

R37. Administrative Services, Risk Management.**R37-1. Risk Management General Rules.****R37-1-1. Purpose.**

The purpose of this rule is to establish the liability and property insurance coverage provided by the Risk Management Fund, and the conditions, underwriting standards, and other rules that govern or control the use of this coverage.

R37-1-2. Authority.

This rule is established pursuant to Section 63A-4-101 which authorizes the State's Risk Manager to recommend rules to the Director of the Department of Administrative Services who is authorized to enact rules.

R37-1-3. Definitions.

(1) "Conditions" specific policy requirements the violation of which will invalidate coverage.

(2) "Coverage or coverage provision" means the type of protection provided against specific risks or losses.

(3) "Covered Entity" means a state department or other state agency not within a state department, a state college or university, a public school district, a participating charter school, or other entity which is covered under the terms of a coverage document issued to it by the Risk Management Fund.

(4) "Underwriting Standard" or "Risk Control Standard" means an action or procedure which must be performed by a covered entity in order to reduce the risk of loss or to avoid imposition of coverage restrictions, deductibles, increased premiums, or loss of credits or dividends.

R37-1-4. Description of the Fund and its Activities.

The Risk Management Fund, hereafter referred to as the Fund, is a self-insurance mechanism established by statute to handle losses to or claims against the state, its agencies, institutions of higher education, participating school districts, participating charter schools, and other entities, which are treated as state agencies when participating, all hereafter referred to as covered entities. Although coverage through the Fund may be in formats like or similar to insurance policies, the relationship between the Fund and covered entities is not that of insurer and insured. No special duties, rules of construction or other legal doctrines recognized by the courts or created by statute with respect to the relationship of an insurer to its insured shall apply to the Fund or entities covered by it, except those which are specifically required by Title 31A, Chapter 12 with respect to some coverage provided to school districts. The duty to defend employees, as defined in Section 63-30d-102 UCA, or volunteers, as defined in Section 67-20-2 UCA, of covered entities extends only as far as the entities' duty to employees or volunteers under the "Governmental Immunity Act" and no special relationship of insurer to insured exists between the Fund and employees or volunteers of covered entities.

R37-1-5. Coverage, Deductibles, Duties and Conditions.

Specific risks covered, properties covered, coverage limits, exclusions, deductibles, conditions and other coverage provisions for coverage through the Risk Management Fund shall apply in accordance with coverage policies issued by the Fund to each covered entity. Subject to specific provisions of the coverage policies, the Fund provides the following coverage:

(1) Liability

(a) Risks Covered - General, automobile, personal injury, errors and omissions, malpractice and garage keepers' liability, and personal injury protection coverage applying to all premises, operations, approved contracts, products and completed operations; owned, non-owned and hired automobiles, other than personal use automobiles; employees, volunteers, and students in the scope of employment or approved services to the

public.

(b) Limits - Typically, the limits are the maximum liability calculated pursuant to Section 63G-7-604 UCA; lower or higher limits for other situations as indicated in coverage policies issued to each covered entity.

(c) Deductible - Deductibles apply to some specific property coverages and situations as noted in the coverage document, but there is no general deductible with regard to liability coverage.

(d) Conditions - The following conditions apply to liability coverages:

(i) In the event of an occurrence, personal injury, act, error, omission, incident, or any other situation likely to give rise to a claim covered by the Fund, written notice containing particulars sufficient to identify the covered entity or person and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the potential claimant, and of available witnesses, shall be given by or for the covered entity or person to the Fund or any of its authorized agents as soon as practicable. The covered entity shall promptly take all reasonable steps to prevent additional injury or damage arising out of the same or similar conditions. A covered entity's failure to take preventive measures shall not constitute a breach of this condition unless the Fund has requested the covered entity, in writing, to undertake the preventive measures. Costs incurred by a covered entity to implement preventive measures shall not be recoverable from the Fund.

(ii) If claim is made or suit is brought against the covered entity or person, whether in court or through an administrative proceeding with the Utah Anti-discrimination Division, the Federal Equal Employment Opportunity Commission or similar body, the covered entity or person shall immediately forward to the Fund a copy of every demand, notice, summons or other process received by it or its representative. Any covered person who is an employee or volunteer of the covered entity shall comply with all provisions of Sections 63G-7-902 UCA, 63G-7-903 UCA, or both before the Fund shall have any duty to defend or pay any judgment against such covered person.

(iii) The covered entity or person shall cooperate with the Fund and, upon the Fund's request, provide the fund with requested information, assist in making settlements, assist in making rule 68 offers of judgment, and assist in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the covered entity or person because of bodily injury or property damage with respect to which coverage is afforded by the Fund; and the covered entity or person shall attend hearings and trials and assist in securing and providing evidence and obtaining the attendance of witnesses. The covered entity or person shall not, except at its own cost, voluntarily make any payment, assume any obligation or incur any expense other than for qualified first aid to others at the time of the accident.

(iv) In the event any employee or volunteer requests under the terms of Section 63G-7-902 UCA that the covered entity defend him relative to any action or claim which would be covered by the Fund, the covered entity shall immediately forward the request to the Fund and the Fund shall have the right to determine on behalf of the covered entity whether to defend, defend under a reservation of rights, or decline to defend.

(v) The covered entity or person shall share with the Fund all records requested by the Fund, relative to any claim under this coverage, to the fullest extent permitted by the Utah Government Records Access and Management Act (GRAMA). If the covered entity falls under the provisions of Section 63-2-701, 702 or 703 UCA, the covered entity shall adopt an ordinance or policy, or make rules which allow the sharing of records with the Fund to at least the extent permitted by

GRAMA and shall share with the Fund all records requested relative to any claim under this coverage to the fullest extent permitted by the ordinance, policy or rule.

(vi) This coverage does not apply to any claim under the Americans With Disabilities Act, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, or similar laws based in whole or in part on the failure of any covered entity to provide a reasonable accommodation unless the covered entity has notified the Fund of its preliminary intention not to provide the requested accommodation, has allowed the Fund a reasonable opportunity to consult with the covered entity before the covered entity denies the requested accommodation, and the Fund agrees with the proposed denial.

(2) Conditions applicable to all coverages provided by the Fund:

(a) In accordance with Subsection 63A-4-101(2)(b)(v) UCA, in the event of any coverage dispute between the Fund and any covered entity or person, there shall be no right of legal action against the Fund.

(b) In the event of any payment under any coverage provided through the Fund, the Fund shall be subrogated to all of the covered entity or person's rights of recovery therefor against any person or organization and the covered entity or person shall execute and deliver instruments and papers and do whatever else is necessary to secure these rights. The covered entity or person shall do nothing after the loss to prejudice these rights.

R37-1-6. Premium Establishment.

In addition to other actuarially sound factors, the Risk Manager may use the following in determining the appropriate premiums for coverage provided to each covered entity:

(1) Entity efforts at exposure management including completion of self-inspection surveys, employee training, agency attendance at Fund-sponsored seminars, agency risk control meetings, risk-related policy development and implementation, etc.

(2) Entity accidents, claims and loss history.

(3) Recent state and federal statutes or court decisions affecting covered entities and operations.

(4) Number of employees in the entity and size of the entity's budget.

(5) Value, protection and other characteristics of the entity's buildings and contents.

(6) Number, type, and value of entity vehicles.

(7) Entity operations and activities.

(8) Actuarial studies.

R37-1-7. Risk Control Standards.

In accordance with Subsection 63A-4-101(2)(b)(i), each covered entity shall comply with the following risk control standards:

(1) Covered entities shall appoint an entity risk coordinator who shall report directly to the covered entity's director, school superintendent or university/college president, or to another individual who reports directly to the covered entity's director, school superintendent or college/university president. Subordinate risk coordinators or other individuals may be appointed at the division, school or lower levels of the organization as the entity deems appropriate. The day to day implementation or management of the entity's risk management duties may be assigned by the risk coordinator to subordinate individuals, committees, or groups as necessary for efficient operation and implementation.

(2) The covered entity risk coordinator shall be responsible for the following duties:

(a) Identifying, evaluating and resolving risk exposures for the entity,

(b) Coordinating with the Fund on the reporting and

investigation of all claims or losses,

(c) Coordinating with the Fund on all liability prevention and loss control and prevention activities.

(d) Ensuring that the Fund is provided with all reasonable information necessary to compute premiums.

(e) Ensuring that premium billings are processed and paid.

(f) Ensuring that notification is made to the Fund on all incidents, issues or informal or administrative claims, including claims originating at the EEOC and/or UALD that may result in a formal claim against the Fund.

(g) Internally supervising or managing all loss prevention activities.

(h) Normally chairing the entity Risk Control Committee and ensuring staff support to the Risk Control Committee.

(3) Each covered entity shall appoint a Risk Control Committee, hereinafter referred to as the committee. Each covered entity shall include on its committee those positions deemed necessary by the Risk Coordinator and/or the entity director, president, or superintendent to provide comprehensive review and risk management services to all of the entities operations. It is recommended that the following positions be included on the committee:

(a) Entity Risk Coordinator.

(b) The covered entity's maintenance director and/or facilities director, where the entity owns or manages its own buildings or in the case where the building is leased the DFCM manager assigned to that building.

(c) The covered entity's Human Resource/Personnel director.

(d) The covered entity's Americans with Disabilities Act Coordinator, or other entity Civil Rights coordinator or director.

(e) The covered entity's Safety Director.

(f) The covered entity's legal counsel or attorney as an ex-officio member.

(g) Staff from the Fund, who may attend the meetings in an ex officio capacity.

The covered entity may appoint on either a permanent or ad hoc basis other individuals whose job duties or special expertise may be of use to the committee. These individuals may include the covered entity's internal auditor, the covered entity's security director, the transportation or motor pool director, a representative from the entity's finance and accounting section and employee representatives. School districts may also wish to include on the committee representatives from the district's athletic, vocational, science and other high risk curriculum areas. The Fund, upon request of the covered entity risk coordinator, will provide recommendations on the makeup of the committee.

The committee shall be normally chaired by the covered entity's risk coordinator. The committee shall be responsible for oversight and supervision of the entity's risk coordination and management program and shall meet at least once each quarter. In advance of its meetings, the committee shall publish an agenda of its meetings and shall forward a copy of the agenda to the Fund. The entity or its committee may appoint other ad hoc or standing committees, or subcommittees to deal with specific issues and problems such as safety, risk control training, civil rights, accident review etc.

(4) The duties of the committee shall include the following activities:

(a) Identifying, evaluating and resolving entity risk exposures.

(b) Reviewing the hazards and corrective actions identified during the annual Risk Management self-inspection survey and developing effective and timely plans to eliminate those hazards.

(c) Serving as a liaison between the Fund and the entity at the discretion of the Risk Coordinator.

(d) Reviewing inspection and other reports from the Fund

and where applicable, implementing the proposed recommendations.

(e) Reviewing and analyzing investigation reports and recommendations regarding all claims, accidents, workers injuries or near accidents, and making recommendations to entity management at appropriate levels on methods for reducing accidents or claims.

(i) Where appropriate, the committee may recommend disciplinary and/or corrective action for employees who violate safety standards including but not limited to OSHA, health, hazardous materials, fire and entity specific standards and/or other standards, policies or rules that result in claims, accidents, worker injuries or near accidents. Any disciplinary or corrective action imposed shall be taken in accordance with the entity's rules.

(ii) The committee, acting as the agency's Accident Review committee, shall review reports and recommendations from subcommittees and others regarding the driving and accident records of employees and may restrict employees from using entity vehicles or the employee's own vehicle on entity business.

(f) Developing policies related to risk reduction and accident prevention and shall recommend their adoption by entity management.

(g) Conducting appropriate evaluations or audits of entity operations and developing findings and recommendations for resolution of identified problems or risk exposures.

(h) Conducting an annual review or evaluation of the entity's risk reduction efforts and providing the Fund with a copy of this evaluation.

(i) Performing other related duties as assigned by the entity risk coordinator, by entity management, or as requested by the Fund.

R37-1-8. Underwriting Standards.

In accordance with Subsection 63A-4-101(2)(b)(i), covered entities shall comply with the following underwriting standards.

(1) Covered entities shall annually review, update, and submit a Statement of Values to the Fund before July 1st. Furthermore, within 90 days of acquisition, covered entities shall report to the Fund the description and value of any after-acquired personal property in excess of \$20,000 and real property in excess of \$250,000. If a covered entity fails to comply with this standard, the Fund may deny coverage with respect to any loss associated with a non-reported asset.

(2) Covered entities shall accurately complete and annually submit the Risk Management Online Self-Inspection Survey before June 1st, unless special exemption has been granted by the State Risk Manager.

(3) Covered entities shall provide all volunteers and employees with training approved by the Fund on unlawful discrimination and harassment in the workplace and other civil rights and liability issues as required by the Fund. After initial training all covered entities shall provide updated or refresher training to all staff members every two (2) years. For state entities the Fund shall coordinate the required training with the Department of Human Resource Management as appropriate. This training shall be developed and provided by qualified individuals. Covered entities shall keep records of the training, including who provided the training, who attended the training and when they attended it.

(4) Covered entities shall conduct or shall have conducted for them driver's license verification checks on all new employees and volunteers who operate entity vehicles or their own vehicles on entity business at time of employment. Covered entities shall, at least annually, verify the status of the driver's license of all employees and volunteers who operate entity vehicles or their own vehicles on entity business.

(5) Covered entities shall establish procedures to ensure that any employee or volunteer who does not have a valid

driver's license is not allowed to operate an entity vehicle or his own vehicle on entity business.

(6) Covered entities shall develop procedures to ensure that records of driver's license checks and the results of these checks shall be kept confidential.

(7) Covered entities shall include in all written job descriptions or other job analysis documents or individual performance plans where use of a vehicle is an essential function of the job, a requirement for maintenance of a valid and appropriate driver's license.

(8) Covered entities shall require and document that all employees and volunteers who operate entity vehicles, or their own vehicles on entity business, complete a Fund-approved or Fund-provided driver safety program at the time of initial employment and at least once every two years.

(9) Covered entities shall develop and enforce policies and procedures to deal with problem drivers and other hazardous driving situations. In addition to other appropriate provisions, these policies shall contain the following:

(a) Employees or volunteers who are involved in an at-fault accident, shall not be allowed to operate entity vehicles, or their own vehicles on entity business, beyond a reasonable time, not to exceed thirty days. During this time the employee or volunteer must complete the Fund approved driver safety program in order to maintain driving privilege. This training shall not take the place of any agency imposed discipline or corrective action.

(b) Employees and volunteers who are required to operate entity vehicles or their own vehicles while on entity business shall operate the vehicles within the limits or restrictions of their individual licenses.

(c) Employees and volunteers who are convicted of Driving under the Influence of Alcohol or Drugs, or Reckless Driving, shall not be allowed to operate entity vehicles or their own vehicles on entity business, until their driving privileges are legally restored.

(10) Covered entities shall develop return to work and temporary transitional duty procedures. Entities shall ensure that these procedures are in accordance with the requirements of the "Americans With Disabilities Act", as amended, and other applicable laws and rules. The procedures shall provide for the return of injured employees to work at the earliest appropriate date.

(11) Covered entities shall review the performance standards or evaluation plan of each employee and where appropriate add a standard requiring the use of required safety equipment, adherence to safety standards, or other liability and risk reduction requirements appropriate to the position and duties performed by the employee.

(12) All new construction, remodels, additions to existing facilities shall comply with the adopted editions of the International Building Code, International Fire Code, and other applicable codes. Existing facilities known to be out of compliance with the adopted edition of the International Building Code, International Fire Code and all other applicable codes at the time of construction, shall be brought up to compliance as a condition of insurability, otherwise an appropriate premium surcharge or coverage restriction may be instituted upon reasonable notice and opportunity to correct areas of noncompliance.

KEY: risk management
June 1, 2010
Notice of Continuation May 5, 2017

63A-4-101 et seq.

R37. Administrative Services, Risk Management.**R37-2. Risk Management State Workers' Compensation Insurance Administration.****R37-2-1. Purpose.**

The purpose of this rule is to establish the responsibilities and guidelines governing the acquisition and administration of workers' compensation insurance, the allocation of costs and the required activities or actions of covered agencies utilizing this coverage.

R37-2-2. Authority.

This rule is established pursuant to Section 63A-4-101 which authorizes the State's Risk Manager to recommend rules to the Department Director who is authorized to enact rules; and Subsection 63A-4-101(2)(a) which authorizes the State's Risk Manager to acquire and administer workers' compensation insurance for the state.

R37-2-3. Workers' Compensation Costs Allocation.

The State's Risk Manager shall allocate workers' compensation insurance costs to state entities on the basis of an equitable and actuarially sound distribution of costs. The Risk Manager shall collect these funds through the state's payroll process. The following factors may be considered in developing this allocation:

- (1) Covered entity injured workers' compensation claims and accident history and trends.
- (2) Covered entity participation in preferred provider programs designated by the Risk Manager.
- (3) Covered entity safety, loss prevention and loss control programs.
- (4) Covered entity disability prevention efforts.
- (5) Covered entity injured worker temporary transitional duty, and return to work programs.
- (6) Covered entity case consultation and cooperation with Risk Management.
- (7) Covered entity payroll by rate classification.

R37-2-4. Expenditure of Workers' Compensation Collections.

The expenditure of collected funds shall be made with the approval of the Risk Manager. In addition to other activities which reduce the overall workers' compensation costs to the state, the collected funds may be expended for:

- (1) Workers' Compensation Insurance premiums for state entities.
- (2) Work site modification and assistive technology to return injured employees to work.
- (3) Employee safety and loss control programs.
- (4) Disability and injury prevention programs.
- (5) Claims management systems.
- (6) Claims information systems.

R37-2-5. Preferred Provider Program.

The Risk Manager may designate a preferred provider program developed by the state's workers compensation insurer, or a preferred provider program developed by Risk Management. Additional contracted facilities or providers may be designated by the Risk Manager. Any designated program shall be in accordance with statutes and rules governing such workers' compensation programs. If the Risk Manager designates any preferred provider program or additional contracted facility or providers state entities shall notify employees of them and require their use by employees for initial treatment.

R37-2-6. Temporary Transitional Duty.

Covered entities shall develop return to work and temporary transitional duty procedures. Entities shall ensure

that these procedures are in accordance with the requirements of the "Americans With Disabilities Act", and other applicable laws and rules. The procedures shall provide for the return of injured employees to work at the earliest appropriate date.

R37-2-7. Agency Notice and Other Requirements.

All state entities shall do the following with respect to any employee or volunteer injury:

(1) Provide immediate notification to Risk Management through a phone call, E-mail, or facsimile, when any of the following conditions occur:

- (a) Serious injury.
- (b) An injury which is questionable or appears to be fraudulent.
- (c) An accident involving the death of an employee.
- (d) An accident where a third party action caused the accident, death or injury.

(2) Notify the Division of Industrial Accidents of the Utah State Labor Commission of incidents, as required by Subsection 34a-2-407(4).

(3) Within seven days of an employee injury, complete a "First Report of Injury Form" provided by Risk Management.

(4) Distribute copies of the "First Report of Injury Form", as indicated on the form, to the Division of Industrial Accidents of the Labor Commission, the state's Workers' Compensation insurer, Risk Management, and the injured employee.

KEY: risk management, workers compensation

June 23, 2008

63A-4-201

Notice of Continuation May 5, 2017

R37. Administrative Services, Risk Management.**R37-3. Risk Management Adjudicative Proceedings.****R37-3-1. Definitions.**

The terms used in this rule are defined in Section 63G-4-103.

R37-3-2. Authority.

This rule is enacted in compliance with the Utah Administrative Procedures Act, Section 63G-4-102 et seq., and Section 63A-1-110.

R37-3-3. Purpose.

(1) The Risk Manager designates all agency action subject to the scope and applicability of the Utah Administrative Procedures Act, Title 63G, Chapter 4, as informal proceedings.

(2) Pursuant to Section 63G-4-102, all agency action with respect to questions of coverage of the risk management Fund, premiums to be charged by the Fund and the interpretation of policies issued by the Fund are actions relating to contracts for the purchase or sale of goods or services by and for the State or by and for an agency of the State and are excluded from the coverage of the Administrative Procedures Act, Section 63G-4-102 et seq., and these rules.

R37-3-4. Procedure.

In compliance with Section 63G-4-203, the procedure for the informal adjudicative proceedings is as follows:

(1) The agency shall not be required to respond in writing to a request for agency action.

(2) The respondent to a notice of agency action pursuant to Section 63G-4-301 shall file an answer or responsive pleading to the allegations contained in the notice of agency action within 20 days following receipt of the notice of agency action.

(3) No hearing shall be held in any agency informal adjudication unless required by statute.

(4) If the agency does not respond in writing to a request for agency action, or does not issue a written decision or order pursuant to Section 63G-4-203 within 90 days of the filing of the request for agency action, such request shall be deemed denied by the agency.

R37-3-5. Agency Review.

Pursuant to Section 63G-4-301, the risk manager does not recommend and the executive director does not enact a rule permitting agency review.

KEY: risk management**1988****Notice of Continuation May 5, 2017****63A-1-110****63G-4-101**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2(2).

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

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

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

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

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

**KEY: limitation on judgments, risk management, Governmental Immunity Act caps
June 1, 2016 63G-7-604(4)
Notice of Continuation May 5, 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 pounce 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, pounce 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 the 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; and
- (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 than 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 States 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. The individual who holds the 2202 license shall be present when slaughter and processing operations 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.

for human consumption may be denatured or destroyed.

KEY: food inspections, slaughter, livestock, poultry
January 12, 2017 4-32-8
Notice of Continuation January 13, 2015

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 conditions 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

R131. Capitol Preservation Board (State), Administration.**R131-3. Use of Magnetometers on Capitol Hill.****R131-3-1. Authority.**

Subsection 63C-9-301(3)(a) requires the Capitol Preservation Board to make rules to govern, administer, and regulate Capitol Hill facilities and Capitol Hill grounds.

R131-3-2. Definitions.

(1) Terms used in this rule are defined in Section 63C-9-102.

(2) In addition:

(a) "Magnetometer" means a device that electronically detects the presence of ferrous metals from their effect on the magnetic field surrounding the earth.

(b) "Capitol Hill identification card" means a valid identification card issued or recognized by the board with a picture, individual name, and department identifying the person as a state elected official or state employee. A Capitol Hill identification card for this purpose does not include a card issued to an individual who are not a state elected official or state employee.

R131-3-3. Security Levels.

(1) Notwithstanding any provision in this rule, under all security levels, Capitol Hill security personnel may in all cases exercise the full authority and discretion granted to them by law to maintain the public safety and peace and to enforce the law.

(2) "Security level one"

(a) Any person entering a facility may be asked to register with the Capitol Hill security personnel. No one is required to pass through a magnetometer.

(b) State elected officials and state employees holding valid Capitol Hill identification cards shall be allowed to enter at all entrances without registering or passing through a magnetometer.

(c) Bag searches may not be conducted.

(3) "Security level two"

(a) Except as provided in Subsection (3)(b), all persons entering a facility may be required to register with the Capitol Hill security personnel, and pass through a magnetometer.

(b) The board shall provide designated "employee entrances" where state elected officials and state employees holding valid Capitol Hill identification cards shall be allowed to enter without registering. The Capitol Hill security personnel may require State elected officials and state employees to pass through the magnetometers.

(c) The Capitol Hill security personnel may require bag searches for persons entering a facility including state elected officials and state employees holding a valid Capitol Hill identification card.

(4) "Security level three"

(a) Except as provided in Subsection (4)(b), all persons entering a facility shall register with the Capitol Hill security personnel, and pass through a magnetometer.

(b) The board shall provide designated "employee entrances" where state elected officials and state employees holding valid Capitol Hill identification cards shall be allowed to enter without registering. The Capitol Hill security personnel shall require state elected officials and state employees to pass through the magnetometers.

(c) The Capitol Hill security personnel shall require bag searches for all person entering a facility, including state elected officials and state employees.

R131-3-4. Magnetometers.

(1) By this rule, the board authorizes the use of magnetometers by Capitol Hill security personnel. Magnetometers may be used for security levels two and three.

(2) Capitol Hill security personnel may use magnetometers

in facilities and on the grounds under the jurisdiction of the board after the commander of Capitol Hill security, or that person's superior, determines that there is a justification for increasing security precautions to level two, or level three. Depending on where the threat is focused, different Capitol Hill facilities may be designated to be at different security levels. When practicable, the decision to increase security precautions at any Capitol Hill facility shall be made in consultation with the executive director. Otherwise, the person making the determination to change from one security level to another, shall notify the executive director as soon as practicable after the decision is made.

(3) The executive director shall notify the members of the board when the security level is changed. Any member of the board may request a meeting of the full board to examine further the decision to move to higher security levels. The Board may lower the security level by a majority vote of the members present forming a quorum of the Board. The Commander may also reduce the security level depending on the security information received.

(4) The board and Capitol Hill security personnel, while using magnetometers in facilities under the authority of the board, shall not impact or infringe upon the rights of persons to keep and bear arms in accordance with Utah Constitution Article I, Section 6, and Title 76, Chapter 10, Part 5. A person carrying a concealed weapon by permit may be asked to show a valid, current concealed weapons permit before being allowed to enter the facility.

**KEY: public buildings, state buildings, facilities use
May 30, 2002
Notice of Continuation May 2, 2017**

63C-9-301(3)

R152. Commerce, Consumer Protection.**R152-34. Postsecondary Proprietary School Act Rules.****R152-34-1. Purpose.**

These rules are promulgated under the authority of Section 13-2-5(1) to administer and enforce the Postsecondary Proprietary School Act. These rules provide standards by which institutions and their agents who are subject to the Postsecondary Proprietary School Act are required to operate consistent with public policy.

R152-34-2. References.

The statutory references that are made in these rules are to Title 13, Chapter 34, Utah Code Annotated 1953.

R152-34-3. Definitions in Addition to Those Found in Section 13-34-103.

(1) "Branch" and "extension" mean a freestanding location that is apart from the main campus, where resident instruction is provided on a regular, continuing basis.

(2) "Correspondence institution" means an institution that is conducted predominantly through the means of home study, including online and distance education programs.

(3) "Course" means a unit subject within a program of education that must be successfully mastered before an educational credential can be awarded.

(4) "Division" means the Division of Consumer Protection.

(5) "Probation" means a negative action of the Division that specifies a stated period for an institution to correct stipulated deficiencies, but does not imply any impairment of operational authority.

(6) "Program of education" consists of a series of courses that lead to an educational credential when completed.

(7) "Resident institution" means an institution where the courses and programs offered are predominantly conducted in a classroom or a class laboratory, with an instructor.

(8) "Revocation" means a negative action of the Division that orders an institution to surrender its certificate and cease operations, including advertising, enrolling students and teaching classes, in accordance with Section 13-34-113.

(9) "Suspension" means a negative action of the Division that impairs an institution's operational authority for a stated period of time during which the deficiencies must be corrected or the certificate may be revoked.

R152-34-4. Rules Relating to the Responsibilities of Proprietary Schools as Outlined in Section 13-34-104.

(1) In order to be able to award a degree or certificate, a proprietary school must meet the following general criteria:

(a) Programs must meet the following generally accepted minimum number of semester/quarter credit hours required to complete a standard college degree: associate, 60/90; bachelor's, 120/180; master's, 150/225; and doctorate, approximately 200/300.

(b) The areas of study, the methods of instruction, and the level of effort required of the student for a degree or certificate must be commensurate with reasonable standards established by recognized accrediting agencies and associations.

(c) In order for the proprietary school to award a degree or certificate, the faculty must be academically prepared in the area of emphasis at the appropriate level, or as to vocational-technical programs, must have equivalent job expertise based on reasonable standards established by recognized accrediting agencies and associations. This notwithstanding, credit may be awarded toward degree completion based on:

(i) transfer of credit from other accredited and recognized institutions,

(ii) recognized proficiency exams (CLEP, AP, etc.), and/or

(iii) in-service competencies as evaluated and recommended by recognized national associations such as the

American Council on Education. Such credit for personal experiences shall be limited to not more than one year's worth of work (30 semester credit hours/45 quarter credit hours).

(d) In order to offer a program of study, either degree or non-degree, it must be of such a nature and quality as to make reasonable the student's expectation of some advantage in enhancing or pursuing employment, as opposed to a general education or non-vocational program which is excluded from registration under 13-34-105(g).

(i) If the purpose of an offered program of study is to prepare students for entry into fields of employment which require licensure by any licensing agency or to prepare students for entry into fields of employment for which it would be impracticable to have reasonable expectations of employment without accreditation and/or certification by any trade and/or industry association and/or accrediting and/or certifying body, the entity offering, or desiring to offer, the program of study must provide the Division:

(A) information regarding the type of license, accreditation and/or certification that students completing the program of study must obtain in order to have a reasonable expectation of employment;

(B) the name and contact information of the agency, trade and/or industry association and/or accrediting and/or certifying body;

(C) evidence that the curriculum for the offered program of study has been reviewed by the appropriate entity from subsection (B) above; and,

(D) evidence that the instructors teaching students enrolled in the program of study are licensed by the appropriate agency from subsection (B) above, or have earned the accreditation and/or certification from the appropriate entity from subsection (B) above to teach and/or practice in the field for which the students are being prepared.

(2) The faculty member shall assign work, set standards of accomplishment, measure the student's ability to perform the assigned tasks, provide information back to the student as to his or her strengths and deficiencies, and as appropriate, provide counseling, advice, and further assignments to enhance the student's learning experience. This requirement does not preclude the use of computer assisted instruction or programmed learning techniques when appropriately supervised by a qualified faculty member.

(3) As appropriate to the program or course of study to be pursued, the proprietary school shall evaluate the prospective student's experience, background, and ability to succeed in that program through review of educational records and transcripts, tests or examinations, interviews, and counseling. This evaluation shall include a finding that the prospective student (1) is beyond the age of compulsory high school attendance, as prescribed by Title 53A Chapter 11, Utah Code Annotated; and (2) has received either a high school diploma or a General Education Development certificate, or has satisfactorily completed a national or industry developed competency-based test or an entrance examination that establishes the individual's ability to benefit. Based on this evaluation, before admitting the prospective student to the program, the institution must have a reasonable expectation that the student can successfully complete the program, and that if he or she does so complete, that there is a reasonable expectation that he or she will be qualified and be able to find appropriate employment based on the skills acquired through the program.

(4) Each proprietary school shall prepare for the use of prospective students and other interested persons a catalog or general information bulletin that contains the following information:

(a) The legal name, address, and telephone number of the institution, also any branches and/or extension locations;

(b) The date of issue;

(c) The names, titles, and qualifications of administrators and faculty;

(d) The calendar, including scheduled state and federal holidays, recess periods, and dates for enrollment, registration, start of classes, withdrawal and completion;

(e) The admission and enrollment prerequisites, both institutional and programmatic, as provided in R152-34-8(1);

(f) The policies regarding student conduct, discipline, and probation for deficiencies in academics and behavior;

(g) The policies regarding attendance and absence, and any provision for make-up of assignments;

(h) The policies regarding dismissal and/or interruption of training and of reentry;

(i) The policies explaining or describing the records that are to be maintained by the institution, including transcripts;

(j) The policies explaining any credit granted for previous education and experience;

(k) The policies explaining the grading system, including standards of progress required;

(l) The policies explaining the provision to students of interim grade or performance reports;

(m) The graduation requirements and the credential awarded upon satisfactory completion of a program;

(n) The schedule of tuition, any other fees, books, supplies and tools;

(o) The policies regarding refunds of any unused charges collected as provided in R152-34-8(3);

(p) The student assistance available, including scholarships and loans;

(q) The name, description, and length of each program offered, including a subject outline with course titles and approximate number of credit or clock hours devoted to each course;

(r) The placement services available and any variation by program;

(s) The facilities and equipment available;

(t) An explanation of whether and to what extent that the credit hours earned by the student are transferable to other institutions;

(u) A statement of the institution's surety or surety exemption status with the Division; and

(v) Such other information as the Division may reasonably require.

R152-34-5. Rules Relating to Institutions Exempt Under Section 13-34-105.

(1) Institutions that provide nonprofessional review courses, such as law enforcement and civil service, are not exempt, unless they are considered as workshops or seminars within the meaning of Section 13-34-105(1)(h).

(2) In order for the church or religious denomination to be "bona fide" such that the institution is exempt from registration, the institution may not be the church or religious denomination's primary purpose, function or asset. The institution shall submit a sworn statement in a form specified by the Division attesting to the religious nature of the education offered.

(3) Any institution which claims an accreditation exemption must furnish acceptable documentation to the Division upon request.

(4) To qualify for exemption under Section 13-34-105(1)(f):

(a) the training or instruction shall not be the primary activity of the organization, association, society, labor union, or franchise system or;

(b) the organization, association, society, labor union, or franchise system shall meet the following requirements:

(i) the organization, association, society, labor union, or franchise system does not recruit students;

(ii) the organization, association, society, labor union, or

franchise system provides courses of instruction only to students who are currently employed;

(iii) the cost of the course of instruction is paid for by the employer of the student, not the student; and

(iv) enrollment in each individual course of instruction is limited to those who are bona fide employees of the employer.

(5) To qualify for exemption under Section 13-34-105(1)(c):

(a) the profession for which the review program is offered must be recognized by a state or national licensing or certifying body;

(b) the students enrolled in the review program must previously complete education and/or training in the occupation or field required to be obtained by the certifying body; and

(c) the professional review program must provide only review and preparation for exams or other certifying tests that are required to be passed by the certifying body.

(6) The Division shall determine an institution's status in accordance with the categories contained in this section.

(7) An exempt institution shall notify the Division within thirty (30) days of a material change in circumstances which may affect its exempt status as provided in this section and shall follow the procedure outlined in Section 13-34-107.

(8) An exempted institution which voluntarily applies for a certificate by filing a registration statement shall comply with all rules as though such institution were nonexempt.

R152-34-6. Rules Relating to the Registration Statement Required under Section 13-34-106.

(1) The registration statement application shall provide the following information and statements made under oath:

(a) The institution's name, address, and telephone number;

(b) The names of all persons involved in the operation of the institution and a stipulation that the resumes are on file at the institution and available to the students;

(c) The name of the agent authorized to respond to student inquiries if the registrant is a branch institution whose parent is located outside of the state of Utah;

(d) A statement that its articles of incorporation have been registered and accepted by the Utah Department of Commerce, Division of Corporations and Commercial Code and that it has a local business license, if required;

(e) A statement that its facilities, equipment, and materials meet minimum standards for the training and assistance necessary to prepare students for employment;

(f) A statement that it maintains accurate attendance records, progress and grade reports, and information on tuition and fee payments appropriately accessible to students;

(g) A statement that its maintenance and operation is in compliance with all ordinances, laws, and codes relative to the safety and health of all persons upon the premises;

(h) A statement that there is sufficient student interest in Utah for the courses that it provides and that there is reasonable employment potential in those areas of study in which credentials will be awarded;

(i) If the registration statement is filed pursuant to Section 13-34-107(3)(b), a detailed description of any material modifications to be made in the institution's operations, identification of those programs that are offered in whole or in part in Utah and a statement of whether the student can complete his or her program without having to take residence at the parent campus;

(j) A statement that it maintains adequate insurance continuously in force to protect its assets;

(k) A disclosure as required by R152-34-7(1);

(l) If the registrant is a correspondence institution, whether located within or without the state of Utah, a demonstration that the institution's educational objectives can be achieved through home study; that its programs, instructional material, and

methods are sufficiently comprehensive, accurate, and up-to-date to meet the announced institutional course and program objectives; that it provides adequate interaction between the student and instructor, through the submission and correction of lessons, assignments, examinations, and such other methods as are recognized as characteristic of this particular learning technique; and that any degrees and certificates earned through correspondence study meet the requirements and criteria of R152-34-4(1).

(2) The institution shall provide with its registration statement application copies of the following documents:

- (a) A sample of the credential(s) awarded upon completion of a program;
- (b) A sample of current advertising including radio, television, newspaper and magazine advertisements, and listings in telephone directories;
- (c) A copy of the student enrollment agreement; and
- (d) Financial information, as described in Section 13-34-107(6).

(3) If any information contained in the registration statement application becomes incorrect or incomplete, the registrant shall, within thirty (30) days after the information becomes incorrect or incomplete, correct the application or file the complete information as required by the Division.

R152-34-7. Rules Relating to the Operation of Proprietary Schools under Section 13-34-107.

(1) In accordance with U.C.A. Section 13-34-107(5), applicants shall pay registration fees established by the Division pursuant to U.C.A. Section 63J-1-504.

(2) The institution shall submit to the Division its renewal registration statement application, along with the appropriate fee, no later than thirty (30) days prior to the expiration date of the current certificate of registration.

(3) In addition to the annual registration fee, an institution failing to file a renewal registration application by the due date or filing an incomplete registration application or renewal shall pay an additional fee of \$25 for each month or part of a month during which the registration remains lapsed.

(4) One year after issuance, an institution shall submit a review on a form provided by the Division and pay a fee as determined in Subsection (1) above. The review will evaluate an institution's financial information, surety requirements and the following statistical information:

- (a) The number of students enrolled for the previous one-year period of registration;
- (b) The number of students who completed and received a credential;
- (c) The number of students who terminated their registration or withdrew from the institution;
- (d) The number of administrators, faculty, supporting staff, and agents; and
- (e) The new catalog, information bulletin, or supplements.

(5) An authorized officer of the institution to be registered under this chapter shall sign a disclosure as to whether the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules as determined in a criminal, civil or administrative proceeding.

(6) The Division shall refuse to register an institution if the Division determines the following:

- (a) the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules, as determined in a criminal, civil or administrative proceeding;
- (b) the violation(s) are relevant to the appropriate operation of the school; and
- (c) there is reasonable doubt that the institution will provide students with an appropriate learning experience or that

the institution will function in accordance with all applicable laws and rules.

(7) Within thirty (30) days after receipt of an initial or renewal registration statement application and its attachments, the Division shall do one of the following:

- (a) issue a certificate of registration;
- (b) refuse to accept the registration statement based on Sections 13-34-107 and 113.

(8) A change in the ownership of an institution, as defined in Section 13-34-103(8), occurs when there is a merger or change in the controlling interest of the entity or if there is a transfer of more than fifty percent (50%) of its assets within a three-year period. When this occurs, the following information shall be submitted to the Division:

- (a) a copy of any new articles of incorporation;
- (b) a current financial statement;
- (c) a listing of all institutional personnel that have changed as a result of the ownership transaction, together with complete resumes and qualifications;
- (d) a detailed description of any material modifications to be made in the operation of the institution; and
- (e) payment of the appropriate fee.

(9)(a) A satisfactory surety in the form of a bond, certificate of deposit, or irrevocable letter of credit shall be provided by the institution before a certificate of registration will be issued by the Division.

(b) The obligation of the surety will be that the institution, its officers, agents, and employees will:

- (i) faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the institution and persons enrolling as students; and
- (ii) conform to the provisions of the Utah Postsecondary Proprietary School Act and Rules.

(c) The bond, certificate of deposit, or letter of credit shall be in a form approved by the Division and issued by a company authorized to do such business in Utah.

(d)(i) The bond, certificate of deposit, or letter of credit shall be payable to the Division to be used for creating teach-out opportunities or for refunding tuition, book fees, supply fees, equipment fees, and other instructional fees paid by a student or potential student, enrollee, or his or her parent or guardian.

(ii) In each instance the Division may determine:

(A) which of the uses listed in Subsection (9)(d)(i) are appropriate; and

(B) if the Division creates teach-out opportunities, the appropriate institution to provide the instruction.

(e) An institution that closes or otherwise discontinues operations shall maintain the institution's surety until:

(i) at least one year has passed since the institution has notified the Division in writing that the institution has closed or discontinued operation; and

(ii) the institution has satisfied the requirements of Section R152-34-9.

(10)(a) The surety company may not be relieved of liability on the surety unless it gives the institution and the Division ninety calendar days notice by certified mail of the company's intent to cancel the surety.

(b) The cancellation or discontinuance of surety coverage after such notice does not discharge or otherwise affect any claim filed by a student, enrollee or his/her parent or guardian for damage resulting from any act of the institution alleged to have occurred while the surety was in effect, or for an institution's ceasing operations during the term for which tuition had been paid while the surety was in force.

(c) If at any time the company that issued the surety cancels or discontinues the coverage, the institution's registration is revoked as a matter of law on the effective date of the cancellation or discontinuance of surety coverage unless a replacement surety is obtained and provided to the Division.

(11)(a) Before an original registration is issued, and except as otherwise provided in this rule, the institution shall secure and submit to the Division a surety in the form of a bond, certificate of deposit or letter of credit in an amount of one hundred and eighty-seven thousand, five-hundred dollars (\$187,500) for schools expecting to enroll more than 100 separate individual students (non-duplicated enrollments) during the first year of operation, one hundred and twenty-five thousand dollars (\$125,000) for schools expecting to enroll between 50 and 99 separate individual students during the first year, and sixty-two thousand, five-hundred dollars (\$62,500) for institutions expecting to enroll less than 50 separate individual students during the first year.

(b) Institutions that submit evidence acceptable to the Division that the school's gross tuition income from any source during the first year will be less than twenty-five thousand dollars (\$25,000) may provide a surety of twelve thousand, five hundred dollars (\$12,500) for the first year of operation.

(12)(a) Except as otherwise provided in this rule, the minimum amount of the required surety to be submitted annually after the first year of operation will be based on twenty-five percent of the annual gross tuition income from registered program(s) for the previous year (rounded to the nearest \$1,000), with a minimum surety amount of twelve thousand, five hundred dollars (\$12,500) and a maximum surety amount of three hundred thousand dollars (\$300,000).

(b) The surety shall be renewed each year by the anniversary date of the school's certificate of registration, and also included as a part of each two-year application for registration renewal.

(c) No additional programs may be offered without appropriate adjustment to the surety amount.

(13)(a) The institution shall provide a statement by a school official regarding the calculation of gross tuition income and written evidence confirming that the amount of the surety meets the requirements of this rule.

(b) The Division may require that such statement be verified by an independent certified public accountant if the Division determines that the written evidence confirming the amount of the surety is questionable.

(14) An institution with a total cost per program of five hundred dollars or less or a length of each such program of less than one month shall not be required to have a surety.

(15) The Division will not register a program at a proprietary school if it determines that the educational credential associated with the program may be interpreted by employers and the public to represent the undertaking or completion of educational achievement that has not been undertaken and earned.

(16) Acceptance of registration statements and the issuing of certificates of registration to operate a school signifies that the legal requirements prescribed by statute and regulations have been satisfied. It does not mean that the Division supervises, recommends, nor accredits institutions whose statements are on file and who have been issued certificates of registration to operate.

R152-34-8. Rules Relating to Fair and Ethical Practices Set Forth in Section 13-34-108.

(1) An institution, as part of its assessment for enrollment, shall consider the applicant's basic skills, aptitude, and physical qualifications, as these relate to the choice of program and to anticipated employment and shall not admit a student to a program unless there is a reasonable expectation that the student will succeed, as prescribed by R152-34-4(3).

(2) Financial dealings with students shall reflect standards of ethical practice. Tuition paid to an institution, and related student loans, are consumer transactions as defined in Utah Code Title 13, Chapter 11.

(3) The institution shall adopt a fair and equitable refund policy including:

(a) A three-business-day cooling-off period, commencing with the day an enrollment agreement with the applicant is signed or an initial deposit or payment toward tuition and fees of the institution is made, until midnight of the third business day following such date or from the date that the student first visits the institution, whichever is later, shall be applicable and during this time the contract may be rescinded by the student and all money paid refunded.

(b) A student enrolled in a correspondence institution may withdraw from enrollment following the cooling off period, prior to submission by the student of any lesson materials or prior to receipt of course materials, whichever comes first, and effective upon deposit of a written statement of withdrawal for delivery by mail or other means, and the institution shall be entitled to retain no more than \$200 in tuition or fees as registration charges or an alternative amount that the institution can demonstrate to have been expended in preparation for that particular student's enrollment.

(c) A clear and unambiguous written statement of the institution's refund policy for students who desire a refund after the three-business-day cooling-off period or after a student enrolled in a correspondence institution has submitted lesson materials or been in receipt of course materials.

(d) There shall be a written enrollment agreement, to be signed by the student and a representative of the institution, that clearly describes the cooling-off period, nonrefundable registration fee, and refund policy and schedule, including the rights of both the student and the institution, with copies provided to each.

(e) There shall be complete written information on repayment obligations to all applicants for financial assistance before an applicant student assumes such responsibilities.

(f) A pay-as-you-learn payment schedule that limits a student's prospective contractual obligation(s), at any one time, to the institution for tuition and fees to four months of training, plus registration or start-up costs not to exceed \$200 or an alternative amount that the institution can demonstrate to have spent in undertaking a student's instruction. This restriction applies regardless of whether a contractual obligation is paid to the institution by:

- (i) the student directly; or
- (ii) a lender or any other entity on behalf of the student.

(g) The payment of a refund within 30 calendar days of a request for a refund if the person requesting the refund is entitled to the refund:

- (i) under any provision of:
 - (A) the Utah Postsecondary Proprietary School Act, Utah Code Title 13, Chapter 34;
 - (B) the Postsecondary Proprietary School Act Rules, R152-34; or

(C) a contract or other agreement between the institution and the person requesting the refund; or

(ii) because of the institution's failure to fulfill its obligations to the person requesting the refund.

(4) Following the satisfactory completion of his or her training and education, a student is provided with appropriate educational credentials that show the program in which he or she was enrolled, together with a transcript of courses completed and grades or other performance evaluations received.

(5) No institution shall use the designation of 'college' nor 'university' in its title nor in conjunction with its operation unless it actually confers a standard college degree as one of its credentials, unless the use of such designation had previously been approved by the Board of Regents prior to July 1, 2002.

(6) The name of the institution shall not contain any reference that could mislead potential students or the general

public as to the type or nature of its educational services, affiliations or structure.

(7) Advertising standards consist of the following:

(a) The institution's chief administrative officer assumes all responsibility for the content of public statements made on behalf of the institution and shall instruct all personnel, including agents, as to this rule and other appropriate laws regarding the ethics of advertisement and recruitment;

(b) Advertising shall be clear, factual, supportable, and shall not include any false or misleading statements with respect to the institution, its personnel, its courses and programs, its services, nor the occupational opportunities for its graduates;

(c) Institutions shall disclose that they are primarily operated for educational purposes if this is not apparent from the legal name. Institutions shall not advertise educational services in conjunction with any other business or establishment, nor in "help wanted" or "employment opportunity" columns of newspapers, magazines or similar forums in such a way as to lead readers to believe that they are applying for employment rather than education and training. Any advertisement in "help wanted" or "employment opportunity" forums shall be for positions open for immediate employment only;

(d) An institution, its employees and agents, shall refrain from other forms of ambiguous or deceptive advertising, such as:

(i) claims as to endorsement by manufacturers or businesses or organizations until and unless written evidence supporting this fact is on file; and

(ii) representations that students completing a course or program may transfer either credits or credentials for acceptance by another institution, state agency, or business, unless written evidence supporting this fact is on file;

(e) An institution shall maintain a file of all promotional information and related materials for a period of three (3) years;

(f) The Division may require an institution to submit its advertising prior to its use; and

(g) An institution cannot advertise that its organization or program is endorsed by the state of Utah other than to state that the school is 'Registered under the Utah Postsecondary Proprietary School Act'.

(h) An institution shall include the following registration and disclaimer statements in its catalog, student information bulletin, and enrollment agreements:

(i) REGISTERED UNDER THE UTAH POSTSECONDARY PROPRIETARY SCHOOL ACT (Title 13, Chapter 34, Utah Code).

(ii) Registration under the Utah Postsecondary Proprietary School Act does not mean that the State of Utah supervises, recommends, nor accredits the institution. It is the student's responsibility to determine whether credits, degrees, or certificates from the institution will transfer to other institutions or meet employers' training requirements. This may be done by calling the prospective school or employer.

(iii) The institution is not accredited by a regional or national accrediting agency recognized by the United States Department of Education.

(8) Recruitment standards include the following:

(a) Recruiting efforts shall be conducted in a professional and ethical manner and free from 'high pressure' techniques; and

(b) An institution shall not use loans, scholarships, discounts, or other such enrollment inducements, where such result in unfair or discriminatory practices.

(9) An agent or sales representative may not be directly or indirectly be portrayed as 'counselor,' 'advisor,' or any other similar title to disguise his or her sales function.

(10) An agent or representative is responsible to have a clear understanding and knowledge of the programs and courses, tuition, enrollment requirements, enrollment agreement, support services, and the general operational procedures thereof.

(11) An institution shall indemnify any student from loss or other injury as a result of any fraud or other form of misrepresentation used by an agent in the recruitment process.

(12) An institution operating in Utah but domiciled outside the state shall designate a Utah resident as its registered agent for purposes of service of legal process.

(13) An institution shall provide a student with all of the student's school records, as described in R152-34-9(2), within five business days after a written or verbal request by a student for the student's school records. The institution may not charge a student more than the actual copying costs for the student's school records.

R152-34-9. Rules Relating to Discontinuance of Operations Pursuant to Section 13-34-109.

(1) Should an institution cease operations or otherwise discontinue its educational activities, it shall immediately notify the Division in writing 30 days prior to closing. The chief administrative officer shall send formal written notice to the Division; this notice shall include:

(a) The date on which the institution will officially close;

(b) A written plan for access to and preservation of permanent records;

(c) What actions the institution plans to take in regards to its students; and

(d) In the event an institution closes with students enrolled who have not completed their programs, a list of such students, including the amount of tuition paid and the proportion of their program completed, shall be submitted to the Division, with all particulars.

(2) Once an institution has notified the Division of its intent to cease operations, it shall not advertise, recruit, offer or otherwise enroll new students into its programs.

(3) School records consist of the following permanent scholastic records for all students who are admitted, withdrawn or terminated:

(a) entrance application and admission acceptance information;

(b) attendance and performance information, including transcripts which shall at a minimum include the program in which the student enrolled, each course attempted and the final grade earned;

(c) graduation or termination dates; and

(d) enrollment agreements, tuition payments, refunds, and any other financial transactions.

(4) An institution that closes or otherwise discontinues operations shall maintain its surety required under R152-34-7(11) and/or R152-34-7(12) until:

(a) At least one year has passed since the institution has notified the Division in writing that the institution has closed or discontinued operation; and

(b) The institution has satisfied the closure requirements of this section by providing documentation acceptable to the Division to show that it has satisfied all possible claims for refunds that may be made against the institution by students of the institution at the time the institution discontinued operations and by persons who were students of the institution within one year prior to the date that the institution discontinued operations, whichever is shorter.

(5) Within ten (10) business days after the closure, the institution shall provide the Division with all the information outlined above and in accordance with Section 13-34-109, including copies of student transcripts.

R152-34-10. Rules Relating to Suspension, Termination or Refusal to Register under Section 13-34-111.

(1) The Division may perform on-site evaluations to verify information submitted by an institution or an agent, or to investigate complaints filed with the Division.

(2) The Division may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, issue an order to deny, suspend, or revoke a registration, upon a finding that:

(a) the award of credentials by a nonexempt institution without having first duly registered with the Division and having obtained the requisite surety;

(b) a registration statement application that contains material representations which are incomplete, improper, or incorrect;

(c) failure to maintain facilities and equipment in a safe and healthful manner;

(d) failure to perform the services or provide materials as represented by the institution, failure to perform any commitment made in the registration statement or permit application, offering programs or services not contained in the registration statement currently on file, or violations of the conditions of the certificate of registration;

(e) failure to maintain sufficient financial capability, as set forth in section R152-34-7;

(f) to confer, or attempt to confer, a fraudulent credential, as set forth in 13-34-201;

(g) employment of students for commercial gain, if such fact is not contained in the current registration statement;

(h) promulgation to the public of fraudulent or misleading statements relating to a program or service offered;

(i) failure to comply with the Postsecondary Proprietary School Act or these rules;

(j) withdrawal of the authority to operate in the home state of an institution whose parent campus or headquarters is not domiciled in this state;

(k) failure to comply with applicable laws in this state or another state where the institution is doing business; and

(l) failure to provide reasonable information to the Division as requested from time to time.

(3) A violation of these administrative rules is also a violation of the Utah Consumer Sales Practices Act and accompanying administrative rules.

R152-34-11. Rules Relating to Fraudulent Educational Credentials under Section 13-34- 201.

(1) A person may not represent him or herself in a deceptive or misleading way, such as by using the title "Dr." or "Ph.D." if he or she has not satisfied accepted academic or scholastic requirements.

KEY: education, postsecondary proprietary schools, registration, requirements, consumer protection
November 24, 2014
Notice of Continuation May 8, 2017

13-2-5(1)

R156. Commerce, Occupational and Professional Licensing.**R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rule.****R156-22-101. Title.**

This rule is known as the "Professional Engineers and Professional Land Surveyors Licensing Act Rule".

R156-22-102. Definitions.

In addition to the definitions in Title 58, Chapters 1, 3a and 22, as used in Title 58, Chapters 1, 3a and 22, or this rule:

(1) "Complete and final", as used in Section 58-22-603, means "complete construction plans" as defined in Subsection 58-22-102(3).

(2) "Direct supervision", as used in Subsection 58-22-102(10), means "supervision" as defined in Subsection 58-22-102(16).

(3) "Employee, subordinate, associate, or drafter of a licensee", as used in Subsections 58-22-102(16), 58-22-603(1)(b) and this rule, means one or more individuals not licensed under this chapter, who are working for, with, or providing professional engineering, professional structural engineering, or professional land surveying services directly to and under the supervision of a person licensed under this chapter.

(4) "Engineering surveys", as used in Subsection 58-22-102(9), include all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but exclude the surveying of real property for the establishment of land boundaries, rights-of-way, easements, alignment of streets, and the dependent or independent surveys or resurveys of the public land survey system.

(5) "Highly toxic materials", as used in Subsection 58-22-102(14)(a)(ii)(F), is as defined in the State Construction and Fire Codes adopted under Title 15A.

(6) "Incidental practice" means "architecture work as is incidental to the practice of engineering", as used in Subsection 58-22-102(9), and "engineering work as is incidental to the practice of architecture", as used in Subsection 58-3a-102(6), which:

(a) can be safely and competently performed by the licensee without jeopardizing the life, health, property and welfare of the public;

(b) is secondary and substantially less in scope and magnitude when compared to the work performed or to be performed by the licensee in the licensed profession;

(c) is work in which the licensee is fully responsible for the incidental practice performed as provided in Subsections 58-3a-603(1) or 58-22-603(1);

(d) unless exempt from licensure as provided in Subsection 58-22-305(1)(e), is work on a building classified for not greater than 49 occupants as determined in the State Construction and Fire Codes adopted under Title 15A;

(e) unless exempt from licensure as provided in Subsection 58-22-305(1)(e), is work included on a project with a construction value not greater than 15 percent of the overall construction value for the project including all changes or additions to the contracted or agreed upon work; and

(f) shall not include work on a building or related structure in an occupancy category of III or IV as defined in 1604.5 of the 2009 International Building Code.

(7) "Maximum allowable quantities", as used in Subsection 58-22-102(14)(a)(ii)(F), is quantities of hazardous materials as set forth in Section 307 of the 2009 International Building Code, Tables 307.1(1) and 307.1(2), which when exceeded, would classify the building, structure or portion thereof as Group H-1, H-2, H-3, H-4 or H-5 hazardous use.

(8) "NCEES FE", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Fundamentals of Engineering Examination.

(9) "NCEES FS", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Fundamentals of Surveying Examination.

(10) "NCEES PE", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Principles and Practice of Engineering Examination.

(11) "NCEES PS", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Principles and Practice in Surveying Examination.

(12) "NCEES SE", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Structural Engineering Examination.

(13) "Professional structural engineering or the practice of structural engineering", as defined in Subsection 58-22-102(14), is further defined to exclude the design and oversight of the construction and installation of highway, utility, or pedestrian bridges.

(14) "Recognized jurisdiction", as used in Subsection 58-22-302(4)(d)(i), for licensure by endorsement, means any jurisdiction that is a member of the NCEES.

(15) "Responsible charge" by a principal, as used in Subsection 58-22-102(7), means that the licensee is assigned to and is personally accountable for the production of specified professional engineering, professional structural engineering or professional land surveying projects within an organization.

(16) "TAC/ABET" means Technology Accreditation Commission/Accreditation Board for Engineering and Technology (ABET, Inc.).

(17) "Under the direction of the licensee", as used in Subsection 58-22-102(16), as part of the definition of "supervision of an employee, subordinate, associate, or drafter of a licensee", means that the unlicensed employee, subordinate, associate, or drafter of a person licensed under this chapter engages in the practice of professional engineering, professional structural engineering, or professional land surveying only on work initiated by a person licensed under this chapter, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of a person licensed under this chapter.

(18) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 22, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-22-502.

R156-22-103. 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 22.

R156-22-104. 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.

R156-22-302b. Qualifications for Licensure - Education Requirements.

(1) Education requirements - Professional Engineer and Professional Structural Engineer.

In accordance with Subsections 58-22-302(1)(d) and 58-22-302(2)(d), the engineering program criteria is established as one of the following:

(a) The bachelors or post graduate engineering program shall be accredited by EAC/ABET or the Canadian Engineering Accrediting Board (CEAB).

(b) The post graduate engineering degree, when not

accredited by EAC/ABET or CEAB, shall be earned from an institution which offers a bachelors or masters degree in an engineering program accredited by EAC/ABET or CEAB in the same specific engineering discipline as the earned post graduate degree and the applicant is responsible to demonstrate that the combined engineering related coursework taken (both undergraduate and post graduate) included coursework that meets or exceeds the engineering related coursework required for the EAC/ABET accreditation for the bachelor degree program.

(c) If the degree was earned in a foreign country, the engineering curriculum shall be determined by the NCEES Credentials Evaluations to fulfill the required curricular content of the NCEES Engineering Education Standard. Deficiencies in course work reflected in the credential evaluation may be satisfied by completing the deficiencies in course work at a recognized college or university approved by the Division in collaboration with the Board. Engineering course work deficiencies must be completed at an EAC/ABET approved program.

(d) A TAC/ABET accredited degree is not acceptable to meet the qualifications for licensure as a professional engineer or a professional structural engineer.

(2) Education requirements - Professional Land Surveyor.

In accordance with Subsection 58-22-302(3)(d), an applicant applying for licensure as a professional land surveyor shall verify completion of one of the following land surveying programs affiliated with an institution that is recognized by the Council for Higher Education Accreditation (CHEA) and approved by the Division in collaboration with the Board:

(a) an associates in applied science degree in land surveying or geomatics;

(b) a bachelors, masters or doctorate degree in land surveying or geomatics;

(c) an equivalent land surveying program that includes completion of a bachelors, masters or doctorate degree in a field related to land surveying or geomatics comprised of a minimum of 30 semester hours or 42 quarter hours of course work in land surveying or geomatics which shall include the following courses:

(i) successful completion of a minimum of one course in each of the following content areas:

- (A) boundary law;
- (B) writing legal descriptions;
- (C) photogrammetry;
- (D) public land survey system;
- (E) studies in land records or land record systems; and
- (F) surveying field techniques; and

(ii) completion of the remainder of the 30 semester hours or 42 quarter hours from any or all of the following content areas:

(A) algebra, calculus, geometry, statistics, trigonometry, not to exceed six semester hours or eight quarter hours;

(B) control systems;

(C) drafting, not to exceed six semester hours or eight quarter hours;

(D) geodesy;

(E) geographic information systems;

(F) global positioning systems;

(G) land development; and

(H) survey instrumentation; or

(d) an equivalent land surveying program that includes completion of a bachelors, masters or doctorate degree in a field related to land surveying or geomatics that does not include some of the course work specified in (c)(i) or (ii), or both, as part of the degree program, provided that the deficient requirements specified in (c)(i) or (ii), or both, have

been completed post degree; and

(e) if the degree was earned in a foreign country, the land surveying curriculum shall be determined by the NCEES Credential Evaluations to fulfill the required curricular content of the NCEES Education Standard. Deficiencies in course work reflected in the credential evaluation may be satisfied by completing the deficiencies in course work at a recognized college or university approved by the Division in collaboration with the Board.

R156-22-302c. Qualifications for Licensure - Experience Requirements.

(1) General Requirements. These general requirements apply to all applicants under this chapter and are in addition to the specific license requirements in Subsections (2), (3) and (4).

(a) 2,000 hours of work experience constitutes one year (12 months) of work experience.

(b) No more than 2,000 hours of work experience can be claimed in any 12 month period.

(c) Experience shall be progressive on projects that are of increasing quality and requiring greater responsibility.

(d) Only experience of an engineering, structural engineering or surveying nature, as appropriate for the specific license, is acceptable.

(e) Experience is not acceptable if it is obtained in violation of applicable statutes or rules.

(f) Unless otherwise provided in this Subsection (1)(g), experience shall be gained under the direct supervision of a person licensed in the profession for which the license application is submitted. Supervision of an intern by another intern is not permitted.

(g) Experience is also acceptable when obtained in a work setting where licensure is not required or is exempted from licensure requirements, including experience obtained in the armed services if:

(i) the experience is performed under the supervision of qualified persons and the applicant provides verifications of the credentials of the supervisor; and

(ii) the experience gained is equivalent to work performed by an intern obtaining experience under a licensed supervisor in a licensed or civilian setting, and the applicant provides verification of the nature of the experience.

(h) Proof of supervision. The supervisor shall provide to the applicant the certificate of qualifying experience in a sealed envelope with the supervisor's seal stamped across the seal flap of the envelope, which the applicant shall submit with the application for licensure.

(i) In the event the supervisor is unavailable or refuses to provide a certification of qualifying experience, the applicant shall submit a complete explanation of why the supervisor is unavailable and submit verification of the experience by alternative means acceptable to the Board, which shall demonstrate that the work was profession-related work, competently performed, and sufficient accumulated experience for the applicant to be granted a license without jeopardy to the public health, safety or welfare.

(j) In addition to the supervisor's documentation, the applicant shall submit:

(i) at least one verification from a person licensed in the profession who has personal knowledge of the applicant's knowledge, ability and competence to practice in the profession applied for; or

(ii) if a person verifying the applicant's credentials is not licensed in the profession:

(A) at least one verification from the unlicensed person; and

(B) a written explanation as to why the unlicensed person is best qualified to verify the applicant's knowledge,

ability and competence to practice in the profession applied for.

(k) Duties and responsibilities of a supervisor. The duties and responsibilities of a licensee under Subsection (1)(f) or other qualified person under Subsection (1)(g) include the following.

(i) A person may not serve as a supervisor for more than one firm.

(ii) A person who renders occasional, part time or consulting services to or for a firm may not serve as a supervisor.

(iii) The supervisor shall be in responsible charge of the projects assigned and is professionally responsible for the acts and practices of the supervisee.

(iv) The supervision shall be conducted in a setting in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised.

(v) The supervisor shall be available for advice, consultation and direction consistent with the standards and ethics of the profession.

(vi) The supervisor shall provide periodic review of the work assigned to the supervisee.

(vii) The supervisor shall monitor the performance of the supervisee for compliance with laws, standards and ethics applicable to the profession.

(viii) The supervisor shall provide supervision only to a supervisee who is an employee of a licensed professional or alternatively in a setting wherein both the supervisor and the supervisee are engaged in a work setting in which the work is exempt from licensure requirements.

(ix) The supervisor shall submit appropriate documentation to the Division with respect to all work completed by the supervisee during the period of supervised experience, including the supervisor's evaluation of the supervisee's competence to practice in the profession.

(x) The supervisor shall assure each supervisee has obtained the degree which is a prerequisite to the intern beginning to obtain qualifying experience.

(2) Experience Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(e), an applicant for licensure as a professional engineer shall submit verification of qualifying experience in accordance with the following:

(i) The experience shall be obtained after meeting the education requirement.

(ii) The experience shall be supervised by one or more licensed professional engineers.

(iii) The experience shall be certified by the licensed professional engineer who provided the supervision.

(iv) The experience shall include a minimum of four years of full-time or equivalent part-time experience in professional engineering, except as provided in Subsection (b).

(b) Credit toward meeting the experience requirement may be granted as follows:

(i) A maximum of three years of qualifying experience may be granted for teaching advanced engineering subjects in a college or university offering an engineering curriculum accredited by EAC/ABET.

(ii) A maximum of three years of qualifying experience may be granted for conducting research in a college or university offering an engineering curriculum accredited by EAC/ABET provided the research is under the supervision of a licensed professional and is directly related to the practice of engineering, as long as such research has not been credited towards the education requirements. Therefore research which is included as part of the classwork, thesis or

dissertation or similar work is not acceptable as additional work experience.

(iii) A maximum of one year of qualifying experience may be granted for completing a masters degree in engineering provided that both the earned bachelors and masters degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(iv) A maximum of two years of qualifying experience may be granted for completing a doctorate degree in engineering provided that both the earned bachelors or masters degree and doctorate degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(c) The performance or supervision of construction work as a contractor, foreman or superintendent is not qualifying experience for licensure as a professional engineer.

(d) Experience should include demonstration of, knowledge, application, and practical solutions using engineering mathematics, physical and applied science, properties of materials and the fundamental principles of engineering design.

(3) Experience Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(e), each applicant shall submit verification of qualifying experience in accordance with the following:

(i) The experience shall be obtained after meeting the education requirement.

(ii) The experience shall be supervised by one or more licensed professional structural engineers.

(iii) The experience shall be certified by the licensed professional structural engineer who provided the supervision.

(iv) The experience shall include a minimum of three years of full-time or equivalent part-time experience in professional structural engineering.

(b) Professional structural engineering experience shall include responsible charge of structural design in one or more of the following areas:

(i) structural design of any building or structure two stories and more, or 45 feet in height, located in a region of moderate or high seismic risk designed in accordance with current codes adopted pursuant to Section 58-56-4;

(ii) structural design for a major seismic retrofit/rehabilitation of an existing building or structure located in a region of moderate or high seismic risk; or

(iii) structural design of any other structure of comparable structural complexity.

(c) Professional structural engineering experience shall include structural design in all of the following areas:

(i) use of three of the following four materials as they relate to the design, rehabilitation or investigation of buildings or structures:

(A) steel;

(B) concrete;

(C) wood; or

(D) masonry;

(ii) selection of framing systems including the consideration of alternatives and the selection of an appropriate system for the interaction of structural components to support vertical and lateral loads;

(iii) selection of foundation systems including the consideration of alternatives and the selection of an appropriate type of foundation system to support the structure;

(iv) design and detailing for the transfer of forces between stories in multi-story buildings or structures;

(v) application of lateral design in the design of the buildings or structures in addition to any wind design requirements; and

(vi) application of the local, state and federal code requirements as they relate to design loads, materials, and detailing.

(4) Experience Requirements - Professional Land Surveyor.

(a) In accordance with Subsection 58-22-302(3)(d), each applicant for licensure as a professional land surveyor shall submit verification of qualifying experience in accordance with the following:

(i) The experience may be obtained before, during or after completing the education requirement.

(ii) The experience shall be supervised by one or more licensed professional land surveyors.

(iii) The experience shall be certified by the licensed professional land surveyor who provided the supervision.

(iv) The experience shall include experience in professional land surveying in the following content areas:

(A) experience specific to field surveying with actual "hands on" surveying, including all of the following:

- (I) operation of various instrumentation;
- (II) review and understanding of plan and plat data;
- (III) public land survey systems;
- (IV) calculations;
- (V) traverse;
- (VI) staking procedures;

(VII) field notes and manipulation of various forms of data encountered in horizontal and vertical studies; and

(B) experience specific to office surveying, including all of the following:

- (I) drafting (includes computer plots and layout);
- (II) reduction of notes and field survey data;
- (III) research of public records;
- (IV) preparation and evaluation of legal descriptions;

and

(V) preparation of survey related drawings, plats and record of survey maps.

(v) The amount of experience shall be in accordance with one of the following:

(A) Each applicant having graduated and received an associates degree in land surveying or geomatics shall complete a minimum of six years of experience as follows:

(I) three years of experience that complies with Subsection (4)(a)(iv)(A); and

(II) three years of experience that complies with Subsection (4)(a)(iv)(B).

(B) Each applicant having graduated and received a bachelors degree in land surveying or geomatics shall complete a minimum of four years of qualifying experience as follows:

(I) two years of qualifying experience that complies with Subsection (4)(a)(iv)(A); and

(II) two years of qualifying experience that complies with Subsection (4)(a)(iv)(B).

(C) Each applicant having graduated and received a masters degree in land surveying or geomatics shall complete a minimum of three years of qualifying experience as follows:

(I) one and a half years of qualifying experience that complies with Subsection (4)(a)(iv)(A); and

(II) one and a half years of qualifying experience that complies with Subsection (4)(a)(iv)(B).

(D) Each applicant having graduated and received a doctorate degree in land surveying or geomatics shall complete a minimum of two years of qualifying experience as follows:

(I) one year of qualifying experience that complies with Subsection (4)(a)(iv)(A); and

(II) one year of qualifying experience that complies with Subsection (4)(a)(iv)(B).

R156-22-302d. Qualifications for Licensure - Examination Requirements.

(1) Examination Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(f), the examination requirements for licensure as a professional engineer are defined, clarified or established as the following:

(i) the NCEES FE examination with a passing score as established by the NCEES except that an applicant who has completed one of the following is not required to pass the FE examination:

(A) a Ph.D. or doctorate degree in engineering from an institution that offers EAC/ABET undergraduate programs in the Ph.D. field of engineering; or

(B) A Ph.D. or doctorate degree in engineering from a foreign institution if the engineering curriculum is determined by the NCEES Credentials Evaluations, formerly known as the Center for Professional Engineering Education Services (CPEES), to fulfill the required curricular content of the NCEES Engineering Education Standard.

(ii) the NCEES PE examination with a passing score as established by the NCEES; or

(iii) the NCEES SE examination with a passing score as established by the NCEES.

(b) If an applicant was approved by the Division of Occupational and Professional Licensing to take the examinations required for licensure as an engineer under prior Utah statutes and rules and did take and pass all examinations required under such prior rules, the prior examinations will be acceptable to qualify for reinstatement of licensure rather than the examinations specified under Subsection R156-22-302d(1)(a).

(c) Prior to submitting an application for pre-approval to sit for the NCEES PE examination, an applicant shall successfully complete the education requirements set forth in Subsection R156-22-302b(1).

(d) The admission criteria to sit for the NCEES FE examination is set forth in Section 58-22-306.

(2) Examination Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(f), the examination requirements for licensure as a professional structural engineer are established as the following:

(i) the NCEES FE examination with a passing score as established by the NCEES; and

(ii)(A) the NCEES SE examination with a passing score as established by the NCEES;

(B) the NCEES Structural I and Structural II Examinations with a passing score as established by the NCEES;

(C) an equivalent 16-hour state written examination with a passing score; or

(D) the NCEES Structural II exam and an equivalent 8-hour state written examination with a passing score.

(b) Prior to submitting an application for pre-approval to sit for the NCEES SE examination, an applicant shall complete two out of the three years of the experience requirements set forth in Subsection R156-22-302c(3).

(3) Examination Requirements - Professional Land Surveyor.

(a) In accordance with Subsection 58-22-302(3)(e), the examination requirements for licensure as a professional land surveyor are established as the following:

(i) the NCEES FS examination with a passing score as established by the NCEES;

(ii) the NCEES PS examination with a passing score as established by the NCEES; and

(iii) the Utah Local Practice Examination with a passing score of at least 75. An applicant who fails the Utah Local Practice Examination may retake the examination as follows:

(A) no sooner than 30 days following any failure, up to three failures; and

(B) no sooner than six months following any failure thereafter.

(b) Prior to submitting an application for pre-approval to sit for the NCEES PS examination, an applicant shall complete the education requirement set forth in Subsection R156-22-302b(2).

(4) Examination Requirements for Licensure by Endorsement.

In accordance with Subsection 58-22-302(4)(d)(ii), the examination requirements for licensure by endorsement are established as follows:

(a) Professional Engineer: An applicant for licensure as a professional engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(1) except that the Board may waive one or more of the following examinations under the following conditions:

(i) the NCEES FE examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE examination for initial licensure from the recognized jurisdiction the applicant was originally licensed;

(ii) the NCEES PE examination for an applicant who is a principal for five of the last seven years preceding the date of the license application, who has been licensed for 10 years preceding the date of the license application, and who was not required to pass the NCEES PE examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(b) Professional Structural Engineer: An applicant for licensure as a professional structural engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(2) except that the Board may waive the NCEES FE examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(c) Professional Land Surveyor: An applicant for licensure as a professional land surveyor by endorsement shall comply with the examination requirements in Subsection R156-22-302d(3) except that the Board may waive either the NCEES FS examination or the NCEES PS examination or both to an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FS examination or the NCEES PS examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

R156-22-304. Continuing Education for Professional Engineers, Professional Structural Engineers and Professional Land Surveyors.

In accordance with Subsection 58-22-303(2) and Section 58-22-304, the qualifying continuing professional education standards for professional engineers, professional structural engineers and professional land surveyors are established as follows:

(1) During each two year period ending on March 31 of each odd numbered year, a licensed professional engineer, professional structural engineer and professional land surveyor shall complete not fewer than 30 hours of qualified professional education directly related to the ethics, business and technical content aimed at maintaining, improving, or expanding the skills and knowledge relevant to the licensee's professional practice.

(2) The required number of hours of professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount

equal to any part of that two year period preceding the date on which that individual first became licensed.

(3) Qualified continuing professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a professional engineer, professional structural engineer, or professional land surveyor;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

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

(a) unlimited hours shall be recognized for professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of 15 hours per two year period may be recognized for teaching in a college or university or for teaching qualified continuing professional education courses in the field of professional engineering, professional structural engineering or professional land surveying, provided it is the first time the material has been taught during the preceding 12 months;

(c) a maximum of five hours per two year period may be recognized for preparation of papers, articles, or books directly related to the practice of professional engineering, professional structural engineering or professional land surveying and submitted for publication; and

(d) a maximum of ten hours per two year period may be recognized at the rate of one hour for each hour served on committees or in leadership roles in any state, national or international organization for the development and improvement of the profession of professional engineering, professional structural engineering or professional land surveying but no more than five of the ten hours may be obtained from such activity in any one organization;

(e) unlimited hours may be recognized for continuing education that is provided via Internet or through home study courses provided the course verifies registration and participation in the course by means of a test which demonstrates that the participant has learned the material presented.

(5) A licensee shall be responsible for maintaining 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. It is the responsibility of the licensee to maintain information with respect to qualified continuing professional education to demonstrate it meets the requirements under this section.

(6) If a licensee exceeds the 30 hours of qualified continuing professional education during the two year period, the licensee may carry forward a maximum of 15 hours of qualified continuing professional education into the next two year period.

(7) Any licensee who fails to timely complete the continuing education required by this rule shall be required to complete double the number of hours missed to be eligible for renewal or reinstatement of licensure.

(8) Any applicant for reinstatement who was not in compliance with the continuing education requirement at the

time of the expiration of licensure shall be required to complete 30 hours of continuing education complying with this rule within two years prior to the date of application for reinstatement of licensure.

(9) The Division may waive continuing education in accordance with Section R156-1-308d.

R156-22-305. Inactive Status.

(1) The requirements for inactive licensure specified in Subsection R156-1-305(3) shall also include certification that the professional engineer, professional structural engineer or professional land surveyor licensee shall not engage in the profession for which the license was issued while the license is on inactive status except to identify the individual as an inactive licensee.

(2) A license, prior to being placed on inactive status, shall be active and in good standing.

(3) Inactive status licensees are not required to fulfill the continuing education requirement.

(4) In addition to the requirements in Subsection R156-1-305(6) to reactivate an inactive license, a licensee shall provide documentation that the licensee, within two years of the license being reactivated, completed 30 hours of continuing education.

(5) Prior to a license being reactivated, a licensee shall meet the requirements for license renewal.

R156-22-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) submitting an incomplete final plan, specification, report or set of construction plans to:

(a) a client, when the licensee represents, or could reasonably expect the client to consider the plan, specification, report or set of construction plans to be complete and final; or

(b) to a building official for the purpose of obtaining a building permit;

(2) failing as a principal to exercise responsible charge;

(3) failing as a supervisor to exercise supervision of an employee, subordinate, associate or drafter; or

(4) failing, in the performance of services for clients, employers, and customers to be cognizant that the first and foremost responsibility is to the public welfare;

(5) failing to hold paramount the duty to safeguard life, health, property and public welfare by approving and sealing only those design documents and surveys that conform to accepted engineering and surveying standards;

(6) failing to notify an employer, client, or other such authority as may be appropriate when the licensee's professional judgment is overruled under circumstances where the life, health, property, or welfare of the public is endangered.

(7) failing to be objective and truthful, or failing to include all relevant and pertinent information, in professional reports, statements, or testimony;

(8) expressing a professional opinion publicly when it is not founded upon an adequate knowledge of the facts and a competent evaluation of the subject matter;

(9) issuing statements, criticisms, or arguments on technical matters in circumstances where such statements, arguments or criticisms, are inspired or paid for by interested parties, unless the licensee explicitly identifies the interested parties on whose behalf the licensee is speaking and reveals any interest the licensee has in the matters;

(10) permitting the use of the licensee's name or the licensee's firm name by, or associating in business ventures with, any person or firm that is engaging in fraudulent or dishonest business or professional practices;

(11) having knowledge of possible violations of any of

these rules of professional conduct, and failing to provide the Division with the information and assistance necessary to make a final determination of such violation;

(12) accepting and undertaking assignments when not qualified by education, experience and training, or that exceed the licensee's competency and ability in the specific technical fields of engineering or surveying involved;

(13) affixing a signature or seal to any plans or documents dealing with subject matter in which the licensee lacks competence, or to any such plan or document not prepared under the licensee's responsible charge;

(14) failing to ensure, when accepting assignments for coordination of an entire project, that each design segment is signed and sealed by the licensee responsible for preparation of that design segment;

(15) revealing facts, data or information obtained in a professional capacity without the prior consent of the client or employer, except as authorized or required by law;

(16) soliciting or accepting gratuities, directly or indirectly, from contractors, their agents, or other parties in connection with work for employers or clients;

(17) failing to make full prior disclosures to employers or clients of potential conflicts of interest or other circumstances that could influence or appear to influence the licensee's judgment or the quality of the licensee's service;

(18) accepting compensation, financial or otherwise, from more than one party for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties;

(19) soliciting or accepting a professional contract from a government body with respect to which a principle or officer of the licensee's organization serves as a member;

(20) if serving as a member, advisor, or employee of a government body or department while also serving as the principal or employee of a private concern, participating in decisions with respect to professional services offered or provided by the private concern to the governmental body with respect to which the licensee services;

(21) falsifying or permitting representation or exaggeration of the academic or professional qualifications, the degree of responsibility in prior assignments, or the complexity of prior assignments, of the licensee or the licensee's associates;

(22) misrepresenting pertinent facts concerning employers, employees, associates, joint ventures, or past accomplishments, in presentations incident to the solicitation of employment or business;

(23) offering, giving, soliciting, or receiving, either directly or indirectly, any commission, gift, or other valuable consideration in order to secure work, or making any political contribution with the intent to influence the award of a contract by public authority;

(24) attempting to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other licensees, or indiscriminately criticizing another licensee's work;

(25) receiving gratuities from material, product, or services suppliers for specifying or endorsing their goods or services; and

(26) failing to fully disclose and obtain consent in writing of the principal employer and all interested parties prior to accepting or engaging in supplemental professional engineering, structural engineering, or land surveying services.

R156-22-503. Administrative Penalties.

(1) In accordance with Subsection 58-22-503, the following fine schedule shall apply to citations issued under Title 58, Chapters 1 and 22:

TABLE
FINE SCHEDULE

| Violation | First Offense | Second Offense |
|----------------|---------------|----------------|
| 58-1-501(1)(a) | \$ 800.00 | \$1,600.00 |
| 58-1-501(1)(b) | \$1,000.00 | \$2,000.00 |
| 58-1-501(1)(c) | \$1,000.00 | \$2,000.00 |
| 58-1-501(1)(d) | \$1,000.00 | \$2,000.00 |
| 58-22-501(1) | \$ 800.00 | \$1,600.00 |
| 58-22-501(2) | \$ 800.00 | \$1,600.00 |
| 58-22-501(3) | \$ 800.00 | \$1,600.00 |
| 58-22-501(4) | \$ 800.00 | \$1,600.00 |
| 58-22-501(5) | \$ 800.00 | \$1,600.00 |

(2) 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 58-22-503(1)(i).

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

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

(5) In all cases the presiding officer shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount based upon the evidence reviewed.

R156-22-601. Seal Requirements.

(1) In accordance with Section 58-22-601, all final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats prepared by the licensee or prepared under the supervision of the licensee, shall be sealed in accordance with the following:

(a) Each seal shall be a circular seal, 1-1/2 inches minimum diameter.

(b) Each seal shall include the licensee's name, license number, "State of Utah", and "Professional Engineer", "Professional Structural Engineer", or "Professional Land Surveyor" as appropriate.

(c) Each seal shall be signed and dated with the signature and date appearing across the face of each seal imprint.

(d) Each original set of final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats, as a minimum, shall have the original seal imprint, original signature and date placed on the cover or title sheet.

(e) A seal may be a wet stamp, embossed, or electronically produced.

(f) Electronically generated signatures are acceptable.

(g) It is the responsibility of the licensee to provide adequate security when documents with electronic seals and electronic signatures are submitted. Sheets subsequent to the cover of specifications are not required to be sealed, signed and dated.

(h) Copies of the original set of plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats which contain the original seal, original signature and date is permitted, if the seal, signature and date is clearly recognizable.

(2) A person who qualifies for and uses the title of professional engineer intern is not permitted to use a seal.

KEY: professional land surveyors, professional engineers, professional structural engineers

October 22, 2015

Notice of Continuation May 30, 2017

58-22-101

58-1-106(1)(a)

58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.

R156-38b. State Construction Registry Rule.

R156-38b-101. Title.

This rule is known as the "State Construction Registry Rule."

R156-38b-102. Definitions.

In addition to the definitions in Title 38, Chapter 1a, Preconstruction and Construction Liens; Title 38, Chapter 1b, Government Construction Projects; Title 58, Chapter 1, Division of Occupational and Professional Licensing Act; and Rule R156-1, General Rule of the Division of Occupational and Professional Licensing; which shall apply to these rules, as used in the referenced statutes or this rule:

(1) "Alternate means" means transmission by telefax, by U.S. mail, or by private commercial courier.

(2) "Electronic" or "Electronically" means transmission by Internet or by electronic mail and does not mean a transmission by alternate means or process.

(3) "J2EE" means SUN Microsystem's Java 2 Platform, Enterprise Edition, for multi-tier server-oriented enterprise applications.

(4) "Merge" means to link two or more filings together under a unique project number as required by Subsection 38-1b-201(3)(c).

(5) "Private project" means a construction project, commenced after July 31, 2011, that is not a government project.

(6) "SCR" means the State Construction Registry established in Sections 38-1a-201 through 38-1a-211.

R156-38b-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 38-1a-202(3)(a) to administer the SCR.

R156-38b-201. Duties, Functions, and Responsibilities of the Division.

In accordance with Subsection 38-1a-202(3)(a), the duties, functions, and responsibilities of the Division are oversight and enforcement of the Act, and include:

- (1) establishing rules to implement the SCR;
- (2) providing oversight of the design, operation, and maintenance of the SCR; and
- (3) auditing the functionality and integrity of the SCR.

R156-38b-301. Duties, Functions, and Responsibilities of the Designated Agent.

In accordance with Subsections 38-1a-202(2) and (4) through (7), the duties, functions, and responsibilities of the designated agent include:

- (1) designing, developing, hosting, operating, and maintaining the SCR;
- (2) providing training, marketing, and technical support for the SCR;
- (3) performing other duties, functions, and responsibilities provided by statute, rule, or contract; and
- (4) obtaining and maintaining insurance coverage as follows:

(a) general liability insurance, which at a minimum shall be the amount established for the designated agent's master contract with the State of Utah; and

(b) errors and omissions insurance as required by Subsection 38-1a-202(5), which may be satisfied by the designated agent's current policy that insures its parent company and all subsidiaries in the amount of \$5 Million.

R156-38b-401. Reliability, Availability and Security Standards.

The designated agent shall provide a reliable hosting environment which shall contain the following elements:

(1) Operating Standard. The designated agent shall initially adhere to the J2EE standard and such standard in the future as the Division shall designate in cooperation with the designated agent.

(2) System Upgrades. The designated agent shall notify the Division when the SCR requires an update that may cause significant service interruption. Functional or structural changes that impact the system requirements shall require prior approval from the Division.

(3) Security. The designated agent shall take commercially reasonable steps to provide that the information contained in the SCR is secure and protected from unauthorized entry.

(4) System Backup. The designated agent shall provide adequate backup of the system and its data, including the following:

(a) Redundant Servers. There shall be multiple servers running the SCR and Internet environments, but no more than two sets of servers.

(b) Data Backup Environment. There shall be facilities to continuously back up data contained in the SCR. This backed-up data must be easily retrieved and either viewed or placed back into the SCR if required.

(c) Redundant Power Supply. There shall be a single reliable redundant power supply for the entire environment.

(5) System Recovery. In the event of a system failure, the designated agent shall provide system recovery and re-deployment to meet a standard that will result in restoration into full production within a maximum of three business days which are defined as Mondays through Fridays with legal holidays excluded. In the event of destruction of the designated agent's primary hosting facility, the designated agent shall meet a standard whereby complete service restoration could be implemented within two weeks provided the telecommunications and data center vendor can meet this schedule.

(6) Software Licensing. The designated agent shall maintain valid software licenses for all purchased software used for the SCR.

(7) System Monitoring. The designated agent shall provide continuous monitoring of SCR environment.

(8) System Support. The designated agent shall provide appropriate personnel to continuously maintain the SCR environment.

(9) Continuity of Operations. In the event that, for whatever reason, operation and maintenance of the SCR is transferred to the state or another designated agent, continuity of the SCR shall be maintained in accordance with the governing contractual provisions with the designated agent.

(10) In the event that the Division elects to provide some of the services listed in (1) through (8) above, the designated agent will be relieved of the responsibilities for the services so assumed. Such election by the Division shall be in writing.

R156-38b-402. User Identification and Password.

(1) All users are required to register with the designated agent.

(2) The designated agent shall issue a unique user ID and password to each user who successfully registers to use the SCR.

(3) The information gathered in the registration process shall be maintained in the SCR as the user profile.

(4) The registration process shall include the following information and any other information established by the Division in collaboration with the designated agent:

- (a) first and last name of the individual registering; and
- (b) email address, if any.

(5) The designated agent shall provide the ability for a user to view and modify the user's profile.

(6) The designated agent shall provide an industry accepted secure method for a user to recover a forgotten user ID or password.

(7) The designated agent shall pre-populate filings with any information available in the user's profile.

R156-38b-403. Transaction Log.

The designated agent shall maintain a transaction log of the SCR that includes a transaction record of completed transactions by registered user.

R156-38b-501. Required Information for SCR Filing Notices.

(1) Electronic notice filings shall be input into the SCR entry screen by the person making the filing but shall not be accepted by the designated agent unless the person complies with the content requirements for the SCR filing.

(2) The designated agent shall verify that data is submitted for each of the content requirements, but it is not responsible for the accuracy, suitability, or coherence of the data.

R156-38b-502. Merging Notices of Commencement.

(1) Checking for Existing Notices. In order to prevent duplicate filings of notices of commencement, the designated agent shall search the SCR for any existing notices of commencement before allowing a user to create a new notice of commencement.

(a) If an existing notice of commencement is identified the following procedures apply:

(i) For an electronic filing:

(A) the designated agent shall indicate that a notice of commencement may have already been filed for the project and display the possible notice or notices of commencement that may match the existing project filing.

(B) The designated agent shall allow the user to review the content of any existing notices to determine whether a notice has already been filed for the project before allowing a new notice to be filed.

(ii) For an alternate means filing, the designated agent shall notify the filer by electronic or alternate means as specified by the filer, that a notice of commencement has already been filed for the particular project and include a copy of the existing notice of commencement.

(b) As part of the process described in Subsection R156-38b-502(1), the SCR search for an existing notice of commencement shall display, for review by the person who submitted the search parameters, all notice of commencement filings that fit the search parameters indicated by the submission that prompted the search.

(c) If no existing notice of commencement is identified for the particular project, the designated agent shall allow the person who submitted the filing to file a new notice of commencement.

(2) Merging of Duplicate Filings. Duplicate filings shall be avoided to the extent possible in accordance with the procedure outlined in this Subsection. The SCR shall include functionality to allow a person who has successfully filed a notice of commencement which duplicates another notice of commencement already in the SCR to merge the notice of commencement with the existing notice of commencement filing.

(a) The affected SCR filings shall reflect the effective date of the merger.

(b) The designated agent shall provide notification of the merger to all persons who are associated with either notice of commencement filing, including those who have filed

preliminary notices.

(c) The effective date of a merger reflects the date the unique merger number was cross-referenced to duplicate notice of commencement filings. A merger does not dissolve or affect the filing dates, or the consequences of the filing dates, of the notices being combined.

(3) The person making a notice filing shall be responsible for correctly identifying a project, and for the consequences of failing to correctly identify a project. Neither the Division nor the designated agent shall be responsible for the consequences of a person making a notice of commencement filing that identifies a project in such a way that the designated agent is unable to identify an existing notice of commencement for the project, according to the search criteria established by the Division in collaboration with the designated agent, nor for the designated agent allowing the person to make a successful duplicate notice of commencement filing with a different description of the project.

R156-38b-503. Alternate Filings.

(1) Alternate Means of Filing. The alternate means of filing are those established by Subsection 38-1a-201(1)(e)(ii), including U.S. Mail and telefax. Private commercial courier is established as an additional alternate means of receipt by the designated agent, but not dispatch from the designated agent.

(2) Content Requirements. The content requirements for alternate means filings shall be the same as for electronic filings as set forth for Notices in Title 38, Chapters 1a and 1b or this rule.

(3) Format Requirements. Alternate means filings shall be submitted in a standard format adopted by the Division in collaboration with the designated agent. Filings not submitted in the standard format, in the sole judgment of the designated agent, shall be rejected and dispatched to the submitter. The filing fee shall be retained by the designated agent as a processing fee for rejecting and dispatching the filing. An additional filing fee shall be due upon resubmission.

(4) Methodology.

(a) U.S. Mail. An alternate means filing by U.S. Mail shall be submitted to the designated agent's mailing address by any method of U.S. Mail.

(b) Express Mail. An alternate means filing by commercial private courier shall be submitted to the designated agent's mailing address by any commercially available method of express mail.

(c) Telefax. An alternate means filing by telefax shall be submitted to the designated agent's toll-free unique SCR fax number.

(5) Processing Requirements.

(a) Transaction Receipt. The designated agent shall confirm a successful alternate method filing and fee payment receipt by sending a transaction receipt as specified in Section R156-38b-602.

(b) Creation of Electronic Image. The designated agent shall create and maintain an electronic image of alternate method filings that are accepted into the SCR. Once an electronic image has been created and the accepted alternate method filing has been entered into the SCR, the original version of the accepted alternate method filing may be destroyed. The electronic image shall remain accessible for audit purposes.

(6) Data Entry Standards.

(a) In accordance with Subsection 38-1a-202(6), the designated agent shall meet or exceed the following data entry standards for alternate means filings:

(i) a primary operator shall manually input information

filed by alternate means;

(ii) a secondary operator shall independently input the construction project permit number and original contractor name;

(iii) the designated agent shall automatically compare all entries from the primary and secondary operators for consistency;

(iv) following the above procedures, the designated agent shall visually inspect at least 5% of all notices created by alternate means filing; and

(v) these standards are to be met prior to Internet publication.

R156-38b-504. Dates of Filings.

The official filing date of a particular filing shall be determined as follows:

(1) In the case of an electronic filing, it shall be the date the designated agent accepts a filing input by the person making the filing and makes available a payment receipt to the person making the filing.

(2) In the case of an alternate means filing, it shall be the date upon which the designated agent received a filing that was ultimately accepted into the SCR including content requirements and payment.

R156-38b-505. Status of and Process for Filings Not Accepted by the Designated Agent.

(1) A filing that is not accepted by the designated agent shall not be considered to be filed.

(2) The designated agent shall electronically indicate to a person whose electronic filing is not accepted that the filing is not accepted and the reason or reasons why it is not accepted. The designated agent shall allow the person making the electronic filing to attempt to correct any defects, if possible.

(3) The designated agent shall notify a person whose alternate means filing is not accepted that the filing is not accepted and the reason or reasons why it is not accepted. The designated agent shall allow the person making the alternate means filing to correct the defect or defects.

(4) A fee payment received with a filing submitted by alternate means that is not accepted shall be retained by the designated agent as the processing fee for handling the incomplete filing.

(5) For auditing purposes, the designated agent shall maintain a record of all processing fees received with filings submitted by alternate means that are not accepted.

R156-38b-601. Fee Payment Methods.

(1) Pay-as-you-go Account. Payments may be made online by a credit card transaction in the amount established by the Division in collaboration with the designated agent. For alternate means filings, users will have the option of sending in a check or credit card information with their filing.

(2) Monthly Accounts. Payments may be made by a monthly account as specified by the Division in collaboration with the designated agent, as follows:

(a) an account in which the designated agent charges monthly fees to a credit card or bank account designated and authorized by the registered user; or

(b) an account, guaranteed by a credit card, in which the designated agent sends a monthly invoice to be paid by the registered user within 30 days.

R156-38b-602. Transaction Receipts.

(1) In accordance with Subsection 38-1a-201(1)(g), the designated agent shall make available a transaction receipt upon acceptance of a filing into the SCR. The receipt shall indicate:

- (a) the amount of any fee payment being processed;
- (b) that the filing is accepted by the designated agent;
- (c) the date and time of the filing's acceptance; and
- (d) the content of the accepted filing.

(2) The designated agent shall send a transaction receipt to a person who submits a filing by alternate means that is accepted.

R156-38b-603. Fee Payment Accounting.

The designated agent shall keep accurate records to account for all fee payments, including filing fee payments and registration payments for access to SCR data. The designated agent shall make its accounting records available to the Division upon notification for auditing purposes.

R156-38b-604. Fee Payment Collection.

The designated agent shall conduct or contract for all fee payment collection activities and shall document or require to be documented such activities. The designated agent shall make its collection activity records available to the Division upon notification, for auditing purposes.

R156-38b-702. Archiving Requirements.

(1) In accordance with Subsection 38-1a-202(4)(a), the designated agent shall archive the SCR computer data files semi-annually for auditing purposes.

(2) In accordance with Subsection 38-1a-202(4)(c), filings shall be archived as follows:

- (a) one year after the day on which a notice of completion is accepted into the SCR; or
- (b) if no notice of completion is filed, two years after the last filing activity for a project.

(3) For purposes of this section, "archive" means to preserve an original or a copy of computer data files and filings separate from the active SCR.

(4) The designated agent shall maintain a transaction log of archived filings and make it available to the Division upon request for auditing purposes.

R156-38b-703. SCR Record Classification.

With the exception of any data that is subclassified as a private record, the SCR shall be classified by the Division under Title 63G, Chapter 2, Government Records Access and Management Act (GRAMA), as a public record series.

R156-38b-704. Registered User Access to SCR Data.

In accordance with Subsection 38-1a-207(5), construction projects in the SCR shall be accessible to an interested person who has registered with the designated agent and has been assigned a unique user ID and password to gain access to the SCR.

R156-38b-705. Public Access to SCR Data.

Requests for public access to SCR data shall be handled in accordance with Subsection 38-1-27(5).

KEY: electronic preliminary lien filing, notice of commencement, preliminary notice, notice of completion
May 8, 2017 **38-1a-101**
Notice of Continuation December 16, 2014 **38-1b-101**

R156. Commerce, Occupational and Professional Licensing.

R156-55a. Utah Construction Trades Licensing Act Rule.

R156-55a-101. Title.

This rule shall be known as the "Utah Construction Trades Licensing Act Rule".

R156-55a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as defined or used in this rule:

(1) "Construction trades instructor", as used in Subsection 58-55-301(2)(p) is clarified to mean the education facility which is issued the license as a construction trades instructor. It does not mean individuals employed by the facility who may teach classes.

(2) "Construction trades instruction facility" means the facility which is granted the license as a construction trades instructor as specified in Subsection 58-55-301(2)(p) and as clarified in R156-55a-102(1).

(3) "Employee", as used in Subsections 58-55-102(12)(a) and 58-55-102(17), means a person providing labor services in the construction trades who works for a licensed contractor, or the substantial equivalent of a licensed contractor as determined by the Division, for compensation who has federal and state taxes withheld and workers' compensation and unemployment insurance provided by the person's employer.

(4) "Incidental", as used in Subsection 58-55-102(40), means work which:

(a) can be safely and competently performed by the specialty contractor; and

(b) arises from and is directly related to work performed in the licensed specialty classification and does not exceed 10 percent of the overall contract and does not include performance of any electrical or plumbing work unless specifically included in the specialty classification description under Subsection R156-55a-301(2).

(5) "Maintenance" means the repair, replacement and refinishing of any component of an existing structure; but, does not include alteration or modification to the existing weight-bearing structural components.

(6) "Mechanical", as used in Subsections 58-55-102(21) and 58-55-102(32), means the work which may be performed by a S350 HVAC Contractor under Section R156-55a-301.

(7) "Personal property" means, as it relates to Title 58, Chapter 56, factory built housing and modular construction, a structure which is titled by the Motor Vehicles Division, state of Utah, and taxed as personal property.

(8) "Qualifier", as used in Title 58, Chapter 55 and this rule, means the individual who demonstrates competence for a contractor or construction trades instruction facility license by passing the examinations, completing the experience requirements or holding the individual licenses that are prerequisite requirements to obtain the contractor or construction trades instruction facility license.

(9) "School" means a Utah school district, applied technology college, or accredited college.

(10) "Unprofessional conduct" defined in Title 58, Chapters 1 and 55, is further defined in accordance with Section 58-1-203 in Section R156-55a-501.

R156-55a-103. Authority.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 55.

R156-55a-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule

R156-1 is as described in Section R156-1-107.

R156-55a-301. License Classifications - Scope of Practice.

(1) In accordance with Subsection 58-55-301(2), the classifications of licensure are listed and described in this section. The construction trades or specialty contractor classifications listed are those determined to significantly impact the public health, safety, and welfare. A person who is engaged in work which is included in the items listed in Subsections R156-55a-301(4) and (5) is exempt from licensure in accordance with Subsection 58-55-305(1)(i).

(2) Licenses shall be issued in the following primary classifications and subclassifications:

E100 - General Engineering Contractor. A General Engineering contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(22).

B100 - General Building Contractor. A General Building contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(21) and pursuant to Subsection 58-55-102(21)(b) is clarified as follows:

(a) The General Building Contractor scope of practice does not include activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the North American Board of Certified Energy Practitioners.

(b) The General Building Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless

(i) the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (AARST-NRPP); or

(ii) the work is limited to installation of passive radon gas controls on new construction in accordance with Appendix F of the International Residential Code.

B200 - Modular Unit Installation Contractor. Set up or installation of modular units as defined in Subsection 15A-1-302(8) and constructed in accordance with Section 15A-1-304. The scope of the work permitted under this classification includes construction of the permanent or temporary foundations, placement of the modular unit on a permanent or temporary foundation, securing the units together if required and securing the modular units to the foundations. Work excluded from this classification includes installation of factory built housing and connection of required utilities.

R100 - Residential and Small Commercial Contractor. A Residential and Small Commercial contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(32) and pursuant to Subsection 58-55-102(32) is clarified as follows:

(a) The Residential and Small Commercial Contractor scope of practice does not include activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the North American Board of Certified Energy Practitioners.

(b) The Residential and Small Commercial Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless:

(i) the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (AARST-NRPP); or

(ii) the work is limited to installation of passive radon

gas controls on new construction in accordance with Appendix F of the International Residential Code.

R101 - Residential and Small Commercial Non Structural Remodeling and Repair. Remodeling and repair to any existing structure built for support, shelter and enclosure of persons, animals, chattels or movable property of any kind with the restriction that no change is made to the bearing portions of the existing structure, including footings, foundation and weight bearing walls; and the entire project is less than \$50,000 in total cost.

R200 - Factory Built Housing Contractor. Disconnection, setup, installation or removal of manufactured housing on a temporary or permanent basis. The scope of the work permitted under this classification includes placement of the manufactured housing on a permanent or temporary foundation, securing the units together if required, securing the manufactured housing to the foundation, and connection of the utilities from the near proximity, such as a meter, to the manufactured housing unit and construction of foundations of less than four feet six inches in height. Work excluded from this classification includes site preparation or finishing, excavation of the ground in the area where a foundation is to be constructed, back filling and grading around the foundation, construction of foundations of more than four feet six inches in height and construction of utility services from the utility source to and including the meter or meters if required or if not required to the near proximity of the manufactured housing unit from which they are connected to the unit.

I101 - General Engineering Trades Instruction Facility. A General Engineering Trades Instruction Facility is a construction trades instruction facility authorized to teach the construction trades and is subject to the scope of practice defined in Subsection 58-55-102(22).

I102 - General Building Trades Instruction Facility. A General Building Trades Instruction Facility is a construction trades instruction facility authorized to teach the construction trades and is subject to the scope of practice defined in Subsections 58-55-102(21) or 58-55-102(32).

I103 - Electrical Trades Instruction Facility. An Electrical Trades Instruction Facility is a construction trades instruction facility authorized to teach the electrical trades and subject to the scope of practice defined in Subsection R156-55a-301(S200).

I104 - Plumbing Trades Instruction Facility. A Plumbing Trades Instruction Facility is a construction trades instruction facility authorized to teach the plumbing trades and subject to the scope of practice defined in Subsection R156-55a-301(S210).

I105 - Mechanical Trades Instruction Facility. A Mechanical Trades Instruction Facility is a construction trades instruction facility authorized to teach the mechanical trades and subject to the scope of practice defined in Subsection R156-55a-301(S350).

S200 - General Electrical Contractor. Fabrication, construction, and/or installation of generators, transformers, conduits, raceways, panels, switch gear, electrical wires, fixtures, appliances, or apparatus which utilizes electrical energy. The General Electrical Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (AARST-NRPP).

S201 - Residential Electrical Contractor. Fabrication, construction, and/or installation of services, disconnecting means, grounding devices, panels, conductors, load centers, lighting and plug circuits, appliances and fixtures in any

residential unit, normally requiring non-metallic sheathed cable, including multiple units up to and including a four-plex, but excluding any work generally recognized in the industry as commercial or industrial.

S202 - Solar Photovoltaic Contractor. Fabrication, construction, installation, and replacement of photovoltaic cell panels and related components. Wiring, connections and wire methods as governed in the National Electrical Code and Subsection R156-55b-102(1) shall only be performed by an S200 General Electrical Contractor or S201 Residential Electrical Contractor. This classification is not required to install stand alone solar systems that do not tie into premises wiring or into the electrical utility, such as signage or street or parking lighting.

A contractor who obtained this classification of licensure between January 1, 2009 and April 25, 2011 and who holds an active license may, in addition to the above, perform the following activities as part of the scope of practice under this subsection: fabrication, construction, installation, and repair of photovoltaic cell panels and related components including battery storage systems, distribution panels, switch gear, electrical wires, inverters, and other electrical apparatus for solar photovoltaic systems. Work excluded from this classification includes work on any alternating current system or system component.

S210 - General Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in buildings, by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting, heating, and industrial purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a building out to the main water, sewer or gas pipeline. The General Plumbing Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (AARST-NRPP).

S211 - Boiler Installation Contractor. Fabrication and/or installation of fire-tube and water-tube power boilers and hot water heating boilers, including all fittings and piping, valves, gauges, pumps, radiators, converters, fuel oil tanks, fuel lines, chimney flues, heat insulation and all other devices, apparatus, and equipment related thereto in a closed system not connected to the culinary water system. Notwithstanding the foregoing, where water delivery for the closed system is connected to the culinary water system and separated from the culinary water system by a backflow prevention device, a contractor licensed under this subsection may connect the closed system to the backflow prevention device, which must be installed by an actively licensed plumber.

S212 - Irrigation Sprinkling Contractor. Layout, fabrication, and/or installation of water distribution system for artificial watering or irrigation.

S213 - Industrial Piping Contractor. Fabrication and/or installation of pipes and piping for the conveyance or transmission of steam, gases, chemicals, and other substances including excavating, trenching, and back-filling related to such work. This classification includes the above work for geo thermal systems.

S214 - Water Conditioning Equipment Contractor. Fabrication and/or installation of water conditioning equipment and only such pipe and fittings as are necessary for

connecting the water conditioning equipment to the water supply system within the premises.

S215 - Solar Thermal Systems Contractor. Construction, repair and/or installation of solar thermal systems up to the system shut off valve or where the system interfaces with any other plumbing system.

S216 - Residential Sewer Connection and Septic Tank Contractor. Construction of residential sewer lines including connection to the public sewer line, and excavation and grading related thereto. Excavation, installation and grading of residential septic tanks and their drainage.

S217 - Residential Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in residential building, including multiple units up to and including a four-plex by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting and heating purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a residential building out to the main water, sewer or gas pipeline. Excluded is any new construction and service work generally recognized in the industry as commercial or industrial.

S220 - Carpentry Contractor. Fabrication for structural and finish purposes in a structure or building using wood, wood products, metal studs, vinyl materials, or other wood/plastic/metal composites as is by custom and usage accepted in the building industry as carpentry. Incidental work includes the installation of tub liners and wall systems.

S221 - Cabinet, Millwork and Countertop Installation Contractor. On-site construction and/or installation of milled wood products or countertops.

S222 - Overhead and Garage Door Contractor. The installation of overhead and garage doors and door openers.

S230 - Siding Contractor. Fabrication, construction, and/or installation of siding.

S231 - Raingutter Installation Contractor. On-site fabrication and/or installation of raingutters and drains, roof flashings, gravel stops and metal ridges.

S240 - Glass and Glazing Contractor. Fabrication, construction, installation, and/or removal of all types and sizes of glass, mirrors, substitutes for glass, glass-holding members, frames, hardware, and other incidental related work.

S250 - Insulation Contractor. Installation of any insulating media in buildings and structures for the sole purpose of temperature control, sound control or fireproofing, but shall not include mechanical insulation of pipes, ducts or conduits.

S260 - General Concrete Contractor. Fabrication, construction, mixing, batching, and/or installation of concrete and related concrete products along with the placing and setting of screeds for pavement for flatwork, the construction of forms, placing and erection of steel bars for reinforcing and application of plaster and other cement-related products.

S261 - Concrete Form Setting and Shoring Contractor. Fabrication, construction, and/or installation of forms and shoring material; but, does not include the placement of concrete, finishing of concrete or embedded items such as metal reinforcement bars or mesh.

S262 - Gunitite and Pressure Grouting Contractor. Installation of a concrete product either injected or sprayed under pressure.

S263 - Cementitious Coating Systems Resurfacing and Sealing Contractor. Fabrication, construction, mixing,

batching and installation of cementitious coating systems or sealants limited to the resurfacing or sealing of existing surfaces, including the preparation or patching of the surface to be covered or sealed.

S270 - General Drywall and Plastering Contractor. Fabrication, construction, and installation of drywall, gypsum, wallboard panels and assemblies. Preparation of drywall or plaster surfaces for suitable painting or finishing. Application to surfaces of coatings made of plaster, including the preparation of the surface and the provision of a base. This does not include applying stucco to lathe, plaster and other surfaces. Exempted is the plastering of foundations.

S272 - Ceiling Grid Systems, Ceiling Tile and Panel Systems Contractor. Fabrication and/or installation of wood, mineral, fiber, and other types of ceiling tile and panels and the grid systems required for placement.

S273 - Light-weight Metal and Non-bearing Wall Partitions Contractor. Fabrication and/or installation of light-weight metal and other non-bearing wall partitions.

S280 - General Roofing Contractor. Application and/or installation of asphalt, pitch, tar, felt, flax, shakes, shingles, roof tile, slate, and any other material or materials, or any combination of any thereof which use and custom has established as usable for, or which are now used as, waterproof, weatherproof, or watertight seal or membranes for roofs and surfaces; and roof conversion. Incidental work includes the installation of roof clamp ring to the roof drain.

S290 - General Masonry Contractor. Construction by cutting, and/or laying of all of the following brick, block, or forms: architectural, industrial, and refractory brick, all brick substitutes, clay and concrete blocks, terra-cotta, thin set or structural quarry tile, glazed structural tile, gypsum tile, glass block, clay tile, copings, natural stone, plastic refractories, and castables and any incidental works, including the installation of shower pans, as required in construction of the masonry work.

S291 - Stone Masonry Contractor. Construction using natural or artificial stone, either rough or cut and dressed, laid at random, with or without mortar. Incidental work includes the installation of shower pans.

S292 - Terrazzo Contractor. Construction by fabrication, grinding, and polishing of terrazzo by the setting of chips of marble, stone, or other material in an irregular pattern with the use of cement, polyester, epoxy or other common binders. Incidental work includes the installation of shower pans.

S293 - Marble, Tile and Ceramic Contractor. Preparation, fabrication, construction, and installation of artificial marble, burned clay tile, ceramic, encaustic, falence, quarry, semi-vitreous, and other tile, excluding hollow or structural partition tile. Incidental work includes the installation of shower pans.

S294 - Cultured Marble Contractor. Preparation, fabrication and installation of slab and sheet manmade synthetic products including cultured marble, onyx, granite, onice, corian, and corian type products. Incidental work includes the installation of shower pans.

S300 - General Painting Contractor. Preparation of surface and/or the application of all paints, varnishes, shellacs, stains, waxes and other coatings or pigments.

S310 - Excavation and Grading Contractor. Moving of the earth's surface or placing earthen materials on the earth's surface, by use of hand or power machinery and tools, including explosives, in any operation of cut, fill, excavation, grading, trenching, backfilling, or combination thereof as they are generally practiced in the construction trade.

S320 - Steel Erection Contractor. Construction by fabrication, placing, and tying or welding of steel reinforcing bars or erecting structural steel shapes, plates of any profile,

perimeter or cross-section that are used to reinforce concrete or as structural members, including riveting, welding, and rigging.

S321 - Steel Reinforcing Contractor. Fabricating, placing, tying, or mechanically welding of reinforcing bars of any profile that are used to reinforce concrete buildings or structures.

S322 - Metal Building Erection Contractor. Erection of pre-fabricated metal structures including concrete foundation and footings, grading, and surface preparation.

S323 - Structural Stud Erection Contractor. Fabrication and installation of metal structural studs and bearing walls.

S330 - Landscaping Contractor.

(a) grading and preparing land for architectural, horticultural, or decorative treatment;

(b) arrangement, and planting of gardens, lawns, shrubs, vines, bushes, trees, or other decorative vegetation;

(c) construction of small decorative pools, tanks, fountains, hothouses, greenhouses, fences, walks, garden lighting of 50 volts or less, or sprinkler systems;

(d) construction of retaining walls except retaining walls which are intended to hold vehicles, structures, equipment or other non natural fill materials within the area located within a 45 degree angle from the base of the retaining wall to the level of where the additional weight bearing vehicles, structures, equipment or other non natural fill materials are located; or

(e) patio areas except that:

(i) no decking designed to support humans or structures shall be included; and

(ii) no concrete work designed to support structures to be placed upon the patio shall be included.

(f) This classification does not include running electrical or gas lines to any appliance.

S340 - Sheet Metal Contractor. Layout, fabrication, and installation of air handling and ventilating systems. All architectural sheet metal such as cornices, marquees, metal soffits, gutters, flashings, and skylights and skydomes including both plastic and fiberglass.

S350 - HVAC Contractor. Fabrication and installation of complete warm air heating and air conditioning systems, and complete ventilating systems. The HVAC Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (AARST-NRPP).

S351 - Refrigerated Air Conditioning Contractor. Fabrication and installation of air conditioning ventilating systems to control air temperatures below 50 degrees.

S352 - Evaporative Cooling Contractor. Fabrication and installation of devices, machinery, and units to cool the air temperature employing evaporation of liquid.

S353 - Warm Air Heating Contractor. Layout, fabrication, and installation of such sheet metal, gas piping, and furnace equipment as necessary for a complete warm air heating and ventilating system.

S354 - Radon Mitigation Contractor. Layout, fabrication, and installation of a radon mitigation system. This classification does not include work on heat recovery ventilation or makeup air components which must be performed by an HVAC Contractor and does not include electrical wiring which must be performed by an Electrical Contractor. Work performed under this classification shall be performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency

Program (AARST-NRPP).

S360 - Refrigeration Contractor. Construction and/or installation of refrigeration equipment including, but not limited to, built-in refrigerators, refrigerated rooms, insulated refrigerated spaces and equipment related thereto; but, the scope of permitted work does not include the installation of gas fuel or electric power services other than connection of electrical devices to a junction box provided for that device and electrical control circuitry not exceeding 50 volts.

S370 - Fire Suppression Systems Contractor. Layout, fabrication, and installation of fire protection systems using water, steam, gas, or chemicals. When a potable sanitary water supply system is used as the source of supply, connection to the water system must be accomplished by a licensed plumbing contractor. Excluded from this classification are persons engaged in the installation of fire suppression systems in hoods above cooking appliances.

S380 - Swimming Pool and Spa Contractor. On-site fabrication, construction and installation of swimming pools, prefabricated pools, spas, and tubs.

S390 - Sewer and Waste Water Pipeline Contractor. Construction of sewer lines, sewage disposal and sewage drain facilities including excavation and grading with respect thereto, and the construction of sewage disposal plants and appurtenances thereto.

S400 - Asphalt Paving Contractor. Construction of asphalt highways, roadways, driveways, parking lots or other asphalt surfaces, which will include but will not be limited to, asphalt overlay, chip seal, fog seal and rejuvenation, micro surfacing, plant mix sealcoat, slurry seal, and the removal of asphalt surfaces by milling. Also included is the excavation, grading, compacting and laying of fill or base-related thereto. Also included in painting on asphalt surfaces including striping, directional and other types of symbols or words.

S410 - Pipeline and Conduit Contractor. Fabrication, construction, and installation of pipes, conduit or cables for the conveyance and transmission from one station to another of such products as water, steam, gases, chemicals, slurries, data or communications. Included are the excavation, cabling, horizontal boring, grading, and backfilling necessary for construction of the system.

S420 - General Fencing, Ornamental Iron and Guardrail Contractor. Fabrication, construction, and installation of fences, guardrails, handrails, and barriers.

S421 - Residential Fencing Contractor. Fabrication and installation of residential fencing up to and including a height of six feet.

S430 - Metal Firebox and Fuel Burning Stove Installer. Fabrication, construction, and installation of metal fireboxes, fireplaces, and wood or coal-burning stoves, including the installation of venting and exhaust systems, provided the individual performing the installation is RMGA certified.

S440 - Sign Installation Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state or local governmental jurisdictions. Signs and graphic displays shall include signs of all types, both lighted and unlighted, permanent highway marker signs, illuminated awnings, electronic message centers, sculptures or graphic representations including logos and trademarks intended to identify or advertise the user or his product, building trim or lighting with neon or decorative fixtures, or any other animated, moving or stationary device used for advertising or identification purposes. Signs and graphic displays must be fabricated, installed and erected in accordance with professionally engineered specifications and wiring in accordance with the National Electrical Code.

S441 - Non Electrical Outdoor Advertising Sign Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state

and local governmental jurisdictions. Signs and graphics shall include outdoor advertising signs which do not have electrical lighting or other electrical requirements, and in accordance with professionally engineered specifications.

S450 - Mechanical Insulation Contractor. Fabrication, application and installation of insulation materials to pipes, ducts and conduits.

S460 - Wrecking and Demolition Contractor. The raising, cribbing, underpinning, moving, and removal of building and structures.

S470 - Petroleum Systems Contractor. Installation of above and below ground petroleum and petro-chemical storage tanks, piping, dispensing equipment, monitoring equipment and associated petroleum and petro-chemical equipment including excavation, backfilling, concrete and asphalt.

S480 - Piers and Foundations Contractor. The excavation, drilling, compacting, pumping, sealing and other work necessary to construct, alter or repair piers, piles, footings and foundations placed in the earth's subsurface to prevent structural settling and to provide an adequate capacity to sustain or transmit the structural load to the soil or rock below.

S490 - Wood Flooring Contractor. Installation of wood flooring including prefinished and unfinished material, sanding, staining and finishing of new and existing wood flooring. Underlayments, non-structural subfloors and other incidental related work.

S491 - Laminate Floor Installation Contractor. Installation of laminate floors including underlayments, non-structural subfloors and other incidental related work, but does not include the installation of solid wood flooring.

S500 - Sports and Athletic Courts, Running Tracks, and Playground Installation Contractor. Installation of sports and athletic courts including but not limited to tennis courts, racquetball courts, handball courts, basketball courts, running tracks, playgrounds, or any combination. Includes nonstructural floor subsurfaces, nonstructural wall surfaces, perimeter walls and perimeter fencing. Includes the installation and attachment of equipment such as poles, basketball standards or other equipment.

S510 - Elevator Contractor. Erecting, constructing, installing, altering, servicing, repairing or maintaining an elevator.

S600 - General Stucco Contractor. Applying stucco to lathe, plaster and other surfaces.

S700 - Specialty License Contractor.

(a) A specialty license is a license that confines the scope of the allowable contracting work to a specialized area of construction which the Division grants on a case-by-case basis.

(b) When applying for a specialty license, an applicant, if requested, shall submit to the Division the following:

(i) a detailed statement of the type and scope of contracting work that the applicant proposes to perform; and

(ii) any brochures, catalogs, photographs, diagrams, or other material to further clarify the scope of the work that the applicant proposes to perform.

(c) A contractor issued a specialty license shall confine the contractor's activities to the field and scope of operations as outlined by the Division.

(3) The scope of practice for the following primary classifications includes the scope of practice stated in the descriptions for the following subclassifications:

TABLE I

| Primary Classification | Included subclassifications |
|------------------------|-----------------------------|
| S200 | S201, S202 |

| | |
|------|---|
| S210 | S211, S212, S213, S214, S215, S216, S217 |
| S220 | S221, S222 |
| S230 | S231 |
| S260 | S261, S262, S263 |
| S270 | S272, S273 |
| S290 | S291, S292, S293, S294 |
| S320 | S321, S322, S323 |
| S350 | S351, S352, S353, S354 |
| S420 | S421 |
| S440 | S441 |
| S490 | S491 |

(4) The following activities are determined to not significantly impact the public health, safety and welfare and therefore do not require a contractors license:

- (a) sandblasting;
- (b) pumping services;
- (c) tree stump or tree removal;
- (d) installation within a building of communication cables including phone and cable television;
- (e) installation of low voltage electrical as described in R156-55b-102(1);
- (f) construction of utility sheds, gazebos or other similar items which are personal property and not attached;
- (g) building and window washing, including power washing;
- (h) central vacuum systems installation;
- (i) concrete cutting;
- (j) interior decorating;
- (k) wall paper hanging;
- (l) drapery and blind installation;
- (m) welding on personal property which is not attached;
- (n) chimney sweepers other than repairing masonry;
- (o) carpet and vinyl floor installation;
- (p) artificial turf installation;
- (q) general cleanup of a construction site which does not include demolition or excavation; and
- (r) work that would otherwise be limited to individuals holding the S260, S261, S262, S263, S290, S310, S330, S380, S420, S421 and S500 specialty classifications if the work is within the \$1,000 or \$3,000 labor and material limit as specified in the handyman exemption in Subsection 58-55-305(1)(h).

(5) The following activities are those determined to not significantly impact the public health, safety and welfare beyond the regulations by other agencies and therefore do not require a contractors license:

- (a) lead removal regulated by the Department of Environmental Quality;
- (b) asbestos removal regulated by the Department of Environmental Quality; and
- (c) fire alarm installation regulated by the Fire Marshal.

R156-55a-302a. Qualifications for Licensure - Examinations.

(1) In accordance with Subsection 58-55-302(1)(c), the qualifier for an applicant for licensure as a contractor or the qualifier for an applicant for licensure as a construction trades instruction facility shall pass the following examinations:

- (a) the Utah Contractor Business - Law Examination; and
- (b) an approved trade classification specific examination, where required in Subsection (2).

(2) An approved trade classification specific examination is required for the following contractor license classifications:

- E100 - General Engineering Contractor
- B100 - General Building Contractor
- B200 - Modular Unit Installation Contractor
- R100 - Residential and Small Commercial Contractor
- R101 - Residential and Small Commercial Non

- Structural Remodeling and Repair Contractor
- R200 - Factory Built Housing Contractor
- I101 - General Engineering Trades Instruction Facility
- I102 - General Building Trades Instruction Facility
- I105 - Mechanical Trades Instruction Facility
- S211 - Boiler Installation Contractor
- S212 - Irrigation Sprinkling Contractor
- S213 - Industrial Piping Contractor
- S215 - Solar Thermal Systems Contractor
- S216 - Residential Sewer Connection and Septic Tank Contractor

- S220 - Carpentry Contractor
- S222 - Overhead and Garage Door Contractor
- S230 - Siding Contractor
- S240 - Glass and Glazing Contractor
- S250 - Insulation Contractor
- S260 - General Concrete Contractor
- S270 - General Drywall and Plastering Contractor
- S280 - General Roofing Contractor
- S290 - General Masonry Contractor
- S293 - Marble, Tile and Ceramic Contractor
- S300 - General Painting Contractor
- S310 - Excavation and Grading Contractor
- S320 - Steel Erection Contractor
- S321 - Steel Reinforcing Contractor
- S330 - Landscaping Contractor
- S340 - Sheet Metal Contractor
- S350 - HVAC Contractor
- S351 - Refrigerated Air Conditioning Contractor
- S353 - Warm Air Heating Contractor
- S360 - Refrigeration Contractor
- S370 - Fire Suppression Systems Contractor
- S380 - Swimming Pool and Spa Contractor
- S390 - Sewer and Waste Water Pipeline Contractor
- S410 - Pipeline and Conduit Contractor
- S440 - Sign Installation Contractor
- S450 - Mechanical Insulation Contractor
- S490 - Wood Flooring Contractor
- S600 - General Stucco Contractor

(3) The passing score for each examination is 70%.

(4) Qualifications to sit for examination.

(a) An applicant applying to take any examination specified in this Section must sign an affidavit verifying that an applicant has completed the experience required under Subsection R156-55a-302b.

(5) "Approved trade classification specific examination" means a trade classification specific examination:

- (a) given, currently or in the past, by the Division's contractor examination provider; or
- (b) given by another state if the Division has determined the examination to be substantially equivalent.

(6) An applicant for licensure who fails an examination may retake the failed examination as follows:

- (a) no sooner than 30 days following any failure up to three failures; and
- (b) no sooner than six months following any failure thereafter.

R156-55a-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsection 58-55-302(1)(e)(ii), the minimum experience requirements are established as follows:

- (1) Requirements for all license classifications:
 - (a) Unless otherwise provided in this rule, two years of experience shall be lawfully performed within the 10-year period preceding the date of application under the general supervision of a contractor, and shall be subject to the following:

- (i) If the experience was completed in Utah, it shall be:

(A) completed while a W-2 employee of a licensed contractor; or

(B) completed while working as an owner of a licensed contractor, which has for all periods of experience claimed, employed a qualifier who performed the duties and served in the capacities specified in Subsection 58-55-304(4) and in Subsection R156-55a-304.

(ii) If the experience was completed outside of the state of Utah, it shall be:

(A) completed in compliance with the laws of the jurisdiction in which the experience is completed; and

(B) completed with supervision that is substantially equivalent to the supervision that is required in Utah.

(iii) Experience may be determined to be substantially equivalent if lawfully obtained in a setting which has supervision of qualified persons and an equivalent scope of work, such as performing construction activities in the military where licensure is not required.

(b) One year of work experience means 2000 hours.

(c) No more than 2000 hours of experience during any 12 month period may be claimed.

(d) Except as described in Subsection (2)b, experience obtained under the supervision of a construction trades instructor as a part of an educational program is not qualifying experience for a contractor's license.

(e) If the applicant's qualifying experience is outdated but has previously been approved in the state of Utah, a passing score on the trade examination and the laws and rules examination obtained within the one-year period preceding the date of application will requalify the applicant's experience.

(2) Requirements for E100 General Engineering, B100 General Building, R100 Residential and Small Commercial Building license classifications:

(a) One of the required two years of experience shall be in a supervisory or managerial position.

(b) A person holding a four-year bachelors degree or a two-year associates degree in Construction Management may have one year of experience credited towards the supervisory or managerial experience requirement.

(c) A person holding a Utah professional engineer license may be credited with satisfying one year toward the supervisory or managerial experience required for E100 contractor license.

(3) Requirements for I101 General Engineering Trades Instruction Facility, I102 General Building Trades Instruction Facility, I103 Electrical Trades Instruction Facility, I104 Plumbing Trades Instruction Facility, I105 Mechanical Trades Instruction Facility license classifications:

An applicant for construction trades instruction facility license shall have the same experience that is required for the license classifications for the construction trade they will instruct.

(4) Requirements for S202 Solar Photovoltaic Contractor. In addition to the requirements of Subsection (1), an applicant shall hold a current certificate by the North American Board of Certified Energy Practitioners.

(5) Requirements for S354 Radon Mitigation Contractor. In addition to the requirements of Subsection (1), an applicant shall hold a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (AARST-NRPP). Experience completed prior to the effective date of this rule does not need to be performed under the supervision of a licensed contractor. Experience completed after the effective date of this rule must be performed under the supervision of a licensed contractor who has authority to practice radon mitigation.

R156-55a-302c. Qualifications for Licensure Requiring

Licensure in a Prerequisite Classification.

(1) Beginning at the effective date of this rule, each new applicant as a qualifier for licensure as a I103 Electrical Trades Instruction Facility shall also be licensed as a master electrician or a residential master electrician.

(2) Beginning at the effective date of this rule, each new applicant as a qualifier for licensure as a I104 Plumbing Trades Instruction Facility shall also be licensed as a master plumber or a residential master plumber.

R156-55a-302d. Qualifications for Licensure - Proof of Insurance and Registrations.

In accordance with the provisions of Subsection 58-55-302(2)(b), an applicant who is approved for licensure shall submit proof of public liability insurance which provides coverage for the scope of work performed and in coverage amounts of at least \$100,000 for each incident and \$300,000 in total by means of a certificate of insurance naming the Division as a certificate holder.

R156-55a-302e. Additional Requirements for Construction Trades Instructor Classifications.

In accordance with Subsection 58-55-302(1)(f), the following additional requirements for licensure are established:

(1) Any school that provides instruction to students by building houses for sale to the public is required to become a Utah licensed contractor with a B100 General Building Contractor or R100 Residential and Small Commercial Building Contractor classification or both.

(2) Any school that provides instruction to students by building houses for sale to the public is also required to be licensed in the appropriate instructor classification.

(a) Before being licensed in a construction trades instruction facility classification, the school shall submit the name of an individual person who acts as the qualifier in each of the construction trades instructor classifications in accordance with Section R156-55a-304. The applicant for licensure as a construction trades instructor shall:

(i) provide evidence that the qualifier has passed the required examinations established in Section R156-55a-302a; and

(ii) provide evidence that the qualifier meets the experience requirement established in Subsection R156-55a-302b(3).

(3) Each individual employed by a school licensed as a construction trades instruction facility and working with students on a job site shall meet any teacher certification, or other teacher requirements imposed by the school district or college, and be qualified to teach the construction trades instruction facility classification as determined by the qualifier.

R156-55a-302f. Pre-licensure Education - Standards.

(1) Qualifier Education Requirement. The 20-hour pre-licensure education program required by Subsection 58-55-302(1)(e)(iii) shall be completed by the qualifier for a contractor applicant.

(2) Program Pre-Approval. A pre-licensure education provider shall submit an application for approval as a provider on the form provided by the Division. The applicant shall demonstrate compliance with Section R156-55a-302f.

(3) Eligible Providers. The following may be approved to provide pre-licensure education:

(a) a nationally or regionally recognized accredited college or university having a physical campus located within the State of Utah; or

(b) a non-profit Utah construction trades association involved in the construction trades in the State of Utah:

(i) representing multiple construction trade classifications;

(ii) with membership of:

(A) at least 250 contractors licensed in Utah; or

(B) less than 250 members, if the association is:

(I) competent, as determined by the Commission and the Director according to their sole discretion; and

(II) compliant with all other standards of this rule; and

(iii) having five years of experience providing education to contractors in Utah.

(4) Content. The 20-hour program shall include the following topics and hours of education relevant to the practice of the construction trades consistent with the laws and rules of this state:

(a) ten hours of financial responsibility instruction that includes the following:

(i) record keeping and financial statements;

(ii) payroll, including:

(A) payroll taxes;

(B) worker compensation insurance requirements;

(C) unemployment insurance requirements;

(D) professional employer organization (employee leasing) alternatives;

(E) prohibitions regarding paying employees on 1099 forms as independent contractors, unless licensed or exempted;

(F) employee benefits; and

(G) Fair Labor Standard Act;

(iii) cash flow;

(iv) insurance requirements including auto, liability, and health; and

(v) independent contractor licensure and exemption requirements;

(b) six hours of construction business practices that includes the following:

(i) estimating and bidding;

(ii) contracts;

(iii) project management;

(iv) subcontractors; and

(v) suppliers;

(c) two hours of regulatory requirements that includes the following:

(i) licensing laws;

(ii) Occupational Safety and Health Administration (OSHA);

(iii) Environmental Protection Agency (EPA); and

(iv) consumer protection laws; and

(d) two hours of mechanic lien fundamentals that include the State Construction Registry.

(5) Program Schedule.

(a) A pre-licensure education provider shall offer programs at least 12 times per year.

(b) The pre-licensure education provider is not obligated to provide a course if the provider determines the enrollment is not sufficient to reach breakeven on cost.

(6) Program Instruction Requirements: The pre-licensure education shall meet the following standards:

(a) Time. Each hour of pre-licensure education credit shall consist of 60 minutes of education in the form of live lectures or training sessions. Time allowed for lunches or breaks may not be counted as part of the education time for which education credit is issued.

(b) Learning Objectives. The learning objectives of the pre-licensure education shall be reasonably and clearly stated.

(c) Teaching Methods. The pre-licensure education shall be presented in a competent and well organized manner consistent with the stated purpose and objective of the program. The student must demonstrate knowledge of the course material and must be given a pass/fail grade.

(d) Faculty. The pre-licensure education shall be prepared and presented by individuals who are qualified by education, training or experience.

(e) Distance Learning. Distance learning, internet courses, and home study courses are not allowed to meet pre-licensure education requirements.

(f) Registration and Attendance. The provider shall have a competent method of registration and verification of attendance of individuals who complete the pre-licensure education.

(g) Education Curriculum and Study/Resource Guide. The provider shall be responsible to provide or develop pre-licensure education curriculum and study/resource guide for the pre-licensure education that must be pre-approved by the Commission and the Division prior to use by the provider.

(h) Live Broadcast. The pre-licensure education course may be taught by live broadcast if:

(i) the student and the instructor are able to see and hear each other; and

(ii) a representative of the provider is at any remote location to monitor registration and attendance at the course.

(7) Certificates of Completion. The pre-licensure education provider shall provide individuals completing the pre-licensure education a certificate that contains the following information:

(a) the date of the pre-licensure education;

(b) the name of the pre-licensure education provider;

(c) the attendee's name;

(d) verification of completion of the 20-hour requirement; and

(e) the signature of the pre-licensure education provider.

(8) Reporting of Program Completion. A pre-licensure education provider shall, within seven calendar days, submit directly to the Division verification of attendance and completion on behalf of persons attending and completing the program. This verification shall be submitted on forms provided by the Division.

(9) Program Monitoring. On a random basis, the Division or Commission may assign monitors at no charge to attend a pre-licensure education course for the purpose of evaluating the education and the instructor(s).

(10) Documentation Retention. Each provider shall for a period of four years maintain adequate documentation as proof of compliance with this section and shall, upon request, make such documentation available for review by the Division or the Commission. Documentation shall include:

(a) the dates of all pre-licensure education courses that have been completed;

(b) registration and attendance logs of individuals who completed the pre-licensure education;

(c) the name of instructors for each education course provided as a part of the program; and

(d) pre-licensure education handouts and materials.

(11) Disciplinary Proceedings. As provided in Section 58-1-401 and Subsection 58-55-302(1)(e)(iii), the Division may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the approval of any pre-licensure education provider, if the pre-licensure education provider fails to meet any of the requirements of this section or the provider has engaged in other unlawful or unprofessional conduct.

(12) Exemptions. In accordance with Subsection 58-55-302(1)(e)(iii), the following persons are not required to complete the pre-licensure education program requirements:

(a) a person holding a four-year bachelor degree or a two-year associate degree in Construction Management from an accredited program;

(b) a person holding an active and unrestricted Utah professional engineer license who is applying for the E100

contractor license classification; or

- (c) a person who:
 - (i) is a qualifier on an active and unrestricted contractor license;
 - (ii) became the qualifier on the license on or before October 9, 2014; and
 - (iii) is applying to:
 - (A) add additional contractor classifications to the license; or
 - (B) become a qualifier on a new entity that is applying for initial licensure.

R156-55a-303a. Renewal Cycle - Procedures.

- (1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 55 is established by rule in Section R156-1-308a(1).
- (2) Renewal procedures shall be in accordance with Section R156-1-308c.
- (3) In accordance with Subsections 58-55-501(21) and 58-1-308(3)(b)(i), there is established a continuing education requirement for license renewal. Each licensee, or the licensee's qualifier, or an officer, director or supervising individual, as designated by the licensee, shall comply with the continuing education requirements set forth in Section R156-55a-303b.

R156-55a-303b. Continuing Education - Standards.

- (1) Required Hours. Pursuant to Subsection 58-55-302.5, each licensee shall complete a total of six hours of continuing education during each two year license term. A minimum of three hours shall be core education. The remaining three hours are to be professional education. Additional core education hours beyond the required amount may be substituted for professional education hours. A minimum of three hours shall consist of live in-class attendance. The remaining three hours may consist of courses provided through distance learning.
 - (a) "Core continuing education" is defined as construction codes, construction laws, job site safety, OSHA 10 or OSHA 30 safety training, governmental regulations pertaining to the construction trades and employee verification and payment practices, finance, bookkeeping, and construction business practices.
 - (b) "Professional continuing education" is defined as substantive subjects dealing with the practice of the construction trades, including land development, land use, planning and zoning, energy conservation, professional development, arbitration practices, estimating, marketing techniques, servicing clients, personal and property protection for the licensee and the licensee's clients and similar topics.
 - (c) The following course subject matter is not acceptable as core education or professional education hours: mechanical office and business skills, such as typing, speed reading, memory improvement and report writing; physical well-being or personal development, such as personal and business motivation, stress management, time management, dress for success, or similar subjects; presentations by a supplier or a supplier representative to promote a particular product or line of products; and meetings held in conjunction with the general business of the licensee or employer.
 - (d) The Division may defer or waive the continuing education requirements as provided in Section R156-1-308d.
- (2) A continuing education course shall meet the following standards:
 - (a) Time. Each hour of continuing education course credit shall consist of 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes is to allow for

breaks.

- (b) Provider. The course provider shall be among those specified in Subsection 58-55-302.5(2).
- (c) Content. The content of the course shall be relevant to the practice of the construction trades and consistent with the laws and rules of this state.
- (d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.
- (e) Teaching Methods. The course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.
- (f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training and experience.
 - (g) Distance learning. A course that is provided through Internet or home study may be recognized for continuing education if the course verifies registration and participation in the course by means of a test demonstrating that the participant has learned the material presented. Test questions shall be randomized for each participant. A home study course shall include no fewer than five variations of the final examination, distributed randomly to participants. Home study courses, including the five exam variations, shall be submitted in their entirety to the Division for review. Providers shall track the following:
 - (i) the amount of time each student has spent in the course;
 - (ii) what activities the student did or did not access; and
 - (iii) all of the student's test scores.
 - (h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division and shall provide individuals completing the course a certificate that contains the following information:
 - (i) the date of the course;
 - (ii) the name of the course provider;
 - (iii) the name of the instructor;
 - (iv) the course title;
 - (v) the hours of continuing education credit and type of credit (core or professional);
 - (vi) the attendee's name; and
 - (v) the signature of the course provider.
 - (i) Live Broadcast. A course provided through live broadcast may be recognized for live in-class continuing education credit if the student and the instructor are able to see and hear each other.
- (3) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.
- (4) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (8). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.
- (5) Licensees who lecture in continuing education courses meeting these requirements shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.
- (6) The continuing education requirement for electricians, plumbers and elevator mechanics as established in Subsections 58-55-302.7, if offered by a provider specified

in Subsection 58-55-302.5(2), shall satisfy the continuing education requirement for contractors as established in Subsection 58-55-302.5 and implemented herein. The contractor licensee shall assure that the course provider has submitted the verification of the electrician's, plumber's or elevator mechanic's attendance on behalf of the licensee to the continuing education registry as specified in Subsection (8).

(7) A course provider shall submit continuing education courses to the continuing education registry and shall submit verification of attendance and completion on behalf of licensees attending and completing the program directly to the continuing education registry in the format required by the continuing education registry.

(8) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses which meet the standards set forth under this Section.

(9) As provided in Section 58-1-401 and Subsections 58-55-302.5(2) and 58-55-302.7(4)(a), the Division may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the approval of any course or provider, if the course or provider fails to meet any of the requirements of this section or the provider has engaged in unlawful or unprofessional conduct.

(10) Continuing Education Registry.

(a) The Division shall designate an entity to act as the Continuing Education Registry under this rule.

(b) The Continuing Education Registry, in consultation with the Division and the Commission, shall:

(i) through its internet site electronically receive applications from continuing education course providers and shall submit the application for course approval to the Division for review and approval of only those programs that meet the standards set forth under this Section;

(ii) publish on their website listings of continuing education programs that have been approved by the Division, and which meet the standards for continuing education credit under this rule;

(iii) maintain accurate records of qualified continuing education approved;

(iv) maintain accurate records of verification of attendance and completion, by individual licensee, which the licensee may review for compliance with this rule; and

(v) make records of approved continuing education programs and attendance and completion available for audit by representatives of the Division.

(c) Fees. A continuing education registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.

R156-55a-304. Contractor License Qualifiers.

(1) The capacity and material authority specified in Subsection 58-55-304(4) is clarified as follows:

(a) Except as allowed in Subsection (b), the qualifier must receive remuneration for work performed for the contractor licensee for not less than 10 hours of work per week;

(i) If the qualifier is an owner of the business, the remuneration may be in the form of owner's profit distributions or dividends with a minimum ownership of 20 percent of the contractor licensee.

(ii) If the qualifier is an officer or manager of the contractor licensee, the remuneration must be in the form of W-2 wages.

(b) The 10 hour minimum in Subsection (a) may be reduced if the total of all hours worked by all owners and employees is less than 50 hours per week, in which case the

minimum may not be less than 20 percent of the total hours of work performed by all owners and employees of the contractor.

(2) Construction Trades Instruction Facility Qualifier. In accordance with Subsection 58-55-302(1)(f), the contractor license qualifier requirements in Section 58-55-304 shall also apply to construction trades instruction facilities.

R156-55a-305. Compliance Agency Reporting of Sole Owner Building Permits Issued.

In accordance with Subsection 58-55-305(2), all compliance agencies that issue building permits to sole owners of property must submit information concerning each building permit issued in their jurisdiction within 30 days of the issuance, with the building permit number, date issued, name, address and phone number of the issuing compliance agency, sole owner's full name, home address, phone number, and subdivision and lot number of the building site, to a fax number, email address or written mailing address designated by the Division.

R156-55a-305a. Exempt Contractors Filing Affirmation of Liability and Workers Compensation Insurance.

(1) Initial affirmation. In accordance with Subsection 58-55-305(1)(h)(ii)(F), any person claiming exemption under Subsection 58-55-305(1)(h) for projects with a value greater than \$1,000 but less than \$3,000 shall file a registration of exemption with the Division which includes:

(a) the identity and address of the person claiming the exemption; and

(b) a statement signed by the registrant verifying:

(i) that the person has public liability insurance in force which includes the Division being named as a certificate holder, the policy number, the expiration date of the policy, the insurance company name and contact information, and coverage amounts of at least \$100,000 for each incident and \$300,000 in total; and

(ii) that the person has workers compensation insurance in force which names the Division as a certificate holder, includes the policy number, the expiration date of the policy, the insurance company name and contact information; or

(iii) that the person does not hire employees and is therefore exempt from the requirement to have workers compensation insurance.

(2) Periodic reaffirmations required. The affirmation required under Subsection (1) shall be reaffirmed on or before November 30 of each odd numbered year.

R156-55a-306. Contractor Financial Responsibility - Division Audit.

In accordance with Subsections 58-55-302(10)(c), 58-55-306(5), 58-55-306(4)(b), and 58-55-102(19), the Division may consider various relevant factors in conducting a financial responsibility audit of an applicant, licensee, or any owner, including:

(1)(a) judgments, tax liens, collection actions, bankruptcy schedules and a history of late payments to creditors, including documentation showing the resolution of each of the above actions;

(b) financial statements and tax returns, including the ability to prepare or have prepared competent and current financial statements and tax returns;

(c) an acceptable current credit report that meets the following requirements:

(i) for individuals:

(A) a credit report from each of the three national reporting agencies, Trans Union, Experian, and Equifax; or

(B) a merged credit report of the agencies identified in Subsection (A) prepared by the National Association of

Credit Managers (NACM); or

(ii) for entities, a business credit report such as an Experian Business Credit Report or a Dun and Bradstreet Report;

(d) an explanation of the reasons for any financial difficulties and how the financial difficulties were resolved;

(e) any of the factors listed in Subsection R156-1-302 that may relate to failure to maintain financial responsibility;

(f) each of the factors listed in this Subsection regarding the financial history of the owners of the applicant or licensee;

(g) any guaranty agreements provided for the applicant or licensee and any owners; and

(h) any history of prior entities owned or operated by the applicant, the licensee, or any owner that have failed to maintain financial responsibility.

R156-55a-308a. Operating Standards for Schools or Colleges Licensed as Contractors.

(1) Each school licensed as a B100 General Building Contractor or a R100 Residential and Small Commercial Contractor or both shall obtain all required building permits for homes built for resale to the public as part of an educational training program.

(2) Each employee that works as a teacher for a school licensed as a construction trades instruction facility shall:

(a) have on their person a school photo ID card with the trade they are authorized to teach printed on the card; and

(b) if instructing in the plumbing or electrical trades, they shall also carry on their person their Utah journeyman or residential journeyman plumber license or Utah journeyman, residential journeyman, master, or residential master electrician license.

(3) Each school licensed as a construction trades instruction facility shall not allow any teacher or student to work on any portion of the project subcontracted to a licensed contractor unless the teacher or student are lawful employees of the subcontractor.

R156-55a-308b. Natural Gas Technician Certification.

(1) In accordance with Subsection 58-55-308(1), the scope of practice defined in Subsection 58-55-308(2)(a) requiring certification is further defined as the installation, modifications, maintenance, cleaning, repair or replacement of the gas piping, combustion air vents, exhaust venting system or derating of gas input for altitude of a residential or commercial gas appliance.

(2) An approved training program shall include the following course content:

- (a) general gas appliance installation codes;
- (b) venting requirements;
- (c) combustion air requirements;
- (d) gas line sizing codes;
- (e) gas line approved materials requirements;
- (f) gas line installation codes; and
- (g) methods of derating gas appliances for elevation.

(3) In accordance with Subsection 58-55-308(2)(c)(i), the following programs are approved to provide natural gas technician training, and to issue certificates or documentation of exemption from certification:

- (a) Federal Bureau of Apprenticeship Training;
- (b) Utah college apprenticeship program; and
- (c) Trade union apprenticeship program.

(4) In accordance with Subsection 58-55-308(3), the approved programs set forth in paragraphs (2)(b) and (2)(c) herein shall require program participants to pass the Rocky Mountain Gas Association Gas Appliance Installers Certification Exam or approved equivalent exams established or adopted by a training program, with a minimum passing score of 80%.

(5) In accordance with Subsection 58-55-308(3), a person who has not completed an approved training program, but has passed the Rocky Mountain Gas Association Gas Exam or approved equivalent exam established or adopted by an approved training program, with a minimum passing score of 80%, or the Utah licensed Journeyman or Residential Journeyman Plumber Exam, with a minimum passing score of 70%, shall be exempt from the certification requirement set forth in Subsection 58-55-308(2)(c)(i).

(6) Content of certificates of completion. An approved program shall issue a certificate, including a wallet certificate, to persons who successfully complete their training program containing the following information:

- (a) name of the program provider;
- (b) name of the approved program;
- (c) name of the certificate holder;
- (d) the date the certification was completed; and
- (e) signature of an authorized representative of the program provider.

(7) Documentation of exemption from certification. The following shall constitute documentation of exemption from certification:

(a) certification of completion of training issued by the Federal Bureau of Apprenticeship Training;

(b) current Utah licensed Journeyman or Residential Journeyman plumber license; or

(c) certification from the Rocky Mountain Gas Association or approved equivalent exam which shall include the following:

- (i) name of the association, school, union, or other organization who administered the exam;
- (ii) name of the person who passed the exam;
- (iii) name of the exam;
- (iv) the date the exam was passed; and
- (v) signature of an authorized representative of the test administrator.

(8) Each person engaged in the scope of practice defined in Subsection 58-55-308(2)(a) and as further defined in Subsection (1) herein, shall carry in their possession documentation of certification or exemption.

R156-55a-309. Reinstatement Application Fee.

The application fee for a contractor applicant who is applying for reinstatement more than two years after the expiration of licensure, who has been engaged in unauthorized practice of contracting following the expiration of the applicant's license, shall be the current license application fee normally required for a new application rather than the reinstatement fee provided under R156-1-308g(3)(d).

R156-55a-311. Reorganization - Conversion of Contractor Business Entity.

A reorganization of the business organization or entity under which a licensed contractor is licensed shall require application for a new license under the new form of organization or business structure. The creation of a new legal entity constitutes a reorganization and includes a change to a new entity under the same form of business entity or a change of the form of business entity between proprietorship, partnership, whether limited or general, joint venture, corporation or any other business form.

Exception: A conversion from one form of entity to another form where "Articles of Conversion" are filed with the Utah Division of Corporations and Commercial Code shall not require a new contractor application.

R156-55a-312. Inactive License.

(1) The requirements for inactive licensure specified in Subsection R156-1-305(3) shall also include certification that

the licensee will not engage in the construction trade(s) for which his license was issued while his license is on inactive status except to identify himself as an inactive licensee.

(2) A license on inactive status will not be required to meet the requirements of licensure in Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b).

(3) The requirements for reactivation of an inactive license specified in Subsection R156-1-305(6) shall also include:

(a) documentation that the licensee meets the requirements of Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b); and

(b) documentation that the licensee has taken and passed the business and law examination and the trade examination for the classification for which activation is sought except that the following exceptions shall apply to the reactivation examination requirement:

(i) No license shall be in an inactive status for more than six years.

(ii) Prior to a license being activated, a licensee shall meet the requirements of renewal.

R156-55a-401. Minimum Penalty for Failure to Maintain Insurance.

(1) A minimum penalty is hereby established for the violation of Subsection R156-55a-501(2) as follows:

(a) For a violation the duration of which is less than 90 days, where the licensee at the time a penalty is imposed documents that the required liability and workers compensation insurance have been reacquired, and provided an insurable loss has not occurred while not insured, a minimum of a 30 day suspension of licensure, stayed indefinitely, automatically executable in addition to any other sanction imposed, upon any subsequent violations of Subsection R156-55a-501(2).

(b) For a violation the duration of which is 90 days or longer, or where insurable loss has occurred, where the licensee at the time a penalty is imposed documents that the required insurance have been reacquired, a minimum of 30 days suspension of licensure.

(c) For a violation of any duration, where the licensee at the time a penalty is imposed fails to document that the required insurance have been reacquired, a minimum of indefinite suspension. A license which is placed on indefinite suspension may not be reinstated any earlier than 30 days after the licensee documents the required insurance have been reacquired.

(d) If insurable loss has occurred and licensee has not paid the damages, the license may be suspended indefinitely until such loss is paid by the licensee.

(e) Nothing in this section shall be construed to restrict a presiding officer from imposing more than the minimum penalty for a violation of Subsection R156-55a-501(2) and (3). However, absent extraordinary cause, the presiding officer may not impose less than the minimum penalty.

R156-55a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to notify the Division with respect to any matter for which notification is required under this rule or Title 58, Chapter 55, the Construction Trades Licensing Act, including a change in qualifier. Such failure shall be considered by the Division and the Commission as grounds for immediate suspension of the contractors license;

(2) failing to continuously maintain insurance and registration as required by Subsection 58-55-302(2) and Section R156-55a-302d; and

(3) failing to within 30 days of a request from the Division to provide:

- (a) proof of insurance coverage;
- (b) a copy of the licensee's public insurance policy; or
- (c) any exclusions included in the licensee's public insurance policy.

R156-55a-502. Penalty for Unlawful Conduct.

The penalty for violating Subsection 58-55-501(1) while suspended from licensure shall include the maximum fine allowed by Subsection 58-55-503(4)(i).

R156-55a-503. Administrative Penalties.

(1) In accordance with Subsection 58-55-503, the following fine schedule shall apply to citations issued under Title 58, Chapter 55:

| TABLE II | | |
|----------------|--|------------------------|
| FINE SCHEDULE | | |
| FIRST OFFENSE | | |
| Violation | All Licenses Except Electrical or Plumbing | Electrical or Plumbing |
| 58-55-308(2) | \$ 500.00 | N/A |
| 58-55-501(1) | \$ 500.00 | \$ 500.00 |
| 58-55-501(2) | \$ 500.00 | \$ 800.00 |
| 58-55-501(3) | \$ 800.00 | \$1,000.00 |
| 58-55-501(9) | \$ 500.00 | \$ 500.00 |
| 58-55-501(10) | \$ 800.00 | \$1,000.00 |
| 58-55-501(12) | N/A | \$ 500.00 |
| 58-55-501(14) | \$ 500.00 | N/A |
| 58-55-501(19) | \$ 500.00 | N/A |
| 58-55-501(21) | \$ 500.00 | \$ 500.00 |
| 58-55-501(22) | \$ 500.00 | N/A |
| 58-55-501(23) | \$ 500.00 | N/A |
| 58-55-501(24) | \$ 500.00 | N/A |
| 58-55-501(25) | \$ 500.00 | N/A |
| 58-55-501(26) | \$ 500.00 | N/A |
| 58-55-501(27) | \$ 500.00 | N/A |
| 58-55-501(28) | \$ 500.00 | N/A |
| 58-55-501(29) | \$ 500.00 | N/A |
| 58-55-504(2) | \$ 500.00 | N/A |
| SECOND OFFENSE | | |
| 58-55-308(2) | \$1,000.00 | N/A |
| 58-55-501(1) | \$1,000.00 | \$1,500.00 |
| 58-55-501(2) | \$1,000.00 | \$1,500.00 |
| 58-55-501(3) | \$1,600.00 | \$2,000.00 |
| 58-55-501(9) | \$1,000.00 | \$1,000.00 |
| 58-55-501(10) | \$1,600.00 | \$2,000.00 |
| 58-55-501(12) | N/A | \$1,000.00 |
| 58-55-501(14) | \$1,000.00 | N/A |
| 58-55-501(19) | \$1,000.00 | N/A |
| 58-55-501(21) | \$1,000.00 | \$1,000.00 |
| 58-55-501(22) | \$1,000.00 | N/A |
| 58-55-501(23) | \$1,000.00 | N/A |
| 58-55-501(24) | \$1,000.00 | N/A |
| 58-55-501(25) | \$1,000.00 | N/A |
| 58-55-501(26) | \$1,000.00 | N/A |
| 58-55-501(27) | \$1,000.00 | N/A |
| 58-55-501(28) | \$1,000.00 | N/A |
| 58-55-501(29) | \$1,000.00 | N/A |
| 58-55-504(2) | \$1,000.00 | N/A |
| THIRD OFFENSE | | |

Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-55-503(4)(h).

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

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

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

(5) The presiding officer for a contested citation shall

have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence presented.

R156-55a-504. Crane Operator Certifications.

In accordance with Subsection 58-55-504(2)(a) one of the following certifications is required to operate a crane on commercial construction projects:

- (1) a certification issued by the National Commission for the Certification of Crane Operators;
- (2) a certification issued by the Operating Engineers Certification Program formerly known as the Southern California Crane and Hoisting Certification Program; or
- (3) a certification issued by the Crane Institute of America.

R156-55a-602. Contractor License Bonds.

Pursuant to the provisions of Subsections 58-55-306(1)(b) and 58-55-306(5)(b)(iii), a contractor shall provide a license bond issued by a surety acceptable to the Division in the amount, form, and coverage as follows:

(1) An acceptable surety is one that is listed in the Department of Treasury, Fiscal Service, Circular 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" at the date of the bond.

(2) The coverage of the license bond shall include losses that may occur as the result of the contractor's violation of the unprofessional or unlawful provisions contained in Title 58, Chapters 1 and 55 and rules R156-1 and R156-55a including the failure to maintain financial responsibility, the failure of the licensee to pay its obligations, and the failure of the owners or a licensed unincorporated entity to pay income taxes or self employment taxes on the gross distributions from the unincorporated entity to its owners.

(3) The financial history of the applicant, licensee, or any owner, as outlined in Section R156-55a-306, may be reviewed in determining the bond amount required under this section.

(4) If the licensee is submitting a bond under Subsection 58-55-306(5)(b)(iii)(B), the amount of the bond shall be 20% of the annual gross distributions from the unincorporated entity to its owners. As provided in Subsection 58-55-302(10)(c), the Division, in determining if financial responsibility has been demonstrated, may consider the total number of owners, including new owners added as reported under the provisions of Subsection 58-55-302(10)(a)(i), in setting the amount of the bond required under this subsection.

(5) If the licensee is submitting a bond under any subsection other than Subsection 58-55-306(5)(b)(iii)(B), the minimum amount of the bond shall be \$50,000 for the E100 or B100 classification of licensure; \$25,000 for the R100 classification of licensure; or \$15,000 for other classifications. A higher amount may be determined by the Division and the Commission as provided in Subsection R156-55a-602(6).

(6) The amount of the bond specified under Subsection R156-55a-602(5) may be increased by an amount determined by the Commission and Division when the financial history of the applicant, licensee or any owner indicates the bond amount specified in Subsection R156-55a-602(1) is insufficient to reasonably cover risks to the public health, safety and welfare. The financial history of the applicant, licensee or any owner, as outlined in Section R156-55a-306 may be reviewed in determining the bond amount required.

(7) A contractor may provide a license bond issued by a surety acceptable to the Division in an amount less than the bond amount specified in Subsection R156-55a-602(5) if:

- (a) the contractor demonstrates by clear and convincing

evidence that:

(i) the financial history of the applicant, licensee or any owner indicates the bond amount specified in Subsection R156-55a-602(1) is in excess of what is reasonably necessary to cover risks to the public health, safety and welfare;

(ii) the contractor's lack of financial responsibility is due to extraordinary circumstances that the contractor could not control as opposed to general financial challenges that all contractors experience; and

(iii) the contractor's scope of practice will be restricted commensurate with the degree of risk the contract presents to the public health, safety, and welfare; and

- (b) the Commission and Division approve the amount.

KEY: contractors, occupational licensing, licensing

May 8, 2017 **58-1-106(1)(a)**
Notice of Continuation August 4, 2016 **58-1-202(1)(a)**
58-55-101
58-55-308(1)(a)
58-55-102(39)(a)

R156. Commerce, Occupational and Professional Licensing.**R156-76. Professional Geologist Licensing Act Rule.****R156-76-101. Title.**

This rule is known as the "Professional Geologist Licensing Act Rule".

R156-76-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 76, as used in Title 58, Chapters 1 and 76, or this rule:

(1) "ASBOG" means Association of State Boards of Geology.

(2) "Geosciences", as used in Subsection 58-76-302(4)(a), means an earth science degree, which results in sufficient geological knowledge to enable the practice of geology before the public.

(3) "Qualified individual", as used in Section R156-76-302c, means a person who is licensed as a professional geologist in a recognized jurisdiction, or who otherwise meets the requirements for licensure as defined in Sections 58-76-302 and R156-76-302b and R156-76-302c.

(4) "Practice of geology before the public", as used in Subsection 58-76-102(3) does not include the following activities:

(a) routine sampling, laboratory work or geological drafting, where the elements of initiative, scientific judgment, and decision-making are lacking;

(b) data acquisition where geological interpretation is minimal and incidental (for example mud-logging, wireline logging, rock property measurements, dating, and geochemical, geophysical and biological surveys);

(c) the following aspects of paleontology:

(i) taxonomy;

(ii) biologic analysis of organisms; or

(iii) investigation and reporting of deposits which may be fossiliferous, including incidental geological analysis; or

(d) the following aspects of the practice of anthropology and archeology:

(i) archeological survey, excavation, and reporting;

(ii) production of archeological plan views, profiles, and regional overviews; or

(iii) investigation and reporting of artifacts or deposits that are modified or affected by past human behavior.

(5) "Principal", as used in Subsection 58-76-603(2), means the licensee assigned to and personally accountable for the production of specified professional geologic projects within an organization.

(6) "Recognized jurisdiction", as used in Subsection R156-76-302d(2), means any state, district or territory of the United States that issues a license for a professional geologist, and whose licensure requirements include:

(a) a bachelors or post graduate degree in the geosciences from an accredited institution or equivalent foreign education as determined by the International Credentialing Association and the Division in collaboration with the board;

(b) documented qualifying experience requirements similar to the experience requirements found in Subsection 58-76-302(5) and Section R156-76-302; and

(c) passing the ASBOG Fundamentals of Geology (FG) and the ASBOG Principles and Practice of Geology (PG) Examination.

(7) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 76, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-76-502.

R156-76-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer

Title 58, Chapter 76.

R156-76-104. 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.

R156-76-302b. Qualifications for Licensure - Education Requirements.

(1) In accordance with Section 58-76-302, the education requirements for graduates of an approved geoscience program are as follows:

(a) an earned bachelors or masters degree in geology from an accredited institution; or

(b) an earned bachelor or post-graduate degree in the geosciences from an accredited institution including the completion of a minimum of 24 semester or 36 quarter hours in upper level or graduate geology courses, which includes one or more of the following subject areas:

(i) structural geology;

(ii) geophysics;

(iii) sedimentology/stratigraphy/paleontology;

(iv) mineralogy/petrology/geochemistry;

(v) engineering geology/environmental geology;

(vi) hydrogeology/hydrology;

(vii) geomorphology/remote sensing;

(viii) economic geology/petroleum geology; and

(ix) field geology.

(2) In accordance with Section 58-1-302, an applicant who has been educated in a foreign country shall submit a course-by-course accreditation evaluation completed by International Credentialing Associates to determine program equivalency.

R156-76-302c. Qualifications for Licensure - Experience Requirements.

In accordance with Subsection 58-76-302(5), active professional practice requirements are clarified or established as follows:

(1) Professional practice shall be obtained after completing the minimum educational requirement for licensure.

(2) One year of active professional practice shall consist of a minimum of 2,000 hours of geological work experience under the supervision of a qualified individual, or in responsible charge as permitted by law.

(3) No more than 2,000 hours of active professional practice may be gained in any 12 month period of time.

(4) Qualifying work engagements consist of a range of activities included in the practice of geology consisting of more than the performance or supervision of geological work activities that are routine, such as routine sampling, laboratory work, or geological drafting, where the elements of initiative, scientific judgment and decision-making are lacking.

(5) Three years of geologic research or teaching activity in upper division or graduate level geology classes at an accredited university is equivalent to one year of qualifying experience.

R156-76-302d. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-76-302(6), except as otherwise provided in Subsection (2) or(3), the examination requirements for licensure as a professional geologist after January 1, 2004 are established as follows:

(a) the ASBOG Fundamentals of Geology ("FG") Examination with a passing score as recommended by the ASBOG; and

(b) the ASBOG Principles and Practice of Geology

("PG") Examination with a passing score as established by the ASBOG.

(2) The ASBOG FG Examination shall not be required for an applicant who:

(a) has practiced as a principal for five years of the last seven years preceding the date of the license application;

(b) was not required to pass the ASBOG FG Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed; and

(c) has passed the ASBOG PG Examination.

(3) The ASBOG FG and PG Examinations shall not be required for an applicant who:

(a) has practiced as a principal for five years during the last seven years preceding the date of the license application;

(b) has been licensed for 20 years preceding the date of the license application; and

(c) who was not required to pass the ASBOG FG and PG Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed, but was required to pass a predecessor exam established by the recognized jurisdiction.

R156-76-303. Renewal Cycle - Procedures.

In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 76, is established by rule in Section R156-1-308.

R156-76-304. Exemption from Licensure.

The exemption from licensure in Subsection 58-76-304(1) is defined or clarified as follows: An "employee" or "subordinate", as used therein and elsewhere in Title 58, Chapter 76, or this rule, means an individual who:

(1) is not licensed as a professional geologist;

(2) works with, for, or provides professional geologic services on work initiated by a person licensed as a professional geologist; and

(3) works only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of a person licensed as a professional geologist.

R156-76-501. Administrative Penalties - Unlawful Conduct.

In accordance with Sections 58-76-501 and 58-76-502 and Subsections 58-1-501(1)(a) through (d), unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

(1) Engaging in unlicensed practice or using any title that would cause a reasonable person to believe the user of the title is licensed under this chapter.

First Offense: \$800

Second Offense: \$1,600

(2) Engaging in, or representing oneself as engaged in the practice of geology as a corporation, proprietorship, partnership, or limited liability company unless exempted from licensure.

First Offense: \$800

Second Offense: \$1,600

(3) Impersonating another licensee or engaging in practice under this chapter using a false or assumed name, unless permitted by law.

First Offense: \$1,000

Second Offense: \$2,000

(4) Knowingly employing any person to practice under this chapter who is not licensed to do so.

First Offense: \$1,000

Second Offense: \$2,000

(5) Knowingly permitting any person to use his license

except as permitted by law.

First Offense: \$1,000

Second Offense: \$2,000

(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 Subsection 58-76-502(1)(i).

(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 and mitigating circumstances, to increase or decrease the fine amount based upon the evidence reviewed.

R156-76-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) submitting an incomplete final plan, specification, report or set of plans to:

(a) a client, when the licensee represents, or could reasonably expect the client to consider the plan, specification, report or set of plans to be complete and final; or

(b) to a government official for the purpose of obtaining a permit;

(2) failing as a principal to exercise responsible charge;

(3) failing as a supervisor to exercise supervision of an employee, subordinate, associate or drafter; or

(4) failing to conform to the accepted and recognized standards and ethics of the profession including those stated in Section 16 Code of Ethics of the 2011 edition of the "National Association of State Boards of Geology (ASBOG) Model Rules and Regulations", which is hereby incorporated by reference.

R156-76-601. Seal Requirements.

(1) In accordance with Section 58-76-601, the seal design and implementation shall be:

(a) each seal shall be a circular seal, 1-1/2 inches minimum diameter;

(b) each seal shall include the licensee's name, license number, "State of Utah", and "Licensed Professional Geologist";

(c) each seal shall be signed and dated with the signature and date appearing across the face of each seal imprint;

(d) each original set of final geologic map, cross-section, sketch, drawing, plan, or report prepared, as a minimum, shall have the original seal imprint, original signature and date placed on the cover or title sheet;

(e) a seal may be a wet stamp, embossed, or electronically produced; and

(f) copies of the original set of plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats which contain the original seal, original signature and date are permitted, if the seal, signature and date is clearly recognizable.

KEY: licensing, professional geologists, geology

May 8, 2017

58-1-106(1)(a)

Notice of Continuation February 2, 2017

58-1-202(1)(a)

58-76-101

R162. Commerce, Real Estate.**R162-2f. Real Estate Licensing and Practices Rules.****R162-2f-101. Title and Authority.**

(1) This chapter is known as the "Real Estate Licensing and Practices Rules."

(2) The authority to establish rules for real estate licensing and practices is granted by Section 61-2f-103.

(3) The authority to establish rules governing undivided fractionalized long-term estates is granted by Section 61-2f-307.

(4) The authority to collect fees is granted by Section 61-2f-105.

R162-2f-102. Definitions.

(1) "Active license" means a license granted to an applicant who:

(a) qualifies for licensure under Section 61-2f-203 and these rules;

(b) pays all applicable nonrefundable license fees; and

(c) affiliates with a principal brokerage.

(2) "Advertising" means 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 Licensure 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-202d. Property Management Sales Agent Licensing Fees and Procedures.

- (1) A sales agent affiliated with a dual broker through a property management company may act as a property management sales agent if:
 - (a) the dual broker designates the sales agent as a property management sales agent, and
 - (b) the sales agent pays to the division the property management sales agent designation fee.

(2) A property management sales agent may simultaneously provide both property management services and real estate sales services under the supervision of the dual broker if the property management sales agent:

- (a) provides property management services only through the property management company overseen by the dual broker, and
- (b) provides real estate sales services only through the real estate brokerage overseen by the dual broker.

(3) Before a property management sales agent may affiliate with another principal broker who is not a dual broker or with a dual broker who does not approve of the property management sales agent designation, the property management sales agent shall pay the additional fee to remove the property management sales agent designation.

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 other 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

(i) as applicable:

(A) entering the certified mail reference number into the appropriate field on the electronic change form; or

(B) providing to the division a copy of the certified mail receipt; or

(b) sending an email to notify the individual.

(5) The termination of affiliation by sending an email is effective 10 days after the date that the email was sent.

(6) Fees. The division may require a notification submitted pursuant to this subsection to be accompanied by a nonrefundable change fee.

(7) 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.

(8) 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)(e)(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 initials), on behalf of Owner;"
- (20) if employing an unlicensed individual to provide assistance in connection with real estate transactions, adhere to the provisions of Section R162-2f-401g;
- (21) strictly adhere to advertising restrictions as outlined in Section R162-2f-401h;
- (22) as to a guaranteed sales agreement, provide full disclosure regarding the guarantee by executing a written contract that contains:
 - (a) the conditions and other terms under which the property is guaranteed to be sold or purchased;
 - (b) the charges or other costs for the service or plan;
 - (c) the price for which the property will be sold or purchased; and
 - (d) the approximate net proceeds the seller may reasonably expect to receive;
- (23) immediately deliver money received in a real estate transaction to the principal broker for deposit; and
- (24) as contemplated by Subsection 61-2f-401(19),

when notified by the division that information or documents are required for investigation purposes, respond with the required information or documents in full and within ten business days.

R162-2f-401b. Prohibited Conduct As Applicable to All Licensed Individuals.

An individual licensee may not:

(1) engage in any of the practices described in Section 61-2f-401 et seq., whether acting as agent or on the licensee's own account, in a manner that:

(a) fails to conform with accepted standards of the real estate sales, leasing, or management industries;

(b) could jeopardize the public health, safety, or welfare; or

(c) violates any provision of Title 61, Chapter 2f et seq. or the rules of this chapter;

(2) require parties to acknowledge receipt of a final copy of any document prepared by the licensee prior to all parties signing a contract evidencing agreement to the terms thereof;

(3) make a misrepresentation to the division:

(a) in an application for license renewal; or

(b) in an investigation.

(4)(a) propose, prepare, or cause to be prepared a document, agreement, settlement statement, or other device that the licensee knows or should know does not reflect the true terms of the transaction; or

(b) knowingly participate in a transaction in which such a false device is used;

(5) participate in a transaction in which a buyer enters into an agreement that:

(a) is not disclosed to the lender; and

(b) if disclosed, might have a material effect on the terms of 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, whitening 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
May 10, 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

R251. Corrections, Administration.**R251-107. Executions.****R251-107-1. Authority and Purpose.**

(1) This rule is authorized by Sections 63G-3-201, 64-13-10, 77-19-10, and 77-19-11, of the Utah Code, in which the Department shall adopt and enforce rules governing procedures for the execution of judgments of death and attendance of persons at the execution.

(2) The purpose of this rule is to address public safety and security within prison facilities prior to, during and immediately following an execution.

R251-107-2. Definitions.

(1) "Department" means Utah Department of Corrections.

(2) "DPO" means Division of Prison Operations.

(3) "news media" includes persons engaged in news gathering for newspapers, news magazines, radio, television, online news sources, excluding personal blogs, or other news services.

(4) "news media members" means persons over the age of eighteen who are primarily employed in the business of gathering or reporting news for newspapers, news magazines, national or international news services, radio or television stations licensed by the Federal Communications Commission or other recognized news services, such as online media.

(5) "newspaper" means a publication that circulates among the general public, and contains information of general interest to the public regarding political, commercial, religious or social affairs.

(6) "press" means the print media, news media, or both.

(7) "USP" means Utah State Prison.

R251-107-3. Crowd Control.

(1) Persons arriving at or driving past the USP shall be routed and controlled in a manner which does not compromise or inhibit:

- (a) security;
- (b) official escort or movement;
- (c) the functions necessary to carry out the execution; or
- (d) safety.

(2) Persons controlled/handled through this process shall be handled in a manner with no more restriction than is necessary to carry out the legitimate interests of the Department.

(3) Procedures for crowd control shall be consistent with federal, state and local laws.

(4) Only persons specifically authorized shall be permitted on USP property, except those persons congregating at a designated demonstration/public area.

(5) Persons entering USP property without authorization shall be ordered to leave and may be arrested if:

- (a) the trespass was intentional;
- (b) the individual failed to immediately leave the USP property following a warning;
- (c) the trespass jeopardized safety or security (or) interfered with the lawful business of the Department or its staff or agents; or
- (d) it involves entry onto areas clearly posted with signs prohibiting access or trespass.

(6) Persons entering USP property without authorization shall be ordered to leave and may be arrested if:

R251-107-4. Location and Procedures.

(1) The executive director of the Department of Corrections or his designee shall ensure that the method of judgment of death specified in the warrant is carried out at a secure correctional facility operated by the department and at an hour determined by the department on the date specified in the warrant.

(2) When the judgment of death is to be carried out by

lethal intravenous injection, the executive director of the department or his designee shall select two or more persons trained in accordance with accepted medical practices to administer intravenous injections, who shall each administer a continuous intravenous injection, one of which shall be of a lethal quantity of sodium thiopental or other equally or more effective substance to cause death.

(3) If the judgment of death is to be carried out by firing squad under Subsection 77-18-5.5(3) or (4), of the Utah Code, the executive director or his designee shall select a five-person firing squad of peace officers.

(4) Death shall be certified by a physician.

R251-107-5. Demonstration and Public Access.

(1) The Executive Director may permit limited access to a designated portion of state property on Minuteman Drive at or near the Fred House Academy for the public to gather demonstrate during an execution event.

(2) No person may violate the intent of clearly marked signs, fences, doors or other indicant relative to prohibitions against entering any prison property or facility for which permission to enter may not be marked.

(3) The Department neither recognizes, nor is bound by, the policies, allowances or arrangements which may have occurred at prior executions, events or on prior occasions, and by this rule any arrangement provided for public access at previous executions or demonstrations is invalidated.

(4) The Executive Director or Warden may at any time withdraw permission without notice in the event of riot, disturbance, or other factors that in the opinion of the Warden/designee or Executive Director/designee jeopardizes the security, peace, order or any function of the prison.

R251-107-6. Witnesses.

(1) The Department will implement the standards and procedures for inmate witnesses outlined in Section 77-19-11, of the Utah Code.

(2) As a condition to attending the execution, each designated witness shall be required by the Department to sign an agreement setting forth their willingness to conduct themselves while on prison property in a manner consistent with the legitimate penological, security and safety concerns as delineated by the Department.

(3) Witnesses shall be searched prior to being allowed to witness the execution.

R251-107-7. News Media.

(1) The Department shall permit press access to the execution and information concerning the execution consistent with the requirements of the constitutions and laws of the United States and State of Utah.

(2) The Department and the Utah Code recognize the need for the public to be informed concerning executions.

(a) The Department will participate and cooperate with the news media to inform the public concerning the execution; and

(b) information should be provided in a timely manner.

(3) The Executive Director shall be responsible for selecting the members of the news media who will be permitted to witness the execution.

(a) After the court sets a date for the execution of the death penalty, news directors or editors desirous to have a staff member witness the execution may submit, in writing, such request for no more than one news media staff member. The request shall be addressed to the Executive Director and received at least 30 days prior to the execution.

(b) When administrative convenience or fairness to the news media dictates, the Department, in its discretion, may extend the request deadline.

(c) Requests for consideration may be granted by the Executive Director provided they contain the following:

(i) a statement setting forth facts showing that the requesting individual falls within the definition of member of the "press" and "news media" as set forth in this rule;

(ii) an agreement to act as a pool representative for other news gathering agencies desiring information on the execution; and

(iii) an agreement that the media member will abide by all of the conditions, rules and regulations while in attendance at the execution.

(d) Upon receipt of a news director's or editor's request for permission for news media witnesses to attend the execution, the Executive Director may take the steps necessary to verify the statements made in the request. After verifying the information in the request, selection of witnesses shall be made by the Executive Director.

(e) As a condition to attending the execution, each designated media witness shall be required by the department to execute an agreement setting forth their willingness to conduct themselves while on prison property in a manner consistent with the legitimate penological, security and safety concerns as delineated by the department.

(f) Media witnesses shall be searched prior to being allowed to witness the execution.

(g) The Department shall arrange for pre-execution briefings, distribution of media briefing packages, briefings throughout the execution event, and post-execution briefings by the news media who witnessed the execution.

(4) Persons representing the news media witnessing the execution shall be required to sign a statement or release absolving the institution or any of its staff from any legal recourse resulting from the exercise of search requirements or other provisions of the witness agreement.

(5) News media representatives shall, after being returned from the execution to the staging area, act as pool representatives for other media representatives covering the event.

(a) The pool representatives shall meet at the designated media center and provide an account of the execution and shall freely answer all questions put to them by other media members and shall not be permitted to report their coverage of the execution back to their respective news organizations until after the non-attending media members have had the benefit of the pool representatives' account of the execution.

(b) News media members attending the post-execution briefing shall agree to remain in the briefing room and not leave nor communicate with persons outside the briefing room until the briefing is over.

(c) The briefing shall end when the attending news media members are through asking questions or after 60 minutes, whichever comes first.

(d) Any film/videotape obtained by a pool photographer shall not be used in any news or other broadcast until made available to all agencies participating in the pool. All agencies receiving the film/videotape will be permitted to use them in news coverage and to retain the film/videotape for file footage.

(6) The Department may alter these processes to impose additional conditions, restrictions and limitations on media coverage of the execution when requirements become necessary for the preservation of prison security, personal safety or other legitimate interests which may be in jeopardy.

(7) If extraordinary circumstances develop, additional conditions and restrictions shall be no more restrictive than required to meet the exigent circumstances.

make changes in policies and procedures that are necessary to ensure the interest of security, safety, and professionalism is maintained during the planning, training, and administering of the execution order.

KEY: corrections, executions, prisons

April 9, 2012

Notice of Continuation April 6, 2017

77-19-10

77-19-11

R251-107-8. Authority of Executive Director.

The Executive Director/designee shall be authorized to

R251. Corrections, Administration.**R251-401. Supervision Fees.****R251-401-1. Authority and Purpose.**

(1) This rule is authorized under Sections 63G-3-201, 64-13-10, and 64-13-21, of the Utah Code.

(2) The purpose of this rule is to define the UDC's policy regarding offenders' monthly supervision fees including criteria for the suspension or waiver of fees and the circumstances under which an offender may request a hearing.

R251-401-2. Definitions.

(1) "Board" means Board of Pardons and Parole.

(2) "Fee suspension" means temporary, time-limited suspension of required fee payment when inability to pay is a result of short-term, substantial hardship.

(3) "Fee waiver" means long-term waiver of fee payment when the substantial hardship causing an inability to pay is highly unlikely to change during the period of supervision.

(4) "Substantial hardship" means any condition which would cause gross monthly household income to be below the Federal Poverty Level.

(5) "UDC" means Utah Department of Corrections.

R251-401-3. Policy.

It is the policy of the Department that:

(1) in accordance with Section 64-13-21, of the Utah Code, offenders on probation or parole shall be assessed a monthly supervision fee of \$30.00 if the offense was committed after May 3, 1993;

(2) court- or Board-ordered supervision fees may be waived if the order would create a substantial hardship as determined by the supervising agent and a supervisor or if the offender owes restitution to a victim;

(3) if the offender disagrees with a non-hardship finding, the decision may be appealed up to the appropriate Regional Administrator, whose decision shall be binding;

(4) offenders required to pay supervision fees shall be provided with written procedures regarding the appeal process;

(5) former offenders who had a fee suspension or waiver when their supervision ended, shall not automatically assume the same status if placed on probation or parole again;

(6) offenders who obtain a suspension or waiver shall not be eligible for a refund of any fees previously paid; and

(7) eligible offenders shall reapply for a suspension or waiver of supervision fees each time they are placed on probation or parole.

KEY: fees, supervision, offenders

October 25, 2007

64-13-21

Notice of Continuation May 31, 2017

R251. Corrections, Administration.**R251-703. Vehicle Direction Station.****R251-703-1. Authority and Purpose.**

(1) This rule is authorized under Sections 63G-3-201, 64-13-14 and 64-13-10, of the Utah Code.

(2) The purpose of this rule is to define the Department's policy, procedure and requirements for the operation of the Vehicle Direction Stations located at the South Point and Central Utah Correctional facilities.

R251-703-2. Definitions.

(1) "Central Utah Correctional Facility" or "CUCF" means the institutional housing unit located in Gunnison.

(2) "Civilian" means vendor, deliveryman, construction worker, family members, friend, or other person not acting on behalf of UDC or an allied agency in an official capacity who needs access to prison property.

(3) "Department" means Department of Corrections.

(4) "DPO" means Division of Prison Operations.

(5) "ID" means identification issued by an authorized government agency.

(6) "South Point" means the Uinta, Wasatch and Oquirrh facilities at the Utah State Prison.

(7) "VDS" means Vehicle Direction Station.

(8) "Visitor" means any person accessing prison property other than a Utah Department of Corrections employee, an inmate, or offender.

R251-703-3. Policy.

It is the policy of the Department that:

(1) the Department shall maintain a Vehicle Direction Station at the main entrance of South Point, and Central Utah Correctional Facility to control access of vehicles and persons entering or leaving institutional property;

(2) the Vehicle Direction Station (VDS) shall be staffed by an armed member of the Security Unit. The VDS shall be staffed from 0600 to 2200 hours daily;

(3) drivers using the entrance road to the VDS shall observe state traffic laws, keep the road free from equipment or vehicles that would obstruct visibility or impede the free flow of traffic, and follow directives of VDS staff charged with maintaining entry facilities;

(4) drivers and pedestrians using the entrance road shall heed directions of VDS staff, to ensure the safety of vehicular and pedestrian traffic;

(5) visitors to the prison shall be responsible to read and follow signs posted on the entrance road to the VDS prohibiting contraband from being introduced onto prison property;

(6) since the VDS is the initial control point for controlling contraband from being brought onto prison property, visitors may be subjected to search and seizure procedures as provided by law;

(7) the VDS shall be the control point for limiting entry to institutional facilities to persons whose presence is necessary to the institution and to authorized visitors of inmates;

(8) to prevent escape of inmates, a vehicle exiting South Point or CUCF shall be subject to a search. Persons in exiting vehicles shall be required to provide identification and verification of clearance;

(9) civilians 16 years of age and older, in a vehicle or on foot, shall be required to have picture ID in their possession and to submit it for inspection, before being allowed through the VDS. If they do not have a valid ID:

(a) access to the prison through the VDS shall not be allowed;

(b) they shall not be allowed to wait or park on the entrance road to any institutional facility or on any roads

adjacent to an institutional facility; but

(c) they may be allowed to wait in a designated parking area adjacent to the VDS;

(10) civilians under 16 years of age shall not be permitted access unless accompanied by an approved adult;

(11) civilians found in the possession of weapons or contraband at the VDS under circumstances which do not constitute a violation of law shall be required to leave prison property;

(12) peace officers from allied agencies shall either secure their firearms at the VDS, another approved location, or lock their weapons in their vehicle trunk if the vehicle will not penetrate the secure perimeter;

(13) persons who have a valid outstanding warrant may be arrested and either cited or transported, depending on the needs of the UDC and the agency holding the warrant;

(14) persons who have a valid outstanding warrant, if not arrested, may be denied entry to prison property until the warrant has been adjudicated; and

(15) visitors shall comply with all directives of VDS officers.

KEY: prisons, corrections**April 9, 2012****Notice of Continuation April 5, 2017****64-13-14**

R251. Corrections, Administration.**R251-705. Inmate Mail Procedures.****R251-705-1. Authority and Purpose.**

(1) This rule is authorized by Sections 63G-3-201, 64-13-10 and 64-13-17(4), of the Utah Code, which allows the Department to adopt standards and rules in accordance with its responsibilities.

(2) The purpose of this section is to establish the UDC's policies and procedures for processing mail received in the DPO Mail Unit.

R251-705-2. Definitions.

(1) "Catalog" means a systematized list whose sole purpose is to feature descriptions of items for sale.

(2) "Department" means the Department of Corrections.

(3) "DPO" means Division of Prison Operations.

(4) "Inspect" means open and examine a letter, correspondence or other material with the primary objective to detect false labeling, contraband, currency, or negotiable instruments.

(5) "Inter-department mail" means mail sent between departments within the state.

(6) "Inter-department mail" mean mail sent from office to office within a department.

(7) "Mail" means written material sent or received by inmates through the United States Postal Service.

(8) "Money instruments" means currency, coin, personal checks, money orders and cashier's or non-personal checks.

(9) "Nuisance contraband" means items that may include, but are not limited to, paper fasteners, hair, ribbons, pins, rubber bands, pressed leaves and/or flowers, promotional gimmicks, gum, stickers, computer disks, maps, calendars, balloons, and other such items having no intrinsic value or not approved by the department administration to be in the possession of the inmates.

(10) "Privileged mail" means correspondence with a person identified by this chapter relating to the official capacity of that person, which has been properly labeled to claim privileged status.

(11) "Publisher-only rule" means a rule limiting books, audio media, magazines, newspapers, etc. to those sent directly from the publisher, a book or tape club or a licensed book store. All media shall be new and audio shall be factory sealed and the return address should be commercially printed or stamped.

(12) "Reasonable cause" means information that could prompt a reasonable person to believe or suspect that there is or might be a threat to the safety, security or management of the UDC facility or that could be harmful to persons.

(13) "UDC" means Utah Department of Corrections.

(14) "USP" means either Utah State Prison or Central Utah Correctional Facility.

R251-705-3. Standards and Procedures.

It is the policy of the Department that:

(1) inmate mail shall comply with the Constitution and Laws of the United States, the Constitution and Laws of the State of Utah, and the authorized written policies and procedures of the UDC.

(2) inmates shall be permitted to send and receive mail while in custody of the UDC in the manner defined by this rule.

(3) nothing in this rule should be interpreted as creating a greater entitlement for inmates or those with whom they correspond than that currently required by law.

(4) inmate mail regulations shall:

(a) further the legitimate interests of the UDC; while

(b) balancing the UDC's interests with those of the general public and inmates.

(5) mail received for inmates at the USP shall be delivered to the USP Mail Unit for processing and:

(a) shall be opened and inspected;

(b) may be read at the discretion of the Department;

(c) may be photocopied when such copying is reasonably related to the furtherance of a legitimate Department interest;

(d) may be refused, denied or confiscated where reasonable cause exists to believe the contents may adversely impact the safety, security, order or treatment goals of the Department;

(e) may be used as evidence in criminal, civil or administrative trials or hearings;

(f) is entitled to no expectation of privacy;

(g) all forms of nuisance contraband shall be confiscated and disposed of without notice or opportunity for appeal; and

(h) shall be delivered to inmates without unreasonable delay;

(6) catalog purchases other than through the DPO Commissary catalog are not authorized and catalogs shall not be accepted through the mail, except when sent 1st or 2nd class or from a legal, school, religious or government printing office.

(7) staff-to-inmate mail shall not be sent in "Inter/Intra-department Delivery" envelopes, but in regular mailing envelopes;

(8) outgoing inmate mail and inmate inter/intra-department mail shall be deposited in the housing units' outgoing mail depository, picked up by USP Mail Unit staff, and delivered to the USP Mail Unit for processing;

(9) an inmate shall not direct nor establish a new business through the mail unless authorized by the Warden of the facility;

(10) an inmate who corresponds concerning a legitimately held business, shall correspond through his attorney or a party holding a power of attorney;

(11) an inmate is not authorized to establish credit transactions through the mail while confined unless authorized by the Warden of the facility;

(12) fund raising by inmates for personal gain is prohibited;

(13) envelopes received by the USP Mail Unit displaying threatening, negative gestures or comments, extraneous materials, or grossly offensive sexual comments, shall be confiscated, declared contraband, placed into evidence, and the inmate shall receive disciplinary action;

(14) the publisher-only rule shall govern the receipt of all incoming books, audio media, magazines, and newspapers;

(15) certain types of mail are entitled to constitutionally protected confidentiality (or privilege); accordingly, this privilege prohibits qualifying correspondence material from being read without cause by staff;

(16) incoming privileged mail:

(a) shall be inspected, but only in the presence of the inmate addressee;

(b) shall not be perused;

(c) shall not be photocopied; and

(d) may be denied only for reasonable cause and upon instruction of the DPO Director/designee;

(17) outgoing privileged mail:

(a) shall be inspected only when there is reasonable cause to believe that the correspondence:

(i) contains material which would significantly endanger the security or safety of the Institution; or

(ii) is misrepresented as legal material;

(b) shall only be inspected in the presence of the inmate sender;

(c) shall not be perused;

(d) shall not be photocopied;

(e) may only be denied for a reasonable cause, and upon instruction of the DPO Director/designee; and

(f) from an inmate that cannot be identified, shall be forwarded to the deputy warden who supervises the mail unit, or his or her designee, who will make a determination of the disposition.

(18) all inmate inter/intra-departmental mail shall be processed through the USP Mail Unit;

(19) inmate-to-inmate correspondence shall not be permitted, unless:

(a) there is a compelling justification for an exception;

(b) there is no alternate means of accomplishing that compelling need; and

(c) the inmates present a minimal risk, according to UDC standards, to security, order and/or safety;

(20) inmates have no entitlement to inmate-to-inmate correspondence created by the constitutions of the United States or the State of Utah;

(21) personal mail written in a language other than English may be delayed for purposes of translation;

(22) the USP Mail Unit shall not accept postage-due mail unless payment is waived by the deliverer;

(23) the USP Mail Unit shall not accept letters, cards, money instruments, or property items for which there is reasonable cause to believe the items are contaminated, defaced or handled in such a way as to be offensive.

(24) items received that cannot be searched without destruction or alteration (e.g., electronic greeting cards, multilayered cards, polaroid photographs, etc.) shall be denied and returned to the sender;

(25) inmates are prohibited from receiving currency or personal checks; and

(26) to be identified as incoming privileged mail, the correspondence shall be from an attorney or other sender qualified for privileged correspondence, be properly labeled as claiming privileged status, and have a return address clearly indicating a judicial agency, law firm, individual attorney, or other approved agency or person.

KEY: corrections, prisons

April 9, 2012

Notice of Continuation April 5, 2017

64-13-10

64-13-17(3)

R251. Corrections, Administration.**R251-707. Legal Access.****R251-707-1. Authority and Purpose.**

(1) This rule is authorized by Sections 63G-3-201, 64-13-7, 64-13-10 and 64-13-17, of the Utah Code, which allow the Department to adopt procedures in accordance with its responsibilities.

(2) The purpose of this rule is to provide the policy and procedures for inmates under the control of Division of Prison Operations regarding access to courts and counsel.

R251-707-2. Definitions.

(1) "Attorney" means a member of the legal profession who has been licensed by a state and who has a current and valid license or bar card allowing him to practice law; lawyer; counsel; esquire;

(2) "Attorney Representatives" means paralegals, law clerks, investigators and other attorneys who are acting under the authority and supervision of the attorney of record;

(3) "CUCF" means Central Utah Correctional Facility located in Gunnison;

(4) "DPO" means Division of Prison Operations;

(5) "Draper Site" means collectively, Timpanogos, Lone Peak, Promontory, Olympus, Oquirrh, Wasatch, Uinta, and SSD facilities;

(6) "Out-Count Status" means any inmate under legal supervision or confinement of the Utah Department of Corrections who is housed at any location other than the Draper or Gunnison sites;

(7) "Prison" means the Utah State Prison in Draper and CUCF in Gunnison;

(8) "Probable Cause" means sufficient knowledge of articulable facts or circumstances to lead a reasonable person to conclude that another person has committed, is committing, or is about to commit a crime or a violation of a legally enforceable policy or rule;

(9) "Service of Process" means the service of writs, summonses, warrants and subpoenas to inmate or UDC members; and

(10) "UDC" means the Utah Department of Corrections.

R251-707-3. Policy.

It is the policy of the Department that:

(1) legal assistance shall be provided to assist inmates in preparing and filing of an initial pleading in habeas corpus and civil rights suits challenging conditions of confinement arising from incarceration at the prison;

(2) inmates incarcerated at UDC facilities shall be allowed reasonable access to courts and counsel regarding any type of legal matter;

(3) access to courts and counsel shall be extended to those inmates in out-count status;

(4) the primary means of access to legal services shall be provided by contract attorneys paid by the Department, though inmates may secure legal counsel at their own expense if they prefer not to use the contracted legal firm or they may choose to represent themselves;

(5) inmate writ writers may represent themselves but may not represent other inmates;

(6) a law library shall not be provided, except that law books may be included among the books in the general inmate library system;

(7) before being admitted to the prison, attorneys shall present a current state bar card and photo I.D.;

(8) before being admitted to the prison, attorney representatives shall present a letter of introduction from the attorney of record and a photo I.D.;

(9) attorneys and their representatives shall not interfere with the safety, security or orderly operation of the prison;

(10) attorneys and their representatives shall be cleared through the Bureau of Criminal Identification prior to being approved for visitation; individuals with a criminal record shall be allowed to visit only with the approval of the Director of Prison Operations/designee;

(11) attorneys may elect to have an attorney representative visit an inmate client instead of visiting personally;

(12) attorney representatives:

(a) have no standing on their own; their standing to visit is granted only in their role as representatives of the attorney of record;

(b) may be cleared for visits, if the attorneys they represent:

(i) submit a request, in writing, to the warden of the facility where the inmate is housed;

(ii) provide the name and title of the person assigned to represent the attorney; and

(iii) provide the name of the inmate to be visited;

(c) who have been cleared shall be afforded the same basic rights and privileges as those extended to the attorney of record;

(13) attorneys/representatives should not be denied visits, nor face inordinate delays when visits are prescheduled within the hours designated by the institution;

(14) in the event of exigent circumstances requiring an attorney/representative visit before appropriate screening can be completed, temporary approval for a visit may be approved by the Director of Prison Operations/designee;

(15) inmate attorney/representative telephone calls shall originate from inside the institution and should not exceed thirty minutes in duration;

(16) attorneys/representatives may leave telephone messages requesting return calls;

(17) visits between inmates and counsel shall not be monitored and shall occur in facilities which permit privacy; however, privacy requirements shall not prohibit visual observation;

(18) attorneys/representatives should schedule on-site visits in advance, when possible;

(19) attorneys/representatives may schedule appointments with their inmate clients:

(a) at Draper Site and CUCF, Monday through Friday, 0800 to 1100 hours and 1300 to 1500 hours;

(b) on weekends, holidays, and evenings with prior written clearance from the Director/designee of Prison Operations;

(c) at county jails as requested;

(d) in out-of-state institutions, consistent with receiving agencies' policies and procedures; and

(e) during non-visiting hours without prior approval in exigent circumstances if authorized by DPO Director/designee;

(20) attorneys/representatives shall:

(a) follow Department and prison rules during visits to the institution;

(b) conduct themselves in a manner consistent with safety and security requirements; and

(c) comply with instructions of staff members while in the institution;

(21) physical inspections shall be made of all material brought into and out of any facility by any attorney/representative and shall be performed only in the presence of the attorney/representative;

(22) if any written material is declared privileged, it shall not be read; however, the attorney/representative may be required to leaf through these materials in the presence of staff, to assist in inspecting for contraband;

(23) if a reasonable suspicion exists to believe an

attorney/representative possesses contraband, a rub search may be required before permitting the visit and an incident report shall be filed documenting the reasonable suspicion and incident;

(24) refusal to submit to search may result in the visit being denied and the attorney/representative being asked to leave the premises;

(25) strip searches of attorneys/representatives shall be conducted only if there is reasonable suspicion of a particularized nature; an incident report shall be filed documenting the reasonable suspicion, incident and reason a strip search was necessary under the circumstances;

(26) if a warden/designee determines that a safety, security, control or management problem could result by allowing an attorney/representative access to a facility, the warden/designee may place reasonable restrictions upon access or deny access when necessary; an incident report shall be filed articulating the justification for denying access and documenting the incident;

(27) an attorney/representative may request a hearing before the Executive Director if he believes the denial of access for him or his legal representative was arbitrary, capricious, unreasonable or in violation of law or Department policy;

(28) any attorney/representative who violates any Department policy or rule or who provides false information may be denied access to the facility; and

(29) staff members authorized to accept service of process shall ensure that the requirements of proper service are appropriately satisfied at the DPO.

KEY: corrections, prisons, legal aid
October 12, 2011
Notice of Continuation April 7, 2017

63-46a-3
64-13-7
64-13-10
64-13-17

R277. Education, Administration.**R277-211. Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions.****R277-211-1. 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-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; 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 regarding:

(a) notifications of alleged educator misconduct;

(b) review of notifications by UPPAC; and

(c) complaints, proposed stipulated agreements, approved stipulated agreements, and defaults.

(3) Except as provided in Subsection(4), Title 63G, Chapter 4, Administrative Procedures Act does not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

(4) UPPAC may invoke and use sections or provisions of Title 63G, Chapter 4, Administrative Procedures Act as necessary to adjudicate an issue.

R277-211-2. Initiating Proceedings Against Educators.

(1) The Executive Secretary may refer a case to UPPAC to make a determination if an investigation should be opened regarding an educator:

(a) upon receiving a notification of alleged educator misconduct; or

(b) upon the Executive Secretary's own initiative.

(2) An informant shall submit an allegation to the Executive Secretary in writing, including the following:

(a) the informant's:

(i) name;

(ii) position, such as administrator, teacher, parent, or student;

(iii) telephone number;

(iv) address; and

(v) contact information;

(b) information of the educator against whom the allegation is made:

(i) name;

(ii) position, such as administrator, teacher, candidate; and

(iii) if known, the address and telephone number;

(c) the facts on which the allegation is based and supporting information; and

(d) signature of the informant and date.

(3) If an informant submits a written allegation of misconduct as provided in this rule, the informant may be notified of a final action taken by the Board regarding the allegation.

(4)(a) Proceedings initiated upon the Executive Secretary's own initiative may be based on information received through a telephone call, letter, newspaper article, media information, notice from another state, or by other means.

(b) The Executive Secretary may also recommend an investigation based on an anonymous allegation, notwithstanding the provisions of this rule, if the allegation bears sufficient indicia of reliability.

(5) The Executive Secretary shall maintain all written allegations, subsequent dismissals, actions, or disciplinary letters related to a case against an educator shall be maintained permanently in the UPPAC case file.

R277-211-3. Review of Notification of Alleged Educator Misconduct.

(1)(a) Upon receipt of a notification of alleged educator misconduct, the Executive Secretary shall recommend one of the following to UPPAC:

(i) dismiss the matter if UPPAC determines that alleged misconduct does not involve an issue that UPPAC should address; or

(ii) initiate an investigation if UPPAC determines that the alleged misconduct involves an issue that may be appropriately addressed by UPPAC and the Board.

(b) If the Executive Secretary recommends UPPAC initiate an investigation:

(i) UPPAC shall initiate an investigation; and

(ii) the Executive Secretary shall direct a UPPAC investigator to gather evidence relating to the allegations.

(2)(a) Prior to a UPPAC investigator's initiation of an investigation, the Executive Secretary shall send a letter to the following with information that UPPAC has initiated an investigation:

(i) the educator to be investigated;

(ii) the LEA that employs the educator; and

(iii) the LEA where the alleged activity occurred.

(b) A letter described in Subsection(2)(a) shall inform the educator and the LEA that an investigation shall take place and is not evidence of unprofessional conduct.

(c) UPPAC shall place a flag on the educator's CACTUS file after sending the notices as provided in this rule.

(3)(a) The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations.

(b) The investigator shall prepare an investigative report of the findings of the investigation and a recommendation for appropriate action or disciplinary letter.

(c) If the investigator discovers additional evidence of unprofessional conduct that could have been included in the original notification of alleged educator misconduct, the investigator may include the additional evidence of misconduct in the investigative report.

(d) The investigator shall submit the investigative report to the Executive Secretary.

(e) The Executive Secretary shall review the investigative report described in Subsection(3)(d) with UPPAC.

(f) The investigative report described in Subsection(3)(d) shall become part of the UPPAC case file.

(4) UPPAC shall review the investigative report and take one of the following actions:

(a) UPPAC determines no further action should be taken, UPPAC may recommend that the Board dismiss the case; or

(b) UPPAC may make an initial recommendation of appropriate action or disciplinary letter.

(5) After receiving an initial recommendation from UPPAC for action, the Executive Secretary shall direct a UPPAC attorney to:

(a) prepare and serve a complaint; or

(b) negotiate and prepare a proposed stipulated agreement.

(6)(a) Upon request of an educator, UPPAC will provide an electronic or paper copy of the UPPAC case file and evidence file to the educator.

(b) UPPAC may charge fees in accordance with R277-103-5 if the educator requests a paper copy.

(7)(a) A proposed stipulated agreement shall conform to the requirements set forth in Section R277-211-6.

(b) An educator may stipulate to any recommended disposition for an action.

(8) The Executive Secretary shall forward any proposed stipulated agreement to the Board for approval.

R277-211-4. Expedited Hearings.

(1) In a case involving the report of an arrest, citation, or charge of a licensed educator, which requires self-reporting by the educator under Section R277-516-3, the Executive Secretary, with the consent of the educator, may schedule the matter for an expedited hearing in lieu of initially referring the matter to UPPAC.

(2)(a) The Executive Secretary shall hold an expedited hearing within 30 days of a report of an arrest, citation, or charge, unless otherwise agreed upon by both parties.

(b) The Executive Secretary or the Executive Secretary's designee shall conduct an expedited hearing with the following additional invited participants:

- (i) the educator;
- (ii) the educator's attorney or representative;
- (iii) a UPPAC attorney;
- (iv) a voting member of UPPAC; and
- (v) a representative of the educator's LEA.

(3) The panel may consider the following matters at an expedited hearing:

- (a) an educator's oral or written explanation of the events;
- (b) a police report;
- (c) a court docket or transcript;
- (d) an LEA's investigative report or employment file; and

(e) additional information offered by the educator if the panel deems it probative of the issues at the expedited hearing.

(4) After reviewing the evidence described in Subsection (3), the expedited hearing panel shall make written findings and a recommendation to UPPAC to do one of the following:

- (a) close the case;
- (b) close the case upon completion of court requirements;
- (c) recommend issuance of a disciplinary letter to the Board;
- (d) open a full investigation; or
- (e) recommend action by the Board, subject to an educator's due process rights under these rules.

(5) An expedited hearing may be recorded, but the testimony from the expedited hearing is inadmissible during a future UPPAC action related to the allegation.

(6) If the Board fails to adopt the recommendation of an expedited hearing panel, UPPAC shall open a full investigation.

R277-211-5. Complaints.

(1) If UPPAC determines that an allegation is sufficiently supported by evidence discovered in the investigation, the Executive Secretary shall direct the UPPAC attorney to serve a complaint upon the educator being investigated.

(2) At a minimum, a complaint shall include:

- (a) a statement of legal authority and jurisdiction under which the action is being taken;
- (b) a statement of the facts and allegations upon which the complaint is based;
- (c) other information that the investigator believes is necessary to enable the respondent to understand and address the allegations;
- (d) a statement of the potential consequences if an allegation is found to be true or substantially true;
- (e) a statement that the respondent shall answer the complaint and request a hearing, if desired, within 30 days of

the date the complaint is mailed to the respondent;

(f) a statement that the respondent is required to file a written answer described in Subsection(2)(e) with the Executive Secretary;

(g) a statement advising the respondent that if the respondent fails to respond within 30 days, a default judgment for revocation or a suspension of the educator's license may occur for a term of five years or more;

(h) a statement that, if a hearing is requested, the hearing will be scheduled no less than 45 days, nor more than 180 days, after receipt of the respondent's answer, unless a different date is agreed to by both parties in writing; and

(i) a copy of the applicable hearing rules as required by Subsection 53A-6-604(2).

(3) On the Executive Secretary's own motion, the Executive Secretary, or the Executive Secretary's designee, with notice to the parties, may reschedule a hearing date.

(4)(a) A respondent may file an answer to a complaint by filing a written response signed by the respondent or the respondent's representative with the Executive Secretary within 30 days after the complaint is mailed.

(b) The answer may include a request for a hearing, and shall include:

- (i) the file number of the complaint;
- (ii) the names of the parties;
- (iii) a statement of the relief that the respondent seeks; and

(iv) if not requesting a hearing, a statement of the reasons that the relief requested should be granted.

(c) As an alternative to filing an answer, the respondent may file a voluntary surrender pursuant to Rule R277-216.

(5)(a) As soon as reasonably practicable after receiving an answer, or no more than 30 days after receipt of an answer, the Executive Secretary shall schedule a hearing, if requested by the respondent, as provided in Rule R277-212.

(b) If the parties can reach an agreement prior to the hearing consistent with the terms of UPPAC's initial recommendation, the UPPAC attorney may negotiate a proposed stipulated agreement with the respondent.

(c) A proposed stipulated agreement described in Subsection(5)(b) shall be submitted to the Board for the Board's final approval.

(6)(a) If a respondent does not respond to the complaint within 30 days, the Executive Secretary may initiate default proceedings in accordance with the procedures set forth in Section R277-211-7.

(b) Except as provided in Subsection R277-211-7(3), if the Executive Secretary enters an order of default, the Executive Secretary shall make a recommendation to the Board for a revocation or a suspension of the educator's license for five years before the educator may request a reinstatement hearing.

(c) If a default results in a suspension, a default may include conditions that an educator shall satisfy before the educator may qualify for a reinstatement hearing.

(d) An order of default shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Subsection 53A-6-501(5)(b).

R277-211-6. Proposed Consent to Discipline.

(1) At any time after UPPAC has made an initial recommendation, a respondent may accept UPPAC's initial recommendation, rather than request a hearing, by entering into a proposed consent to discipline.

(2) By entering into a proposed consent to discipline, a respondent waives the respondent's right to a hearing to contest the recommended disposition, contingent on final approval by the Board.

(3) At a minimum, the Executive Secretary shall include

the following in a proposed consent to discipline:

(a) a summary of the facts, the allegations, the presumption described in Rule R277-215, mitigating or aggravating factors described in Rule R277-215, and the evidence relied upon by UPPAC in its recommendation;

(b) a statement that the respondent admits the facts recited in the proposed consent to discipline as true for purposes of the Board administrative action;

(c) a statement that the respondent:

(i) waives the respondent's right to a hearing to contest the allegations that gave rise to the investigation; and

(ii) agrees to limitations on the respondent's license or surrenders the respondent's license rather than contest the allegations;

(d) a statement that the respondent agrees to the terms of the proposed consent to discipline and other provisions applicable to the case, such as remediation, counseling, restitution, rehabilitation, and other conditions, if any, under which the respondent may request a reinstatement hearing or a removal of the letter of reprimand or termination of probation;

(e) if for suspension or revocation of a license, a statement that the respondent:

(i) may not seek or provide professional services in a public school in the state;

(ii) may not seek to obtain or use an educator license in the state; or

(iii) may not work or volunteer in a public K-12 setting in any capacity without express authorization from the UPPAC Executive Secretary, unless or until the respondent:

(A) first obtains a valid educator license or authorization from the Board to obtain such a license; or

(B) satisfies other provisions provided in the proposed consent to discipline;

(f) a statement that the action and the proposed consent to discipline shall be reported to other states through the NASDTEC Educator Information Clearinghouse and any attempt to present to any other state a valid Utah license shall result in further licensing action in Utah;

(g) a statement that respondent waives the respondent's right to contest the facts stated in the proposed consent to discipline at a subsequent reinstatement hearing, if any;

(h) a statement that all records related to the proposed consent to discipline shall remain permanently in the UPPAC case file;

(i) a statement reflecting the proposed consent to discipline classification under Title 63G, Chapter 2, Government Records Access and Management Act;

(j) a statement that information regarding the proposed letter of reprimand, suspension, or revocation may be included in an online licensing database that is available for public access in accordance with R277-512.

(k) a statement that a violation of the terms of an approved consent to discipline may result in additional disciplinary action and may affect the reinstatement process; and

(l) a statement that the educator understands that the Board is not bound by UPPAC's recommendation or the negotiated proposed stipulated agreement unless the Board approves the proposed consent to discipline.

(4)(a) The Executive Secretary shall forward a proposed consent to discipline to the Board for approval.

(b) If the Board does not approve a proposed consent to discipline, the Board may:

(i)(A) remand the case to UPPAC and may include issues that need to be addressed;

(B) offer respondent the opportunity for a hearing; or

(C) provide alternative terms and disposition to the Executive Secretary, that would be satisfactory to the Board to be submitted to the educator for consideration;

(ii) direct the Executive Secretary to issue a disciplinary letter or dismiss the matter; or

(iii) take other appropriate action consistent with due process and R277-215.

(5) If the respondent accepts a consent to discipline with alternative terms and disposition proposed by the Board, the consent to discipline, as modified, is a final Board administrative action without further Board consideration.

(6) If the terms approved by the Board are rejected by the respondent, the proceedings shall continue from the point under these procedures at which the agreement was negotiated, as if the stipulated agreement had not been submitted.

(7) If the Board remands to UPPAC to provide respondent the opportunity for a hearing under Subsection (4)(b)(i)(B), the Executive Secretary shall:

(a) notify the parties of the decision;

(b) direct a UPPAC attorney to issue a complaint; and

(c) direct the proceedings as if the proposed consent to discipline had not been submitted.

(8) If the Board approves a proposed consent to discipline, the approval is a final Board administrative action and the Executive Secretary shall:

(a) notify the parties of the decision;

(b) update CACTUS to reflect the action;

(c) report the action to the NASDTEC Educator Information Clearinghouse if the agreement results in:

(i) a revocation;

(ii) a suspension;

(iii) probation; or

(iv) a letter of reprimand;

(d) direct the appropriate penalties to begin; and

(e) notify the LEAs throughout the state.

R277-211-7. Default Procedures.

(1) If a respondent does not respond to a complaint within 30 days from the date the complaint is served, the Executive Secretary may issue an order of default against the respondent consistent with the following:

(a) the Executive Secretary shall prepare and serve on the respondent an order of default including:

(i) a statement of the grounds for default; and

(ii) a recommended disposition if the respondent fails to file a response to a complaint;

(b) ten days following service of the order of default, a UPPAC attorney shall attempt to contact respondent by telephone or electronically;

(c) UPPAC shall maintain documentation of attempts toward written, telephonic, or electronic contact;

(d) the respondent has 20 days following service of the order of default to respond to UPPAC; and

(e) if UPPAC receives a response from respondent to a default order before the end of the 20 day default period, UPPAC shall allow respondent a final ten day period to respond to a complaint.

(2) Except as provided in Subsection (3), if an order of default is issued, the Executive Secretary shall make a recommendation to the Board for discipline in accordance with Rule R277-215.

(3) If an order of default is issued, the Executive Secretary shall make a recommendation to the Board for a revocation of the educator's license if the alleged misconduct is conduct identified in Subsection 53A-6-501(5)(b).

R277-211-8. Disciplinary Letters and Dismissal.

(1) If UPPAC recommends issuance of a disciplinary letter or dismissal, the Executive Secretary shall forward the case to the Board for review.

(2) If the Board does not approve a recommendation for

a disciplinary letter or dismissal described in Subsection (1), the Board may:

- (a) remand the case to UPPAC with:
 - (i) direction as to the issues UPPAC should address;
 - (ii) alternative terms and disposition that should be satisfactory to the Board to be submitted to the educator for consideration; and
 - (iii) the opportunity for the educator to participate in a hearing;
 - (b) direct the Executive Secretary to issue a different level of disciplinary letter;
 - (c) dismiss the matter; or
 - (d) take other appropriate action consistent with due process and Rule R277-215.
- (3) If the Board approves a disciplinary letter, the Executive Secretary shall:
- (a) prepare the disciplinary letter and mail it to the educator;
 - (b) place a copy of the disciplinary letter in the UPPAC case file; and
 - (c) update CACTUS to reflect that the investigation is closed.

KEY: teacher licensing, conduct, hearings
May 10, 2017

Art X Sec 3
53A-6-306
53A-1-401

R277. Education, Administration.**R277-612. Foreign Exchange Students.****R277-612-1. 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-2-206(2), which directs the Board to make rules to administer the cap on the number of foreign exchange students for purposes of apportioning state monies for the students; 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) administer the cap on the number of foreign exchange students that may be counted by school districts and charter schools for state funding; and

(b) provide guidance to school districts and charter schools in working with exchange student agencies and accepting foreign exchange students to provide for safety and fairness to the exchange students and Utah public school students.

R277-612-2. Definitions.

(1) "Foreign exchange student" means a student sponsored by an agency approved by an LEA governing board, subject to the limitations of Subsection 53A-2-206(2).

R277-612-3. Foreign Exchange Student Cap.

(1) The Superintendent shall allocate funds to an LEA from a specific legislative appropriation designated annually to pay the costs of educating foreign exchange students who meet all criteria of the law.

(2) School districts and charter schools are encouraged to enroll foreign exchange students and report those enrollment numbers annually to the Superintendent in the October 1 Superintendents' Report.

(3) School districts and charter schools shall include in their report to the Superintendent only foreign exchange students that satisfy all requirements of 53A-2-206(6) and LEA policies.

(4) An LEA may enroll foreign exchange students who do not qualify for state monies and:

- (a) pay the costs of the student with other LEA funds; or
- (b) charge the student tuition.

(5) Nothing in this section shall prevent an LEA from enrolling a foreign exchange student in accordance with Subsection 53A-2-206(8).

R277-612-4. LEA Policy for Working with Foreign Exchange Student Agencies and Protecting Students.

(1) An LEA that enrolls foreign exchange students shall have a policy that includes:

(a) adherence to the requirements of Subsection 53A-2-206(6); and

(b) provisions which create a safe environment for foreign exchange students and school district/charter school students.

(2) Prior to accepting students through a foreign exchange student agency, each LEA shall require and maintain a sworn affidavit of compliance.

(3) A sworn affidavit of compliance shall include confirmation that the agency:

(a) is in compliance with all applicable policies of the LEA governing board;

(b) has completed a household study, including a background check consistent with Section 53A-3-410, of all adult residents of each household where foreign exchange

students will reside;

(c) has reviewed the information revealed through the background checks required by Subsection (b) with an appropriate LEA official;

(d) has completed a background study to assure that the exchange student will receive proper care and supervision in a safe environment;

(e) has provided host parents with training appropriate to their positions, including information about enhanced criminal penalties under Subsection 76-5-406(10) for persons who are in a position of special trust;

(f) will send a representative to visit each student's place of residence at least monthly during the student's stay in Utah;

(g) will cooperate with school and other public authorities to ensure that no exchange student becomes an unreasonable burden upon the public schools or other public agencies;

(h) will give each exchange student names and telephone numbers of agency representatives and others who could be called at any time if a serious problem occurs, in the exchange student's native language; and

(i) will provide alternate placements so that no student is required to remain in a household if conditions appear to exist which unreasonably endanger the student's welfare.

(4) An LEA that accepts foreign exchange students shall provide each approved foreign exchange student agency with a list of names and telephone numbers of individuals not associated with the agency who could be called by an exchange student in the event of a serious problem.

(5) A foreign exchange student agency shall provide a copy of a list in the student's native language provided by an LEA in accordance with Subsection (4) to each foreign exchange student.

**KEY: foreign exchange students, enrollment
May 10, 2017**

Notice of Continuation March 15, 2017

**Art X Sec 3
53A-2-206(2)
53A-1-401**

R277. Education, Administration.**R277-615. Standards and Procedures for Student Searches.****R277-615-1. Authority and Purpose.**

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;
 - (b) Section 53A-11-1305, which directs the Board and LEAs to adopt rules to protect students against unreasonable and excessive intrusion of personal rights; 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 direct LEAs to adopt policies to protect student rights with procedures and provisions that balance students' rights and privacy with the responsibility of school officials for the safety and protection of students and adults while on school property or at school-sponsored events.

R277-615-2. Definitions.

- (1) "Controlled substance" has the same meaning as provided in Section 58-37-2.
- (2)(a) "Law enforcement authorities" means officers working under the direct supervision and in the employment of police or law enforcement, as opposed to under the supervision of an LEA.
 - (b) Law enforcement authorities have received police officer training and are acting in that capacity.
- (3) "LEA," for purposes of this rule, includes the Utah Schools for the Deaf and the Blind.
- (4) "Weapon" means any item capable of causing death or serious bodily injury or a facsimile or representation of the item.

R277-615-3. Superintendent Responsibilities.

- (1) The Superintendent shall provide consistent definitions for LEAs to include in search and seizure policies.
- (2) The Superintendent shall develop a model search and seizure policy as guidance for LEAs.
- (3) The Superintendent shall require an assurance from LEAs in the Utah Consolidated Report regarding the student search policy required under Section 53A-11-1305.

R277-615-4. LEA Responsibilities.

- (1) An LEA shall develop a policy for searching students for controlled substances and weapons.
- (2) An LEA shall include appropriate interested parties in the development of student search policies, including:
 - (a) parents;
 - (b) school employees; and
 - (c) licensed school employees.
- (3) An LEA policy developed pursuant to Subsection (1) shall ensure protection of individual student rights against excessive and unreasonable intrusion.
- (4) An LEA shall make policies available electronically and in and in printed form to parents and students upon enrollment.
- (5) An LEA shall provide adequate training to appropriate classes of employees for fair and consistent implementation of student search policies.

KEY: students, searches**May 10, 2017****Notice of Continuation March 15, 2017****Art X Sec 3
53A-11-1305
53A-1-401**

R307. Environmental Quality, Air Quality.
R307-105. General Requirements: Emergency Controls.
R307-105-1. Air Pollution Emergency Episodes.

(1) Determination of an episode and its extent or stage shall be made by the director taking into consideration the levels of pollutant concentrations contained at 40 CFR Section 51.151 and 40 CFR Section 51, Appendix L, and summarized in the table below:

TABLE
 AIR POLLUTION EPISODE CRITERIA
 (values in micrograms/cubic meter unless stated otherwise)

| POLLUTANT | ALERT | WARNING | EMERGENCY | NEVER TO BE EXCEEDED |
|------------------|------------|-----------|-----------|----------------------|
| SULFUR DIOXIDE | 800 | 1,600 | 2,100 | 2,620 |
| 24-hour average | (0.3 ppm) | (0.6 ppm) | (0.8 ppm) | (1.0 ppm) |
| PM10 | 350 | 420 | 500 | 600 |
| 24-hour average | | | | |
| CARBON MONOXIDE | | | | |
| 8-hour average | 17,000 | 34,000 | 46,000 | 57,500 |
| | (15 ppm) | (30 ppm) | (40 ppm) | (50 ppm) |
| 4-hour average | | | | 86,300 |
| | | | | (75 ppm) |
| 1-hour average | | | | 144,000 |
| | | | | (125 ppm) |
| OZONE | | | | |
| 1-hour average | 400 | 800 | 1,000 | |
| | (0.2 ppm) | (0.4 ppm) | (0.5 ppm) | |
| 2-hour average | | | | 1,200 |
| | | | | (0.6 ppm) |
| NITROGEN DIOXIDE | 1130 | 2,260 | 3,000 | 3,750 |
| 1-hour average | (0.6 ppm) | (1.2 ppm) | (1.6 ppm) | (2.0 ppm) |
| NITROGEN DIOXIDE | 282 | 565 | 750 | 938 |
| 24-hour average | (0.15 ppm) | (0.3 ppm) | (0.4 ppm) | (0.5 ppm) |

An air pollution alert, air pollution warning, or air pollution emergency will be declared when any one of the above pollutants reaches the specified levels at any monitoring site.

In addition to the levels listed for the above pollutants, meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken.

ALERT The Alert level is that concentration at which first stage control action is to begin.

WARNING The warning level indicates that air quality is continuing to degrade and that additional control actions are necessary.

EMERGENCY The emergency level indicates that air quality is continuing to degrade toward a level of significant harm to the health of persons and that the most stringent control actions are necessary.

(2) The director shall also take into consideration, to determine an episode and its extent, rate of change of concentration, meteorological forecasts, and the geographical area of the episode, including a consideration of point and area sources of emission, where applicable.

R307-105-2. Emergency Actions.

(1) If an episode is determined to exist, the Executive Director, with concurrence of the Governor shall:

(a) Make public announcements pertaining to the existence, extent and area of the episode.

(b) Require corrective measures as necessary to prevent a further deterioration of air quality.

(2) Episode termination shall be announced by the Executive Director, with concurrence of the Governor, once

monitored pollutant concentration data and meteorological forecasts determine the crisis is over.

KEY: air pollution, emergency powers, governor*, air pollution
September 15, 1998
Notice of Continuation May 15, 2017

19-2-112

R307. Environmental Quality, Air Quality.**R307-214. National Emission Standards for Hazardous Air Pollutants.****R307-214-1. Pollutants Subject to Part 61.**

The provisions of Title 40 of the Code of Federal Regulations (40 CFR) Part 61, National Emission Standards for Hazardous Air Pollutants, effective as of July 1, 2015, are incorporated into these rules by reference. For pollutant emission standards delegated to the State, references in 40 CFR Part 61 to "the Administrator" shall refer to the director.

R307-214-2. Sources Subject to Part 63.

The provisions listed below of 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories, effective as of July 1, 2015, are incorporated into these rules by reference. References in 40 CFR Part 63 to "the Administrator" shall refer to the director, unless by federal law the authority is specific to the Administrator and cannot be delegated.

- (1) 40 CFR Part 63, Subpart A, General Provisions.
- (2) 40 CFR Part 63, Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance with 42 U.S.C. 7412(g) and (j).
- (3) 40 CFR Part 63, Subpart F, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.
- (4) 40 CFR Part 63, Subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.
- (5) 40 CFR Part 63, Subpart H, National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
- (6) 40 CFR Part 63, Subpart I, National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
- (7) 40 CFR Part 63, Subpart J, National Emission Standards for Polyvinyl Chloride and Copolymers Production.
- (8) 40 CFR Part 63, Subpart L, National Emission Standards for Coke Oven Batteries.
- (9) 40 CFR Part 63, Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
- (10) 40 CFR Part 63, Subpart N, National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
- (11) 40 CFR Part 63, Subpart O, National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations.
- (12) 40 CFR Part 63, Subpart Q, National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.
- (13) 40 CFR Part 63, Subpart R, National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).
- (14) 40 CFR Part 63, Subpart T, National Emission Standards for Halogenated Solvent Cleaning.
- (15) 40 CFR Part 63, Subpart U, National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.
- (16) 40 CFR Part 63, Subpart AA, National Emission Standards for Hazardous Air Pollutants for Phosphoric Acid Manufacturing.
- (17) 40 CFR Part 63, Subpart BB, National Emission Standards for Hazardous Air Pollutants for Phosphate

Fertilizer Production.

(18) 40 CFR Part 63, Subpart CC, National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.

(19) 40 CFR Part 63, Subpart DD, National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

(20) 40 CFR Part 63, Subpart EE, National Emission Standards for Magnetic Tape Manufacturing Operations.

(21) 40 CFR Part 63, Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities.

(22) 40 CFR Part 63, Subpart HH, National Emission Standards for Hazardous Air Pollutants for Oil and Natural Gas Production.

(23) 40 CFR Part 63, Subpart JJ, National Emission Standards for Wood Furniture Manufacturing Operations.

(24) 40 CFR Part 63, Subpart KK, National Emission Standards for the Printing and Publishing Industry.

(25) 40 CFR Part 63, Subpart MM, National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semicheical Pulp Mills.

(26) 40 CFR Part 63, Subpart OO, National Emission Standards for Tanks - Level 1.

(27) 40 CFR Part 63, Subpart PP, National Emission Standards for Containers.

(28) 40 CFR Part 63, Subpart QQ, National Emission Standards for Surface Impoundments.

(29) 40 CFR Part 63, Subpart RR, National Emission Standards for Individual Drain Systems.

(30) 40 CFR Part 63, Subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (Generic MACT).

(31) 40 CFR Part 63, Subpart TT, National Emission Standards for Equipment Leaks- Control Level 1 (Generic MACT).

(32) 40 CFR Part 63, Subpart UU, National Emission Standards for Equipment Leaks-Control Level 2 Standards (Generic MACT).

(33) 40 CFR Part 63, Subpart VV, National Emission Standards for Oil-Water Separators and Organic-Water Separators.

(34) 40 CFR Part 63, Subpart WW, National Emission Standards for Storage Vessels (Tanks)-Control Level 2 (Generic MACT).

(35) 40 CFR Part 63, Subpart XX, National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.

(36) 40 CFR Part 63, Subpart YY, National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic MACT.

(37) 40 CFR Part 63, Subpart CCC, National Emission Standards for Hazardous Air Pollutants for Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants.

(38) 40 CFR Part 63, Subpart DDD, National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.

(39) 40 CFR Part 63, Subpart EEE, National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.

(40) 40 CFR Part 63, Subpart GGG, National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production.

(41) 40 CFR Part 63, Subpart HHH, National Emission Standards for Hazardous Air Pollutants for Natural Gas Transmission and Storage.

- (42) 40 CFR Part 63, Subpart III, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.
- (43) 40 CFR Part 63, Subpart JJJ, National Emission Standards for Hazardous Air Pollutants for Group IV Polymers and Resins.
- (44) 40 CFR Part 63, Subpart LLL, National Emission Standards for Hazardous Air Pollutants for Portland Cement Manufacturing Industry.
- (45) 40 CFR Part 63, Subpart MMM, National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.
- (46) 40 CFR Part 63, Subpart NNN, National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.
- (47) 40 CFR Part 63, Subpart OOO, National Emission Standards for Hazardous Air Pollutants for Amino/Phenolic Resins Production (Resin III).
- (48) 40 CFR Part 63, Subpart PPP, National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production.
- (49) 40 CFR Part 63, Subpart QQQ, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelters.
- (50) 40 CFR Part 63, Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.
- (51) 40 CFR Part 63, Subpart TTT, National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.
- (52) 40 CFR Part 63, Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.
- (53) 40 CFR Part 63, Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.
- (54) 40 CFR Part 63, Subpart AAAA, National Emission Standards for Hazardous Air Pollutants for Municipal Solid Waste Landfills.
- (55) 40 CFR Part 63, Subpart CCCC, National Emission Standards for Manufacturing of Nutritional Yeast.
- (56) 40 CFR Part 63, Subpart DDDD, National Emission Standards for Hazardous Air Pollutants for Plywood and Composite Wood Products.
- (57) 40 CFR Part 63, Subpart EEEE, National Emission Standards for Hazardous Air Pollutants for Organic Liquids Distribution (non-gasoline).
- (58) 40 CFR Part 63, Subpart FFFF, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Organic Chemical Manufacturing.
- (59) 40 CFR Part 63, Subpart GGGG, National Emission Standards for Vegetable Oil Production; Solvent Extraction.
- (60) 40 CFR Part 63, Subpart HHHH, National Emission Standards for Wet-Formed Fiberglass Mat Production.
- (61) 40 CFR Part 63, Subpart IIII, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Automobiles and Light-Duty Trucks.
- (62) 40 CFR Part 63, Subpart JJJJ, National Emission Standards for Hazardous Air Pollutants for Paper and Other Web Surface Coating Operations.
- (63) 40 CFR Part 63, Subpart KKKK, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Metal Cans.
- (64) 40 CFR Part 63, Subpart MMMM, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.
- (65) 40 CFR Part 63, Subpart NNNN, National Emission Standards for Large Appliances Surface Coating Operations.
- (66) 40 CFR Part 63, Subpart OOOO, National Emission Standards for Hazardous Air Pollutants for Fabric Printing, Coating and Dyeing Surface Coating Operations.
- (67) 40 CFR Part 63, Subpart PPPP, National Emissions Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products.
- (68) 40 CFR Part 63, Subpart QQQQ, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Wood Building Products.
- (69) 40 CFR Part 63, Subpart RRRR, National Emission Standards for Hazardous Air Pollutants for Metal Furniture Surface Coating Operations.
- (70) 40 CFR Part 63, Subpart SSSS, National Emission Standards for Metal Coil Surface Coating Operations.
- (71) 40 CFR Part 63, Subpart TTTT, National Emission Standards for Leather Tanning and Finishing Operations.
- (72) 40 CFR Part 63, Subpart UUUU, National Emission Standards for Cellulose Product Manufacturing.
- (73) 40 CFR Part 63, Subpart VVVV, National Emission Standards for Boat Manufacturing.
- (74) 40 CFR Part 63, Subpart WWWW, National Emissions Standards for Hazardous Air Pollutants for Reinforced Plastic Composites Production.
- (75) 40 CFR Part 63, Subpart XXXX, National Emission Standards for Tire Manufacturing.
- (76) 40 CFR Part 63, Subpart YYYYY, National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.
- (77) 40 CFR Part 63, Subpart ZZZZ, National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.
- (78) 40 CFR Part 63, Subpart AAAAA, National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.
- (79) 40 CFR Part 63, Subpart BBBB, National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.
- (80) 40 CFR Part 63, Subpart CCCCC, National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.
- (81) 40 CFR Part 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters.
- (82) 40 CFR Part 63, Subpart EEEEE, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.
- (83) 40 CFR Part 63, Subpart FFFFF, National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing.
- (84) 40 CFR Part 63, Subpart GGGGG, National Emission Standards for Hazardous Air Pollutants for Site Remediation.
- (85) 40 CFR Part 63, Subpart HHHHH, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Coating Manufacturing.
- (86) 40 CFR Part 63, Subpart IIIII, National Emission Standards for Hazardous Air Pollutants for Mercury Emissions from Mercury Cell Chlor-Alkali Plants.
- (87) 40 CFR Part 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.
- (88) 40 CFR Part 63, Subpart KKKKK, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.
- (89) 40 CFR Part 63, Subpart LLLLL, National

Emission Standards for Hazardous Air Pollutants for Asphalt Processing and Asphalt Roofing Manufacturing.

(90) 40 CFR Part 63, Subpart MMMMM, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Fabrication Operations.

(91) 40 CFR Part 63, Subpart NNNNN, National Emission Standards for Hazardous Air Pollutants for Hydrochloric Acid Production.

(92) 40 CFR Part 63, Subpart PPPPP, National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands.

(93) 40 CFR Part 63, Subpart QQQQQ, National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.

(94) 40 CFR Part 63, Subpart RRRRR, National Emission Standards for Hazardous Air Pollutants for Taconite Iron Ore Processing.

(95) 40 CFR Part 63, Subpart SSSSS, National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.

(96) 40 CFR Part 63, Subpart TTTTT, National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining.

(97) 40 CFR Part 63, Subpart UUUUU, National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-Fired Electric Utility Steam Generating Units.

(98) 40 CFR Part 63, Subpart WWWWW, National Emission Standards for Hospital Ethylene Oxide Sterilizers.

(99) 40 CFR Part 63, Subpart YYYYY, National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities.

(100) 40 CFR Part 63, Subpart ZZZZZ, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources.

(101) 40 CFR Part 63 Subpart BBBBBB National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities

(102) 40 CFR Part 63 Subpart CCCCCC National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities.

(103) 40 CFR Part 63, Subpart DDDDDD, National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources.

(104) 40 CFR Part 63, Subpart EEEEE, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources.

(105) 40 CFR Part 63, Subpart FFFFF, National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources.

(106) 40 CFR Part 63, Subpart GGGGG, National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources--Zinc, Cadmium, and Beryllium.

(107) 40 CFR Part 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources.

(108) 40 CFR Part 63, Subpart LLLLLL, National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources.

(109) 40 CFR Part 63, Subpart MMMMMM, National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources.

(110) 40 CFR Part 63, Subpart NNNNNN, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds.

(111) 40 CFR Part 63, Subpart OOOOOO, National

Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources.

(112) 40 CFR Part 63, Subpart PPPPPP, National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources.

(113) 40 CFR Part 63, Subpart QQQQQQ, National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources.

(114) 40 CFR Part 63, Subpart RRRRRR, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources.

(115) 40 CFR Part 63, Subpart SSSSSS, National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources.

(116) 40 CFR Part 63, Subpart VVVVVV, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources.

(117) 40 CFR Part 63, Subpart TTTTTT, National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources.

(118) 40 CFR Part 63, Subpart WWWWWW, National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations.

(119) 40 CFR Part 63, Subpart XXXXXX, National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories.

(120) 40 CFR Part 63, Subpart YYYYYY, National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities.

(121) 40 CFR Part 63, Subpart ZZZZZZ, National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries.

(122) 40 CFR Part 63, Subpart AAAAAA, National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing.

(123) 40 CFR Part 63, Subpart BBBBBB, National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry.

(124) 40 CFR Part 63, Subpart CCCCCC, National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing.

(125) 40 CFR Part 63, Subpart DDDDDD, National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing.

(126) 40 CFR Part 63, Subpart EEEEE, National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category.

KEY: air pollution, hazardous air pollutant, MACT, NESHAP

August 4, 2016

19-2-104(1)(a)

Notice of Continuation May 15, 2017

R307. Environmental Quality, Air Quality.**R307-401. Permit: New and Modified Sources.****R307-401-1. Purpose.**

This rule establishes the application and permitting requirements for new installations and modifications to existing installations throughout the State of Utah. Additional permitting requirements apply to larger installations or installations located in nonattainment or maintenance areas. These additional requirements can be found in R307-403, R307-405, R307-406, R307-420, and R307-421. Modeling requirements in R307-410 may also apply. Each of the permitting rules establishes independent requirements, and the owner or operator must comply with all of the requirements that apply to the installation. Exemptions under R307-401 do not affect applicability of the other permitting rules.

R307-401-2. Definitions.

(1) The following additional definitions apply to R307-401.

"Actual emissions" (a) means the actual rate of emissions of an air pollutant from an emissions unit, as determined in accordance with paragraphs (b) through (d) below.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the air pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each air pollutant which would be emitted from any proposed stationary source or modification which the director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same

person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any air pollutant.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Indirect source" means a building, structure, facility or installation which attracts or may attract mobile source activity that results in emission of a pollutant for which there is a national standard.

"Potential to emit" means the maximum capacity of a stationary source to emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Stationary source" means any building, structure, facility, or installation which emits or may emit an air pollutant.

R307-401-3. Applicability.

(1) R307-401 applies to any person intending to:

(a) construct a new installation which will or might reasonably be expected to become a source or an indirect source of air pollution, or

(b) make modifications or relocate an existing installation which will or might reasonably be expected to increase the amount or change the effect of, or the character of, air pollutants discharged, so that such installation may be expected to become a source or indirect source of air pollution, or

(c) install a control apparatus or other equipment intended to control emissions of air pollutants.

(2) R307-403, R307-405 and R307-406 may establish additional permitting requirements for new or modified sources.

(a) Exemptions contained in R307-401 do not affect applicability or other requirements under R307-403, R307-405 or R307-406.

(b) Exemptions contained in R307-403, R307-405 or R307-406 do not affect applicability or other requirements under R307-401, unless specifically authorized in this rule.

R307-401-4. General Requirements.

The general requirements in (1) through (3) below apply to all new and modified installations, including installations that are exempt from the requirement to obtain an approval order.

(1) Any control apparatus installed on an installation shall be adequately and properly maintained.

(2) If the director determines that an exempted installation is not meeting an approval order or State Implementation Plan limitation, is creating an adverse impact to the environment, or would be injurious to human health or welfare, then the director may require the owner or operator to submit a notice of intent and obtain an approval order in accordance with R307-401-5 through R307-401-8. The director will complete an appropriate analysis and evaluation in consultation with the owner or operator before determining that an approval order is required.

(3) Low Oxides of Nitrogen Burner Technology.

(a) Except as provided in (b) below, whenever existing fuel combustion burners are replaced, the owner or operator shall install low oxides of nitrogen burners or equivalent oxides of nitrogen controls, as determined by the director, unless such equipment is not physically practical or cost effective. The owner or operator shall submit a demonstration that the equipment is not physically practical or cost effective to the director for review and approval prior to beginning construction.

(b) The provisions of (a) above do not apply to non-commercial, residential buildings.

R307-401-5. Notice of Intent.

(1) Except as provided in R307-401-9 through R307-401-17, any person subject to R307-401 shall submit a notice of intent to the director and receive an approval order prior to initiation of construction, modification or relocation. The notice of intent shall be in a format specified by the director.

(2) The notice of intent shall include the following information:

(a) A description of the nature of the processes involved; the nature, procedures for handling and quantities of raw materials; the type and quantity of fuels employed; and the nature and quantity of finished product.

(b) Expected composition and physical characteristics of effluent stream both before and after treatment by any control apparatus, including emission rates, volume, temperature, air pollutant types, and concentration of air pollutants.

(c) Size, type and performance characteristics of any control apparatus.

(d) An analysis of best available control technology for the proposed source or modification. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, the owner or operator of the source shall consider EPA Control Technique Guidance (CTG) documents and Alternative Control Technique documents that are applicable to the source. Best available control technology shall be at least as stringent as any published CTG that is applicable to the source.

(e) Location and elevation of the emission point and other factors relating to dispersion and diffusion of the air pollutant in relation to nearby structures and window openings, and other information necessary to appraise the possible effects of the effluent.

(f) The location of planned sampling points and the tests of the completed installation to be made by the owner or operator when necessary to ascertain compliance.

(g) The typical operating schedule.

(h) A schedule for construction.

(i) Any plans, specifications and related information that

are in final form at the time of submission of notice of intent.

(j) Any additional information required by:

(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties; or

(vi) R307-421, Permits: PM10 Offset Requirements in Salt Lake County and Utah County.

(k) Any other information necessary to determine if the proposed source or modification will be in compliance with Title R307.

(3) Notwithstanding the exemption in R307-401-9 through 16, any person that is subject to R307-403, R307-405, or R307-406 shall submit a notice of intent to the director and receive an approval order prior to initiation of construction, modification, or relocation.

R307-401-6. Review Period.

(1) Completeness Determination. Within 30 days after receipt of a notice of intent, or any additional information necessary to the review, the director will advise the applicant of any deficiency in the notice of intent or the information submitted.

(2) Within 90 days of receipt of a complete application including all the information described in R307-401-5, the director will

(a) issue an approval order for the proposed construction, installation, modification, relocation, or establishment pursuant to the requirements of R307-401-8, or

(b) issue an order prohibiting the proposed construction, installation, modification, relocation or establishment if it is deemed that any part of the proposal is inadequate to meet the applicable requirements of R307.

(3) The review period under (2) above may be extended by up to three 30-day extensions if more time is needed to review the proposal.

R307-401-7. Public Notice.

(1) Issuing the Notice. Prior to issuing an approval or disapproval order, the director will advertise intent to approve or disapprove in a newspaper of general circulation in the locality of the proposed construction, installation, modification, relocation or establishment.

(2) Opportunity for Review and Comment.

(a) At least one location will be provided where the information submitted by the owner or operator, the director's analysis of the notice of intent proposal, and the proposed approval order conditions will be available for public inspection.

(b) Public Comment.

(i) A 30-day public comment period will be established.

(ii) A request to extend the length of the comment period, up to 30 days, may be submitted to the director within 15 days of the date the notice in R307-401-7(1) is published.

(iii) Public Hearing. A request for a hearing on the proposed approval or disapproval order may be submitted to the director within 15 days of the date the notice in R307-401-7(1) is published.

(iv) The hearing will be held in the area of the proposed construction, installation, modification, relocation or establishment.

(v) The public comment and hearing procedure shall not be required when an order is issued for the purpose of extending the time required by the director to review plans and specifications.

(3) The director will consider all comments received during the public comment period and at the public hearing and, if appropriate, will make changes to the proposal in response to comments before issuing an approval order or disapproval order.

R307-401-8. Approval Order.

(1) The director will issue an approval order if the following conditions have been met:

(a) The degree of pollution control for emissions, to include fugitive emissions and fugitive dust, is at least best available control technology. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, best available control technology shall be at least as stringent as any Control Technique Guidance document that has been published by EPA that is applicable to the source.

(b) The proposed installation will meet the applicable requirements of:

(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties;

(vi) R307-210, National Standards of Performance for New Stationary Sources;

(vii) National Primary and Secondary Ambient Air Quality Standards;

(viii) R307-214, National Emission Standards for Hazardous Air Pollutants;

(ix) R307-110, Utah State Implementation Plan; and

(x) all other provisions of R307.

(2) The approval order will require that all pollution control equipment be adequately and properly maintained.

(3) Receipt of an approval order does not relieve any owner or operator of the responsibility to comply with the provisions of R307 or the State Implementation Plan.

(4) To accommodate staged construction of a large source, the director may issue an order authorizing construction of an initial stage prior to receipt of detailed plans for the entire proposal provided that, through a review of general plans, engineering reports and other information the proposal is determined feasible by the director under the intent of R307. Subsequent detailed plans will then be processed as prescribed in this paragraph. For staged construction projects the previous determination under R307-401-8(1) and (2) will be reviewed and modified as appropriate at the earliest reasonable time prior to commencement of construction of each independent phase of the proposed source or modification.

(5) If the director determines that a proposed stationary source, modification or relocation does not meet the conditions established in (1) above, the director will not issue an approval order.

R307-401-9. Small Source Exemption.

(1) A small stationary source is exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following conditions are met.

(a) its actual emissions are less than 5 tons per year per air pollutant of any of the following air pollutants: sulfur dioxide, carbon monoxide, nitrogen oxides, PM₁₀, ozone, or volatile organic compounds;

(b) its actual emissions are less than 500 pounds per year of any hazardous air pollutant and less than 2000 pounds

per year of any combination of hazardous air pollutants;

(c) its actual emissions are less than 500 pounds per year of any air pollutant not listed in (a) or (b) above and less than 2000 pounds per year of any combination of air pollutants not listed in (a) or (b) above.

(d) Air pollutants that are drawn from the environment through equipment in intake air and then are released back to the environment without chemical change, as well as carbon dioxide, nitrogen, oxygen, argon, neon, helium, krypton, xenon should not be included in emission calculations when determining applicability under (a) through (c) above.

(2) The owner or operator of a source that is exempted from the requirement to obtain an approval order under (1) above shall no longer be exempt if actual emissions in any subsequent year exceed the emission thresholds in (1) above. The owner or operator shall submit a notice of intent under R307-401-5 no later than 180 days after the end of the calendar year in which the source exceeded the emission threshold.

(3) Small Source Exemption - Registration. The director will maintain a registry of sources that are claiming an exemption under R307-401-9. The owner or operator of a stationary source that is claiming an exemption under R307-401-9 may submit a written registration notice to the director. The notice shall include the following minimum information:

(a) identifying information, including company name and address, location of source, telephone number, and name of plant site manager or point of contact;

(b) a description of the nature of the processes involved, equipment, anticipated quantities of materials used, the type and quantity of fuel employed and nature and quantity of the finished product;

(c) identification of expected emissions;

(d) estimated annual emission rates;

(e) any control apparatus used; and

(f) typical operating schedule.

(4) An exemption under R307-401-9 does not affect the requirements of R307-401-17, Temporary Relocation.

(5) A stationary source that is not required to obtain a permit under R307-405 for greenhouse gases, as defined in R307-405-3(9)(a), is not required to obtain an approval order for greenhouse gases under R307-401. This exemption does not affect the requirement to obtain an approval order for any other air pollutant emitted by the stationary source.

R307-401-10. Source Category Exemptions.

The following source categories described in (1) through (4) below are exempted from the requirement to obtain an approval order. The general provisions in R307-401-4 shall apply to these sources.

(1) Fuel-burning equipment in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure with a rated capacity of less than five million BTU per hour using no other fuel than natural gas or LPG or other mixed gas that meets the standards of gas distributed by a utility in accordance with the rules of the Public Service Commission of the State of Utah, unless there are emissions other than combustion products.

(2) Comfort heating equipment such as boilers, water heaters, air heaters and steam generators with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6,

(3) Emergency heating equipment, using coal or wood for fuel, with a rated capacity less than 50,000 BTU per hour.

(4) Exhaust systems for controlling steam and heat that do not contain combustion products.

R307-401-11. Replacement-in-Kind Equipment.

(1) Applicability. Existing process equipment or

pollution control equipment that is covered by an existing approval order or State Implementation Plan requirement may be replaced using the procedures in (2) below if:

- (a) the potential to emit of the process equipment is the same or lower;
- (b) the number of emission points or emitting units is the same or lower;
- (c) no additional types of air pollutants are emitted as a result of the replacement;
- (d) the process equipment or pollution control equipment is identical to or functionally equivalent to the replaced equipment;
- (e) the replacement does not change the basic design parameters of the process unit or pollution control equipment;
- (f) the replaced process equipment or pollution control equipment is permanently removed from the stationary source, otherwise permanently disabled, or permanently barred from operation;
- (g) the replacement process equipment or pollution control equipment does not trigger New Source Performance Standards or National Emissions Standards for Hazardous Air Pollutants under 42 U.S.C. 7411 or 7412; and

(h) the replacement of the control apparatus or process equipment does not violate any other provision of Title R307.

(2) Replacement-in-Kind Procedures.

(a) In lieu of filing a notice of intent under R307-401-5, the owner or operator of a stationary source shall submit a written notification to the director before replacing the equipment. The notification shall contain a description of the replacement-in-kind equipment, including the control capability of any control apparatus and a demonstration that the conditions of (1) above are met.

(b) If the replacement-in-kind meets the conditions of (1) above, the director will update the source's approval order and notify the owner or operator. Public review under R307-401-7 is not required for the update to the approval order.

(3) If the replaced process equipment or pollution control equipment is brought back into operation, it shall constitute a new emissions unit.

R307-401-12. Reduction in Air Pollutants.

(1) Applicability. The owner or operator of a stationary source of air pollutants that reduces or eliminates air pollutants is exempt from the requirement to submit a notice of intent and obtain an approval order prior to construction if:

(a) the project does not increase the potential to emit of any air pollutant or cause emissions of any new air pollutant, and

(b) the director is notified of the change and the reduction of air pollutants is made enforceable through an approval order in accordance with (2) below.

(2) Notification. The owner or operator shall submit a written description of the project to the director no later than 60 days after the changes are made. The director will update the source's approval order or issue a new approval order to include the project and to make the emission reductions enforceable. Public review under R307-401-7 is not required for the update to the approval order.

R307-401-13. Plantwide Applicability Limits.

A plantwide applicability limit under R307-405-21 does not exempt a stationary source from the requirements of R307-401.

R307-401-14. Used Oil Fuel Burned for Energy Recovery.

(1) Definitions.

"Boiler" means boiler as defined in R315-1-1(b).

"Used Oil" is defined as any oil that has been refined from crude oil, used, and, as a result of such use contaminated

by physical or chemical impurities.

(2) Boilers burning used oil for energy recovery are exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following requirements are met:

(a) the heat input design is less than one million BTU/hr;

(b) contamination levels of all used oil to be burned do not exceed any of the following values:

(i) arsenic - 5 ppm by weight,

(ii) cadmium - 2 ppm by weight,

(iii) chromium - 10 ppm by weight,

(iv) lead - 100 ppm by weight,

(v) total halogens - 1,000 ppm by weight,

(vi) Sulfur - 0.50% by weight; and

(c) the flash point of all used oil to be burned is at least 100 degrees Fahrenheit.

(3) Testing. The owner or operator shall test each load of used oil received or generated as directed by the director to ensure it meets these requirements. Testing may be performed by the owner/operator or documented by test reports from the used fuel oil vendor. The flash point shall be measured using the appropriate ASTM method as required by the director. Records for used oil consumption and test reports are to be kept for all periods when fuel-burning equipment is in operation. The records shall be kept on site and made available to the director or the director's representative upon request. Records must be kept for a three-year period.

R307-401-15. Air Strippers and Soil Venting Projects.

(1) The owner or operator of an air stripper or soil venting system that is used to remediate contaminated groundwater or soil is exempt from the notice of intent and approval order requirements of R307-401-5 through 8 if the following conditions are met:

(a) the estimated total air emissions of volatile organic compounds from a given project are less than the de minimis emissions listed in R307-401-9(1)(a), and

(b) the level of any one hazardous air pollutant or any combination of hazardous air pollutants is below the levels listed in R307-410-5(1)(c)(i)(C).

(2) The owner or operator shall submit documentation that the project meets the exemption requirements in R307-401-15(1) to the director prior to beginning the remediation project.

(3) After beginning the soil remediation project, the owner or operator shall submit emissions information to the director to verify that the emission rates of the volatile organic compounds and hazardous air pollutants in R307-401-15(1) are not exceeded.

(a) Emissions estimates of volatile organic compounds shall be based on test data obtained in accordance with the test method in the EPA document SW-846, Test #8260c or 8261a, or the most recent EPA revision of either test method if approved by the director.

(b) Emissions estimates of hazardous air pollutants shall be based on test data obtained in accordance with the test method in EPA document SW-846, Test #8021B or the most recent EPA revision of the test method if approved by the director.

(c) Results of the test and calculated annual quantity of emissions of volatile organic compounds and hazardous air pollutants shall be submitted to the director within one month of sampling.

(d) The test samples shall be drawn on intervals of no less than twenty-eight days and no more than thirty-one days (i.e., monthly) for the first quarter, quarterly for the first year, and semi-annually thereafter or as determined necessary by the director.

(4) The following control devices do not require a

notice of intent or approval order when used in relation to an air stripper or soil venting project exempted under R307-401-15:

- (a) thermodestruction unit with a rated input capacity of less than five million BTU per hour using no other auxiliary fuel than natural gas or LPG, or
- (b) carbon adsorption unit.

R307-401-16. De minimis Emissions From Soil Aeration Projects.

An owner or operator of a soil remediation project is not subject to the notice of intent and approval order requirements of R307-401-5 through 8 when soil aeration or land farming is used to conduct a soil remediation, if the owner or operator submits the following information to the director prior to beginning the remediation project:

- (1) documentation that the estimated total air emissions of volatile organic compounds, using an appropriate sampling method, from the project are less than the de minimis emissions listed in R307-401-9(1)(a);
- (2) documentation that the levels of any one hazardous air pollutant or any combination of hazardous air pollutants are less than the levels in R307-410-5(1)(d); and
- (3) the location of the remediation and where the remediated material originated.

R307-401-17. Temporary Relocation.

The owner or operator of a stationary source previously approved under R307-401 may temporarily relocate and operate the stationary source at any site for up to 180 working days in any calendar year not to exceed 365 consecutive days, starting from the initial relocation date. The director will evaluate the expected emissions impact at the site and compliance with applicable Title R307 rules as the bases for determining if approval for temporary relocation may be granted. Records of the working days at each site, consecutive days at each site, and actual production rate shall be submitted to the director at the end of each 180 calendar days. These records shall also be kept on site by the owner or operator for the entire project, and be made available for review to the director as requested. R307-401-7, Public Notice, does not apply to temporary relocations under R307-401-17.

R307-401-18. Eighteen Month Review.

Approval orders issued by the director in accordance with the provisions of R307-401 will be reviewed eighteen months after the date of issuance to determine the status of construction, installation, modification, relocation or establishment. If a continuous program of construction, installation, modification, relocation or establishment is not proceeding, the director may revoke the approval order.

R307-401-19. General Approval Order.

(1) The director may issue a general approval order that would establish conditions for similar new or modified sources of the same type or for specific types of equipment. The general approval order may apply throughout the state or in a specific area.

(a) A major source or major modification as defined in R307-403, R307-405, or R307-420 for each respective area is not eligible for coverage under a general approval order.

(b) A source that is subject to the requirements of R307-403-5 is not eligible for coverage under a general approval order.

(c) A source that is subject to the requirements of R307-410-4 is not eligible for coverage under a general approval order unless a demonstration that meets the requirements of R307-410-4 was conducted.

(d) A source that is subject to the requirements of R307-

410-5(1)(c)(ii) is not eligible for coverage under a general approval order unless a demonstration that meets the requirements of R307-410-5(1)(c)(ii) was conducted.

(e) A source that is subject to the requirements of R307-410-5(1)(c)(iii) is not eligible for coverage under a general approval order.

(2) A general approval order shall meet all applicable requirements of R307-401-8.

(3) The public notice requirements in R307-401-7 shall apply to a general approval order except that the director will advertise the notice of intent in a newspaper of statewide circulation.

(4) Application.

(a) After a general approval order has been issued, the owner or operator of a proposed new or modified source may apply to be covered under the conditions of the general approval order.

(b) The owner or operator shall submit the application on forms provided by the director in lieu of the notice of intent requirements in R307-401-5 for all equipment covered by the general approval order.

(c) The owner or operator may request that an existing, individual approval order for the source be revoked, and that it be covered by the general approval order.

(d) The owner or operator that has applied to be covered by a general approval order shall not initiate construction, modification, or relocation until the application has been approved by the director.

(5) Approval.

(a) The director will review the application and approve or deny the request based on criteria specified in the general approval order for that type of source. If approved, the director will issue an authorization to the applicant to operate under the general approval order.

(b) The public notice requirements in R307-401-7 do not apply to the approval of an application to be covered under the general approval order.

(c) The director will maintain a record of all stationary sources that are covered by a specific general approval order and this record will be available for public review.

(6) Exclusions and Revocation.

(a) The director may require any source that has applied for or is authorized by a general approval order to submit a notice of intent and obtain an individual approval order under R307-401-8. Cases where an individual approval order will be required include, but are not limited to, the following:

(i) the director determines that the source does not meet the criteria specified in the general approval order;

(ii) the director determines that the application for the general approval order did not contain all necessary information to evaluate applicability under the general approval order;

(iii) modifications were made to the source that were not authorized by the general approval order or an individual approval order;

(iv) the director determines the source may cause a violation of a national ambient air quality standard; or

(v) the director determines that one is required based on the compliance history and current compliance status of the source or applicant.

(b)(i) Any source authorized by a general approval order may request to be excluded from the coverage of the general approval order by submitting a notice of intent under R307-401-5 and receiving an individual approval order under R307-401-8.

(ii) When the director issues an individual approval order to a source subject to a general approval order, the applicability of the general approval order to the individual source is revoked on the effective date of the individual

approval order.

(7) Modification of General Approval Order. The director may modify, replace, or discontinue the general approval order.

(a) Administrative corrections may be made to the existing version of the general approval order. These corrections are to correct typographical errors or similar minor administrative changes.

(b) All other modifications or the discontinuation of a general approval order shall not apply to any source authorized under previous versions of the general approval order unless the owner or operator submits an application to be covered under the new version of the general approval order. Modifications under R307-401-19(7)(b) shall meet the public notice requirements in R307-401-19(3).

(c) A general approval order shall be reviewed at least every three year. The review of the general approval order shall follow the public notice requirements of R307-401-19(3).

(8) Modifications at a source covered by a general approval order. A source may make modifications only as authorized by the approved general approval order. Modifications outside the scope authorized by the approved general approval order shall require a new application for either an individual approval order under R307-401-8 or a general approval order under R307-401-19.

KEY: air pollution, permits, approval orders, greenhouse gases

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Notice of Continuation May 15, 2017

19-2-104(3)(q)

19-2-108

R307. Environmental Quality, Air Quality.**R307-403. Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas.****R307-403-1. Purpose and Definitions.**

(1) Purpose. This rule implements the federal nonattainment area permitting program for major sources as required by 40 CFR 51.165. In addition, the rule contains new source review provisions for some non-major sources in PM10 nonattainment areas. This rule supplements, but does not replace, the permitting requirements of R307-401.

(2) Unless otherwise specified, all references to 40 CFR in R307-403 shall mean the version that is in effect on July 1, 2012.

(3) Except as provided in R307-403-1(4), the definitions in 40 CFR 51.165(a)(1) are hereby incorporated by reference.

(4)(a) "Reviewing authority" means the director.

(b) In the definition of "significant" in 40 CFR 51.165(a)(1)(x) add the following text at the end of the pollutant emission rate for PM2.5: "; and in the Logan, Salt Lake City, and Provo PM2.5 nonattainment areas as defined in the July 1, 2010 version of 40 CFR 81.345, 40 tpy of volatile organic compounds."

(c) In the definition of "regulated NSR pollutant" in 40 CFR 51.165(a)(1)(xxxvii) the following subparagraph is added to 51.165(a)(1)(xxxvii)(4): "(i) Volatile organic compounds are precursors to PM2.5 and ammonia is not a precursor to PM2.5 in the Logan, Salt Lake City, and Provo PM2.5 nonattainment areas as defined in the July 1, 2010 version of 40 CFR 81.345."

(d) The following definitions or portions of definitions that apply to the equipment repair and replacement provisions are not incorporated because these provisions were vacated by the DC Circuit Court of Appeals on March 17, 2006:

(i) in the definition of "major modification" in 40 CFR 51.165(a)(1)(v)(C), the second sentence in subparagraph (1);

(ii) the definition of "process unit" in 40 CFR 51.165(a)(1)(xliii);

(iii) the definition of "functionally equivalent component" in 40 CFR 51.165(a)(1)(xlv);

(iv) the definition of "fixed capital cost" in 40 CFR 51.165(a)(1)(xlv); and

(v) the definition of "total capital investment" in 40 CFR 51.165(a)(1)(xlvi).

R307-403-2. Applicability.

(1) R307-403 applies to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment under section 107(d)(1)(A)(i) of the Clean Air Act, if the stationary source or modification would locate anywhere in the designated nonattainment area.

(a) Except as otherwise provided in paragraph R307-403-2(2), and consistent with the definition of major modification contained in 40 CFR 51.165(a)(1)(v)(A), a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in 40 CFR 51.165(a)(1)(xxvii)), and a significant net emissions increase (as defined in 40 CFR 51.165(a)(1)(vi) and (x)). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(b) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs R307-403-2(c) through (e). The procedure for calculating (before beginning actual construction) whether a

significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in 40 CFR 51.165(a)(1)(vi). Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(c) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in 40 CFR 51.165(a)(1)(xxviii)) and the baseline actual emissions (as defined in 40 CFR 51.165(a)(1)(xxxv)(A) and (B), as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in 40 CFR 51.165(a)(1)(x)).

(d) Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in 40 CFR 51.165(a)(1)(iii)) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in 40 CFR 51.165(a)(1)(xxxv)(C)) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in 40 CFR 51.165(a)(1)(x)).

(e) Reserved.

(f) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in R307-403-2(1)(c) through (d) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in 40 CFR 51.165(a)(1)(x)).

(2) For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under R307-403-11.

(3) Reserved.

(4) Reserved.

(5)(a) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provision of the state implementation plan and any other requirements under local, state or federal law.

(b) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of R307-403 shall apply to the source or modification as though construction had not yet commenced on the source or modification;

(6) The provisions of R307-403-2(6)(a) through (f) apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs 40 CFR 51.165(a)(1)(xxviii)(B)(1) through (3) for calculating projected actual emissions.

(a) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(i) A description of the project;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(iii) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under 40 CFR 51.165(a)(1)(xxviii)(B)(3) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(b) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in R307-403-2(6)(a) to the reviewing authority. Nothing in this paragraph shall be construed to require the owner or operator of such a unit to obtain any determination from the reviewing authority before beginning actual construction.

(c) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in paragraph R307-403-2(6)(a)(ii); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

(d) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority within 60 days after the end of each year during which records must be generated under paragraph R307-403-2(6)(c) setting out the unit's annual emissions during the year that preceded submission of the report.

(e) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority if the annual emissions, in tons per year, from the project identified in paragraph R307-403-2(6)(a), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph R307-403-2(6)(c), by a significant amount (as defined in 40 CFR 51.165(a)(1)(x)) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph R307-403-2(6)(c). Such report shall be submitted to the reviewing authority within 60 days after the end of such year. The report shall contain the following:

(i) The name, address and telephone number of the major stationary source;

(ii) The annual emissions as calculated pursuant to paragraph R307-403-2(6)(c); and

(iii) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(f) A "reasonable possibility" under (R307-403-2(6)) occurs when the owner or operator calculates the project to result in either:

(i) A projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined in 40 CFR 51.165(a)(1)(xxvii)(without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(ii) A projected actual emissions increase that, added to the amount of emissions excluded under 40 CFR 51.165(a)(1)(xxviii)(B)(3), sums to at least 50 percent of the amount that is a "significant emissions increase," as defined under paragraph 40 CFR 51.165(a)(1)(xxvii) without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of this paragraph, and not also within the meaning of

paragraph R307-403-2(6)(f)(i), then provisions R307-403-2(6)(b) through (e) do not apply to the project.

(7) The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph R307-403-2(6) above available for review upon a request for inspection by the director or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

(8) The requirements of R307-403 applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas or in portions of an ozone transport region where the EPA Administrator has granted a nitrogen oxides waiver applying the standards set forth under section 182(f) of the Clean Air Act and the waiver continues to apply.

(9) Reserved.

(10) The requirements of R307-403 applicable to major stationary sources and major modifications of PM₁₀ shall also apply to major stationary sources and major modifications of PM₁₀ precursors, except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels that exceed the PM₁₀ ambient standards in the area.

(11) Reserved.

(12) R307-403 applies to any major source or major modification that is located outside a nonattainment area and is major for the pollutant for which the area is designated nonattainment under section 107(d)(1)(A)(i) of the Clean Air Act and that causes the significant increments in R307-403-3(1) to be exceeded in the nonattainment area.

(13) R307-403-5 applies to any new or modified source in a PM₁₀ nonattainment area.

R307-403-3. Review of Major Sources of Air Quality Impact.

Every major new source or major modification must be reviewed by the director to determine if a source will cause or contribute to a violation of the NAAQS. The determination of whether a source will cause or contribute to a violation of the NAAQS will be made by the director as of the new source's projected start-up date. He will make an analysis of the proposed new source's operation data using the best information and analytical techniques available.

(1) If the owner or operator of a source proposes to locate the source outside an area of nonattainment where the source will not cause an increase greater than the following increments in actual areas of nonattainment or in the Salt Lake City and Ogden maintenance areas for carbon monoxide and the source otherwise meets the requirements of these regulations, such source shall be approved.

TABLE
MAXIMUM ALLOWABLE MICROGRAM/CUBIC METER IMPACT
BY AVERAGING TIME

| Pollutant | Annual | 24-Hr | 8-Hr | 3-Hr | 1-Hr |
|----------------|--------|-------|------|------|------|
| SULFUR DIOXIDE | 1.0 | 5 | | 25 | |
| PM10 | 1.0 | 3 | | | |
| CO | | | 500 | | 2000 |

(2) If the director finds that the emissions from a proposed source would cause a new violation of the NAAQS but would not contribute to an existing violation, the director shall approve the proposed source if and only if:

(a) the new source is required to meet a more stringent emission limitation, sufficient to avoid a new violation of the NAAQS and

(b) the new source has acquired sufficient offset to

avoid a new violation of the NAAQS and

(c) the new emission limitations for the proposed source and for any affected existing sources are enforceable.

(3) If the director finds that the emissions from a proposed source in a nonattainment area would contribute to an existing violation of a national ambient air quality standard at the time of the source's proposed start-up date, approval shall be granted if and only if:

(a) the new source meets an emission limitation which is the Lowest Achievable Emission Rate (LAER) for such source and

(b) the applicant has certified that all existing major sources in the State, owned or controlled by the owner or operator (or by any entity controlling, controlled by or under common control with such owner or operator) of the proposed source, are in compliance with all applicable rules in R307, including the Utah Implementation Plan requirements or are in compliance with an approved schedule and timetable for compliance under the Utah Implementation Plan, R307, or an enforcement order, and that the source is complying with all requirements and limitations as expeditiously as practicable.

(c) emission offsets to the extent provided in R307-403-4, 5 and 6 are sufficient such that there will be reasonable further progress toward attainment of the applicable NAAQS.

(d) the emission offsets provide a positive net air quality benefit in the affected area of nonattainment.

(e) there is an approved implementation plan in effect for the pollutant to be emitted by the proposed source.

(4) A source which is locating outside a nonattainment area or the Salt Lake City and Ogden maintenance areas for carbon monoxide and which causes the significant increments in (1) above to be exceeded in the nonattainment or maintenance area is subject to the requirements of (3) above.

R307-403-4. Offsets: General Requirements.

(1) Emission offsets must be obtained from the same source or other sources in the same nonattainment area except that the owner or operator of a source may obtain emission offsets in another nonattainment area if:

(a) the other area has an equal or higher nonattainment classification than the area in which the source is located; and

(b) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located or which is impacted by the source.

(2) Any emission offsets shall be enforceable by the time a new or modified source commences construction, and, by the time a new or modified source commences operation, any emission offsets shall be in effect and enforceable and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

(3) Emission reductions otherwise required by the federal Clean Air Act or R307, including the State Implementation Plan shall not be creditable as emission reductions for purposes of any offset requirement. Incidental emission reductions which are not otherwise required by federal or state law shall be creditable as emission reductions if such emission reductions meet the requirements of (1) and (2) above.

(4) Sources shall be allowed to offset, by alternative or innovative means, emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the conditions outlined in 42 U.S.C. 7503(e) (Section 173(e)(1) through Section 173(e)(4) of the federal Clean Air Act as amended in 1990).

R307-403-5. Offsets: PM10 Nonattainment Areas.

(1) New sources which have a potential to emit, or modified sources which would produce an emission increase equal to or exceeding the tonnage total of combined PM10, sulfur dioxide, and oxides of nitrogen listed below which are located in or impact a PM10 Nonattainment Area as defined in (a) below, shall obtain an enforceable offset as defined in (b) and (c) below.

(a) For the purpose of determining whether the owner or operator which proposes to locate a source outside a nonattainment area is required to obtain offsets, the maximum allowable impact on any nonattainment area is 1.0 microgram/cubic meter for a one-year averaging period and 3.0 micrograms/cubic meter for a 24-hour averaging period for any combination of PM10, sulfur dioxide and nitrogen dioxide.

(b) For a total of 50 tons/year or greater, an offset of 1.2:1 of the emission increase is required.

(c) For a total of 25 tons/year but less than 50 tons/year, an offset of 1:1 of the emission increase is required.

(2) For the offset determinations, PM10, sulfur dioxide, and oxides of nitrogen shall be considered on an equal basis. In areas where offsets are required for both PM10 and ozone, the most stringent emission offset ratio for oxides of nitrogen required by R307-403 or R307-420 shall apply.

R307-403-6. Offsets: Ozone Nonattainment Areas.

In any ozone nonattainment area, new sources and modifications to existing sources as defined and outlined in 42 U.S.C. 7511a (Section 182 of the Clean Air Act) shall meet the offset requirements and conditions listed in that section for the applicable classified area and for the identified pollutants.

R307-403-7. Offsets: Baseline.

The baseline to be used for determination of credit for emission and air quality offsets will be the emission limitations and/or other requirements in the State Implementation Plan (SIP), revised in accordance with the Clean Air Act or subsequent revisions thereto in effect at the time the application to construct or modify a source is filed.

R307-403-8. Offsets: Banking of Emission Offset Credit.

Banking of emission offset credit will be permitted to the fullest extent allowed by applicable Federal Law as identified in EPA's document "Emissions Trading Policy Statement" published in the Federal Register on December 4, 1986, and 40 CFR 51.165(a)(3)(ii)(c) as amended on June 28, 1989, and 40 CFR 51, Appendix S. To preserve banked emission reductions, the director must identify them in either the Utah SIP or an order issued pursuant to R307-401 and shall provide a registry to identify the person, private entity or governmental authority that has the right to use or allocate the banked emission reductions, and to record any transfers of, or liens on these rights.

R307-403-9. Construction in Stages.

When a source is constructed or modified in stages which individually do not have the potential to emit more than 100 tons per year, the allowable emission from all such stages shall be added together in determining the applicability of R307-403.

R307-403-10. Analysis of Alternatives.

The owner or operator of a major new source or major modification to be located in a nonattainment area or which would impact a nonattainment area must, in addition to the requirements in R307-403, submit with the notice of intent an adequate analysis of alternative sites, sizes, production

processes, and environmental control techniques for such proposed source which demonstrates the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. The director shall review the analysis. The analysis and the director's comments shall be subject to public comment as required by R307-401-7. The preceding shall also apply in Salt Lake and Davis Counties for new major sources or modifications which are considered major for precursors of ozone, including volatile organic compounds and nitrogen oxides.

R307-403-11. Actuals PALS.

The provisions of 40 CFR 51.165(f)(1) through (14) are hereby incorporated by reference.

KEY: air quality, nonattainment, offset

December 5, 2013

19-2-104

Notice of Continuation May 15, 2017

19-2-108

R307. Environmental Quality, Air Quality.**R307-406. Visibility.****R307-406-1. Definitions.**

The following additional definition applies throughout R307-406:

"Adverse Impact on Visibility" means for purposes of R307-406, visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitors visual experience of a mandatory Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with times of visitor use of the mandatory Class I area, and the frequency and timing of natural conditions that reduce visibility.

R307-406-2. Source Review.

(1) The director shall review any new major source or major modification proposed in either an attainment area or area of nonattainment area for the impact of its emissions on visibility in any mandatory Class I area. As a condition of any approval order issued to a source under R307-401, the director shall require the use of air pollution control equipment, technologies, methods or work practices deemed necessary to mitigate visibility impacts in Class I areas that would occur as a result of emissions from such source. The director shall take into consideration as a part of the review and control requirements:

- (a) the costs of compliance;
- (b) the time necessary for compliance;
- (c) the energy usage and conservation;
- (d) the non air quality environmental impacts of compliance;
- (e) the useful life of the source; and
- (f) the degree of visibility improvement which will be provided as a result of control.

(2) In determining visibility impact by a major new source or major modification, the director shall use, the procedures identified in the EPA publication "Workbook For Estimating Visibility Impacts" (EPA 450-4-80-031) November 1980, or equivalent.

(3) The director shall insure that source emissions will be consistent with making reasonable progress toward the national visibility goal referred to in 40 CFR, 51.300(a).

R307-406-3. Notification of Federal Land Managers.

(1) The director shall notify the Federal Land Manager having jurisdiction over any mandatory Class I area of any proposed new major source or major modification that may reasonably be expected to affect visibility in that mandatory Class I area. Such notification shall be in writing and shall include a copy of all information relevant to the Notice of Intent and visibility impact analysis submitted by the source. The notification shall be made within thirty (30) days of receipt of the completed Notice of Intent and at least sixty (60) days prior to any public hearing or the commencement of any public comment period, held in accordance with R307-401-4 of these regulations, on the proposal. The director shall consider, as a part of the new or modified source review required by R307-406, any analysis performed by the Federal Land Manager that such proposed new major source or major modification may have an adverse impact on visibility in any mandatory Class I area, provided such analysis is submitted to the director within sixty (60) days of the notification to the Federal Land Manager as required by this paragraph. If the director determines that the major source or major modification will have an adverse impact on visibility in any mandatory Class I area, the director shall not issue the approval order. Where the director determines that such

analysis does not demonstrate that adverse impact on visibility will result in a mandatory Class I area, the director will, in the notice of any public hearing held on the new major source or major modification proposal, explain the decision or give notice where the explanation can be obtained.

(2) Where the director receives advance notification or early consultation with a major new source or major modification which may affect visibility prior to the submission of a Notice of Intent to Construct for the major new source or major modification, the director will notify the affected Federal Land Manager within thirty (30) days of such advance notification.

R307-406-4. Adverse Impact.

If the analysis required by R307-406-2 predicts that an adverse impact on visibility may reasonably be expected to occur in a mandatory Class I area, the director may require a proposed new major source or major modification to perform pre-construction and/or post-construction visibility monitoring in any mandatory Class I area as deemed necessary and appropriate to assess the impact of the proposed source or modification on visibility. Such monitoring shall be conducted in accordance with a monitoring plan prepared by the owner or operator of the source or his representative and approved by the director.

R307-406-5. Consideration in Review.

The director will consider in review and permitting of a new major source or major modification to an existing source, any visibility monitoring data provided by the Federal Land Manager which may reasonably be expected to be impacted by the proposed new major source or major modification.

R307-406-6. Audits for Permitting.

The director may perform oversight audits of any network collecting visibility data which may be used as a part of the permitting process as determined necessary.

**KEY: air pollution, visibility*, permits
September 15, 1998**

Notice of Continuation May 15, 2017

19-2-104

R307. Environmental Quality, Air Quality.**R307-410. Permits: Emissions Impact Analysis.****R307-410-1. Purpose.**

This rule establishes the procedures and requirements for evaluating the emissions impact of new or modified sources that require an approval order under R307-401 to ensure that the source will not interfere with the attainment or maintenance of any NAAQS. The rule also establishes the procedures and requirements for evaluating the emissions impact of hazardous air pollutants. The rule also establishes the procedures for establishing an emission rate based on the good engineering practice stack height as required by 40 CFR 51.118.

R307-410-2. Definitions.

(1) The following additional definitions apply to R307-410.

"Vertically Restricted Emissions Release" means the release of an air pollutant through a stack or opening whose flow is directed in a downward or horizontal direction due to the alignment of the opening or a physical obstruction placed beyond the opening, or at a height which is less than 1.3 times the height of an adjacent building or structure, as measured from ground level.

"Vertically Unrestricted Emissions Release" means the release of an air pollutant through a stack or opening whose flow is directed upward without any physical obstruction placed beyond the opening, and at a height which is at least 1.3 times the height of an adjacent building or structure, as measured from ground level.

(2) Except as provided in (3) below, the definitions of "stack", "stack in existence", "dispersion technique", "good engineering practice (GEP) stack height", "nearby", "excessive concentration", and "intermittent control system (ICS)" in 40 CFR 51.100(ff) through (kk) and (nn) are hereby incorporated by reference.

(3)(a) The terms "reviewing authority" and "authority administering the State implementation plan" shall mean the director.

(b) The reference to "40 CFR parts 51 and 52" in 40 CFR 51.100(ii)(2)(i) shall be changed to "R307-401, R307-403 and R307-405".

(c) The phrase "For sources subject to the prevention of significant deterioration program (40 CFR 51.166 and 52.21)" in 40 CFR 51.100(kk)(1) shall be replaced with the phrase "For sources subject to R307-401, R307-403, or R307-405".

R307-410-3. Use of Dispersion Models.

All estimates of ambient concentrations derived in meeting the requirements of R307 shall be based on appropriate air quality models, data bases, and other requirements specified in 40 CFR Part 51, Appendix W, (Guideline on Air Quality Models), effective July 1, 2005, which is hereby incorporated by reference. Where an air quality model specified in the Guideline on Air Quality Models or other EPA approved guidance documents is inappropriate, the director may authorize the modification of the model or substitution of another model. In meeting the requirements of federal law, any modification or substitution will be made only with the written approval of the Administrator, EPA.

R307-410-4. Modeling of Criteria Pollutant Impacts in Attainment Areas.

Prior to receiving an approval order under R307-401, a new source in an attainment area with a total controlled emission rate per pollutant greater than or equal to amounts specified in Table 1, or a modification to an existing source located in an attainment area which increases the total

controlled emission rate per pollutant of the source in an amount greater than or equal to those specified in Table 1, shall conduct air quality modeling, as identified in R307-410-3, to estimate the impact of the new or modified source on air quality unless previously performed air quality modeling for the source indicates that the addition of the proposed emissions increase would not violate a National Ambient Air Quality Standard, as determined by the director.

TABLE 1

| POLLUTANT | EMISSIONS |
|---|-------------------|
| sulfur dioxide | 40 tons per year |
| oxides of nitrogen | 40 tons per year |
| PM10 - fugitive emissions and fugitive dust | 5 tons per year |
| PM10 - non-fugitive emissions or non-fugitive dust | 15 tons per year |
| carbon monoxide | 100 tons per year |
| Lead | 0.6 tons per year |

R307-410-5. Documentation of Ambient Air Impacts for Hazardous Air Pollutants.

(1) Prior to receiving an approval order under R307-401, a source shall provide documentation of increases in emissions of hazardous air pollutants as required under (c) below for all installations not exempt under (a) below.

(a) Exempted Installations.

(i) The requirements of R307-410-5 do not apply to installations which are subject to or are scheduled to be subject to an emission standard promulgated under 42 U.S.C. 7412 at the time a notice of intent is submitted, except as defined in (ii) below. This exemption does not affect requirements otherwise applicable to the source, including requirements under R307-401.

(ii) The director may, upon making a written determination that the delay in the implementation of an emission standard under R307-214-2, that incorporates 40 CFR Part 63, might reasonably be expected to pose an unacceptable risk to public health, require, on a case-by-case basis, notice of intent documentation of emissions consistent with (c) below.

(A) The director will notify the source in writing of the preliminary decision to require some or all of the documentation as listed in (c) below.

(B) The source may respond in writing within thirty days of receipt of the notice, or such longer period as the director approves.

(C) In making a final determination, the director will document objective bases for the determination, which may include public information and studies, documented public comment, the applicant's written response, the physical and chemical properties of emissions, and ambient monitoring data.

(b) Lead Compounds Exemption. The requirements of R307-410-5 do not apply to emissions of lead compounds. Lead compounds shall be evaluated pursuant to requirements of R307-410-4.

(c) Submittal Requirements.

(i) Each applicant's notice of intent shall include:

(A) the estimated maximum pounds per hour emission rate increase from each affected installation,

(B) the type of release, whether the release flow is vertically restricted or unrestricted, the maximum release duration in minutes per hour, the release height measured from the ground, the height of any adjacent building or structure, the shortest distance between the release point and any area defined as "ambient air" under 40 CFR 50.1(e), effective July 1, 2005, which is hereby incorporated by reference for each installation for which the source proposes an emissions increase,

(C) the emission threshold value, calculated to be the

applicable threshold limit value - time weighted average (TLV-TWA) or the threshold limit value - ceiling (TLV-C) multiplied by the appropriate emission threshold factor listed in Table 2, except in the case of arsenic, benzene, beryllium, and ethylene oxide which shall be calculated using chronic emission threshold factors, and formaldehyde, which shall be calculated using an acute emission threshold factor. For acute hazardous air pollutant releases having a duration period less than one hour, this maximum pounds per hour emission rate shall be consistent with an identical operating process having a continuous release for a one-hour period.

TABLE 2
EMISSION THRESHOLD FACTORS FOR HAZARDOUS AIR POLLUTANTS
(cubic meter pounds per milligram hour)

VERTICALLY-RESTRICTED AND FUGITIVE EMISSION RELEASE POINTS

| DISTANCE TO PROPERTY BOUNDARY | ACUTE | CHRONIC | CARCINOGENIC |
|----------------------------------|-------|---------|--------------|
| 20 Meters or less | 0.038 | 0.051 | 0.017 |
| 21 - 50 Meters | 0.051 | 0.066 | 0.022 |
| 51 - 100 Meters | 0.092 | 0.123 | 0.041 |
| Beyond 100 Meters | 0.180 | 0.269 | 0.090 |

VERTICALLY-UNRESTRICTED EMISSION RELEASE POINTS

| DISTANCE TO PROPERTY BOUNDARY | ACUTE | CHRONIC | CARCINOGENIC |
|----------------------------------|-------|---------|--------------|
| 50 Meters or less | 0.154 | 0.198 | 0.066 |
| 51 - 100 Meters | 0.224 | 0.244 | 0.081 |
| Beyond 100 Meters | 0.310 | 0.368 | 0.123 |

(ii) A source with a proposed maximum pounds per hour emissions increase equal to or greater than the emissions threshold value shall include documentation of a comparison of the estimated ambient concentration of the proposed emissions with the applicable toxic screening level specified in (d) below.

(iii) A source with an estimated ambient concentration equal to or greater than the toxic screening level shall provide additional documentation regarding the impact of the proposed emissions. The director may require such documentation to include, but not be limited to:

(A) a description of symptoms and adverse health effects that can be caused by the hazardous air pollutant,

(B) the exposure conditions or dose that is sufficient to cause the adverse health effects,

(C) a description of the human population or other biological species which could be exposed to the estimated concentration,

(D) an evaluation of land use for the impacted areas,

(E) the environmental fate and persistency.

(d) Toxic Screening Levels and Averaging Periods.

(i) The toxic screening level for an acute hazardous air pollutant is 1/10th the value of the TLV-C, and the applicable averaging period shall be:

(A) one hour for emissions releases having a duration period of one hour or greater,

(B) one hour for emission releases having a duration period less than one hour if the emission rate used in the model is consistent with an identical operating process having a continuous release for a one-hour period or more, or

(C) the dispersion model's shortest averaging period when using an applicable model capable of estimating ambient concentrations for periods of less than one hour.

(ii) The toxic screening level for a chronic hazardous air pollutant is 1/30th the value of the TLV-TWA, and the applicable averaging period shall be 24 hours.

(iii) The toxic screening level for all carcinogenic hazardous air pollutants is 1/90 the value of the TLV-TWA, and the applicable averaging period shall be 24 hours, except in the case of formaldehyde which shall be evaluated consistent with (d)(i) above and arsenic, benzene, beryllium,

and ethylene oxide which shall be evaluated consistent with (d)(ii) above.

R307-410-6. Stack Heights and Dispersion Techniques.

(1) The degree of emission limitation required of any source for control of any air pollutant to include determinations made under R307-401, R307-403 and R307-405, must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique except as provided in (2) below. This does not restrict, in any manner, the actual stack height of any source.

(2) The provisions in R307-410-6 shall not apply to:

(a) stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources which were constructed or reconstructed, or for which major modifications were carried out after December 31, 1970; or

(b) coal-fired steam electric generating units subject to the provisions of Section 118 of the Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.

(3) The director may require the source owner or operator to provide a demonstration that the source stack height meets good engineering practice as required by R307-410-6. The director shall notify the public of the availability of the demonstration as part of the public notice process required by R307-401-7, Public Notice.

KEY: air pollution, modeling, hazardous air pollutant, stack height
December 15, 2015
Notice of Continuation May 15, 2017

19-2-104

R307. Environmental Quality, Air Quality.**R307-414. Permits: Fees for Approval Orders.****R307-414-1. Applicability and Definitions.**

The owner and operator of each new major source or major modification is required to pay a fee to the Department sufficient to cover the reasonable costs of reviewing and acting upon the notice of intent required pursuant to R307-401 for each new major source or major modification and implementing and enforcing requirements placed on such source by any approval order issued pursuant to such notice (not including any court costs associated with any enforcement action).

R307-414-2. Bills for Service.

(1) The director will provide the owner or operator of each new major source or major modification with an itemized bill for services upon issuance of an approval order. Such a bill for services shall represent the actual costs to the Department for reviewing and acting upon the notice of intent and shall be due and payable upon receipt.

(2) The director shall provide the owner or operator of each new major source or major modification with an itemized bill for services upon completion of an initial compliance inspection and/or source testing and/or any enforcement action brought about by the issuance of an approval order. Such bill shall represent the actual costs to the Department for the inspection, testing and/or enforcement action and shall be due and payable upon receipt.

KEY: air pollution, fee

December 7, 2000

19-2-104(3)(o)

Notice of Continuation May 15, 2017

R307. Environmental Quality, Air Quality.
R307-415. Permits: Operating Permit Requirements.
R307-415-1. Purpose.

Title V of the Clean Air Act (the Act) requires states to develop and implement a comprehensive air quality permitting program. Title V of the Act does not impose new substantive requirements. Title V does require that sources subject to R307-415 pay a fee and obtain a renewable operating permit that clarifies, in a single document, which requirements apply to a source and assures the source's compliance with those requirements. The purpose of R307-415 is to establish the procedures and elements of such a program.

R307-415-2. Authority.

(1) R307-415 is required by Title V of the Act and 40 Code of Federal Regulations (CFR) Part 70, and is adopted under the authority of Section 19-2-104.

(2) All references to 40 CFR in R307-415, except when otherwise specified, are effective as of the date referenced in R307-101-3.

R307-415-3. Definitions.

(1) The definitions contained in R307-101-2 apply throughout R307-415, except as specifically provided in (2).

(2) The following additional definitions apply to R307-415.

"Act" means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

"Administrator" means the Administrator of EPA or his or her designee.

"Affected States" are all states:

(a) Whose air quality may be affected and that are contiguous to Utah; or

(b) That are within 50 miles of the permitted source.

"Applicable requirement" means all of the following as they apply to emissions units in a Part 70 source, including requirements that have been promulgated or approved by the Board or by the EPA through rulemaking at the time of permit issuance but have future-effective compliance dates:

(a) Any standard or other requirement provided for in the State Implementation Plan;

(b) Any term or condition of any approval order issued under R307-401;

(c) Any standard or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources, including Section 111(d);

(d) Any standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, including any requirement concerning accident prevention under Section 112(r)(7) of the Act;

(e) Any standard or other requirement of the Acid Rain Program under Title IV of the Act or the regulations promulgated thereunder;

(f) Any requirements established pursuant to Section 504(b) of the Act, Monitoring and Analysis, or Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification;

(g) Any standard or other requirement governing solid waste incineration, under Section 129 of the Act;

(h) Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act;

(i) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in an operating permit;

(j) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources

permitted pursuant to Section 504(e) of the Act;

(k) Any standard or other requirement under rules adopted by the Board.

"Area source" means any stationary source that is not a major source.

"Designated representative" shall have the meaning given to it in Section 402 of the Act and in 40 CFR Section 72.2, and applies only to Title IV affected sources.

"Draft permit" means the version of a permit for which the director offers public participation under R307-415-7i or affected State review under R307-415-8(2).

"Emissions allowable under the permit" means a federally-enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit, including a work practice standard, or a federally-enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any hazardous air pollutant. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Act, Acid Deposition Control.

"Final permit" means the version of an operating permit issued by the director that has completed all review procedures required by R307-415-7a through 7i and R307-415-8.

"General permit" means an operating permit that meets the requirements of R307-415-6d.

"Hazardous Air Pollutant" means any pollutant listed by the Administrator as a hazardous air pollutant under Section 112(b) of the Act.

"Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraphs (a), (b), or (c) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be considered in determining whether a stationary source is a major source under this definition.

(a) A major source under Section 112 of the Act, Hazardous Air Pollutants, which is defined as: for pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of such hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well, with its associated equipment, and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

(b) A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit, 100 tons per year or more of any air pollutant including any major source of fugitive emissions or

fugitive dust of any such pollutant as determined by rule by the Administrator. The fugitive emissions or fugitive dust of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to any one of the following categories of stationary source:

- (i) Coal cleaning plants with thermal dryers;
 - (ii) Kraft pulp mills;
 - (iii) Portland cement plants;
 - (iv) Primary zinc smelters;
 - (v) Iron and steel mills;
 - (vi) Primary aluminum ore reduction plants;
 - (vii) Primary copper smelters;
 - (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
 - (ix) Hydrofluoric, sulfuric, or nitric acid plants;
 - (x) Petroleum refineries;
 - (xi) Lime plants;
 - (xii) Phosphate rock processing plants;
 - (xiii) Coke oven batteries;
 - (xiv) Sulfur recovery plants;
 - (xv) Carbon black plants, furnace process;
 - (xvi) Primary lead smelters;
 - (xvii) Fuel conversion plants;
 - (xviii) Sintering plants;
 - (xix) Secondary metal production plants;
 - (xx) Chemical process plants;
 - (xxi) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;
 - (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
 - (xxiii) Taconite ore processing plants;
 - (xxiv) Glass fiber processing plants;
 - (xxv) Charcoal production plants;
 - (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
 - (xxvii) Any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or Section 112 of the Act.
- (c) A major stationary source as defined in part D of Title I of the Act, Plan Requirements for Nonattainment Areas, including:
- (i) For ozone nonattainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;
 - (ii) For ozone transport regions established pursuant to Section 184 of the Act, sources with the potential to emit 50 tons per year or more of volatile organic compounds;
 - (iii) For carbon monoxide nonattainment areas that are classified as "serious" and in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tons per year or more of carbon monoxide;
 - (iv) For PM-10 particulate matter nonattainment areas classified as "serious," sources with the potential to emit 70 tons per year or more of PM-10 particulate matter.

"Non-Road Vehicle" means a vehicle that is powered by an internal combustion engine (including the fuel system),

that is not a self-propelled vehicle designed for transporting persons or property on a street or highway or a vehicle used solely for competition, and is not subject to standards promulgated under Section 111 of the Act (New Source Performance Standards) or Section 202 of the Act (Motor Vehicle Emission Standards).

"Operating permit" or "permit," unless the context suggests otherwise, means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to these rules.

"Part 70 Source" means any source subject to the permitting requirements of R307-415, as provided in R307-415-4.

"Permit modification" means a revision to an operating permit that meets the requirements of R307-415-7f.

"Permit revision" means any permit modification or administrative permit amendment.

"Permit shield" means the permit shield as described in R307-415-6f.

"Proposed permit" means the version of a permit that the director proposes to issue and forwards to EPA for review in compliance with R307-415-8.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) the operating facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million in second quarter 1980 dollars; or

(ii) the delegation of authority to such representative is approved in advance by the director;

(b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of R307-415, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency;

(d) For Title IV affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act, Acid Deposition Control, or the regulations promulgated thereunder are concerned;

(ii) The responsible official as defined above for any other purposes under R307-415.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any hazardous air pollutant.

"Title IV Affected source" means a source that contains one or more affected units as defined in Section 402 of the Act and in 40 CFR, Part 72.

R307-415-4. Applicability.

(1) Part 70 sources. All of the following sources are subject to the permitting requirements of R307-415, and unless exempted under (2) below are required to submit an application for an operating permit:

(a) Any major source;

(b) Any source, including an area source, subject to a standard, limitation, or other requirement under Section 111 of the Act, Standards of Performance for New Stationary

Sources;

(c) Any source, including an area source, subject to a standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under Section 112(r) of the Act, Prevention of Accidental Releases;

(d) Any Title IV affected source.

(2) Exemptions.

(a) All source categories that would be required to obtain an operating permit solely because they are subject to 40 CFR Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters, are exempted from the requirement to obtain a permit.

(b) All source categories that would be required to obtain an operating permit solely because they are subject to 40 CFR Part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation, are exempted from the requirement to obtain a permit. For Part 70 sources, demolition and renovation activities within the source under 40 CFR 61.145 shall be treated as a separate source for the purpose of R307-415.

(c) An area source subject to a regulation under Section 111 or 112 of the Act (42 U.S.C. 7411 or 7412) promulgated after July 21, 1992 is exempt from the obligation to obtain a Part 70 permit if:

(i) the regulation specifically exempts the area source category from the obligation to obtain a Part 70 permit, and

(ii) the source is not required to obtain a permit under R307-415-4(1) for a reason other than its status as an area source under the Section 111 or 112 regulation containing the exemption.

(3) Emissions units and Part 70 sources.

(a) For major sources, the director shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(b) For any area source subject to the operating permit program under R307-415-4(1), the director shall include in the permit all applicable requirements applicable to emissions units that cause the source to be subject to the operating permit program.

(4) Fugitive emissions. Fugitive emissions and fugitive dust from a Part 70 source shall be included in the permit application and the operating permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of source categories contained in the definition of major source.

(5) Control requirements. R307-415 does not establish any new control requirements beyond those established by applicable requirements, but may establish new monitoring, recordkeeping, and reporting requirements.

(6) Synthetic minors. An existing source that wishes to avoid designation as a major Part 70 source under R307-415, must obtain federally-enforceable conditions which reduce the potential to emit, as defined in R307-101-2, to less than the level established for a major Part 70 source. Such federally-enforceable conditions may be obtained by applying for and receiving an approval order under R307-401. The approval order shall contain periodic monitoring, recordkeeping, and reporting requirements sufficient to verify continuing compliance with the conditions which would reduce the source's potential to emit.

R307-415-5a. Permit Applications: Duty to Apply.

For each Part 70 source, the owner or operator shall submit a timely and complete permit application. A pre-application conference may be held at the request of a Part 70 source or the director to assist a source in submitting a

complete application.

(1) Timely application.

(a) Except as provided in the transition plan under (3) below, a timely application for a source applying for an operating permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program.

(b) Except as provided in the transition plan under (3) below, any Part 70 source required to meet the requirements under Section 112(g) of the Act, Hazardous Air Pollutant Modifications, or required to receive an approval order to construct a new source or modify an existing source under R307-401, shall file a complete application to obtain an operating permit or permit revision within 12 months after commencing operation of the newly constructed or modified source. Where an existing operating permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(c) For purposes of permit renewal, a timely application is one that is submitted by the renewal date established in the permit. The director shall establish a renewal date for each permit that is at least six months and not greater than 18 months prior to the date of permit expiration. A source may submit a permit application early for any reason, including timing of other application requirements.

(2) Complete application.

(a) To be deemed complete, an application must provide all information sufficient to evaluate the subject source and its application and to determine all applicable requirements pursuant to R307-415-5c. Applications for permit revision need supply such information only if it is related to the proposed change. A responsible official shall certify the submitted information consistent with R307-415-5d.

(b) Unless the director notifies the source in writing within 60 days of receipt of the application that an application is not complete, such application shall be deemed to be complete. A completeness determination shall not be required for minor permit modifications. If, while processing an application that has been determined or deemed to be complete, the director determines that additional information is necessary to evaluate or take final action on that application, the director may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in R307-415-7b(2), shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified in writing by the director.

(3) Transition Plan. A timely application under the transition plan is an application that is submitted according to the following schedule:

(a) All Title IV affected sources shall submit an operating permit application as well as an acid rain permit application in accordance with the date required by 40 CFR Part 72 effective April 11, 1995, Subpart C-Acid Rain Permit Applications;

(b) All major Part 70 sources operating as of July 10, 1995, except those described in (a) above, and all solid waste incineration units operating as of July 10, 1995, that are required to obtain an operating permit pursuant to 42 U.S.C. Sec. 7429(e) shall submit a permit application by October 10, 1995.

(c) Area sources.

(i) Except as provided in (c)(ii) and (c)(iii) below, each Part 70 source that is not a major source, a Title IV affected source, or a solid waste incineration unit required to obtain a permit pursuant to section 129(e) (42 U.S.C. 7429), is deferred from the obligation to submit an application until 12

months after the Administrator completes a rulemaking to determine how the program should be structured for area sources and the appropriateness of any permanent exemptions in addition to those provided in R307-415-4(2).

(ii) General Permits.

(A) The director shall develop general permits and application forms for area source categories.

(B) After a general permit has been issued for a source category, the director shall establish a due date for permit applications from all area sources in that source category.

(C) The director shall provide at least six months notice that the application is due for a source category.

(iii) Regulation-specific Requirements.

(A) If a regulation promulgated under Section 111 or 112 (42 U.S.C. 7411 or 7412) requires an area source category to submit an application for a Part 70 permit, each area source covered by the requirement must submit an application in accordance with the regulation.

(d) Extensions. The owner or operator of any Part 70 source may petition the director for an extension of the application due date for good cause. The due date for major Part 70 sources shall not be extended beyond July 10, 1996. The due date for an area source shall not be extended beyond twelve months after the due date in (c)(i) above.

(e) Application shield. If a source submits a timely and complete application under this transition plan, the application shield under R307-415-7b(2) shall apply to the source. If a source submits a timely application and is making sufficient progress toward correcting an application determined to be incomplete, the director may extend the application shield under R307-415-7b(2) to the source when the application is determined complete. The application shield shall not be extended to any major source that has not submitted a complete application by July 10, 1996, or to any area source that has not submitted a complete application within twelve months after the due date in (c)(i) above.

(4) Confidential information. Claims of confidentiality on information submitted to EPA may be made pursuant to applicable federal requirements. Claims of confidentiality on information submitted to the Department shall be made and governed according to Section 19-1-306. In the case where a source has submitted information to the Department under a claim of confidentiality that also must be submitted to the EPA, the director shall either submit the information to the EPA under Section 19-1-306, or require the source to submit a copy of such information directly to EPA.

(5) Late applications. An application submitted after the deadlines established in R307-415-5a shall be accepted for processing, but shall not be considered a timely application. Submitting an application shall not relieve a source of any enforcement actions resulting from submitting a late application.

R307-415-5b. Permit Applications: Duty to Supplement or Correct Application.

Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

R307-415-5c. Permit Applications: Standard Requirements.

Information as described below for each emissions unit at a Part 70 source shall be included in the application except

for insignificant activities and emissions levels under R307-415-5e. The operating permit application shall include the elements specified below:

(1) Identifying information, including company name, company address, plant name and address if different from the company name and address, owner's name and agent, and telephone number and names of plant site manager or contact.

(2) A description of the source's processes and products by Standard Industrial Classification Code, including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(a) A permit application shall describe the potential to emit of all air pollutants for which the source is major, and the potential to emit of all regulated air pollutants and hazardous air pollutants from any emissions unit, except for insignificant activities and emissions under R307-415-5e. For emissions of hazardous air pollutants under 1,000 pounds per year, the following ranges may be used in the application: 1-10 pounds per year, 11-499 pounds per year, 500-999 pounds per year. The mid-point of the range shall be used to calculate the emission fee under R307-415-9 for hazardous air pollutants reported as a range.

(b) Identification and description of all points of emissions described in (a) above in sufficient detail to establish the basis for fees and applicability of applicable requirements.

(c) Emissions rates in tons per year and in such terms as are necessary to establish compliance with applicable requirements consistent with the applicable standard reference test method.

(d) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(e) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(f) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants and hazardous air pollutants at the Part 70 source.

(g) Other information required by any applicable requirement, including information related to stack height limitations developed pursuant to Section 123 of the Act.

(h) Calculations on which the information in items (a) through (g) above is based.

(4) The following air pollution control requirements:

(a) Citation and description of all applicable requirements, and

(b) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce applicable requirements or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the director to define alternative operating scenarios identified by the source pursuant to R307-415-6a(9) or to define permit terms and conditions implementing emission trading under R307-415-7d(1)(c) or R307-415-6a(10).

(8) A compliance plan for all Part 70 sources that contains all of the following:

(a) A description of the compliance status of the source with respect to all applicable requirements.

(b) A description as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to

comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(c) A compliance schedule as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(iii) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(d) A schedule for submission of certified progress reports every six months, or more frequently if specified by the underlying applicable requirement or by the director, for sources required to have a schedule of compliance to remedy a violation.

(e) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for a Title IV affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, Acid Deposition Control, with regard to the schedule and methods the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including all of the following:

(a) A certification of compliance with all applicable requirements by a responsible official consistent with R307-415-5d and Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification.

(b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test method.

(c) A schedule for submission of compliance certifications during the permit term, to be submitted annually, or more frequently if specified by the underlying applicable requirement or by the director.

(d) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) Nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act, Acid Deposition Control.

R307-415-5d. Permit Applications: Certification.

Any application form, report, or compliance certification submitted pursuant to R307-415 shall contain certification by a responsible official of truth, accuracy, and completeness.

This certification and any other certification required under R307-415 shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

R307-415-5e. Permit Applications: Insignificant Activities and Emissions.

An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under R307-415-9. The following lists apply only to operating permit applications and do not affect the applicability of R307-415 to a source, do not affect the requirement that a source receive an approval order under R307-401, and do not relieve a source of the responsibility to comply with any applicable requirement.

(1) The following insignificant activities and emission levels are not required to be included in the permit application.

(a) Exhaust systems for controlling steam and heat that do not contain combustion products, except for systems that are subject to an emission standard under any applicable requirement.

(b) Air pollutants that are present in process water or non-contact cooling water as drawn from the environment or from municipal sources, or air pollutants that are present in compressed air or in ambient air, which may contain air pollution, used for combustion.

(c) Air conditioning or ventilating systems not designed to remove air pollutants generated by or released from other processes or equipment.

(d) Disturbance of surface areas for purposes of land development, not including mining operations or the disturbance of contaminated soil.

(e) Brazing, soldering, or welding operations.

(f) Aerosol can usage.

(g) Road and parking lot paving operations, not including asphalt, sand and gravel, and cement batch plants.

(h) Fire training activities that are not conducted at permanent fire training facilities.

(i) Landscaping, janitorial, and site housekeeping activities, including fugitive emissions from landscaping activities.

(j) Architectural painting.

(k) Office emissions, including cleaning, copying, and restrooms.

(l) Wet wash aggregate operations that are solely dedicated to this process.

(m) Air pollutants that are emitted from personal use by employees or other persons at the source, such as foods, drugs, or cosmetics.

(n) Air pollutants that are emitted by a laboratory at a facility under the supervision of a technically qualified individual as defined in 40 CFR 720.3(ee); however, this exclusion does not apply to specialty chemical production, pilot plant scale operations, or activities conducted outside the laboratory.

(o) Maintenance on petroleum liquid handling equipment such as pumps, valves, flanges, and similar pipeline devices and appurtenances when purged and isolated from normal operations.

(p) Portable steam cleaning equipment.

(q) Vents on sanitary sewer lines.

(r) Vents on tanks containing no volatile air pollutants, e.g., any petroleum liquid, not containing Hazardous Air Pollutants, with a Reid Vapor Pressure less than 0.05 psia.

(2) The following insignificant activities are exempted because of size or production rate and a list of such insignificant activities must be included in the application.

The director may require information to verify that the activity is insignificant.

(a) Emergency heating equipment, using coal, wood, kerosene, fuel oil, natural gas, or LPG for fuel, with a rated capacity less than 50,000 BTU per hour.

(b) Individual emissions units having the potential to emit less than one ton per year per pollutant of PM10 particulate matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, or carbon monoxide, unless combined emissions from similar small emission units located within the same Part 70 source are greater than five tons per year of any one pollutant. This does not include emissions units that emit air pollutants other than PM10 particulate matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, or carbon monoxide.

(c) Petroleum industry flares, not associated with refineries, combusting natural gas containing no hydrogen sulfide except in amounts less than 500 parts per million by weight, and having the potential to emit less than five tons per year per air pollutant.

(d) Road sweeping.

(e) Road salting and sanding.

(f) Unpaved public and private roads, except unpaved haul roads located within the boundaries of a stationary source. A haul road means any road normally used to transport people, livestock, product or material by any type of vehicle.

(g) Non-commercial automotive (car and truck) service stations dispensing less than 6,750 gal. of gasoline/month

(h) Hazardous Air Pollutants present at less than 1% concentration, or 0.1% for a carcinogen, in a mixture used at a rate of less than 50 tons per year, provided that a National Emission Standards for Hazardous Air Pollutants standard does not specify otherwise.

(i) Fuel-burning equipment, in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure, with a rated capacity of less than five million BTU per hour using no other fuel than natural gas, or LPG or other mixed gas distributed by a public utility.

(j) Comfort heating equipment (i.e., boilers, water heaters, air heaters and steam generators) with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6.

(3) Any person may petition the Board to add an activity or emission to the list of Insignificant Activities and Emissions which may be excluded from an operating permit application under (1) or (2) above upon a change in the rule and approval of the rule change by EPA. The petition shall include the following information:

(a) A complete description of the activity or emission to be added to the list.

(b) A complete description of all air pollutants that may be emitted by the activity or emission, including emission rate, air pollution control equipment, and calculations used to determine emissions.

(c) An explanation of why the activity or emission should be exempted from the application requirements for an operating permit.

(4) The director may determine on a case-by-case basis, insignificant activities and emissions for an individual Part 70 source that may be excluded from an application or that must be listed in the application, but do not require a detailed description. No activity with the potential to emit greater than two tons per year of any criteria pollutant, five tons of a combination of criteria pollutants, 500 pounds of any hazardous air pollutant or one ton of a combination of hazardous air pollutants shall be eligible to be determined an insignificant activity or emission under this subsection (4).

R307-415-6a. Permit Content: Standard Requirements.

Each permit issued under R307-415 shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance;

(a) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(b) The permit shall state that, where an applicable requirement is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, Acid Deposition Control, both provisions shall be incorporated into the permit.

(c) If the State Implementation Plan allows a determination of an alternative emission limit at a Part 70 source, equivalent to that contained in the State Implementation Plan, to be made in the permit issuance, renewal, or significant modification process, and the director elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) Permit duration. Except as provided by Section 19-2-109.1(3), the director shall issue permits for a fixed term of five years.

(3) Monitoring and related recordkeeping and reporting requirements.

(a) Each permit shall contain the following requirements with respect to monitoring:

(i) All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including 40 CFR Part 64 and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) or 504(b) of the Act. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

(ii) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, which may consist of recordkeeping designed to serve as monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to (3)(c) below. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph;

(iii) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(b) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(i) Records of required monitoring information that include the following:

(A) The date, place as defined in the permit, and time of sampling or measurements;

(B) The dates analyses were performed;

(C) The company or entity that performed the analyses;

(D) The analytical techniques or methods used;

(E) The results of such analyses;

(F) The operating conditions as existing at the time of sampling or measurement;

(ii) Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(c) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require all of the following:

(i) Submittal of reports of any required monitoring every six months, or more frequently if specified by the underlying applicable requirement or by the director. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with R307-415-5d.

(ii) Prompt reporting of deviations from permit requirements including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The director shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements. Deviations from permit requirements due to unavoidable breakdowns shall be reported according to the unavoidable breakdown provisions of R307-107. The director may establish more stringent reporting deadlines if required by the applicable requirement.

(d) Claims of confidentiality shall be governed by Section 19-1-306.

(4) Acid Rain Allowances. For Title IV affected sources, a permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.

(a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the Acid Rain Program, provided that such increases do not require a permit revision under any other applicable requirement.

(b) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(c) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Standard provisions stating the following:

(a) The permittee must comply with all conditions of the operating permit. Any permit noncompliance constitutes a violation of the Air Conservation Act and is grounds for any of the following: enforcement action; permit termination; revocation and reissuance; modification; denial of a permit renewal application.

(b) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(c) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition, except as provided under R307-415-7f(1)

for minor permit modifications.

(d) The permit does not convey any property rights of any sort, or any exclusive privilege.

(e) The permittee shall furnish to the director, within a reasonable time, any information that the director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the director copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality.

(7) Emission fee. A provision to ensure that a Part 70 source pays fees to the director consistent with R307-415-9.

(8) Emissions trading. A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(9) Alternate operating scenarios. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the director. Such terms and conditions:

(a) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(b) Shall extend the permit shield to all terms and conditions under each such operating scenario; and

(c) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of R307-415.

(10) Emissions trading. Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

(a) Shall include all terms required under R307-415-6a and 6c to determine compliance;

(b) Shall extend the permit shield to all terms and conditions that allow such increases and decreases in emissions; and

(c) Must meet all applicable requirements and requirements of R307-415.

R307-415-6b. Permit Content: Federally-Enforceable Requirements.

(1) All terms and conditions in an operating permit, including any provisions designed to limit a source's potential to emit, are enforceable by EPA and citizens under the Act.

(2) Notwithstanding (1) above, applicable requirements that are not required by the Act or implementing federal regulations shall be included in the permit but shall be specifically designated as being not federally enforceable under the Act and shall be designated as "state requirements." Terms and conditions so designated are not subject to the requirements of R307-415-7a through 7i and R307-415-8 that apply to permit review by EPA and affected states. The director shall determine which conditions are "state requirements" in each operating permit.

R307-415-6c. Permit Content: Compliance Requirements.

All operating permits shall contain all of the following elements with respect to compliance:

(1) Consistent with R307-415-6a(3), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance

with the terms and conditions of the permit. Any document, including any report, required by an operating permit shall contain a certification by a responsible official that meets the requirements of R307-415-5d;

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the director or an authorized representative to perform any of the following:

(a) Enter upon the permittee's premises where a Part 70 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;

(d) Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements;

(e) Claims of confidentiality on the information obtained during an inspection shall be made pursuant to Section 19-1-306;

(3) A schedule of compliance consistent with R307-415-5c(8);

(4) Progress reports consistent with an applicable schedule of compliance and R307-415-5c(8) to be submitted semiannually, or at a more frequent period if specified in the applicable requirement or by the director. Such progress reports shall contain all of the following:

(a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved;

(b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include all of the following:

(a) Annual submission of compliance certification, or more frequently if specified in the applicable requirement or by the director;

(b) In accordance with R307-415-6a(3), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(c) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may reference the permit or previous reports, as applicable):

(i) The identification of each term or condition of the permit that is the basis of the certification;

(ii) The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under R307-415-6a(3). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;

(iii) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in (ii) above. The

certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred; and

(iv) Such other facts as the director may require to determine the compliance status of the source;

(d) A requirement that all compliance certifications be submitted to the EPA as well as to the director;

(e) Such additional requirements as may be specified pursuant to Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification, and Section 504(b) of the Act, Monitoring and Analysis;

(6) Such other provisions as the director may require.

R307-415-6d. Permit Content: General Permits.

(1) The director may, after notice and opportunity for public participation provided under R307-415-7i, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other operating permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the director shall grant the conditions and terms of the general permit. Notwithstanding the permit shield, the source shall be subject to enforcement action for operation without an operating permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be issued for Title IV affected sources under the Acid Rain Program unless otherwise provided in regulations promulgated under Title IV of the Act.

(2) Part 70 sources that would qualify for a general permit must apply to the director for coverage under the terms of the general permit or must apply for an operating permit consistent with R307-415-5a through 5e. The director may, in the general permit, provide for applications which deviate from the requirements of R307-415-5a through 5e, provided that such applications meet the requirements of Title V of the Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under R307-415-7i, the director may grant a source's request for authorization to operate under a general permit, but such a grant to a qualified source shall not be a final permit action until the requirements of R307-415-5a through 5e have been met.

R307-415-6e. Permit Content: Temporary Sources.

The owner or operator of a permitted source may temporarily relocate the source for a period not to exceed that allowed by R307-401-7. A permit modification is required to relocate the source for a period longer than that allowed by R307-401-7. No Title IV affected source may be permitted as a temporary source. Permits for temporary sources shall include all of the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator receive approval to relocate under R307-401-7 before operating at the new location;

(3) Conditions that assure compliance with all other provisions of R307-415.

R307-415-6f. Permit Content: Permit Shield.

(1) Except as provided in R307-415, the director shall include in each operating permit a permit shield provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of

the date of permit issuance, provided that:

(a) Such applicable requirements are included and are specifically identified in the permit; or

(b) The director, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) An operating permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this paragraph or in any operating permit shall alter or affect any of the following:

(a) The emergency provisions of Section 19-1-202 and Section 19-2-112, and the provisions of Section 303 of the Act, Emergency Orders, including the authority of the Administrator under that Section;

(b) The liability of an owner or operator of a source for any violation of applicable requirements under Section 19-2-107(2)(g) and Section 19-2-110 prior to or at the time of permit issuance;

(c) The applicable requirements of the Acid Rain Program, consistent with Section 408(a) of the Act;

(d) The ability of the director to obtain information from a source under Section 19-2-120, and the ability of EPA to obtain information from a source under Section 114 of the Act, Inspection, Monitoring, and Entry.

R307-415-6g. Permit Content: Emergency Provision.

(1) Emergency. An "emergency" is any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of (3) below are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An emergency occurred and that the permittee can identify the causes of the emergency;

(b) The permitted facility was at the time being properly operated;

(c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(d) The permittee submitted notice of the emergency to the director within two working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of R307-415-6a(3)(c)(ii). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

R307-415-7a. Permit Issuance: Action on Application.

(1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(a) The director has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit;

(b) Except for modifications qualifying for minor permit modification procedures under R307-415-7f(1) and (2), the director has complied with the requirements for public participation under R307-415-7i;

(c) The director has complied with the requirements for notifying and responding to affected States under R307-415-8(2);

(d) The conditions of the permit provide for compliance with all applicable requirements and the requirements of R307-415;

(e) EPA has received a copy of the proposed permit and any notices required under R307-415-8(1) and (2), and has not objected to issuance of the permit under R307-415-8(3) within the time period specified therein.

(2) Except as provided under the initial transition plan provided for under R307-415-5a(3) or under regulations promulgated under Title IV of the Act for the permitting of Title IV affected sources under the Acid Rain Program, the director shall take final action on each permit application, including a request for permit modification or renewal, within 18 months after receiving a complete application.

(3) The director shall promptly provide notice to the applicant of whether the application is complete. Unless the director requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. A completeness determination shall not be required for minor permit modifications.

(4) The director shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to the applicable statutory or regulatory provisions. The director shall send this statement to EPA and to any other person who requests it.

(5) The submittal of a complete application shall not affect the requirement that any source have an approval order under R307-401.

R307-415-7b. Permit Issuance: Requirement for a Permit.

(1) Except as provided in R307-415-7d and R307-415-7f(1)(f) and 7f(2)(e), no Part 70 source may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued under these rules.

(2) Application shield. If a Part 70 source submits a timely and complete application for permit issuance, including for renewal, the source's failure to have an operating permit is not a violation of R307-415 until the director takes final action on the permit application. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to R307-415-7a(3), and as required by R307-415-5a(2), the applicant fails to submit by the deadline specified in writing by the director any additional information identified as being needed to process the application.

R307-415-7c. Permit Renewal and Expiration.

(1) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected State and EPA review, that apply to initial permit issuance.

(2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has

been submitted consistent with R307-415-7b and R307-415-5a(1)(c).

(3) If a timely and complete renewal application is submitted consistent with R307-415-7b and R307-415-5a(1)(c) and the director fails to issue or deny the renewal permit before the end of the term of the previous permit, then all of the terms and conditions of the permit, including the permit shield, shall remain in effect until renewal or denial.

R307-415-7d. Permit Revision: Changes That Do Not Require a Revision.

(1) Operational Flexibility.

(a) A Part 70 source may make changes that contravene an express permit term if all of the following conditions have been met:

(i) The source has obtained an approval order, or has met the exemption requirements under R307-401;

(ii) The change would not violate any applicable requirements or contravene any federally enforceable permit terms and conditions for monitoring, including test methods, recordkeeping, reporting, or compliance certification requirements;

(iii) The changes are not modifications under any provision of Title I of the Act; and the changes do not exceed the emissions allowable under the permit, whether expressed therein as a rate of emissions or in terms of total emissions.

(iv) For each such change, the source shall provide written notice to the director and send a copy of the notice to EPA at least seven days before implementing the proposed change. The seven-day requirement may be waived by the director in the case of an emergency. The written notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change. The permit shield shall not apply to these changes. The source, the EPA, and the director shall attach each such notice to their copy of the relevant permit.

(b) Emission trading under the State Implementation Plan. Permitted sources may trade increases and decreases in emissions in the permitted facility, where the State Implementation Plan provides for such emissions trades, without requiring a permit revision provided the change is not a modification under any provision of Title I of the Act, the change does not exceed the emissions allowable under the permit, and the source notifies the director and the EPA at least seven days in advance of the trade. This provision is available in those cases where the permit does not already provide for such emissions trading.

(i) The written notification required above shall include such information as may be required by the provision in the State Implementation Plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the State Implementation Plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the State Implementation Plan and that provide for the emissions trade.

(ii) The permit shield shall not extend to any change made under this paragraph. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the State Implementation Plan authorizing the emissions trade.

(c) If a permit applicant requests it, the director shall issue permits that contain terms and conditions, including all terms required under R307-415-6a and 6c to determine compliance, allowing for the trading of emissions increases

and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. Such changes in emissions shall not be allowed if the change is a modification under any provision of Title I of the Act or the change would exceed the emissions allowable under the permit. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The director shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements, and shall require the source to notify the director and the EPA in writing at least seven days before making the emission trade.

(i) The written notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(ii) The permit shield shall extend to terms and conditions that allow such increases and decreases in emissions.

(2) Off-permit changes. A Part 70 source may make changes that are not addressed or prohibited by the permit without a permit revision, unless such changes are subject to any requirements under Title IV of the Act or are modifications under any provision of Title I of the Act.

(a) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(b) Sources must provide contemporaneous written notice to the director and EPA of each such change, except for changes that qualify as insignificant under R307-415-5e. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirements that would apply as a result of the change.

(c) The change shall not qualify for the permit shield.

(d) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(e) The off-permit provisions do not affect the requirement for a source to obtain an approval order under R307-401.

R307-415-7e. Permit Revision: Administrative Amendments.

(1) An "administrative permit amendment" is a permit revision that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(c) Requires more frequent monitoring or reporting by the permittee;

(d) Allows for a change in ownership or operational control of a source where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the director;

(e) Incorporates into the operating permit the requirements from an approval order issued under R307-401, provided that the procedures for issuing the approval order were substantially equivalent to the permit issuance or

modification procedures of R307-415-7a through 7i and R307-415-8, and compliance requirements are substantially equivalent to those contained in R307-415-6a through 6g;

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(3) Administrative permit amendment procedures. An administrative permit amendment may be made by the director consistent with the following:

(a) The director shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that the director designates any such permit revisions as having been made pursuant to this paragraph. The director shall take final action on a request for a change in ownership or operational control of a source under (1)(d) above within 30 days of receipt of a request.

(b) The director shall submit a copy of the revised permit to EPA.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(4) The director shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield for administrative permit amendments made pursuant to (1)(e) above which meet the relevant requirements of R307-415-6a through 6g, 7 and 8 for significant permit modifications.

R307-415-7f. Permit Revision: Modification.

The permit modification procedures described in R307-415-7f shall not affect the requirement that a source obtain an approval order under R307-401 before constructing or modifying a source of air pollution. A modification not subject to the requirements of R307-401 shall not require an approval order in addition to the permit modification as described in this section. A permit modification is any revision to an operating permit that cannot be accomplished under the program's provisions for administrative permit amendments under R307-415-7e. Any permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(1) Minor permit modification procedures.

(a) Criteria. Minor permit modification procedures may be used only for those permit modifications that:

(i) Do not violate any applicable requirement or require an approval order under R307-401;

(ii) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(iii) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(iv) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such term or condition would include a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I or an alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act, Early Reduction; and

(v) Are not modifications under any provision of Title I of the Act.

(b) Notwithstanding (1)(a) above and (2)(a) below,

minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the State Implementation Plan or an applicable requirement.

(c) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of R307-415-5c and shall include all of the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) The source's suggested draft permit;

(iii) Certification by a responsible official, consistent with R307-415-5d, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used;

(iv) Completed forms for the director to use to notify EPA and affected States as required under R307-415-8.

(d) EPA and affected State notification. Within five working days of receipt of a complete permit modification application, the director shall notify EPA and affected States of the requested permit modification. The director promptly shall send any notice required under R307-415-8(2)(b) to EPA.

(e) Timetable for issuance. The director may not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the director that EPA will not object to issuance of the permit modification, whichever is first. Within 90 days of the director's receipt of an application under minor permit modification procedures or 15 days after the end of EPA's 45-day review period under R307-415-8(3), whichever is later, the director shall:

(i) Issue the permit modification as proposed;

(ii) Deny the permit modification application;

(iii) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(iv) Revise the draft permit modification and transmit to EPA the new proposed permit modification as required by R307-415-8(1).

(f) Source's ability to make change. A Part 70 source may make the change proposed in its minor permit modification application immediately after it files such application if the source has received an approval order under R307-401 or has met the approval order exemption requirements under R307-413-1 through 6. After the source makes the change allowed by the preceding sentence, and until the director takes any of the actions specified in (1)(e)(i) through (iii) above, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(g) Permit shield. The permit shield under R307-415-6f shall not extend to minor permit modifications.

(2) Group processing of minor permit modifications. Consistent with this paragraph, the director may modify the procedure outlined in (1) above to process groups of a source's applications for certain modifications eligible for minor permit modification processing.

(a) Criteria. Group processing of modifications may be used only for those permit modifications:

(i) That meet the criteria for minor permit modification procedures under (1)(a) above; and

(ii) That collectively are below the following threshold level: 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested, 20 percent of the applicable definition of major source in R307-415-3, or five tons per year, whichever is least.

(b) Application. An application requesting the use of group processing procedures shall meet the requirements of R307-415-5c and shall include the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(ii) The source's suggested draft permit.

(iii) Certification by a responsible official, consistent with R307-415-5d, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

(iv) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under R307-415-7e(2)(a)(ii).

(v) Certification, consistent with R307-415-5d, that the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

(vi) Completed forms for the director to use to notify EPA and affected States as required under R307-415-8.

(c) EPA and affected State notification. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under (2)(a)(ii) above, whichever is earlier, the director shall notify EPA and affected States of the requested permit modifications. The director shall send any notice required under R307-415-8(2)(b) to EPA.

(d) Timetable for issuance. The provisions of (1)(e) above shall apply to modifications eligible for group processing, except that the director shall take one of the actions specified in (1)(e)(i) through (iv) above within 180 days of receipt of the application or 15 days after the end of EPA's 45-day review period under R307-415-8(3), whichever is later.

(e) Source's ability to make change. The provisions of (1)(f) above shall apply to modifications eligible for group processing.

(f) Permit shield. The provisions of (1)(g) above shall also apply to modifications eligible for group processing.

(3) Significant modification procedures.

(a) Criteria. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with R307-415 that would render existing permit compliance terms and conditions irrelevant.

(b) Significant permit modifications shall meet all requirements of R307-415, including those for applications, public participation, review by affected States, and review by EPA, as they apply to permit issuance and permit renewal. The director shall complete review on the majority of significant permit modifications within nine months after receipt of a complete application.

R307-415-7g. Permit Revision: Reopening for Cause.

(1) Each issued permit shall include provisions specifying the conditions under which the permit will be

reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(a) New applicable requirements become applicable to a major Part 70 source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the terms and conditions of the permit have been extended pursuant to R307-415-7c(3).

(b) Additional requirements, including excess emissions requirements, become applicable to an Title IV affected source under the Acid Rain Program. Upon approval by EPA, excess emissions offset plans shall be deemed to be incorporated into the permit.

(c) The director or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(d) EPA or the director determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(e) Additional applicable requirements are to become effective before the renewal date of the permit and are in conflict with existing permit conditions.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(3) Reopenings under (1) above shall not be initiated before a notice of such intent is provided to the Part 70 source by the director at least 30 days in advance of the date that the permit is to be reopened, except that the director may provide a shorter time period in the case of an emergency.

R307-415-7h. Permit Revision: Reopenings for Cause by EPA.

The director shall, within 90 days after receipt of notification that EPA finds that cause exists to terminate, modify or revoke and reissue a permit, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The director may request a 90-day extension if a new or revised permit application is necessary or if the director determines that the permittee must submit additional information.

R307-415-7i. Public Participation.

The director shall provide for public notice, comment and an opportunity for a hearing on initial permit issuance, significant modifications, reopenings for cause, and renewals, including the following procedures:

(1) Notice shall be given: by publication in a newspaper of general circulation in the area where the source is located; to persons on a mailing list developed by the director, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public.

(2) The notice shall identify the Part 70 source; the name and address of the permittee; the name and address of the director; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan or compliance and monitoring certification, and all other materials available to the director that are

relevant to the permit decision; a brief description of the comment procedures; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled.

(3) The director shall provide such notice and opportunity for participation by affected States as is provided for by R307-415-8.

(4) Timing. The director shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(5) The director shall keep a record of the commenters and also of the issues raised during the public participation process, and such records shall be available to the public and to EPA.

R307-415-8. Permit Review by EPA and Affected States.

(1) Transmission of information to EPA.

(a) The director shall provide to EPA a copy of each permit application, including any application for permit modification, each proposed permit, and each final operating permit, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within such category. The applicant may be required by the director to provide a copy of the permit application, including the compliance plan, directly to EPA. Upon agreement with EPA, the director may submit to EPA a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with EPA's national database management system.

(b) The director shall keep for five years such records and submit to EPA such information as EPA may reasonably require to ascertain whether the Operating Permit Program complies with the requirements of the Act or of 40 CFR Part 70.

(2) Review by affected States.

(a) The director shall give notice of each draft permit to any affected State on or before the time that the director provides this notice to the public under R307-415-7i, except to the extent R307-415-7f(1) or (2) requires the timing to be different, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within such category.

(b) The director, as part of the submittal of the proposed permit to EPA, or as soon as possible after the submittal for minor permit modification procedures allowed under R307-415-7f(1) or (2), shall notify EPA and any affected State in writing of any refusal by the director to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the director's reasons for not accepting any such recommendation. The director is not required to accept recommendations that are not based on applicable requirements or the requirements of R307-415.

(3) EPA objection. If EPA objects to the issuance of a permit in writing within 45 days of receipt of the proposed permit and all necessary supporting information, then the director shall not issue the permit. If the director fails, within 90 days after the date of an objection by EPA, to revise and submit a proposed permit in response to the objection, EPA may issue or deny the permit in accordance with the requirements of the Federal program promulgated under Title V of the Act.

(4) Public petitions to EPA. If EPA does not object in writing under R307-415-8(3), any person may petition EPA under the provisions of 40 CFR 70.8(d) within 60 days after

the expiration of EPA's 45-day review period to make such objection. If EPA objects to the permit as a result of a petition, the director shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the director has issued a permit prior to receipt of an EPA objection under this paragraph, EPA may modify, terminate, or revoke such permit, consistent with the procedures in 40 CFR 70.7(g) except in unusual circumstances, and the director may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(5) Prohibition on default issuance. The director shall not issue an operating permit, including a permit renewal or modification, until affected States and EPA have had an opportunity to review the proposed permit as required under this Section.

R307-415-9. Fees for Operating Permits.

(1) Definitions. The following definition applies only to R307-415-9: "Allowable emissions" are emissions based on the potential to emit stated by the director in an approval order, the State Implementation Plan or an operating permit.

(2) Applicability. As authorized by Section 19-2-109.1, all Part 70 sources must pay an annual fee, based on annual emissions of all chargeable pollutants.

(a) Any Title IV affected source that has been designated as a "Phase I Unit" in a substitution plan approved by the Administrator under 40 CFR Section 72.41 shall be exempted from the requirement to pay an emission fee from January 1, 1995 to December 31, 1999.

(3) Calculation of Annual Emission Fee for a Part 70 Source.

(a) The emission fee shall be calculated for all chargeable pollutants emitted from a Part 70 source, even if only one unit or one chargeable pollutant triggers the applicability of R307-415 to the source.

(i) Fugitive emissions and fugitive dust shall be counted when determining the emission fee for a Part 70 source.

(ii) An emission fee shall not be charged for emissions of any amount of a chargeable pollutant if the emissions are already accounted for within the emissions of another chargeable pollutant.

(iii) An emission fee shall not be charged for emissions of any one chargeable pollutant from any one Part 70 source in excess of 4,000 tons per year.

(iv) Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be counted when calculating chargeable emissions for a Part 70 source.

(b) The emission fee for an existing source prior to the issuance of an operating permit, shall be based on the most recent emission inventory available unless a Part 70 source elected, prior to July 1, 1992, to base the fee for one or more pollutants on allowable emissions established in an approval order or the State Implementation Plan.

(c) The emission fee after the issuance or renewal of an operating permit shall be based on the most recent emission inventory available unless a Part 70 source elects, prior to the issuance or renewal of the permit, to base the fee for one or more chargeable pollutants on allowable emissions for the entire term of the permit.

(d) When a new Part 70 source begins operating, it shall pay an emission fee for that fiscal year, prorated from the date the source begins operating. The emission fee for a new Part 70 source shall be based on allowable emissions until that

source has been in operation for a full calendar year, and has submitted an inventory of actual emissions. If a new Part 70 source is not billed in the first billing cycle of its operation, the emission fee shall be calculated using the emissions that would have been used had the source been billed at that time. This fee shall be in addition to any subsequent emission fees.

(e) When a Part 70 source is no longer subject to Part 70, the emission fee shall be prorated to the date that the source ceased to be subject to Part 70. If the Part 70 source has already paid an emission fee that is greater than the prorated fee, the balance will be refunded.

(i) If that Part 70 source again becomes subject to the emission fee requirements, it shall pay an emission fee for that fiscal year prorated from the date the source again became subject to the emission fee requirements. The fee shall be based on the emission inventory during the last full year of operation. The emission fee shall continue to be based on actual emissions reported for the last full calendar year of operation until that source has been in operation for a full calendar year and has submitted an updated inventory of actual emissions.

(ii) If a Part 70 source has chosen to base the emission fee on allowable emissions, then the prorated fee shall be calculated using allowable emissions.

(f) Modifications. The method for calculating the emission fee for a source shall not be affected by modifications at that source, unless the source demonstrates to the director that another method for calculating chargeable emissions is more representative of operations after the modification has been made.

(g) The director may presume that potential emissions of any chargeable pollutant for the source are equivalent to the actual emissions for the source if recent inventory data are not available.

(4) Collection of Fees.

(a) The emission fee is due on October 1 of each calendar year or 45 days after the source has received notice of the amount of the fee, whichever is later.

(b) The director may require any person who fails to pay the annual emission fee by the due date to pay interest on the fee and a penalty under 19-2-109.1(7)(a).

(c) A person may contest an emission fee assessment, or associated penalty, under 19-2-109.1(8).

KEY: air pollution, greenhouse gases, operating permit, emission fees

February 4, 2016

19-2-109.1

Notice of Continuation May 15, 2017

19-2-104

R307. Environmental Quality, Air Quality.**R307-417. Permits: Acid Rain Sources.****R307-417-1. Part 72 Requirements.**

The provisions of 40 CFR Part 72, effective as of the date referenced in R307-101-3, for purposes of implementing an acid rain program that meets the requirements of Title IV of the Clean Air Act, are incorporated into these rules by reference. The term "permitting authority" shall mean the director, and the term "Administrator" shall mean the Administrator of the Environmental Protection Agency. If the provisions or requirements of 40 CFR Part 72 conflict with or are not included in R307-415, Permits: Operating Permit Requirements, provisions and requirements of 40 CFR Part 72 shall apply and take precedence.

R307-417-2. Part 75 Requirements.

The provisions of 40 CFR Part 75, effective as of the date referenced in R307-101-3, for purposes of implementing an acid rain program that meets the requirements of Title IV of the Clean Air Act, are incorporated into these rules by reference. The term "permitting authority" shall mean the director, and the term "Administrator" shall mean the Administrator of the Environmental Protection Agency. If the provisions or requirements of 40 CFR Part 75 conflict with or are not included in R307-415, Operating Permit Requirements, provisions and requirements of 40 CFR Part 75 shall apply and take precedence.

R307-417-3. Part 76 Requirements.

The provisions of 40 CFR Part 76, effective as of the date referenced in R307-101-3, for purposes of implementing an acid rain program that meets the requirements of Title IV of the Clean Air Act, are incorporated into these rules by reference. The term "permitting authority" shall mean the director, and the term "Administrator" shall mean the Administrator of the Environmental Protection Agency. If the provisions or requirements of 40 CFR Part 76 conflict with or are not included in R307-415, Operating Permit Requirements, provisions and requirements of 40 CFR Part 76 shall apply and take precedence.

KEY: acid rain, air quality, permitting authority, operating permit

February 8, 2008

19-2-101

Notice of Continuation May 15, 2017

19-2-104(3)(q)

R307. Environmental Quality, Air Quality.**R307-420. Permits: Ozone Offset Requirements in Davis and Salt Lake Counties.****R307-420-1. Purpose.**

The purpose of R307-420 is to maintain the offset provisions of the nonattainment area new source review permitting program in Salt Lake and Davis Counties after the area is redesignated to attainment for ozone. R307-420 also establishes more stringent offset requirements for nitrogen oxides that may be triggered as a contingency measure under the ozone maintenance plan.

R307-420-2. Definitions.

Except as provided in R307-420-2, the definitions in R307-403-1 apply to R307-420.

"Major Source" means:

(1)(a) any stationary source of air pollutants which emits, or has the potential to emit, fifty tons per year or more of volatile organic compounds; or

(b) any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of nitrogen oxides; or

(c) any physical change that would occur at a source not qualifying under (1)(a) or (b) as a major source, if the change would constitute a major source by itself.

(2) The fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- (a) Coal cleaning plants (with thermal dryers);
- (b) Kraft pulp mills;
- (c) Portland cement plants;
- (d) Primary zinc smelters;
- (e) Iron and steel mills;
- (f) Primary aluminum ore reduction plants;
- (g) Primary copper smelters;
- (h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (i) Hydrofluoric, sulfuric, or nitric acid plants;
- (j) Petroleum refineries;
- (k) Lime plants;
- (l) Phosphate rock processing plants;
- (m) Coke oven batteries;
- (n) Sulfur recovery plants;
- (o) Carbon black plants (furnace process);
- (p) Primary lead smelters;
- (q) Fuel conversion plants;
- (r) Sintering plants;
- (s) Secondary metal production plants;
- (t) Chemical process plants;
- (u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412 (section 111 or 112 of the federal Clean Air Act).

"Significant" means, for the purposes of determining what is a significant emission increase or a significant net emission increase and therefore a major modification, a rate of emissions that would equal or exceed any of the following rates:

- (1) for volatile organic compounds, 25 tons per year,

- (2) for nitrogen oxides, 40 tons per year.

R307-420-3. Applicability.

(1) Nitrogen Oxides. Effective August 18, 1997, any new major source or major modification of nitrogen oxides in Davis County or Salt Lake County shall offset the proposed increase in nitrogen oxide emissions by a ratio of 1.15:1 before the director may issue an approval order to construct, modify, or relocate under R307-401.

(2) Volatile Organic Compounds. Effective December 2, 1998 any new major source or major modification of volatile organic compounds in Davis County or Salt Lake County shall offset the proposed increase in volatile organic compound emissions by a ratio of 1.2:1 before the director may issue an approval order to construct, modify, or relocate under R307-401.

(3) The applicability provisions in R307-403-2(1)(a) through (f) and R307-403-2(2) through (7) apply in R307-420 for the limited purpose of determining whether a modification is a major modification for volatile organic compounds or nitrogen oxides. Emissions of other regulated air pollutants shall not be considered in this determination.

R307-420-4. General Requirements.

(1) All emission offsets shall meet the general requirements for calculating and banking emission offsets that are established in R307-403-4, R307-403-7 and R307-403-8.

(2) Emission offset credits generated in Davis County or Salt Lake County may be used in either county.

(3) Offsets may not be traded between volatile organic compounds and nitrogen oxides.

R307-420-5. Contingency Measure: Offsets for Oxides of Nitrogen.

If the nitrogen oxide offset contingency measure described in Section IX, Part D.2.h(3) of the state implementation plan is triggered, the following conditions shall apply in Davis County and Salt Lake County.

(1) Paragraph (1)(b) in the term "major source," which is defined in R307-420-2, shall be changed to read: any stationary source of air pollutants which emits, or has the potential to emit, fifty tons per year or more of nitrogen oxides.

(2) The nitrogen dioxide level that is included in the term "significant," which is defined in R307-420-2, shall be changed from 40 tons per year to 25 tons per year.

(3) The emission offset ratio shall be 1.2:1 for nitrogen oxides.

KEY: air pollution, ozone, offset**July 1, 2013****19-2-104****Notice of Continuation May 15, 2017****19-2-108**

R307. Environmental Quality, Air Quality.**R307-421. Permits: PM10 Offset Requirements in Salt Lake County and Utah County.****R307-421-1. Purpose.**

The purpose of R307-421 is to require emission reductions from existing sources to offset emission increases from new or modified sources of PM10 precursors in Salt Lake and Utah Counties. The emission offset will minimize growth of PM10 precursors to ensure that these areas will continue to maintain the PM10 and PM2.5 national ambient air quality standards.

R307-421-2. Applicability.

(1) This rule applies to new or modified sources of sulfur dioxide or oxides of nitrogen that are located in or impact Salt Lake County or Utah County.

(2) A new or modified source shall be considered to impact an area if the modeled impact is greater than 1.0 microgram/cubic meter for a one-year averaging period or 3.0 micrograms/cubic meter for a 24-hour averaging period for sulfur dioxide or nitrogen dioxide.

R307-421-3. Offset Requirements.

(1) The owner or operator of any new source that has the potential to emit, or any modified source that would increase sulfur dioxide or oxides of nitrogen in an amount equal to or greater than the levels in (a) and (b) below shall obtain an enforceable emission offset as defined in (a) and (b) below.

(a) For a total of 50 tons/year or greater, an emission offset of 1.2:1 of the emission increase is required.

(b) For a total of 25 tons/year or greater but less than 50 tons/year, an emission offset of 1:1 of the emission increase is required.

R307-421-4. General Requirements.

(1) All emission offsets shall meet the general requirements for calculating and banking emission offsets that are established in R307-403-4, R307-403-7 and R307-403-8.

(2) Emission offsets shall be used only in the county where the credits are generated. In the case of sources located outside of Salt Lake or Utah Counties, the offsets shall be generated in the county where the modeled impact in R307-421-2(2) occurs.

(3) Emission offsets shall not be traded between pollutants.

R307-421-5. Transition Provision.

This rule will become effective in each county on the day that the EPA redesignates the county to attainment for PM10. The PM10 nonattainment area offset provisions in R307-403 will continue to apply until the EPA redesignates each county to attainment for PM10.

KEY: air pollution, offset, PM10, PM2.5

July 7, 2005

Notice of Continuation May 15, 2017

19-2-101(1)(a)

19-2-104

19-2-108

R307. Environmental Quality, Air Quality.**R307-424. Permits: Mercury Requirements for Electric Generating Units.****R307-424-1. Purpose and Applicability.**

The purpose of R307-424 is to regulate mercury emissions from any coal-fired electric generating unit (EGU). R307-424 applies to any coal-fired electric generating unit as defined in 40 CFR 60.24.

R307-424-2. Part 70 Permit.

Sources meeting the applicability requirements of R307-424-1 above, and also meeting the applicability requirements of R307-415-4, are required to obtain a mercury (Hg) budget permit in accordance with R307-224-2(1)(a).

R307-424-3. Offset Requirement: Mercury.

Sources meeting the applicability requirements of R307-424-1 above and making application for an approval order under R307-401 shall, in addition to any other requirement for obtaining such approval order, obtain an enforceable offset for any potential increase in mercury emissions in accordance with the following:

(1) The permitted increase in mercury emissions, considering the application of any control method or device, shall be offset by mercury emission credits at a ratio of 1 to 1.1 respectively.

(2) The averaging period for such determinations shall be a 12-month period.

(3) Mercury emission credits must be obtained from an EGU located within the State of Utah, excluding any EGU located on Indian lands within the State.

(4) To preserve reductions in mercury emissions as credits for use in offsetting potential increases, the director must identify such credits in an order issued pursuant to R307-401 and shall provide a registry to identify the person, private entity or governmental authority that has the right to use or allocate the banked emission reduction credits, and to record any transfers of, or liens on, these rights.

(5) Any emission offsets shall be enforceable by the time a new or modified source commences construction, and, by the time a new or modified source commences operation, any emission offsets shall be in effect and enforceable.

(6) The quantity of mercury emission reductions to be used for credit will be determined in accordance with 40 CFR part 75, or will be based on the best available data reported to the director. To the extent that the EGU has been subject to the requirements of part 75, mercury emissions data shall be the average of the 3 highest annual amounts over the most recent 5-year period. Mercury emission reductions made prior to December 31, 1999 shall not be creditable for such purpose.

(7) R307-424-3 shall not apply to any EGU for which a valid approval order was issued prior to November 17, 2006.

R307-424-4. Emission Rates.

(1) By no later than December 31, 2012, the owner or operator of any EGU with an input heat capacity in excess of 1,500 MMBtu per hour and having commenced operations prior to November 17, 2006, shall demonstrate compliance with at least one of the following:

(a) A maximum emission rate of 6.50×10^{-7} pounds mercury per million btu heat input; or

(b) A minimum of 90% control of total mercury emissions.

(2) Compliance with (1) above shall be based on an annual averaging period beginning January 1 and ending December 31.

(a) Beginning January 1, 2013, compliance shall be determined using the monitoring and recordkeeping

requirements incorporated under R307-224-2. Upon completion of each year's fourth quarterly report, an assessment shall be made for the entire calendar year and reported to the director within 30 days.

(b) Where it is necessary to determine the mercury content of the coal or coals burned, the owner or operator shall use the appropriate ASTM method, and shall measure at least one representative sample each month. Records of such testing shall be kept for a period of at least five years, and shall be made available to the director upon request.

(3) Should an EGU be unable to achieve the maximum emission rate or the minimum control efficiency described in (1) above, despite proper operation of the unit in conjunction with a baghouse as well as wet or dry flue gas desulfurization, the owner or operator may petition the director for a modification to the compliance limitation for the unit in accordance with R307-401.

(a) Such petition shall be received no later than the date upon which the compliance assessment required under (2)(a) above is due.

(b) Any such determination by the director will be made on a case-by-case basis, taking into consideration energy, environmental and economic impacts and other costs. It will be based on the best information and analytical techniques available.

KEY: air pollution, electric generating unit, mercury**May 9, 2007****Notice of Continuation May 15, 2017****19-2-101****19-2-104(1)(a)****19-2-104(3)(e)****40 CFR 60.24**

R307. Environmental Quality, Air Quality.**R307-841. Residential Property and Child-Occupied Facility Renovation.****R307-841-1. Purpose.**

This rule implements 40 CFR 745, regulations developed under Sections 402 and 406 of the Toxic Substances Control Act (15 U.S.C. 2682 and 2686) and applies to all renovations performed for compensation in target housing and child-occupied facilities. The purpose of this rule is to ensure the following:

(1) Owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before these renovations begin; and

(2) Individuals performing renovations regulated in accordance with R307-841-3 are properly trained; renovators and firms performing these renovations are certified; and the work practices in R307-841-5 are followed during these renovations.

R307-841-2. Effective Dates.

(1) Training, certification and accreditation requirements, and work practice standards. The training, certification and accreditation requirements and work practice standards in this rule are applicable as follows:

(a) Training programs. Effective April 8, 2010, no training program may provide, offer, or claim to provide training or refresher training for director certification as a renovator or a dust sampling technician without accreditation from the director under R307-842-1. Training programs may apply for accreditation under R307-842-1;

(b) Firms.

(i) Firms may apply for certification under R307-841-7 beginning April 8, 2010.

(ii) On or after April 8, 2010, no firm may perform, offer, or claim to perform renovations without certification from the director under R307-841-7 in target housing or child-occupied facilities, unless the renovation qualifies as one of the exceptions identified in R307-841-3(1).

(c) Individuals. On or after April 8, 2010, all renovations must be directed by renovators certified in accordance with R307-841-8(1) and performed by certified renovators or individuals trained in accordance with R307-841-8(2)(b) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in R307-841-3(1).

(d) Work practices.

(i) On or after April 8, 2010 and before July 5, 2012, all renovations must be performed in accordance with the work practice standards in R307-841-5 and the associated recordkeeping requirements in R307-841-6(2)(a) and (2)(f) in target housing or child-occupied facilities, unless the renovation qualifies for the exceptions identified in R307-841-3(1). This does not apply to renovations in target housing for which the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age six resides there, the housing is not a child-occupied facility, and the owner acknowledges that the work practices to be used during the renovation will not necessarily include all of the lead-safe work practices contained in EPA's renovation, repair, and painting rule. For the purposes of this section, a child resides in the primary residence of his or her custodial parents, legal guardians, and foster parents. A child also resides in the primary residence of an informal caretaker if the child lives and sleeps most of the time at the caretaker's residence.

(ii) On or after July 5, 2012, all renovations must be performed in accordance with the work practice standards in R307-841-5 and the associated recordkeeping requirements in

R307-841-6(2)(a) and (2)(f) in target housing or child-occupied facilities, unless the renovation qualifies for the exception identified in R307-841-3(1).

(2) Renovation-specific pamphlet. Renovators or firms performing renovations must provide owners and occupants with "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools."

R307-841-3. Applicability.

(1) This rule applies to all renovations performed for compensation in target housing and child-occupied facilities, except for the following:

(a) Renovations in target housing or child-occupied facilities in which a written determination has been made by an inspector or risk assessor, certified pursuant to R307-842-2, that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter (mg/cm²) or 0.5% by weight, where the firm performing the renovation has obtained a copy of the determination; or

(b) Renovations in target housing or child-occupied facilities in which a certified renovator, using an EPA-recognized test kit as defined in R307-840-2 and following the kit manufacturer's instructions, has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm² or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(c) Renovations in target housing or child-occupied facilities in which a certified renovator has collected a paint chip sample from each painted component affected by the renovation and a laboratory recognized by EPA pursuant to section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip samples has determined that the samples are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm² or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(2) The information distribution requirements in R307-841-4 do not apply to emergency renovations, which are renovation activities that were not planned but result from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage. Interim controls performed in response to an elevated blood lead level in a resident child are also emergency renovations. Emergency renovations other than interim controls are also exempt from the warning sign, containment, waste handling, training, and certification requirements in R307-841-5, R307-841-7, and R307-841-8 to the extent necessary to respond to the emergency. Emergency renovations are not exempt from the cleaning requirements of R307-841-5(1)(e) which must be performed by certified renovators or individuals trained in accordance with R307-841-8(2)(b), the cleaning verification requirements of R307-841-5(2), which must be performed by certified renovators, and the recordkeeping requirements of R307-841-6(2)(e) and (f).

R307-841-4. Information Distribution Requirements.

(1) Renovations in dwelling units. No more than 60 days before beginning renovation activities in any residential

dwelling unit of target housing, the firm performing the renovation must:

(a) Provide the owner of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation; and

(b) If the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet, or certify in writing that a pamphlet has been delivered to the dwelling and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of a representative of the firm performing the renovation, and the date of signature; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) Renovations in common areas. No more than 60 days before beginning renovation activities in common areas of multi-unit target housing, the firm performing the renovation must:

(a) Provide the owner with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation;

(b) Comply with one of the following:

(i) Notify in writing, or ensure written notification of, each affected unit and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities, the expected starting and ending dates, and a statement of how the occupant can obtain the pamphlet and a copy of the records required by R307-841-6(3) and (4) at no cost to the occupants; or

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the occupants of all of the affected units. The signs must be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to occupants. The signs must also include information on how interested occupants can review a copy of the records required by R307-841-6(3) and (4) or obtain a copy from the renovation firm at no cost to the occupants;

(c) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet; and

(d) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, and the firm provided written initial notification to each affected unit, the firm performing the renovation must provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the firm performing the renovation

initiates work beyond that which was described in the original notice.

(3) Renovations in child-occupied facilities. No more than 60 days before beginning renovation activities in any child-occupied facility, the firm performing the renovation must:

(a)(i) Provide the owner of the building with the pamphlet, and comply with one of the following:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(B) Obtain a certificate of mailing at least 7 days prior to the renovation;

(ii) If the adult representative of the child-occupied facility is not the owner of the building, provide an adult representative of the child-occupied facility with the pamphlet, and comply with one of the following:

(A) Obtain, from the adult representative, a written acknowledgment that the adult representative has received the pamphlet, or certify in writing that a pamphlet has been delivered to the facility and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult representative. Such certification must include the address of the child-occupied facility undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., representative refuses to sign), the signature of a representative of the firm performing the renovation, and the date of signature; or

(B) Obtain a certificate of mailing at least 7 days prior to the renovation;

(b) Provide the parents and guardians of children using the child-occupied facility with the pamphlet and information describing the general nature and locations of the renovation and the anticipated completion date and information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by R307-841-6(3) and (4) or obtain a copy from the renovation firm at no cost to the parents or guardians by complying with one of the following:

(i) Mail or hand-deliver the pamphlet and the renovation information to each parent or guardian of a child using the child-occupied facility; or

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians. The signs must also include information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by R307-841-6(3) and (4) or obtain a copy from the renovation firm at no cost to the parents or guardians.

(c) The renovation firm must prepare, sign, and date a statement describing the steps performed to notify all parents and guardians of the intended renovation activities and to provide the pamphlet.

(4) Written acknowledgment. The written acknowledgments required by paragraphs (1)(a)(i), (1)(b)(i), (2)(a)(i), (3)(a)(i)(A), and (3)(a)(ii)(A) of this section must:

(a) Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or

occupant as applicable, and the date of signature;

(b) Be either a separate sheet or part of any written contract or service agreement for the renovation; and

(c) Be written in the same language as the text of the contract or agreement for the renovation or, in the case of non-owner occupied target housing, in the same language as the lease or rental agreement or the pamphlet.

R307-841-5. Work Practice Standards.

(1) Standards for renovation activities. Renovations must be performed by firms certified under R307-841-7 using renovators certified under R307-841-8. The responsibilities of certified firms are set forth in R307-841-7(4) and the responsibilities of certified renovators are set forth in R307-841-8(2).

(a) Occupant protection. Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation, must remain in place, and must be readable until the renovation and the post-renovation cleaning verification have been completed. If warning signs have been posted in accordance with 24 CFR 35.1345(b)(2) or 29 CFR 1926.62(m), additional signs are not required by this section.

(b) Containing the work area. Before beginning the renovation, the firm must isolate the work area so that no dust or debris leaves the work area while the renovation is being performed. In addition, the firm must maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that no dust or debris leaves the work area while the renovation is being performed. The firm must also ensure that containment is installed in such a manner that it does not interfere with occupant and worker egress in an emergency.

(i) Interior renovations. The firm must:

(A) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed;

(B) Close and cover all duct openings in the work area with taped-down plastic sheeting or other impermeable material;

(C) Close windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area;

(D) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater. Floor containment measures may stop at the edge of the vertical barrier when using a vertical containment system consisting of impermeable barriers that extend from the floor to the ceiling and are tightly sealed at joints with the floor, ceiling, and walls; and

(E) Use precautions to ensure that all personnel, tools, and other items, including the exterior of containers of waste, are free of dust and debris before leaving the work area.

(ii) Exterior renovations. The firm must:

(A) Close all doors and windows within 20 feet of the renovation. On multi-story buildings, close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors

below that are the same horizontal distance from the renovation;

(B) Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area;

(C) Cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering. Ground containment measures may stop at the edge of the vertical barrier when using a vertical containment system; and

(D) If the renovation will affect surfaces within 10 feet of the property line, the renovation firm must erect vertical containment or equivalent extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate adjacent buildings or migrate to adjacent properties. Vertical containment or equivalent extra precautions in containing the work area may also be necessary in other situations in order to prevent contamination of other buildings, other areas of the property, or adjacent buildings or properties.

(c) Prohibited and restricted practices. The work practices listed below are prohibited or restricted during a renovation as follows:

(i) Open-flame burning or torching of painted surfaces is prohibited;

(ii) The use of machines designed to remove paint or other surface coatings through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, is prohibited on painted surfaces unless such machines have shrouds or containment systems and are equipped with a HEPA vacuum attachment to collect dust and debris at the point of generation. Machines must be operated so that no visible dust or release of air occurs outside the shroud or containment system; and

(iii) Operating a heat gun on painted surfaces is permitted only at temperatures below 1,100 degrees Fahrenheit.

(d) Waste from renovations.

(i) Waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered.

(ii) At the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

(iii) When the firm transports waste from renovation activities, the firm must contain the waste to prevent release of dust and debris.

(e) Cleaning the work area. After the renovation has been completed, the firm must clean the work area until no dust, debris, or residue remains.

(i) Interior and exterior renovations. The firm must:

(A) Collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag; and

(B) Remove the protective sheeting. Mist the sheeting before folding it, fold the dirty side inward, and either tape shut to seal or seal in heavy-duty bags. Sheeting used to isolate contaminated rooms from non-contaminated rooms must remain in place until after the cleaning and removal of

other sheeting. Dispose of the sheeting as waste.

(ii) Additional cleaning for interior renovations. The firm must clean all objects and surfaces in the work area and within 2 feet of the work area in the following manner, cleaning from higher to lower:

(A) Walls. Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA vacuum or wiping with a damp cloth;

(B) Remaining surfaces. Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs; and

(C) Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth. Mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the 2-bucket mopping method, or using a wet mopping system.

(2) Standards for post-renovation cleaning verification.

(a) Interiors.

(i) A certified renovator must perform a visual inspection to determine whether dust, debris, or residue is still present. If dust, debris, or residue is present, these conditions must be removed by re-cleaning and another visual inspection must be performed.

(ii) After a successful visual inspection, a certified renovator must:

(A) Verify that each windowsill in the work area has been adequately cleaned, using the following procedure.

(I) Wipe the windowsill with a wet disposable cleaning cloth that is damp to the touch. If the cloth matches or is lighter than the cleaning verification card, the windowsill has been adequately cleaned.

(II) If the cloth does not match and is darker than the cleaning verification card, re-clean the windowsill as directed in paragraphs (1)(e)(ii)(B) and (1)(e)(ii)(C) of this section, then either use a new cloth or fold the used cloth in such a way that an unused surface is exposed, and wipe the surface again. If the cloth matches or is lighter than the cleaning verification card, that windowsill has been adequately cleaned.

(III) If the cloth does not match and is darker than the cleaning verification card, wait for 1 hour or until the surface has dried completely, whichever is longer.

(IV) After waiting for the windowsill to dry, wipe the windowsill with a dry disposable cleaning cloth. After this wipe, the windowsill has been adequately cleaned.

(B) Wipe uncarpeted floors and countertops within the work area with a wet disposable cleaning cloth. Floors must be wiped using application device with a long handle and a head to which the cloth is attached. The cloth must remain damp at all times while it is being used to wipe the surface for post-renovation cleaning verification. If the surface within the work area is greater than 40 square feet, the surface within the work area must be divided into roughly equal sections that are each less than 40 square feet. Wipe each such section separately with a new wet disposable cleaning cloth. If the cloth used to wipe each section of the surface within the work area matches the cleaning verification card, the surface has been adequately cleaned.

(I) If the cloth used to wipe a particular surface section does not match the cleaning verification card, re-clean that section of the surface as directed in paragraphs (1)(e)(ii)(B) and (1)(e)(ii)(C) of this section, then use a new wet disposable cleaning cloth to wipe that section again. If the cloth matches the cleaning verification card, that section of the surface has been adequately cleaned.

(II) If the cloth used to wipe a particular surface section

does not match the cleaning verification card after the surface has been re-cleaned, wait for 1 hour or until the entire surface within the work area has dried completely, whichever is longer.

(III) After waiting for the entire surface within the work area to dry, wipe each section of the surface that has not yet achieved post-renovation cleaning verification with a dry disposable cleaning cloth. After this wipe, that section of the surface has been adequately cleaned.

(iii) When the work area passes the post-renovation cleaning verification, remove the warning signs.

(b) Exteriors. A certified renovator must perform a visual inspection to determine whether dust, debris, or residue is still present on surfaces in and below the work area, including windowsills and the ground. If dust, debris, or residue is present, these conditions must be eliminated and another visual inspection must be performed. When the area passes the visual inspection, remove the warning signs.

(3) Optional dust clearance testing. Cleaning verification need not be performed if the contract between the renovation firm and the person contracting for the renovation or another federal, state, territorial, tribal, or local law or regulation requires:

(a) The renovation firm to perform dust clearance sampling at the conclusion of a renovation covered by this rule.

(b) The dust clearance samples are required to be collected by a certified inspector, risk assessor, or dust sampling technician.

(c) The renovation firm is required to re-clean the work area until the dust clearance sample results are below the clearance standards in R307-842-3(5)(h) or any local standard.

(4) Activities conducted after post-renovation cleaning verification. Activities that do not disturb paint, such as applying paint to walls that have already been prepared, are not regulated by this rule if they are conducted after post-renovation cleaning verification has been performed.

R307-841-6. Recordkeeping and Reporting Requirements.

(1) Firms performing renovations must retain and, if requested, make available to the director all records necessary to demonstrate compliance with this rule for a period of 3 years following completion of the renovation. This 3-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation.

(2) Records that must be retained pursuant to paragraph (1) of this section shall include (where applicable):

(a) Records or reports certifying that a determination had been made that lead-based paint is not present on the components affected by the renovation, as described in R307-841-3(1). These records or reports include:

(i) Reports prepared by a certified inspector or certified risk assessor certified pursuant to R307-842-2.

(ii) Records prepared by a certified renovator after using EPA-recognized test kits, including an identification of the manufacturer and model of any test kits used, a description of the components that were tested including their locations, and the result of each test kit used.

(iii) Records prepared by a certified renovator after collecting paint chip samples, including a description of the components that were tested including their locations, the name and address of the NLLAP-recognized entity performing the analysis, and the results for each sample.

(b) Signed and dated acknowledgments of receipt as described in R307-841-4(1)(a)(i), (1)(b)(i), (2)(a)(i), (3)(a)(i)(A), and (3)(a)(ii)(A).

(c) Certifications of attempted delivery as described in

R307-841-4(1)(b)(i) and (3)(a)(ii)(A).

(d) Certificates of mailing as described in R307-841-4(1)(a)(ii), (1)(b)(ii), (2)(a)(ii), (3)(a)(i)(B), and (3)(a)(ii)(B).

(e) Records of notification activities performed regarding common area renovations, as described in R307-841-4(2)(c) and (2)(d), and renovations in child-occupied facilities, as described in R307-841-4(3)(b).

(f) Documentation of compliance with the requirements of R307-841-5, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in R307-841-5(1), and that the certified renovator performed the post-renovation cleaning verification described in R307-841-5(2). If the renovation firm was unable to comply with all of the requirements of this rule due to an emergency as defined in R307-841-3, the firm must document the nature of the emergency and the provisions of the rule that were not followed. This documentation must include a copy of the certified renovator's current Utah Lead-Based Paint Renovator certification card, and a certification by the certified renovator assigned to the project that:

(i) Training was provided to workers (topics must be identified for each worker).

(ii) Warning signs were posted at the entrances to the work area.

(iii) If test kits were used, that the specified brand of kits was used at the specified locations and that the results were as specified.

(iv) If paint chip samples were collected, that the samples were collected at the specified locations, that the specified NLLAP-recognized laboratory analyzed the samples, and that the results were as specified.

(v) The work area was contained by:

(A) Removing or covering all objects in the work area (interiors);

(B) Closing and covering all HVAC ducts in the work area (interiors);

(C) Closing all windows in the work area (interiors) or closing all windows in and within 20 feet of the work area (exteriors);

(D) Closing and sealing all doors in the work area (interiors) or closing and sealing all doors in and within 20 feet of the work area (exteriors);

(E) Covering doors in the work area that were being used to allow passage but prevent spread of dust;

(F) Covering the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater (interiors) or covering the ground with plastic sheeting or other disposable impermeable material anchored to the building extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering, weighted down by heavy objects (exteriors); and

(G) Installing (if necessary) vertical containment to prevent migration of dust and debris to adjacent property (exteriors).

(vi) Waste was contained on-site and while being transported off-site.

(vii) The work area was properly cleaned after the renovation by:

(A) Picking up all chips and debris, misting protective sheeting, folding it dirty side inward, and taping it for removal; and

(B) Cleaning the work area surfaces and objects using a HEPA vacuum and/or wet cloths or mops (interiors).

(viii) The certified renovator performed the post-renovation cleaning verification (the results of which must be briefly described, including the number of wet and dry cloths used).

(3)(a) When the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, the renovation firm must provide information pertaining to compliance with this rule to the following persons:

(i) The owner of the building; and, if different,

(ii) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(b) When performing renovations in common areas of multi-unit target housing, renovation firms must post the information required by this rule or instructions on how interested occupants can obtain a copy of this information. This information must be posted in areas where it is likely to be seen by the occupants of all of the affected units.

(c) The information required to be provided by paragraph (3) of this section may be provided by completing the sample form titled "Sample Renovation Recordkeeping Checklist" or a similar form containing the test kit information required by R307-841-6(2)(a)(ii) and the training and work practice compliance information required by R307-841-6(2)(f).

(4) If dust clearance sampling is performed in lieu of cleaning verification as permitted by R307-841-5(3), the renovation firm must provide, when the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, a copy of the dust sampling report to:

(a) The owner of the building; and, if different,

(b) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(c) When performing renovations in common areas of multi-unit target housing, renovation firms must post these dust sampling reports or information on how interested occupants of the housing being renovated can obtain a copy of the report. This information must be posted in areas where they are likely to be seen by the occupants of all of the affected units.

R307-841-7. Firm Certification.

(1) Initial certification.

(a) Firms that perform renovations for compensation must apply to the director for certification to perform renovations or dust sampling. To apply, a firm must submit to the director a completed "Lead-Based Paint Certification Application for Firms," signed by an authorized agent of the firm, and pay the correct amount of fees.

(b) After the director receives a firm's application, the director will take one of the following actions within 90 days of the date the application is received:

(i) The director will approve a firm's application if the director determines that it is complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. An application is complete if it contains all of the information requested on the form and includes at least the correct amount of fees. When the director approves a firm's application, the director will issue the firm a certificate with an expiration date not more than 5 years from the date

the application is approved;

(ii) The director will request a firm to supplement its application if the director determines that the application is incomplete. If the director requests a firm to supplement its application, the firm must submit the requested information or pay the additional fees within 30 days of the date of the request; and

(iii) The director will not approve a firm's application if the firm does not supplement its application in accordance with paragraph (1)(b)(ii) of this section or if the director determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. The director will send the firm a letter giving the reason for not approving the application. The director will not refund the application fees. A firm may reapply for certification at any time by filing a new, complete application that includes the correct amount of fees.

(2) Re-certification. To maintain its certification, a firm must be re-certified by the director.

(a) Timely and complete application. To be re-certified, a firm must submit a complete application for re-certification. A complete application for re-certification includes a completed "Lead-Based Paint Certification Application for Firms" which contains all of the information requested by the form and is signed by an authorized agent of the firm, noting on the form that it is submitted as a re-certification. A complete application must also include the correct amount of fees.

(i) An application for re-certification is timely if it is postmarked 90 days or more before the date the firm's current certification expires. If the firm's application is complete and timely, the firm's current certification will remain in effect until its expiration date or until the director has made a final decision to approve or disapprove the re-certification application, whichever is later.

(ii) If the firm submits a complete re-certification application less than 90 days before its current certification expires, and the director does not approve the application before the expiration date, the firm's current certification will expire and the firm will not be able to conduct renovations until the director approves its re-certification application.

(iii) If the firm fails to obtain re-certification before the firm's current certification expires, the firm must not perform renovations or dust sampling until it is certified anew pursuant to paragraph (1), of this section.

(b) Director's action on an application. After the director receives a firm's application for re-certification, the director will review the application and take one of the following actions within 90 days of receipt:

(i) The director will approve a firm's application if the director determines that it is timely and complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. When the director approves a firm's application for re-certification, the director will issue the firm a new certificate with an expiration date not more than 5 years from the date that the firm's current certification expires.

(ii) The director will request a firm to supplement its application if the director determines that the application is incomplete.

(iii) The director will not approve a firm's application if it is not received or is not complete as of the date that the firm's current certification expires, or if the director determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with

environmental statutes or regulations. The director will send the firm a letter giving the reason for not approving the application. The director will not refund the application fees. A firm may reapply for certification at any time by filing a new application and paying the correct amount of fees.

(3) Amendment of certification. A firm must amend its certification within 90 days of the date a change occurs to information included in the firm's most recent application. If the firm fails to amend its certification within 90 days of the date the change occurs, the firm may not perform renovations or dust sampling until its certification is amended.

(a) To amend a certification, a firm must submit a completed "Lead-Based Paint Certification Application for Firms," signed by an authorized agent of the firm, noting on the form that it is submitted as an amendment and indicating the information that has changed. The firm must also pay at least the correct amount of fees.

(b) If additional information is needed to process the amendment, or the firm did not pay the correct amount of fees, the director will request the firm to submit the necessary information or fees. The firm's certification is not amended until the firm complies with the request.

(c) Amending a certification does not affect the certification expiration date.

(4) Firm responsibilities. Firms performing renovations must ensure that:

(a) All individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with R307-841-8;

(b) A certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in R307-841-8;

(c) All renovations performed by the firm are performed in accordance with the work practice standards in R307-841-5;

(d) The pre-renovation education requirements of R307-841-4 have been performed; and

(e) The recordkeeping requirements of R307-841-6 are met.

R307-841-8. Renovator Certification and Dust Sampling Technician Certification.

(1) Renovator certification and dust sampling technician certification.

(a) To become a certified renovator or certified dust sampling technician, an individual must successfully complete an initial lead-based paint renovator or dust-sampling technician course accredited by the director under R307-842-1, the EPA under 40 CFR 745.225, or a state or tribal program that has been authorized by EPA pursuant to subpart Q of 40 CFR 745.

(b) Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who successfully completed a director, EPA, HUD, or EPA/HUD model renovation training course before October 4, 2011, but no later than the training course expiration date found on that training certificate, may take an accredited refresher renovator training course that includes hands-on training in lieu of the initial renovator training course to become a certified renovator.

(c) Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course before October 4, 2011, but no later than the training course expiration date found on that training certificate, may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician. Individuals who are currently certified as lead-based paint inspectors or risk assessors may act as certified

dust sampling technicians without further training.

(d) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by the director under R307-842-1, the EPA under 40 CFR 745.225, or by a state or tribal program that is authorized under subpart Q of 40 CFR 745 within 5 years of the date the individual completed the initial course described in paragraph (1)(a) of this section. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again. Individuals who complete a renovator course accredited by the director under R307-842-1, the EPA or an EPA authorized program on or before March 31, 2010, must complete a renovator refresher course accredited by the director under R307-842-1, the EPA or an EPA authorized program on or before March 31, 2016, to maintain renovator certification. Individuals who completed a renovator course accredited by the director under R307-842-1, the EPA or an EPA authorized program between April 1, 2010 and March 31, 2011, will have one year added to their original 5-year training certificate expiration date. Individuals who take a renovator refresher course that does not include hands-on training will have a training course certificate expiration date 3 years from the date they complete the training. Individuals who take a refresher training course that includes hands-on training will have a training course certificate expiration date 5 years from the date they complete the training. Individuals who take the renovator refresher course without hands-on training must, for their next renovator refresher course, take a course that includes hands-on training.

(e) An individual shall be re-certified as a renovator or a dust sampling technician if the individual successfully completes the appropriate lead-based paint accredited refresher training course and submits a valid copy of the appropriate refresher course completion certificate. During the time period when the individual is not certified by the director, that individual cannot perform any regulated work activities that requires individual certification.

(2) Renovator responsibilities. Certified renovators are responsible for ensuring compliance with R307-841-5 at all renovations to which they are assigned. A certified renovator:

(a) Must perform all of the tasks described in R307-841-5(2) and must either perform or direct workers who perform all of the tasks described in R307-841-5(1);

(b) Must provide training to workers on the work practices required by R307-841-5(1) that they will be using in performing their assigned tasks;

(c) Must be physically present at the work site when the signs required by R307-841-5(1)(a) are posted, while the work area containment required by R307-841-5(1)(b) is being established, and while the work area cleaning required by R307-841-5(1)(e) is performed;

(d) Must regularly direct work being performed by other individuals to ensure that the work practices required by R307-841-5(1) are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area;

(e) Must be available, either on-site or by telephone, at all times that renovations are being conducted;

(f) When requested by the party contracting for renovation services, must use an acceptable test kit to determine whether components to be affected by the renovation contain lead-based paint;

(g) Must have with them at the work site their current Utah Lead-Based Paint Renovator certification card; and

(h) Must prepare the records required by R307-841-6(2)(a)(ii), (iii), and (f).

(3) Dust sampling technician responsibilities. When

performing optional dust clearance sampling under R307-841-5(3), a certified dust sampling technician:

(a) Must collect dust samples in accordance with R307-842-3(5)(h), must send the collected samples to a laboratory recognized by EPA under TSCA Section 405(b), and must compare the results to the clearance levels in accordance with R307-842-3(5)(h); and

(b) Must have with them at the work site their current Utah Lead-Based Paint Dust Sampling Technician certification card.

R307-841-9. Suspending, Revoking, or Modifying an Individual's or Firm's Certification.

(1) Grounds for suspending, revoking, or modifying an individual's certification. The director may suspend, revoke, or modify an individual's certification if the individual fails to comply with state lead-based paint administrative rules. The director may also suspend, revoke, or modify a certified renovator's certification if the renovator fails to ensure that all assigned renovations comply with R307-841-5. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(2) Grounds for suspending, revoking, or modifying a firm's certification. The director may suspend, revoke, or modify a firm's certification if the firm:

(a) Submits false or misleading information to the director in its application for certification or re-certification,

(b) Fails to maintain or falsifies records required in R307-841-6, or

(c) Fails to comply, or an individual performing a renovation on behalf of the firm fails to comply, with state lead-based paint administrative rules. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

KEY: paint, lead-based paint, lead-based paint renovation May 9, 2017 19-2-104(1)(i)

Notice of Continuation February 5, 2015

R307. Environmental Quality, Air Quality.**R307-842. Lead-Based Paint Activities.****R307-842-1. Accreditation of Training Programs: Target Housing and Child-Occupied Facilities.**

(1) Scope.

(a) A training program may seek accreditation to offer courses in any of the following disciplines: inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. A training program may also seek accreditation to offer refresher courses for each of the above listed disciplines. Training courses taught in Utah must be accredited by the director. All e-learning renovator refresher courses originating from companies based in Utah must also be accredited by the director.

(b) Training programs may apply to the director for accreditation of their lead-based paint activities courses or refresher courses pursuant to this section. Training programs may apply to the director for accreditation of their renovator or dust sampling technician courses or refresher courses pursuant to this section.

(c) A training program must not provide, offer, or claim to provide director-accredited lead-based paint activities courses without applying for and receiving accreditation from the director as required under paragraph (2) of this section. A training program must not provide, offer, or claim to provide director-accredited renovator or dust sampling technician courses without applying for and receiving accreditation from the director as required under paragraph (2) of this section.

(d) Accredited training programs, training program managers, and principal instructors must comply with all of the requirements of this section including approved terms of the application and all the requirements and limitations specified in any accreditation documents issued to training programs.

(2) Application process. The following are procedures a training program must follow to receive director accreditation to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses:

(a) A training program seeking accreditation shall submit a written application to the director containing the following information:

(i) The training program's name, address, and telephone number;

(ii) A list of courses for which it is applying for accreditation. For the purposes of this section, courses taught in different languages and electronic learning courses are considered different courses, and each must independently meet the accreditation requirements;

(iii) The name and documentation of the qualifications of the training program manager;

(iv) The name(s) and documentation of qualifications of any principal instructor(s); and

(v) A statement signed by the training program manager certifying that the training program meets the requirements established in paragraph (3) of this section. If a training program uses EPA-recommended model training materials, the training program manager shall include a statement certifying that, as well; or

(vi) If a training program does not use EPA-recommended model training materials, its application for accreditation shall also include:

(A) A copy of the student and instructor manuals, or other materials to be used for each course;

(B) A copy of the course agenda for each course; and

(C) When applying for accreditation of a course in a language other than English, a signed statement from a qualified, independent translator that they had compared the course to the English language version and found the translation to be accurate;

(vii) All training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training;

(B) A copy of the course test blueprint for each course;

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course; and

(D) A copy of the quality control plan as described in paragraph (3)(i) of this section.

(b) If a training program meets the requirements in paragraph (3) of this section, then the director shall approve the application for accreditation no more than 180 days after receiving a complete application from the training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the director may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. The director may also request additional materials retained by the training program under paragraph (8) of this section. If a training program's application is disapproved, the program may reapply for accreditation at any time.

(c) A training program may apply for accreditation to offer initial courses or refresher courses in as many disciplines as it chooses. A training program may seek accreditation for additional courses at any time as long as the program can demonstrate that it meets the requirements of this section.

(d) A training program applying for accreditation must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(3) Requirements for the accreditation of training programs. A training program accredited by the director to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses must meet the following requirements:

(a) The training program shall employ a training manager who has:

(i) At least 2 years of experience, education, or training in teaching workers or adults; or

(ii) A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management or a related field; or

(iii) Two years of experience in managing a training program specializing in environmental hazards; and

(iv) Demonstrated experience, education, or training in the construction industry including: lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(b) The training manager shall designate a qualified principal instructor for each course who has:

(i) Demonstrated experience, education, or training in teaching workers or adults; and

(ii) Successfully completed at least 16 hours of any director-accredited, EPA-accredited, or EPA-authorized state or tribal-accredited lead-specific training for instructors of lead-based paint activities courses or 8 hours of any director-accredited, EPA-accredited or EPA-authorized state or tribal-accredited lead-specific training for instructors of renovator or dust sampling technician courses; and

(iii) Demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(c) The principal instructor shall be responsible for the organization of the course, course delivery, and oversight of

the teaching of all course material. The training manager may designate guest instructors as needed for a portion of the course to provide instruction specific to the lecture, hands-on activities, or work practice components of a course. However, the principal instructor is primarily responsible for teaching the course materials and must be present to provide instruction (or oversight of portions of the course taught by guest instructors) for the course for which he or she has been designated the principal instructor.

(d) The following documents shall be recognized by the director as evidence that training managers and principal instructors have the education, work experience, training requirements or demonstrated experience, specifically listed in paragraphs (3)(a) and (3)(b) of this section. This documentation must be submitted with the accreditation application and retained by the training program as required by the recordkeeping requirements contained in paragraph (8) of this section. Those documents include the following:

- (i) Official academic transcripts or diploma as evidence of meeting the education requirements;
- (ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and
- (iii) Certificates from train-the-trainer courses and lead-specific training courses, as evidence of meeting the training requirements.

(e) The training program shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.

(f) To become accredited in the following disciplines, the training program shall provide initial training courses that meet the following training requirements:

(i) The initial inspector course shall last a minimum of 24 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the initial inspector course are contained in paragraph (4)(a) of this section;

(ii) The initial risk assessor course shall last a minimum of 16 training hours, with a minimum of 4 hours devoted to hands-on training activities. The minimum curriculum requirements for the initial risk assessor course are contained in paragraph (4)(b) of this section;

(iii) The initial supervisor course shall last a minimum of 32 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the initial supervisor course are contained in paragraph (4)(c) of this section;

(iv) The initial project designer course shall last a minimum of 8 training hours. The minimum curriculum requirements for the initial project designer course are contained in paragraph (4)(d) of this section;

(v) The initial abatement worker course shall last a minimum of 16 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the initial abatement worker course are contained in paragraph (4)(e) of this section;

(vi) The initial renovator course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the initial renovator course are contained in paragraph (4)(f) of this section; and

(vii) The initial dust sampling technician course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the initial dust sampling technician course are contained in paragraph (4)(g) of this

section.

(viii) Electronic learning and other alternative course delivery methods are permitted for the classroom portion of renovator, dust sampling technician, or lead-based paint activities courses but not the hands-on portion of these courses, or for final course tests or proficiency tests described in paragraph (3)(g) of this section. Electronic learning courses must comply with the following requirements:

(A) A unique identifier must be assigned to each student for them to use to launch and re-launch the course;

(B) The training provider must track each student's course log-ins, launches, progress, and completion, and maintain these records in accordance with paragraph (8) of this section;

(C) The course must include periodic knowledge checks equivalent to the number and content of the knowledge checks contained in EPA's model course, but at least 16 over the entire course. The knowledge checks must be successfully completed before the student can go on to the next module;

(D) There must be a test of at least 20 questions at the end of the electronic learning portion of the course, of which 80% must be answered correctly by the student for successful completion of the electronic learning portion of the course. The test must be designed so that students do not receive feedback on their test answers until after they have completed and submitted the test; and

(E) Each student must be able to save or print a copy of an electronic learning course completion certificate. The electronic certificate must not be susceptible to easy editing.

(g) For each course offered, the training program shall conduct either a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline. Each student must successfully complete the hands-on skills assessment and receive a passing score on the course test to pass any course, or successfully complete a proficiency test.

(i) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or proficiency test to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in paragraph (4) of this section;

(ii) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics; and

(iii) The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application.

(h) The training program shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:

(i) The name, a unique identification number, and address of the individual;

(ii) The name of the particular course that the individual completed;

(iii) Dates of course completion/test passage;

(iv) For initial inspector, risk assessor, project designer, supervisor, or abatement worker course completion certificates, the expiration date of interim certification, which is 6 months from the date of course completion;

(v) The name, address, and telephone number of the training program;

(vi) The language in which the course was taught;

(vii) For renovator and dust sampling technician course completion certificates, a photograph of the individual. The photograph must be an accurate and recognizable image of

the individual. As reproduced on the certificate, the photograph must not be smaller than 1 square inch; and

(viii) For renovator, dust sampling technician, or lead-based paint activities course completion certificates, the expiration date of the training certificate.

(i) The training manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(i) Procedures for periodic revision of training materials and the course test to reflect innovations in the field; and

(ii) Procedures for the training manager's annual review of principal instructor competency.

(j) Courses offered by the training program must teach the work practice standards contained in R307-841-5 or R307-842-3, as applicable, in such a manner that trainees are provided with the knowledge needed to perform the renovations or lead-based paint activities they will be responsible for conducting.

(k) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in this section.

(l) The training manager shall allow the director or the director's authorized representative to audit the training program to verify the contents of the application for accreditation as described in paragraph (2) of this section.

(m) The training manager must provide notification of renovator, dust sampling technician, or lead-based paint activities courses offered.

(i) The training manager must provide the director with notification of all renovator, dust sampling technician, or lead-based paint activities courses offered except for any renovator course without hands-on training delivered via electronic learning. The original notification must be received by the director at least 7 business days prior to the start date of any renovator, dust sampling technician, or lead-based paint activities course;

(ii) The training manager must provide the director updated notification when renovator, dust sampling technician, or lead-based paint activities courses will begin on a date other than the start date specified in the original notification, as follows:

(A) For renovator, dust sampling technician, or lead-based paint activities courses beginning prior to the start date provided to the director, an updated notification must be received by the director at least 7 business days before the new start date; and

(B) For renovator, dust sampling technician, or lead-based paint activities courses beginning after the start date provided to the director, an updated notification must be received by the director at least 2 business days before the start date provided to the director;

(iii) The training manager must update the director of any change in location of renovator, dust sampling technician, or lead-based paint activities courses at least 7 business days prior to the start date provided to the director;

(iv) The training manager must update the director regarding any course cancellations, or any other change to the original notification. Updated notifications must be received by the director at least 2 business days prior to the start date provided to the director;

(v) Each notification, including updates, must include the following:

(A) Notification type (original, update, or cancellation);

(B) Training program name, address, and telephone number;

(C) Course discipline, type (initial/refresher), and the language in which instruction will be given;

(D) Date(s) and time(s) of training;

(E) Training location(s) telephone number, and address;

(F) Principal instructor's name; and

(G) Training manager's name and signature;

(vi) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Utah Division of Air Quality electronic notification system. Written notification of renovator, dust sampling technician, or lead-based paint activities course schedules can be accomplished by using either the sample form titled "Renovator, Dust Sampling Technician, or Lead-Based Paint Activities Training Course Notification Form" or a similar form containing the information required in paragraph (3)(m)(v) of this section. All written notifications must be delivered to the director by United States Postal Service, fax, commercial delivery service, hand delivery, or by email. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site;

(vii) Renovator, dust sampling technician, or lead-based paint activities courses must not begin on a date, or at a location other than that specified in the original notification unless an updated notification identifying a new start date or location is submitted, in which case the course must begin on the new start date and/or location specified in the updated notification; and

(viii) No training program shall provide renovator, dust sampling technician, or lead-based paint activities courses without first notifying the director of such activities in accordance with the requirements of this paragraph.

(n) The training manager must provide notification following completion of renovator, dust sampling technician, or lead-based paint activities courses.

(i) The training manager must provide the director notification after the completion of any renovator, dust sampling technician, or lead-based paint activities course. This notification must be received by the director no later than 10 business days following course completion. Notifications for any e-learning renovator refresher course that does not include hands-on training must be submitted via written notification or electronically using the Utah Division of Air Quality electronic notification system no later than the 10th day of the month and include all students trained in the previous month. Written notification for any e-learning renovator refresher course, can be accomplished by using either the sample form titled "Renovator, Dust Sampling Technician, or Lead-Based Paint Activities Training Course Notification Form" or a similar form containing the information required in paragraph (3)(n)(ii) of this section. All written notifications must be delivered to the director by United States Postal Service, fax, commercial delivery service, hand delivery, or by email. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site;

(ii) The notification must include the following:

(A) Training program name, address, and telephone number;

(B) Course discipline and type (initial/refresher);

(C) Date(s) of training;

(D) The following information for each student who took the course:

(I) Name,

(II) Address,

(III) Date of birth,

(IV) Course completion certificate number,

(V) Course test score,

(VI) For renovator or dust sampling technician courses, a digital photograph of the student, and

(VII) For renovator refresher courses, the expiration date of the training certificate;

(E) Training manager's name and signature; and

(F) Utah Division of Air Quality Lead-Based Paint Program training verification statement.

(iii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Utah Division of Air Quality electronic notification system. Written notification following renovator, dust sampling technician, or lead-based paint activities training courses can be accomplished by using either the sample form titled "Renovator, Dust Sampling Technician, or Lead-Based Paint Activities Training Course Notification Form" or a similar form containing the information required in paragraph (3)(n)(ii) of this section. All written notifications must be delivered to the director by United States Postal Service, fax, commercial delivery service, hand delivery, or by email. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site.

(4) Minimum training curriculum requirements. A training program accredited by the director to offer lead-based paint courses in the specific disciplines listed in paragraph (4) must ensure that its courses of study include, at a minimum, the following course topics.

(a) Inspector. Instruction in the topics described in paragraphs (4)(a)(iv), (v), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of an inspector;

(ii) Background information on lead and its adverse health effects;

(iii) Background information on federal, state, and local regulations and guidance that pertains to lead-based paint and lead-based paint activities;

(iv) Lead-based paint inspection methods, including selection of rooms and components for sampling or testing;

(v) Paint, dust, and soil sampling methodologies;

(vi) Clearance standards and testing, including random sampling;

(vii) Preparation of the final inspection report; and

(viii) Recordkeeping.

(b) Risk assessor. Instruction in the topics described in paragraphs (4)(b)(iv), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of a risk assessor;

(ii) Collection of background information to perform a risk assessment;

(iii) Sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food;

(iv) Visual inspection for the purposes of identifying potential sources of lead-based paint hazards;

(v) Lead hazard screen protocol;

(vi) Sampling for other sources of lead exposure;

(vii) Interpretation of lead-based paint and other lead sampling results, including all applicable federal or state guidance or regulations pertaining to lead-based paint hazards;

(viii) Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards; and

(ix) Preparation of a final risk assessment report.

(c) Supervisor. Instruction in the topics described in paragraphs (4)(c)(v), (vii), (viii), (ix), and (x) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of a supervisor;

(ii) Background information on lead and its adverse health effects;

(iii) Background information on federal, state, and local regulations and guidance that pertain to lead-based paint abatement;

(iv) Liability and insurance issues relating to lead-based paint abatement;

(v) Risk assessment and inspection report interpretation;

(vi) Development and implementation of an occupant protection plan and abatement report;

(vii) Lead-based paint hazard recognition and control;

(viii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices;

(ix) Interior dust abatement/cleanup or lead-based paint hazard control and reduction methods;

(x) Soil and exterior dust abatement or lead-based paint hazard control and reduction methods;

(xi) Clearance standards and testing;

(xii) Cleanup and waste disposal; and

(xiii) Recordkeeping.

(d) Project designer.

(i) Role and responsibilities of a project designer;

(ii) Development and implementation of an occupant protection plan for large-scale abatement projects;

(iii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large-scale abatement projects;

(iv) Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects;

(v) Clearance standards and testing for large scale abatement projects; and

(vi) Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large scale abatement projects.

(e) Abatement worker. Instruction in the topics described in paragraphs (4)(e)(iv), (v), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of an abatement worker;

(ii) Background information on lead and its adverse health effects;

(iii) Background information on federal, state, and local regulations and guidance that pertain to lead-based paint abatement;

(iv) Lead-based paint hazard recognition and control;

(v) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices;

(vi) Interior dust abatement methods/cleanup or lead-based paint hazard reduction; and

(vii) Soil and exterior dust abatement methods or lead-based paint hazard reduction.

(f) Renovator. Instruction in the topics described in paragraphs (4)(f)(iv), (vi), (vii), and (viii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibility of a renovator;

(ii) Background information on lead and its adverse health effects;

(iii) Background information on EPA, HUD, OSHA, and other federal, state, and local regulations and guidance that pertain to lead-based paint and renovation activities;

(iv) Procedures for using acceptable test kits to determine whether paint is lead-based paint;

(v) Procedures for collecting a paint chip sample and sending it to a laboratory recognized by EPA under section 405(b) of TSCA;

(vi) Renovation methods to minimize the creation of dust and lead-based paint hazards;

(vii) Interior and exterior containment and cleanup methods;

(viii) Methods to ensure that the renovation has been properly completed, including cleaning verification, and clearance testing;

(ix) Waste handling and disposal;

(x) Providing on-the-job training to other workers; and

(xi) Record preparation.

(g) Dust sampling technician. Instruction in the topics

described in paragraphs (4)(g)(iv) and (vi) of this section must be included in the hands-on portion of the course.

- (i) Role and responsibility of a dust sampling technician;
- (ii) Background information on lead and its adverse health effects;
- (iii) Background information on federal, state, and local regulations and guidance that pertains to lead-based paint and renovation activities;
- (iv) Dust sampling methodologies;
- (v) Clearance standards and testing; and
- (vi) Report preparation.

(5) Requirements for the accreditation of refresher training programs. A training program may seek accreditation to offer refresher training courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. A training program accredited by the director to offer refresher training must meet the following minimum requirements:

(a) Each refresher course shall review the curriculum topics of the full-length courses listed under paragraph (4) of this section, as appropriate. In addition, to become accredited to offer refresher training courses, training programs shall ensure that their courses of study include, at a minimum, the following:

- (i) An overview of current safety practices relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline;
- (ii) Current laws and regulations relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline; and
- (iii) Current technologies relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline;

(b) Refresher courses for inspector, risk assessor, supervisor, and abatement worker must last a minimum of 8 training hours. Refresher courses for project designer, renovator, and dust sampling technician must last a minimum of 4 training hours. Refresher courses for all disciplines except renovator and project designer must include a hands-on component. Renovators must take a refresher course that includes hands-on training at least every other re-certification;

(c) Except for e-learning renovator refresher courses and project designer courses, for all other courses offered, the training program shall conduct a hands-on assessment. With the exception of project designer courses, the training program shall conduct a course test at the completion of the course. Renovators must take a refresher course that includes hands-on training at least every other re-certification;

(d) A training program may apply for accreditation of a refresher course concurrently with its application for accreditation of the corresponding initial training course as described in paragraph (2) of this section. If so, the director shall use the approval procedure described in paragraph (2) of this section. In addition, the minimum requirements contained in paragraphs (3)(a) through (3)(e), (3)(f)(viii), and (3)(g) through (3)(n), and (5)(a) through (5)(c) of this section shall also apply; and

(e) A training program seeking accreditation to offer refresher training courses only shall submit a written application to the director containing the following information:

- (i) The refresher training program's name, address, and telephone number;
- (ii) A list of courses for which it is applying for accreditation;
- (iii) The name and documentation of the qualifications of the training program manager;
- (iv) The name(s) and documentation of the

qualifications of the principal instructor(s);

(v) A statement signed by the training program manager certifying that the refresher training program meets the minimum requirements established in paragraph (3) of this section, except for the requirements in paragraph (3)(f) of this section. If a training program uses EPA-developed model training materials, the training manager shall include a statement certifying that, as well;

(vi) If the refresher training course materials are not based on EPA-developed model training materials, the training program's application for accreditation shall include:

(A) A copy of the student and instructor manuals to be used for each course; and

(B) A copy of the course agenda for each course;

(vii) All refresher training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training;

(B) A copy of the course test blueprint for each course;

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course (if applicable); and

(D) A copy of the quality control plan as described in paragraph (3)(i) of this section;

(viii) The requirements in paragraphs (3)(a) through (3)(e), (3)(f)(viii) and (3)(g) through (3)(n) of this section apply to refresher training providers; and

(ix) If a refresher training program meets the requirements listed in this paragraph, then the director shall approve the application for accreditation no more than 180 days after receiving a complete application from the refresher training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the director may, at the director's discretion, work with the applicant to address inadequacies in the application for accreditation. The director may also request additional materials retained by the refresher training program under paragraph (8) of this section. If a refresher training program's application is disapproved, the program may reapply for accreditation at any time.

(6) Re-accreditation of training programs.

(a) Unless re-accredited, a training program's accreditation, including refresher training accreditation, shall expire 4 years after the date of issuance. If a training program meets the requirements of this section, the training program shall be re-accredited.

(b) A training program seeking re-accreditation shall submit an application to the director no later than 180 days before its accreditation expires. If a training program does not submit its application for re-accreditation by that date, the director cannot guarantee that the program will be re-accredited before the end of the accreditation period.

(c) The training program's application for re-accreditation shall contain:

(i) The training program's name, address, and telephone number;

(ii) A list of courses for which it is applying for re-accreditation;

(iii) The name and qualifications of the training program manager;

(iv) The name(s) and qualifications of the principal instructor(s);

(v) A description of any changes to the training facility, equipment or course materials since its last application was approved that adversely affects the students' ability to learn;

(vi) A statement signed by the program manager stating:

(A) That the training program complies at all times with

all requirements in paragraphs (3) and (5) of this section, as applicable; and

(B) The recordkeeping and reporting requirements of paragraph (8) of this section shall be followed; and

(vii) A payment of appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(d) Upon request, the training program shall allow the director or the director's authorized representative to audit the training program to verify the contents of the application for re-accreditation as described in paragraph (6)(c) of this section.

(7) Suspension, revocation, and modification of accredited training programs.

(a) The director may, after notice and an opportunity, for hearing, suspend, revoke, or modify training program accreditation, including refresher training accreditation, if a training program, training manager, or other person with supervisory authority over the training program has:

(i) Misrepresented the contents of a training course to the director and/or the student population;

(ii) Failed to submit required information or notifications in a timely manner;

(iii) Failed to maintain required records;

(iv) Falsified accreditation records, instructor qualifications, or other accreditation-related information or documentation;

(v) Failed to comply with the training standards and requirements in this section;

(vi) Failed to comply with federal, state, or local lead-based paint statutes or regulations; or

(vii) Made false or misleading statements to the director in its application for accreditation or re-accreditation which the director relied upon in approving the application.

(b) In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(8) Training program recordkeeping requirements.

(a) Accredited training programs shall maintain, and make available to the director or the director's authorized representative, upon request, the following records:

(i) All documents specified in paragraph (3)(d) of this section that demonstrate the qualifications listed in paragraphs (3)(a) and (3)(b) of this section of the training manager and principal instructors;

(ii) Current curriculum/course materials and documents reflecting any changes made to these materials;

(iii) The course test blueprint;

(iv) Information regarding how the hands-on assessment is conducted including, but not limited to:

(A) Who conducts the assessment;

(B) How the skills are graded;

(C) What facilities are used; and

(D) The pass/fail rate;

(v) The quality control plan as described in paragraph (3)(i) of this section;

(vi) Results of the students' hands-on skills assessments and course tests, and a record of each student's course completion certificate;

(vii) Any other material not listed in paragraphs (8)(a)(i) through (8)(a)(vi) of this section that was submitted to the director as part of the program's application for accreditation.

(viii) For renovator refresher and dust sampling technician refresher courses, a copy of each trainee's prior course completion certificate showing that each trainee was eligible to take the refresher course; and

(ix) For course modules delivered in an electronic

format, a record of each student's log-ins, launches, progress, and completion, and a copy of the electronic learning completion certificate for each student.

(b) The training program must retain records pertaining to renovator, dust sampling technician and lead-based paint activities courses at the address specified on the training program accreditation application (or as modified in accordance with paragraph (8)(c) of this section) for the following minimum periods:

(i) Records pertaining to lead-based paint activities courses must be retained for a minimum of 3 years and 6 months;

(ii) Records pertaining to renovator or dust sampling technician courses offered must be retained for a minimum of 5 years and 6 months.

(c) The training program shall notify the director in writing within 30 days of changing the address specified on its training program accreditation application or transferring the records from that address.

(9) Amendment of accreditation.

(a) A training program must amend its accreditation within 90 days of the date a change occurs to information included in the program's most recent application. If the training program fails to amend its accreditation within 90 days of the date the change occurs, the program may not provide renovator, dust sampling technician, or lead-based paint activities training until its accreditation is amended.

(b) To amend an accreditation, a training program must submit a completed Division of Air Quality Lead-Based Paint Application for Course Accreditation, signed by an authorized agent of the training provider, noting on the form that it is submitted as an amendment and indicating the information that has changed.

(c) Training managers, principal instructors, permanent training locations. If the amendment includes a new training program manager, any new or additional principal instructor(s), or any new permanent training location(s), the training provider is not permitted to provide training under the new training manager or offer courses taught by any new principal instructor(s) or at the new training location(s) until the director either approves the amendment or 30 days have elapsed, whichever occurs earlier. Except:

(i) If the amendment includes a new training program manager or new or additional principal instructor that was identified in a training provider accreditation application that the director has already approved under this section, the training provider may begin to provide training under the new training manager or offer courses taught by the new principal instructor on an interim basis as soon as the provider submits the amendment to the director. The training provider may continue to provide training under the new training manager or offer courses taught by the new principal instructor if the director approves the amendment or if the director does not disapprove the amendment within 30 days.

(ii) If the amendment includes a new permanent training location, the training provider may begin to provide training at the new permanent training location on an interim basis as soon as the provider submits the amendment to the director. The training provider may continue to provide training at the new permanent training location if the director approves the amendment or if the director does not disapprove the amendment within 30 days.

R307-842-2. Certification of Individuals and Firms Engaged in Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities.

(1) Certification of individuals.

(a) Individuals seeking certification by the director to engage in lead-based paint activities must either:

(i) Submit to the director an application demonstrating that they meet the requirements established in paragraphs (2) or (3) of this section for the particular discipline for which certification is sought; or

(ii) Submit to the director an application with a copy of a valid lead-based paint activities certification (or equivalent) from the EPA or a state or tribal program that has been authorized by EPA pursuant to subpart Q of 40 CFR 745; or

(iii) For supervisor, inspector, and/or risk assessor certification, submit to the director an application with a copy of a valid lead-based paint training certificate from an EPA-accredited, or EPA-authorized state or tribal-accredited lead-specific training in the appropriate discipline and pass the certification exam in the appropriate discipline offered by the director.

(b) Following the submission of an application demonstrating that all the requirements of this section have been met, the director shall certify an applicant as an inspector, risk assessor, supervisor, project designer, or abatement worker, as appropriate.

(c) Upon receiving director certification, individuals conducting lead-based paint activities shall comply with the work practice standards for performing the appropriate lead-based paint activities as established in R307-842-3.

(d) It shall be a violation of state administrative rules for an individual to conduct any of the lead-based paint activities described in R307-842-3 if that individual has not been certified by the director pursuant to this section to do so.

(e) Individuals applying for certification must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(2) Inspector, risk assessor or supervisor.

(a) To become certified by the director as an inspector, risk assessor, or supervisor, pursuant to paragraph (1)(a)(i) of this section, an individual must:

(i) Successfully complete an accredited initial training course in the appropriate discipline and receive a course completion certificate from an accredited training program;

(ii) Pass the certification exam in the appropriate discipline offered by the director; and

(iii) Meet or exceed the following experience and/or education requirements:

(A) Inspectors. No additional experience and/or education requirements;

(B) Risk assessors.

(I) Successful completion of an accredited initial training course for inspectors; and

(II) Bachelor's degree and 1 year of experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction), or an Associates degree and 2 years experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction); or

(III) Certification as an industrial hygienist, professional engineer, registered architect and/or certification in a related engineering/health/environmental field (e.g., safety professional, environmental scientist); or

(IV) A high school diploma (or equivalent), and at least 3 years of experience in a related field (e.g., lead, asbestos, environmental remediation work or construction);

(C) Supervisor.

(I) One year of experience as a certified lead-based paint abatement worker; or

(II) At least 2 years of experience in a related field (e.g., lead, asbestos, or environmental remediation work) or in the building trades.

(b) The following documents shall be recognized by the director as evidence of meeting the requirements listed in (2)(b)(iii) of this paragraph:

(i) Official academic transcripts or diploma, as evidence

of meeting the education requirements;

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

(iii) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(c) In order to take the certification examination for a particular discipline an individual must:

(i) Successfully complete an accredited initial training course in the appropriate discipline and receive a course completion certificate from an accredited training program; and

(ii) Meet or exceed the education and/or experience requirements in paragraph (2)(a)(iii) of this section.

(d) The initial training course completion certificate shall serve as interim certification for an individual until the next available opportunity to take the certification exam. Such interim certification shall expire 6 months after issuance.

(e) After passing the appropriate certification exam and submitting an application demonstrating that he/she meets the appropriate training, education, and/or experience prerequisites described in paragraph (2)(a) of this section, an individual shall be issued a certificate by the director. To maintain certification, an individual must be re-certified as described in paragraph (4) of this section.

(f) An individual may take the certification exam no more than three times within 6 months of receiving an initial training course completion certificate.

(g) If an individual does not pass the certification exam and receive a certificate within 6 months of receiving his/her initial training course completion certificate, the individual must retake the appropriate initial training course from an accredited training program before reapplying for certification from the director.

(3) Abatement worker and project designer.

(a) To become certified by the director as an abatement worker or project designer, pursuant to paragraph (1)(a)(i) of this section, an individual must:

(i) Successfully complete an accredited initial training course in the appropriate discipline and receive a course completion certificate from an accredited training program; and

(ii) Meet or exceed the following additional experience and/or education requirements:

(A) Abatement workers. No additional experience and/or education requirements; and

(B) Project designers.

(I) Successful completion of an accredited initial training course for supervisors;

(II) Bachelor's degree in engineering, architecture, or a related profession, and 1 year of experience in building construction and design or a related field; or

(III) Four years of experience in building construction and design or a related field.

(b) The following documents shall be recognized by the director as evidence of meeting the requirements listed in this paragraph:

(i) Official academic transcripts or diploma, as evidence of meeting the education requirements;

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

(iii) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(c) The initial training course completion certificate shall serve as an interim certification until certification from the director is received, but shall be valid for no more than 6

months from the date of completion.

(d) After successfully completing the appropriate initial training courses and meeting any other qualifications described in paragraph (3)(a) of this section, an individual shall be issued a certificate from the director. To maintain certification, an individual must be re-certified as described in paragraph (4) of this section.

(4) Re-certification.

(a) To maintain certification in a particular discipline, a certified individual shall apply to and be re-certified by the director in that discipline by the director either:

(i) Every 3 years if the individual completed a training course with a course test and hands-on assessment; or

(ii) Every 5 years if the individual completed a training course with a proficiency test.

(b) An individual shall be re-certified if the individual successfully completes the appropriate accredited refresher training course and submits a valid copy of the appropriate refresher training course completion certificate. For the supervisor, inspector, or risk assessor disciplines, if more than 3 years but less than 4 years have passed since certification or re-certification for an individual that completed an initial or a refresher training course with a course test and hands-on assessment, or if more than 5 years but less than 6 years have passed since certification or re-certification for an individual that completed an initial or a refresher training course with a proficiency test, then the individual must also pass the certification exam in the appropriate discipline offered by the director. During the time period when the individual is not certified by the director, that individual cannot perform any regulated work activities that requires individual certification.

(c) Individuals applying for re-certification must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(5) Certification of firms.

(a) All firms which perform or offer to perform any of the lead-based paint activities or renovations described in R307-842-3 shall be certified by the director.

(b) A firm seeking certification shall submit to the director a letter attesting that the firm shall only employ appropriately certified employees to conduct lead-based paint activities, and that the firm and its employees shall follow the work practice standards in R307-842-3 for conducting lead-based paint activities.

(c) From the date of receiving the firm's letter requesting certification, the director shall have 90 days to approve or disapprove the firm's request for certification. Within that time, the director shall respond with either a certificate of approval or a letter describing the reasons for disapproval.

(d) The firm shall maintain all records pursuant to the requirements in R307-842-3.

(e) Firms may apply to the director for certification to engage in lead-based paint activities pursuant to this section.

(f) Firms applying for certification or re-certification must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(6) Suspension, revocation, and modification of certifications of individuals engaged in lead-based paint activities.

(a) The director may, after notice and opportunity for hearing, suspend, revoke, or modify an individual's certification if an individual has:

(i) Obtained training documentation through fraudulent means;

(ii) Gained admission to and completed an accredited training program through misrepresentation of admission requirements;

(iii) Obtained certification through misrepresentation of certification requirements or related documents dealing with

education, training, professional registration, or experience;

(iv) Performed work requiring certification at a job site without having proof of certification;

(v) Permitted the duplication or use of the individual's own certificate by another;

(vi) Performed work for which certification is required, but for which appropriate certification has not been received;

(vii) Failed to comply with the appropriate work practice standards for lead-based paint activities at R307-842-3; or

(viii) Failed to comply with federal, state, or local lead-based paint statutes or regulations.

(b) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

(7) Suspension, revocation, and modification of certifications of firms engaged in lead-based paint activities.

(a) The director may, after notice and opportunity for hearing, suspend, revoke, or modify a firm's certification if a firm has:

(i) Performed work requiring certification at a job site with individuals who are not certified;

(ii) Failed to comply with the work practice standards established in R307-842-3;

(iii) Misrepresented facts in its letter of application for certification to the director;

(iv) Failed to maintain required records; or

(v) Failed to comply with federal, state, or local lead-based paint statutes or regulations.

(b) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

R307-842-3. Work Practice Standards for Conducting Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities.

(1) Effective date, applicability, and terms.

(a) All lead-based paint activities shall be performed pursuant to the work practice standards contained in this section.

(b) When performing any lead-based paint activity described by the certified individual as an inspection, lead-hazard screen, risk assessment, or abatement, a certified individual must perform that activity in compliance with the appropriate requirements below.

(c) Documented methodologies that are appropriate for this section are found in the following: the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil, the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 7474-R-95-001), and other equivalent methods and guidelines.

(d) Clearance levels are appropriate for the purposes of this section may be found in the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead Contaminated Soil or other equivalent guidelines.

(2) Inspection.

(a) An inspection shall be conducted only by a person certified by the director as an inspector or risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(b) When conducting an inspection, the following locations shall be selected according to documented methodologies and tested for the presence of lead-based

paint:

(i) In a residential dwelling and child-occupied facility, each component with a distinct painting history and each exterior component with a distinct painting history shall be tested for lead-based paint, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint; and

(ii) In a multi-family dwelling or child-occupied facility, each component with a distinct painting history in every common area, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint.

(c) Paint shall be sampled in the following manner:

(i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

(ii) All collected paint chip samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(d) The certified inspector or risk assessor shall prepare an inspection report which shall include the following information:

(i) Date of each inspection;

(ii) Address of building;

(iii) Date of construction;

(iv) Apartment numbers (if applicable);

(v) Name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;

(vi) Name, signature, and certification number of each certified inspector and/or risk assessor conducting testing;

(vii) Name, address, and telephone number of the certified firm employing each inspector and/or risk assessor, if applicable;

(viii) Each testing method and device and/or sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any x-ray fluorescence (XRF) device;

(ix) Specific locations of each painted component tested for the presence of lead-based paint; and

(x) The results of the inspection expressed in terms appropriate to the sampling method used.

(3) Lead hazard screen.

(a) A lead hazard screen shall be conducted only by a person certified by the director as a risk assessor.

(b) If conducted, a lead hazard screen shall be conducted as follows:

(i) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected;

(ii) A visual inspection of the residential dwelling or child-occupied facility shall be conducted to:

(A) Determine if any deteriorated paint is present; and

(B) Locate at least two dust sampling locations;

(iii) If deteriorated paint is present, each surface with deteriorated paint, which is determined, using documented methodologies, to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead;

(iv) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways, or stairwells where one or more children, age 6 and under, are most likely to come into contact with dust; and

(v) In multi-family dwellings and child-occupied facilities, in addition to the floor and window samples required in paragraph (3)(b)(iv) of this section, the risk

assessor shall also collect composite dust samples from common areas where one or more children, age 6 and under, are most likely to come into contact with dust.

(c) Dust samples shall be collected and analyzed in the following manner:

(i) All dust samples shall be taken using documented methodologies that incorporate adequate quality control procedures; and

(ii) All collected dust samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(d) Paint shall be sampled in the following manner:

(i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

(ii) All collected paint chip samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(e) The risk assessor shall prepare a lead hazard screen report, which shall include the following information:

(i) The information required in a risk assessment report as specified in paragraph (4) of this section, including paragraphs (4)(k)(i) through (4)(k)(xiv), and excluding paragraphs (4)(k)(xv) through (4)(k)(xviii) of this section. Additionally, any background information collected pursuant to paragraph (3)(b)(i) of this section shall be included in the lead hazard screen report; and

(ii) Recommendations, if warranted, for a follow-up risk assessment, and as appropriate, any further actions.

(4) Risk assessment.

(a) A risk assessment shall be conducted only by a person certified by the director as a risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(b) A visual inspection for risk assessment of the residential dwelling or child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential lead-based paint hazards.

(c) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected.

(d) The following surfaces which are determined, using documented methodologies, to have a distinct painting history, shall be tested for the presence of lead:

(i) Each friction surface or impact surface with visibly deteriorated paint; and

(ii) All other surfaces with visibly deteriorated paint.

(e) In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sill(s) and floor shall be collected and analyzed for lead concentration in all living areas where one or more children, age 6 and under, are most likely to come into contact with dust.

(f) For multi-family dwellings and child-occupied facilities, the samples required in paragraph (4)(d) of this section shall be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in the following locations:

(i) Common areas adjacent to the sampled residential dwelling or child-occupied facility; and

(ii) Other common areas in the building where the risk assessor determines that one or more children, age 6 and

under, are likely to come into contact with dust.

(g) For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in each room, hallway, or stairwell utilized by one or more children, age 6 and under, and in other common areas in the child-occupied facility where one or more children, age 6 and under, are likely to come into contact with dust.

(h) Soil samples shall be collected and analyzed for lead concentrations in the following locations:

(i) Exterior play areas where bare soil is present;

(ii) The rest of the yard (i.e., non-play areas) where bare soil is present; and

(iii) Dripline/foundation areas where bare soil is present.

(i) Any paint, dust, or soil sampling or testing shall be conducted using documented methodologies that incorporate adequate quality control procedures.

(j) Any collected paint chip, dust, or soil samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(k) The certified risk assessor shall prepare a risk assessment report which shall include the following information:

(i) Date of assessment;

(ii) Address of each building;

(iii) Date of construction of buildings;

(iv) Apartment number (if applicable);

(v) Name, address, and telephone number of each owner of each building;

(vi) Name, signature, and certification number of the certified risk assessor conducting the assessment;

(vii) Name, address, and telephone number of the certified firm employing each certified risk assessor if applicable;

(viii) Name, address, and telephone number of each recognized laboratory conducting analysis of collected samples;

(ix) Results of the visual inspection;

(x) Testing method and sampling procedure for paint analysis employed;

(xi) Specific locations of each painted component tested for the presence of lead;

(xii) All data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device.

(xiii) All results of laboratory analysis on collected paint, soil, and dust samples;

(xiv) Any other sampling results;

(xv) Any background information collected pursuant to paragraph (4)(c) of this section;

(xvi) To the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint-related hazards;

(xvii) A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards; and

(xviii) A description of interim controls and/or abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(5) Abatement.

(a) An abatement shall be conducted only by an individual certified by the director, and if conducted, shall be conducted according to the procedures in this paragraph.

(b) A certified supervisor is required for each abatement project and shall be onsite during all work site preparation and during the post-abatement cleanup of work areas. At all other times when abatement activities are being conducted, the certified supervisor shall be onsite or available by telephone, pager or answering service, and able to be present at the work site in no more than 2 hours.

(c) The certified supervisor and the certified firm employing that supervisor shall ensure that all abatement activities are conducted according to the requirements of this section and all other federal, state, and local requirements.

(d) A certified firm must notify the director of lead-based paint abatement activities as follows:

(i) Except as provided in paragraph (5)(d)(ii) of this section, the director must be notified prior to conducting lead-based paint abatement activities. The original notification must be received by the director at least 5 business days before the start date of any lead-based paint abatement activities;

(ii) Notification for lead-based paint abatement activities required in response to an elevated blood lead level (EBL) determination, or federal, state, tribal, or local emergency abatement order should be received by the director as early as possible before, but must be received no later than the start date of the lead-based paint abatement activities. Should the start date and/or location provided to the director change, an updated notification must be received by the director on or before the start date provided to the director. Documentation showing evidence of an EBL determination or a copy of the federal/state/tribal/local emergency abatement order must be included in the written notification to take advantage of this abbreviated notification period;

(iii) Except as provided in paragraph (5)(d)(ii) of this section, updated notification must be provided to the director for lead-based paint abatement activities that will begin on a date other than the start date specified in the original notification, as follows:

(A) For lead-based paint abatement activities beginning prior to the start date provided to the director an updated notification must be received by the director at least 5 business days before the new start date included in the notification; and

(B) For lead-based paint abatement activities beginning after the start date provided to the director an updated notification must be received by the director on or before the start date provided to the director;

(iv) Except as provided in paragraph (5)(d)(ii) of this section, updated notification must be provided to the director for any change in location of lead-based paint abatement activities at least 5 business days prior to the start date provided to the director;

(v) Updated notification must be provided to the director when lead-based paint abatement activities are canceled, or when there are other significant changes including, but not limited to, when the square footage or acreage to be abated changes by more than 20%. This updated notification must be received by the director on or before the start date provided to the director, or if work has already begun, within 24 hours of the change;

(vi) The following must be included in each notification:

(A) Notification type (original, updated, or cancellation);

(B) Date when lead-based paint abatement activities will start;

(C) Date when lead-based paint abatement activities will end (approximation using best professional judgment);

(D) Firm's name, Utah lead-based paint firm certification number, address, and telephone number;

(E) Type of building (e.g., single family dwelling, multi-family dwelling, and/or child-occupied facilities) on/in which abatement work will be performed;

(F) Property name (if applicable);

(G) Property address including apartment or unit number(s) (if applicable) for abatement work;

(H) Documentation showing evidence of an EBL determination or a copy of the federal/state/tribal/local emergency abatement order, if using the abbreviated time period as described in paragraph (5)(d)(ii) of this section;

(I) Name and Utah lead-based paint individual certification number of the project supervisor;

(J) Approximate square footage/acreage to be abated;

(K) Brief description of abatement activities to be performed; and

(L) Name, title, and signature of the representative of the certified firm who prepared the notification;

(vii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Utah Division of Air Quality electronic notification system. Written notification can be accomplished using either the sample form titled "Lead-Based Paint Abatement Project Notification" or similar form containing the information required in paragraph (5)(d)(vi) of this section. All written notifications must be delivered by United States Postal Service, fax, commercial delivery service, hand delivery, or by email on or before the applicable date. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site;

(viii) Lead-based paint abatement activities shall not begin on a date, or at a location other than that specified in either an original or updated notification, in the event of changes to the original notification; and

(ix) No firm or individual shall engage in lead-based paint abatement activities, as defined in R307-840-2, prior to notifying the director of such activities according to the requirements of this paragraph.

(e) A written occupant protection plan shall be developed for all abatement projects and shall be prepared according to the following procedures:

(i) The occupant protection plan shall be unique to each residential dwelling or child-occupied facility and be developed prior to the abatement. The occupant protection plan shall describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards; and

(ii) A certified supervisor or project designer shall prepare the occupant protection plan.

(f) The work practices listed below shall be restricted during an abatement as follows:

(i) Open-flame burning or torching of lead-based paint is prohibited;

(ii) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with High Efficiency Particulate Air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97% or greater efficiency;

(iii) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than 2 square feet in any one room, hallway, or stairwell or totaling no more than 20 square feet on exterior surfaces; and

(iv) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100 degrees Fahrenheit.

(g) If conducted, soil abatement shall be conducted in one of the following ways:

(i) If the soil is removed:

(A) The soil shall be replaced by soil with a lead

concentration as close to local background as practicable, but no greater than 400 ppm; and

(B) The soil that is removed shall not be used as top soil at another residential property or child-occupied facility; or

(ii) If soil is not removed, the soil shall be permanently covered, as defined in R307-840-2.

(h) The following post-abatement clearance procedures shall be performed only by a certified inspector or risk assessor:

(i) Following an abatement, a visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris, or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris, or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures;

(ii) Following the visual inspection and any post-abatement cleanup required by paragraph (5)(h)(i) of this section, clearance sampling for lead in dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques;

(iii) Dust samples for clearance purposes shall be taken using documented methodologies that incorporate adequate quality control procedures;

(iv) Dust samples for clearance purposes shall be taken a minimum of 1 hour after completion of final post-abatement cleanup activities;

(v) The following post-abatement clearance activities shall be conducted as appropriate based upon the extent or manner of abatement activities conducted in or to the residential dwelling or child-occupied facility:

(A) After conducting an abatement with containment between abated and unabated areas, one dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floors of each of no less than four rooms, hallways, or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are less than four rooms, hallways, or stairwells within the containment area, then all rooms, hallways, or stairwells shall be sampled;

(B) After conducting an abatement with no containment, two dust samples shall be taken from each of no less than four rooms, hallways, or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one interior window sill and window trough (if present) and one dust sample shall be taken from the floor of each room, hallway, or stairwell selected. If there are less than four rooms, hallways, or stairwells within the residential dwelling or child-occupied facility, then all rooms, hallways, or stairwells shall be sampled; and

(C) Following an exterior paint abatement, a visible inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surface shall be found to be cleaned of visible dust and debris. In addition, a visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior surface abated. If paint chips are present, they must be removed from the site and properly disposed of, according to all applicable federal, state, and local requirements;

(vi) The rooms, hallways, or stairwells selected for sampling shall be selected according to documented methodologies;

(vii) The certified inspector or risk assessor shall compare the residual lead level (as determined by the laboratory analysis) from each single surface dust sample with clearance levels in paragraph (5)(h)(viii) of this section for

lead in dust on floors, interior window sills, and window troughs or from each composite dust sample with the applicable clearance levels for lead in dust on floors, interior window sills, and window troughs divided by half the number of subsamples in the composite sample. If the residual lead level in a single surface dust sample equals or exceeds the applicable clearance level or if the residual lead level in a composite dust sample equals or exceeds the applicable clearance level divided by half the number of subsamples in the composite sample, the components represented by the failed sample shall be recleaned and retested; and

(viii) The clearance levels for lead in dust are 40 ug/ft² for floors, 250 ug/ft² for interior window sills, and 400 ug/ft² for window troughs.

(i) In a multi-family dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:

(i) The certified individuals who abate or clean the residential dwellings do not know which residential dwelling will be selected for the random sample;

(ii) A sufficient number of residential dwellings are selected for dust sampling to provide a 95% level of confidence that no more than 5% or 50 of the residential dwellings (whichever is smaller) in the randomly sampled population exceed the appropriate clearance levels; and

(iii) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to the procedures found in paragraph (5)(h) of this section.

(j) An abatement report shall be prepared by a certified supervisor or project designer no later than 30 business days after receiving the results of final clearance testing and all soil analyses (if applicable). The abatement report shall include the following information:

(i) Start and completion dates of abatement;

(ii) The name and address of each certified firm conducting the abatement and the name of each supervisor assigned to the abatement project;

(iii) The occupant protection plan prepared pursuant to paragraph (5)(e) of this section;

(iv) The name, address, and signature of each certified risk assessor or inspector conducting clearance sampling and the date of clearance testing;

(v) The results of clearance testing and all soil analyses (if applicable) and the name of each recognized laboratory that conducted the analyses; and

(vi) A detailed written description of the abatement, including abatement methods used, locations of rooms and/or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures.

(6) Collection and laboratory analysis of samples. Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in this section shall be:

(a) Collected by persons certified by the director as an inspector or risk assessor; and

(b) Analyzed by a laboratory recognized by EPA pursuant to Section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip, dust, and soil samples.

(7) Composite dust sampling. Composite dust sampling may only be conducted in the situations specified in paragraphs (3) through (5) of this section. If such sampling is conducted, the following conditions shall apply:

(a) Composite dust samples shall consist of at least two subsamples;

(b) Every component that is being tested shall be included in the sampling; and

(c) Composite dust samples shall not consist of subsamples from more than one type of component.

(8) Determinations.

(a) Lead-based paint is present:

(i) On any surface that is tested and found to contain lead equal to or in excess of 1.0 milligrams per square centimeter or equal to or in excess of 0.5% by weight; and

(ii) On any surface like a surface tested in the same room equivalent that has a similar painting history and that is found to be lead-based paint.

(b) A paint-lead hazard is present:

(i) On any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill or floor) are equal to or greater than the dust hazard levels identified in the definition of "Dust-lead hazard" in R307-840-2;

(ii) On any chewable lead-based paint surface on which there is evidence of teeth marks;

(iii) Where there is any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame); and

(iv) If there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(c) A dust-lead hazard is present in a residential dwelling or child-occupied facility:

(i) In a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills are equal to or greater than 40 ug/ft² for floors and 250 ug/ft² for interior window sills, respectively;

(ii) On floors or interior window sills in an unsampled residential dwelling in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property; and

(iii) On floors or interior window sills in an unsampled common area in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled common area in the same common area group on the property.

(d) A soil-lead hazard is present:

(i) In a play area when the soil-lead concentration from a composite play area sample of bare soil is equal to or greater than 400 parts per million; or

(ii) In the rest of the yard when the arithmetic mean lead concentration from a composite sample (or arithmetic mean of composite samples) of bare soil from the rest of the yard (i.e., non-play areas) for each residential building on a property is equal to or greater than 1,200 parts per million.

(9) Recordkeeping. All reports or plans required in this section shall be maintained by the certified firm or individual who prepared the report for no fewer than 3 years. The certified firm or individual also shall provide copies of these reports to the building owner who contracted for its services.

R307-842-4. Lead-Based Paint Activities Requirements.

Lead-based paint activities, as defined in R307-840-2, shall only be conducted according to the procedures and work practice standards contained in R307-842-3 of this rule. No individual or firm may offer to perform or perform any lead-based paint activity as defined in R307-840-2, unless certified to perform that activity according to the procedures in R307-842-2.

R307-842-5. Work Practice Requirements for Lead-Based Paint Hazards.

Applicable certification, occupant protection, and clearance requirements and work practice standards are found

in R307-842 and in regulations issued by HUD at 24 CFR Part 35, Subpart R. The work practice standards in those regulations do not apply when treating paint-lead hazards of less than:

- (a) Two square feet of deteriorated lead-based paint per room or equivalent,
- (b) Twenty square feet of deteriorated paint on the exterior building, or
- (c) Ten percent of the total surface area of deteriorated paint on an interior or exterior type of component with a small surface area.

KEY: paint, lead-based paint, lead-based paint abatement
May 9, 2017 **19-2-104(1)(i)**
Notice of Continuation February 5, 2015

R317. Environmental Quality, Water Quality.**R317-3. Design Requirements for Wastewater Collection, Treatment and Disposal Systems.****R317-3-1. Technical and Procedural Requirements.**

1.1. Scope of This Rule

A. General. This rule is intended to aid the logical development, from feasibility study, through startup, to operation of a wastewater collection, treatment and disposal project.

B. Authority. Construction and operating permits and approvals are issued pursuant to the provisions of Sections 19-5-104, 19-5-107 and 19-5-108. Violation of these permit(s) or approval(s) including compliance with the conditions thereof, or beginning of construction, or modification without the Director's approval, is subject to the penalties provided in Section 19-5-115.

C. Applicability

1. This rule applies to:

a. communities, sewerage agencies, industries, and federal or state agencies (hereinafter referred to as the applicant), and

b. i. construction, installation, modification or operation of any treatment works or part thereof or any extension or addition thereto, or

ii. construction, installation, modification or operation of any establishment or any extension or modification or addition to it, the operation of which would probably result in a discharge.

2. The applicant must not advertise the project for bids and must not begin construction without receiving a construction permit.

D. Requirements

1. The design requirements in this rule are for collection, treatment and disposal of wastewater largely originating from domestic sources. These criteria are intended to be limiting values for items upon which an evaluation of such plans and specifications will be made and to establish, as far as practicable, uniformity of practice. This rule also provides for a mechanism to apply water pollution control research and recommendations for further evaluation by the design engineer.

2. Communities, and the engineering profession should discuss with the staff of the Director possible combinations of wastewater treatment and disposal processes or situations not covered in detail by this rule.

E. Construction Permit and Approvals

1. When a Permit or an Approval is Issued. A construction permit or an approval is issued when the applicant has met all requirements of this rule, including any additional requirements of funding programs administered by the Director. The applicant or the designee or the consultant should meet with the staff of the Director to discuss the plan of study before undertaking extensive engineering studies for construction of treatment works. 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.

2. Variance. The Director may grant a variance from the minimum requirements stated in this rule, subject to site-specific consideration and justification, but not overriding safeguarding of public health or protection of water quality or engineering practice. The applicant must submit pertinent and relevant material in support of a variance from the minimum requirements.

3. Limitations

a. The issuance of a construction permit does not relieve in any way the applicant of the obligation to obtain other

approvals and permits, i.e., ground water discharge permit, clearances etc., from other agencies which may have jurisdiction over the project.

b. The permit will expire at the end of one year from the date of issuance if the approved project is not under substantial construction. Plans and specifications must be resubmitted for review and reissuance of the expired permit.

F. Operating Permits

1. Scope

Permits are issued to any wastewater treatment works covered under R317-3 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.

2. Facilities requiring operating permits that treat domestic waste will typically be issued a general permit rather than individual permits. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of R317-8-5 and R317-8-6. General permits shall be effective for a fixed term not to exceed 5 years.

3. Facilities requiring operating permits that treat non-domestic waste will be issued individual permits. Individual permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of R317-8-5 and R317-8-6. Individual permits shall be effective for a fixed term not to exceed 5 years.

4. Application requirements.

a. Facilities currently in operation shall submit to the Director a written notice of intent to be covered by the general permit or by an individual permit no later than January 1, 2010. New facilities must submit a written notice of intent prior to commencing operation. A facility that fails to submit a notice of intent in accordance with the terms of the permit is not authorized to operate.

b. The notice of intent shall include:

i. the legal name and address of the owner.

ii. the facility name and address.

iii. design flow, actual flow, and type of waste treated.

iv. disposal method, effluent quality (if applicable).

v. location of nearest public drinking water well.

vi. diagram of system showing major components.

5. Requirements for recording and reporting monitoring results. All permits shall specify:

a. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, (including biological monitoring methods when appropriate);

b. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

c. Reporting shall be monthly in accordance with R317-1-2.4.

G. Definitions

1. The annual average daily rate of flow is defined as:

a. an average of daily rates of flow over a period of not less than one year; or

b. the rate of flow equal to or greater than 50 percent of the daily flow rate data.

2. The average design rate of flow or the average peak-monthly rate of flow is defined as:

a. a moving average of daily rates of flow over a thirty consecutive days; or over a period of month whichever

produces a higher rate of flow; or

b. the rate of flow equal to or greater than 92 percent of the daily flow rate data.

3. The maximum design rate of flow or peak-daily rate of flow is defined as:

a. the maximum rates of flow over a 24 hour period; or

b. the rate of flow equal to or greater than 99.7 percent of the daily flow data.

4. The peak design rate of flow or peak-hourly rate of flow is defined as:

a. the maximum rate of flow over a 60-minute period; or

b. the rate of flow equal to or greater than 99.9 percent of the daily flow data.

5. The minimum daily rate of flow is defined as the minimum rate of flow over a twenty-four hour period.

6. Industrial waste flow is defined as the maximum rate of flow for each of industries tributary to the sewer system.

7. Other Definitions. Other definition of terms and their use in this rule is intended to be in accordance with:

a. R317-1 (Definitions and General Requirements), and

b. Glossary - Water and Wastewater Control Engineering, jointly prepared by American Public Health Association (APHA), American Society of Civil Engineers (ASCE), American Water Works Association (AWWA), and Water Pollution Control Federation (WPCF).

8. Units of Expression The units of expression used are in accordance with those recommended in WPCF Manual of Practice Number 6, Units of Expression for Wastewater Treatment.

9. Terms

a. The term shall be used where practice is standardized to permit specific delineation of requirements or where safeguarding of the public health or protection of water quality justifies such definite action.

b. Other terms, such as should, recommended, preferred, indicate desirable procedures or methods, with deviations subject to individual consideration and justification, but not overriding safeguarding of public health or protection of water quality or engineering practice.

c. Desirable procedures or methods may be mandatory requirements for projects using state or federal funds.

1.2. Engineering Report

A. The Scope of the Report

1. The applicant or the applicant's consulting engineer should submit an engineering report to the Director at least 60 days before the date when action by the Director is desired. The report shall be prepared under the direction of a registered professional engineer licensed to practice in the State of Utah. The report must establish the need, scope, basis and viability for:

a. all projects involving innovative treatment and disposal processes, and

b. collection and pumping systems handling flows in excess of 1 million gallons per day (3,785 cubic meters per day).

2. The documents submitted for formal approval should include all pertinent and relevant material to aid in the review of the submitted reports.

B. What is Required in the Report

1. The magnitude and complexity of the project will determine the scope of the report.

2. The report must provide basic information; criteria and assumptions; evaluation of alternate projects, with preliminary layouts and cost estimates; assessment of environmental factors; financing methods, anticipated charges for users; organizational and staffing requirements; conclusions or recommendations with a proposed project for consideration; and an outline of official actions and procedures required to implement the project.

3. The report should detail various concepts (including process description and sizing), factual data, and controlling assumptions and considerations for the functional planning of sewerage facilities. These data form the continuing technical basis for the detailed design and preparation of construction plans and specifications.

4. The report should include preliminary architectural, structural, mechanical, and electrical designs, sketches and outline specifications of process units, special equipment, etc.

5. The applicant or the consultant must address specific program and funding requirements in the report.

6. A detailed topical outline is available from the division.

C. Supplemental Requirements for Lagoons and Land Application. The engineer's report shall contain pertinent information on location, geology, hydrology, hydrogeology, soil conditions, area for expansion and any other factors that will affect the feasibility and acceptability of the proposed lagoon and land application projects.

1. Project Location. The engineer's report shall include on a 7.5-minute US Geological Survey topographic map showing the following within two mile (3.22 kilometers) radius of the proposed project site:

a. the location and direction of all residences, commercial developments, parks, recreational areas, land requirements for future additional treatment units and increased waste loadings, and land use zoning of area;

b. elevations and contours of the site and adjacent area;

c. watercourses and water supplies (including a log of each well, unless waived by the Director);

d. location, depth, and discharge point of any field tile in the immediate area of the proposed site;

e. buffer zones;

f. limits of all flood plains, public drinking water supply watersheds and inland wetlands; and

g. natural site drainage zones.

2. Soil Borings and Geology. The applicant must determine representative subsurface soil characteristics and geology of the project site using a number of soil borings logged by an independent soil testing laboratory. At least one boring shall be a minimum of 25 feet (7.6 meters) in depth or into bedrock, whichever is shallower. The borings shall be filled and sealed. The report must address the following items as a minimum:

a. depth, type and texture of soil, all confirmed field data by the Soil Conservation Service (US Department of Agriculture);

b. hydraulic conductivity of the project site or the lagoon bottom as determined in the field, and lagoon bottom materials;

c. soil chemical properties such as, pH, nutrient levels, cation exchange capacity, etc.;

d. depth to bedrock;

e. bedrock type;

f. geologic discontinuities - faults, fractures, sinkholes;

g. jointing and permeability of rock.

3. Ground Water Issues

a. ground water depth confirmed by field investigations, for various seasons, including data from the period between March and May;

b. location of perched water tables;

c. ground water contours;

d. direction of ground water movement and flow;

e. ground water points of discharge;

f. available analyses of site ground water quality and drinking water wells in the vicinity, including but not limited to: coliform bacteria, pH, nitrates, total nitrogen, chlorides, sulfates, and total hardness;

g. a description of the depth and type of all water supply

wells within two-mile (3.22 kilometers) radius of the proposed project site;

h. ground water monitoring needs using a system of wells or lysimeters around the perimeter of the project site; and

i. compliance with the requirements of R317-6 (Ground Water Quality Protection Rules) including securing a ground water discharge permit.

4. Climate Data

- a. total precipitation for each month;
- b. mean number of days per year with temperatures less than or equal to 32 degrees Fahrenheit (0 degree Centigrade);
- c. wind velocities and direction;
- d. evapotranspiration data.

D. Reports on Supplementary Investigations. Reports on soils, foundation, geological and hydrogeological investigations must be submitted by the applicant or the consultant, to the Director. These reports are supplementary to a proposal, predesign or design report, plans and specifications for all projects. The reports must focus on any existing site conditions which may affect feasibility or constructibility of the project. If such problems do exist, mitigative and remedial measures thereto must be recommended by the applicant's consultant. The basis of conclusions reached should be supported with relevant and detailed information, graphically and narratively. The recommendations must be incorporated in the design.

1.3. Predesign Report

A. A predesign report must be prepared for the projects designed to:

1. treat domestic sewage flow in excess of 5 million gallons per day (18,900 cubic meters per day); or
2. incorporate emerging, innovative and alternative technologies.

B. The report must be submitted for review and approval by the Director. The report shall include a summary of process design criteria, the basis of design, process and hydraulic profiles, outline of all appurtenant facilities, and supporting information.

C. Approval of a predesign report represents an agreement-in-principle subject to receipt, review and approval of satisfactory engineering plans and specifications. Such agreement-in-principle will be modified or revised in light of new information that may become available later. Also, an approval of prefinal documents is not an authorization to advertise the project for bids or to begin construction; but allows the applicant to proceed with preparing final engineering drawings and specifications.

1.4. Construction Plans

A. General. A complete set of construction drawings covering all disciplines shall be submitted for review in fulfillment of the requirements of this rule. The size, complexity and nature of the project will determine the extent of involvement of various disciplines. Such disciplines are, but not necessarily limited to, Civil, Structural, Mechanical, Architectural, Mechanical, Electrical, Geotechnical, Instrumentation, Heating, Ventilating and Air Conditioning etc. All designs shall be in accordance with the requirements of applicable local, state and federal rules or regulations, the latest recognized practice standards including the Uniform Building Code, the National Electrical Code, the Uniform Mechanical Code, the Uniform Plumbing Code and other industry standards. The plans shall be clear, legible and suitable for microfilming or image processing.

1. Standard Information

a. Plans shall show a suitable project title, the name of municipality, sewer district, sewerage agency, sponsoring institution or industry, current revision date, and the name of engineer in charge of the project, engineer's registration

number, an imprint of registration seal and signature.

b. Plans shall be drawn to a scale which will permit all necessary information to be plainly shown. Numerical and graphical scales in foot-pound-second (FPS or English) system shall be shown. The use of the international system (metric or MKS or meter-kilogram-second) of units is encouraged.

c. All plan views shall indicate a north point, preferably in a standardized direction. A suitable geographical reference for the project shall also be shown. Topographical and elevation data should be presented on a recognized standard datum. Such datum should be clearly indicated.

2. Vicinity and Location Plans. A large scale vicinity map should be provided for a suitable geographical reference to the project. It should also indicate vehicular access to the project.

3. General Site Work Plans.

a. A site plan showing the project lay out should be included to establish a reference to the existing features. Similarly, a reduced-scale site or key plan should be drawn on all drawings to provide the context of work shown on the drawing to the site.

b. For the entire project site, information shall be provided on topography, survey data, location of test borings, limits of work, staging area for contractors, areas of project related site work, and other work that may overlap the areas of concentrated work activities. Information shall be compiled to the extent practicable on utility locations, above and below ground utilities which might interfere with the proposed construction, particularly water mains, gas mains, storm drains, and telephone and power conduits, outside piping, all known existing structures, security improvements, roads, signage, lighting, and other site improvements. Compiled information should be shown on plans.

4. Detailed Plans. Construction to be performed in areas of concentrated work such as individual installations, buildings, rooms or assemblies shall be shown on the detailed plans. Such plans shall show plan views, elevations, sections and supplementary views which, together with the specifications and general layouts, provide the working information for the contract and construction of the works. They shall also include detailed design data in all applicable disciplines, dimensions and relative elevations of structures, the location and outline form of equipment, location size of piping, water levels, water surface and hydraulic profiles, and ground elevations.

B. Plans for Sewers. Construction plans are required to be submitted for projects involving new sewer systems. Projects for substantial additions to the existing systems are required to be submitted only in fulfillment of the requirements of the funding agency. These plans must detail the following information:

1. Geographical Features

a. Topography and elevations. Existing or proposed improvements, streets, the boundaries of all streams and water impoundments, and water surfaces shall be clearly shown. Contour lines at suitable intervals should be included.

b. Streams. The direction of flow in all natural or artificial streams, and high and low water elevations of all water surfaces at sewer outlets shall be shown.

2. Boundaries. The boundary lines of the municipality or the sewer district, and the area to be sewerred, shall be shown.

3. Sewers. The plan shall show the location, size and direction of flow of all existing and proposed sanitary sewers draining to the treatment works concerned.

4. Plans and Profiles. Detailed plans and profiles shall be submitted. Profiles should have a horizontal scale of not more than 100 feet to the inch and vertical scale of not more

than 10 feet to the inch. Plan views should be drawn to a corresponding horizontal scale and preferably be shown on the same sheet. Plans and profiles shall show:

- a. Location of streets and sewers;
- b. ground surface; size of pipe; length between manholes; manhole identifiers, such as numbers etc.; invert and surface elevation at each manhole; and grade of sewer between each two adjacent manholes;
- c. the elevation and location of the basement floor on the profile of the sewer, showing feasibility to serve adjacent basements except where otherwise noted on the plans; and
- d. Locations of all special features such as inverted siphons, concrete encasements, elevated sewers, special construction to implement proper separation from water mains etc.

5. Detailed drawings, made to a scale to clearly show the nature of the design, shall be furnished to show the following particulars:

- a. all stream crossings and sewer outlets, with elevations of the stream bed and of normal and extreme high and low water levels;
- b. details of all special sewer joints, pipeline construction or installation, and cross-sections; and
- c. details of all sewer appurtenances such as manholes, inspection chambers, inverted siphons, regulators, flow measurement or control stations and elevated sewers.

C. Plans for Pumping Stations. Construction plans shall be submitted for construction or modifications of pumping stations having the installed capacity in excess of 1 million gallons per day (3,785 cubic meters per day). These plans must detail the following information besides vicinity, site and location, and engineering information required:

1. Vicinity, Site and General Site Work Plans
 - a. the location and extent of the tributary area;
 - b. any municipal boundaries within the tributary area;
 - c. the location of the pumping station and force main, and pertinent elevations; and
 - d. availability of power sources, including alternative sources.

2. Detailed Plans. Detailed plans shall be submitted showing the following:

- a. topography of the site with all pertinent elevations;
- b. soils or foundation report;
- c. existing pumping station with all adjacent improvements;
- d. proposed pumping station, including provisions for installation of future pumps or ejectors, emergency power generation, and other reliability features;
- e. maximum hydraulic gradient including calculations in downstream gravity sewers when all installed pumps are in operation; and
- f. elevation of high water at the site, and maximum elevation of sewage in the collection system upon occasion of power failure.

D. Plans for Treatment Plants. Construction plans shall be submitted for construction or modifications of treatment plants. These plans must detail the following information besides vicinity, site and location, and engineering information required:

1. Location Plan. A plan shall be submitted showing the treatment plant in relation to the remainder of the system.

2. General Layout. Layouts of the proposed treatment plant shall be submitted, showing:

- a. topography of the site;
- b. size and location of plant structures, and adjacent improvements;
- c. schematic flow diagram(s), including mass balance, showing the flow through various plant units, and showing utility systems serving the plant processes;

d. outside or yard piping, including any arrangements for bypassing individual units (Materials handled and direction of flow through pipes shall be shown.); and

e. hydraulic profiles, including calculations, showing the flow of the major liquid or solid process streams including raw or treated sewage, supernatant liquor, scum and sludge.

3. Detailed Plans. Detailed plans shall show the following:

- a. location, dimensions, and elevations of all existing and proposed plant facilities;
- b. elevations of a 100-year water level of the body of water to which the plant effluent is to be discharged;
- c. type, size, pertinent features, and operating capacity of all pumps, blowers, motors, and other mechanical devices;
- d. schematics, sectional or isometric views of all process and utility piping not shown on the General Site Work Plans;
- e. hydraulic profile at the minimum, average, and maximum rate of flow; and
- f. description of any features not otherwise covered by other drawings or specifications or engineer's report.

1.5. Technical Specifications. Complete technical specifications for the construction of sewers, pumping stations, treatment plants, and all other appurtenances, shall accompany the plans. The specifications accompanying construction drawings shall include all construction information not shown on the drawings which is necessary to inform the builder in detail of the design requirements for the quality of materials, workmanship and fabrication of the project. They shall also include: the type, size strength, operating characteristics, and rating of equipment; allowable infiltration; the complete requirements for all mechanical and electrical equipment, including machinery, valves, piping, and jointing of pipe; electrical apparatus, wiring, instrumentation, and meters; laboratory fixtures and equipment; operating tools, construction materials; special filter materials, such as, stone, sand, gravel, or slag; miscellaneous appurtenances; chemicals when used; instructions for testing materials and equipment as necessary to meet design standards; and performance tests for the completed work and component units. Performance tests must be conducted at design load conditions wherever practical.

1.6. Revisions to the Approved Plans and Specifications. Any changes, such as addenda, change orders, field change etc., to the approved plans or specifications affecting capacity, flow, operation of units, or point or quality of discharge shall be submitted for review and approval before any such change is made in either contract documents or construction. Plans or specifications proposed to be so revised must, therefore, be submitted at least 30 days in advance of any construction work which will be affected by such changes to permit sufficient time for review and approval. Changes under emergency conditions may be communicated verbally, and then submitted in writing. Structural revisions or other minor changes not affecting capacities, flows, or operation are to be permitted during construction without approval.

1.7. Construction Supervision. The applicant must demonstrate that adequate and competent inspection will be provided during construction. It is the responsibility of the applicant to provide frequent and comprehensive inspection of the project.

1.8. Plan of Operation

A. Submittal. A plan of operation must be prepared at the mid-point of construction, but no later than at the time of 80 percent completion of construction, unless waived by the Director on the basis of funding program requirements, and the scope and the complexity of the project.

B. Contents of the Plan. The plan of operation must provide a concise, sequential description of and

implementation schedule for the following activities:

1. hiring and training of operators;
 2. start-up schedules and services;
 3. safety programs, plans and procedures;
 4. emergency operations procedures and plan;
 5. process monitoring program;
 6. laboratory and testing services;
 7. user charge and pretreatment program, necessary to assure cost-effective, efficient and reliable startup and operation of the facility, future expansion and upgrade; and
 8. maintenance of water quality and public health.
- 1.9. Operation and Maintenance Manual

A. Submittal. A draft of the manual must be submitted at the mid-point of construction, unless waived by the Director on the basis of funding program requirements, and the scope and the complexity of the project. Final draft must be submitted for review and approval, no later than at the 90 percent stage of construction in the final form or 30 days prior to startup, whichever occurs first.

B. Contents of the Manual

1. The manual presents procedures to facilitate operation and maintenance of the plant under all conditions, technical guidance for troubleshooting, and requirements for compliance with the permits and approvals issued. The manual must address the needs of the system being employed and must be directed toward the level of training required of the operating staff.

2. The manual must include all information pertinent for the facilities besides information from manufacturers' catalogs or brochures.

1.10. Start-up

A. Certificate of Completion. The engineer in charge of construction management or inspection of the approved project or facilities shall submit a certificate, bearing the seal of the professional engineer, to the effect that the facilities were constructed in accordance with approved plans, specifications, addenda and change orders to the owner with a copy thereof to the division.

B. Authorization to Operate. The applicant will request a final inspection the division upon receipt of the certificate of completion. No facilities may be placed in service before the final inspection by the division, and authorization to operate the facility is issued in writing by the Director.

C. As-built or Record Drawings.

1. Within 30 days of acceptance by the owner of wastewater or industrial waste facilities from the contractor, a copy of such acceptance must be submitted to the division for record.

2. As-built or record drawings clearly showing the as-built project shall be submitted to the Director within 120 days after the completion of the construction of the approved project or facilities.

1.11. Operation During Construction

A. Construction-related Bypass. Operation of all existing sewers, pump stations, and treatment plants must continue without interruption during the construction of new facilities or modification of existing facilities. Therefore, bypassing will not be allowed except under extenuating circumstances. If this is not possible and construction will result in the discharge of partially treated and untreated sewage into the surface waters of the state, an approval for such a discharge shall be required from the Director before such discharge occurs.

B. Request for a Construction-related Bypass. A formal request for the consideration of a construction-related bypass shall be submitted to the Director by the permittee not less than 90 days prior to the date of proposed bypass initiation. Such request shall contain at least the following information:

1. a detailed description of the construction work to be

performed which the owner has deemed warrants a bypass;

2. an analysis of all known alternatives which would eliminate or reduce the need for plant bypassing;
3. cost-benefit and effective analysis of alternatives, including an assessment of resource damages;
4. the minimum and maximum duration of bypassing under each alternative;
5. the applicant's preferred alternative for conducting the bypass;
6. the projected date of initiation of bypass.

C. Approval or Denial of a Construction-related Bypass

1. The request for a construction-related bypass will be approved or denied following a thorough review with due consideration of compliance with the discharge permit(s); water quality standards; and all known available and reasonable methods to abate water pollution.

2. An approval issued to permit bypass will contain all restrictions necessary to minimize the duration of bypassing. A denial determination will state the reasons for the denial and will direct the permittee to initiate a plan of action to implement an alternative to bypassing.

1.12. Innovative Processes Evaluation

A. Basic requirements. The Director will consider the evaluation of innovative approaches to wastewater treatment in the interest of encouraging advances in technology, processes, equipment and material not covered by this rule, provided that:

1. a favorable recommendation has been made by a professional engineer licensed to practice in Utah, following his own evaluation of developmental processes or equipment or material, for a specific project;

2. the applicant has capital and technical resources to replace or modify developmental processes, equipment and material with conventional processes, equipment and material;

3. the risk incurred with the experimentation rests solely with the proponent of processes, equipment and material as evidenced by the written acknowledgement to the Director; and

4. the applicant will replace the failed processes, equipment and material with a proven conventional processes, equipment and material as evidenced by the written acknowledgement to the Director.

B. Approval Limitations

1. The Director may approve developmental processes, equipment and material may be approved in the form of terms and conditions to a construction permit, when reliable operating data from full scale installations are not available. The term and conditions may include such as, but not necessarily limited to, demonstration period for a successful application, requirements to submit reports on the operation of the system during the experimental period.

2. The Director may limit the number of approvals for the same developmental processes, equipment and material until reliable and valid operational experience is gained.

C. Evaluation Criteria. The evaluation of innovative processes will include the following factors:

1. anticipated performance of the system in full scale field conditions,

2. ability to consistently meet required effluent and water quality standards,

3. any evidence of equivalence to conventional technology,

4. the owner's ability to finance, and to operate and maintain the system with the level of expertise necessary, and

5. submission of process descriptions, schematics, reports, monitoring and performance data, costs, specific studies, bench scale test data and pilot plant test data, and any other information appropriate and necessary for the

evaluation.

R317-3-2. Sewers.

2.1. General. Construction of a new sewer system project may not begin unless the applicant has submitted an engineering report detailing the design, and construction plans to the Director for review and approval evidenced by a construction permit. The Director will not normally review construction plans for extensions of the existing sewer systems to new areas or replacement of sanitary sewers in the existing sewer systems unless requested or required by state or federal funding programs. Rain water from roofs, streets, and other areas, and ground water from foundation drains must not be allowed to enter the sewer system through planning, design and construction quality assurance and control measures.

2.2. Basis of Design

A. Planning Period. Sewers should be designed for the estimated ultimate tributary population or the 50-year planning period, whichever requires a larger capacity. The Director may approve the design for reduced capacities provided the capacity of the system can be readily increased when required. The maximum anticipated capacity required by institutions, industrial parks, etc. must be considered in the design.

B. Sewer Capacity. The required sewer capacity shall be determined on the basis of maximum hourly domestic sewage flow; additional maximum flow from industrial plants; inflow; ground water infiltration; potential for sulfide generation; topography of area; location of sewage treatment plant; depth of excavation; and pumping requirements.

1. Per Capita Flow. New sewer systems shall be designed on the basis of an annual average daily rate of flow of 100 gallons per capita per day (0.38 cubic meter per capita per day) unless there are data to indicate otherwise. The per capita rate of flow includes an allowance for infiltration/inflow. The per capita rate of flow may be higher than 100 gallons per day (0.38 cubic meter per day) if there is a probability of large amounts of infiltration/inflow entering the system.

2. Design Flow

a. Laterals and collector sewers shall be designed for 400 gallons per capita per day (1.51 cubic meters per capita per day).

b. Interceptors and outfall sewers shall be designed for 250 gallons per capita per day (0.95 cubic meter per capita per day), or rates of flow established from an approved infiltration/inflow study.

c. The Director will consider other rates of flow for the design if such basis is justified on the basis of supporting documentation.

C. Design Calculations. Detailed computations, such as the basis of design and hydraulic calculations showing depth of flow, velocity, water surface profiles, and gradients shall be submitted with plans.

2.3. Design and Construction Details

A. Minimum Size

1. No gravity sewer shall be of less than eight inches (20 centimeters) in diameter.

2. A 6-inch (15 centimeters) diameter pipe may be permitted when the sewer is serving only one connection, or if the applicant justifies the need for such diameter on the basis of supporting documentation.

B. Depth. Sewers should be sufficiently deep to receive sewage from basements and to prevent freezing. Insulation shall be provided for sewers that cannot be placed at a depth sufficient to prevent freezing.

C. Odor and Sulfide Generation. The design shall incorporate features to control and mitigate odor and sulfide

generation in sewers. Such features may include steeper slope to achieve higher velocity, reaeration through induced turbulence, etc.

D. Slope

1. The pipe diameter and slope shall be selected to obtain velocities to minimize settling problems.

2. All sewers shall be designed and constructed to give mean velocities of not less than 2 feet per second (0.61 meter per second), when flowing full, based on Manning's formula using an n value of 0.013.

3. Sewers shall be laid with uniform slope between manholes.

4. Table R317-3-2.3(D)(4) shows the minimum slopes which shall be provided; however, slopes greater than these are desirable.

E. Flatter Slopes. Slopes flatter than those required for the 2-feet-per-second (0.61 meter per second)-velocity criterion when flowing full, may be permitted by the Director provided that:

1. there is no other practical alternative;

2. the depth of flow is not less than 30 percent of the diameter at the average design rate of flow;

3. the design engineer has furnished with the report the computations showing velocity and depth of flow corresponding to the minimum, average and peak rates of flow for the present and design conditions in support of the request for variance; and

4. the operating authority of the sewer system submits a written acknowledgement of the ability to provide any additional sewer maintenance required by flatter slopes.

F. Steep Slopes

1. Where velocities greater than 15 feet per second (4.6 meters per second) are attained, special provision shall be made to protect against displacement by erosion and shock.

2. Sewers on 20 percent slopes or greater shall be anchored securely against lateral and axial displacement with suitable thrust blocks, concrete anchors or other equivalent restraints, spaced as follows:

a. Not over 36 feet (11 meters) center to center on grades 20 percent and up to 35 percent;

b. Not over 24 feet (7.3 meters) center to center on grades 35 percent and up to 50 percent;

c. Not over 16 feet (4.9 meters) center to center on grades 50 percent and over.

G. Alignment. Sewers 24 inches (61 centimeters) in diameter or less shall be laid with a straight alignment between manholes. The alignment shall be checked by either using a laser beam or lamping.

H. Changes in Pipe Size. When a smaller sewer joins a large one, the invert of the larger sewer should be lowered sufficiently to maintain the same energy gradient. An approximate method for securing these results is to place the 0.8 depth point of both sewers at the same elevation.

I. Materials

1. The material of pipe selected should be suitable for local conditions. The material of sewer pipe should be compatible with factors such as industrial wastewater characteristics, putrecibility, physical and chemical properties of adjacent soil, heavy external loading, etc.

2. The material of pipe must withstand superimposed loads without any damage. The design of trench widths and depths should allow for loads. Special bedding, concrete cradle or encasement, or other special construction may be used to withstand extraordinary superimposed loading.

2.4. Curved Sewers. Curved sewers are permitted only under circumstances where conventional sewer construction is not feasible. A conceptual approval must be obtained before beginning the design.

A. Design

1. The minimum radius of curvature shall be greater than 200 feet or one-half of the maximum deflection angle for the material of pipe allowed by the manufacturer.

2. The design n value for the sewer pipe shall be 0.018.

3. Only one horizontal curve in the sewer alignment will be allowed between manholes. No vertical curves shall be permitted.

4. Manhole spacing shall not exceed 400 feet (122 meters).

5. Manholes must be provided at the beginning and the end of a curved alignment (i.e. change in radius of curvature).

6. The design should consider increased erosion potential due to high velocities.

B. Other Requirements

1. Maintenance equipment shall be available at all times for inspection and cleaning.

2. Horizontal and vertical alignment of the sewer after the construction must be verified and certified by a registered professional engineer.

a. Accurate record or as-built drawings must be prepared showing the physical location of the pipe in the ground, and submitted to the division in accordance with the requirements of R317-3-1.

2.5. Installation Requirements

A. Standards

1. The technical specifications shall require that installation be in accordance with the requirements based on the criteria, standards and procedures established by:

a. this rule;

b. recognized industry standards and practices as published in their technical publications;

c. the product manufacturer's recommendations and guidance;

d. Uniform Building Code, Uniform Plumbing Code, Uniform Mechanical Code and National Electrical Code;

e. American Society of Testing Materials;

f. American National Standards Institute; and

g. Occupational Safety and Health Administration (OSHA), US Department of Labor and its succeeding agencies.

2. Requirements shall be set forth in the specifications for the pipe and methods of bedding and backfilling thereof so as not to damage the pipe or its joints, impede cleaning operations and future tapping, nor create excessive side fill pressures or ovalation of the pipe, nor seriously impair flow capacity.

B. Identification of Sewer Lines. A clearly labelled tracer location tape shall be placed two feet above the top of sewer lines less than or equal to 24 inch (61 centimeters) in diameter, along its entire length.

C. Deflection Test

1. Deflection test shall be performed on all flexible pipes. The test shall be conducted after the final backfill has been in place at least 30 days.

2. No pipe shall show a deflection in excess of 5 percent.

3. If the deflection test is run using a rigid ball or mandrel, it shall have a diameter equal to 95 percent of the inside diameter of the pipe. The test shall be performed without mechanical pulling devices.

D. Joints and Infiltration

1. Joints. The installation procedures of joints and the materials to be used shall be included in the specifications. Sewer joints shall be designed to minimize infiltration and to prevent the entrance of roots throughout the life of the system.

2. Leakage Tests. Procedures for leakage tests shall be specified. This may include appropriate water or low pressure air testing. The leakage outward or inward (exfiltration or infiltration) shall not exceed 200 gallons per inch of pipe diameter per mile per day (0.19 cubic meter per centimeter of

pipe diameter per kilometer per day) for any section of the system. An exfiltration or infiltration test shall be performed with a minimum positive head of 2 feet (0.61 meter). The air test, if used, shall, as a minimum, conform to the test procedure described in the American Society of Testing Materials standards. The testing methods selected should take into consideration the range in ground water elevations projected during the test.

E. Inspection

1. The specifications shall include requirements for inspection of manholes for water-tightness prior to placing in service, including television inspection.

2. Records of television inspection shall be retained for future reference.

2.6. Manholes

A. Location. Manholes shall be installed at:

1. the end of each line exceeding 150 feet (46 meters) in length;

2. all changes in grade, size, or alignment;

3. all intersections; and

4. distances not greater than:

a. 400 feet (120 meters) for sewers 15 inches (38 centimeters) or less; and

b. 500 feet (150 meters) for sewers 18 inches (46 centimeters) to 30 inches (76 centimeters).

5. Distances up to 600 feet (180 meters) may be approved in cases where adequate cleaning equipment for such spacing is provided.

6. Greater spacing may be permitted in larger sewers.

7. Cleanouts shall not be substituted for manholes nor installed at the end of lines greater than 150 feet (46 meters) in length.

B. Drop Type Manholes

1. A drop pipe should be provided for a sewer entering a manhole at an elevation of 24 inches (61 centimeters) or more above the manhole invert. Where the difference in elevation between the incoming sewer and manhole invert is less than 24 inches (61 centimeters), the invert should be filleted to prevent solids deposition.

2. Drop manholes should be constructed with an outside drop connection. If an inside drop connections is necessary, it shall be secured to the interior wall of the manhole and provide access for cleaning.

3. Due to the unequal earth pressures that would result from the backfilling operation in the vicinity of the manhole, the entire outside drop connection shall be encased in concrete.

C. Diameter. The minimum diameter of manholes shall be 48 inches (1.22 meters); larger diameter manholes are preferable for large diameter sewers. A minimum diameter of 22 inches (56 centimeters) shall be provided for safe access.

D. Flow Channel. The flow channel through manholes should be made to conform in shape and slope to that of the sewers. The depth of flow channels should be up to one-half to three-quarters of the diameter of the sewer. Adjacent floor area should drain to the channel with the minimum slope of 1 inch per foot (8.3 centimeters per meter).

E. Watertightness

1. Manholes shall be of the pre-cast concrete or poured-in-place concrete type. Manholes shall be waterproofed on the exterior.

2. Inlet and outlet pipes shall be joined to the manhole with a gasketed flexible watertight connection arrangement that allows differential settlement of the pipe and manhole wall to take place.

3. Watertight manhole covers shall be used wherever the manhole tops may be flooded by street runoff or high water. Locked manhole covers may be desirable in isolated easement locations or where vandalism may be a problem.

F. Electrical. Electrical equipment installed or used in manholes shall conform to appropriate National Electrical Code requirements.

2.7. Inverted Siphons. Inverted siphons shall consist of at least two barrels, with a minimum pipe size of 6 inches (15 centimeters) with an arrangement to exclude debris and solids. The siphon shall be provided with necessary appurtenances for convenient flushing and maintenance. The manholes shall have adequate clearances for rodding; and in general, sufficient head shall be provided and pipe sizes selected to secure velocities of at least 3.0 feet per second (0.92 meter per second) for average flows. The inlet and outlet details shall be so arranged that the normal flow is diverted to 1 barrel, and that either barrel may be cut out of service for cleaning. The vertical alignment should permit cleaning and maintenance.

2.8. Sewers In Relation To Streams

A. Location of Sewers on Streams

1. The top of all sewers entering or crossing streams shall be at a sufficient depth below the natural bottom of the stream bed to protect the sewer line. In general, the following cover requirements must be met:

- a. one foot (30 centimeters) of cover is required where the sewer is located in bedrock;
- b. three feet (90 centimeters) of cover is required in other material;
- c. cover in excess of 3 feet (90 centimeters) may be required in streams having a high erosion potential; and
- d. in paved stream channels, the top of the sewer must be placed below the bottom of the channel pavement.

2. If the proposed sewer crossing will not interfere with the future improvements to the stream channel, then reduced cover may be permitted.

B. Horizontal Location. Sewers shall be located along streams outside of the stream bed and sufficiently removed therefrom to provide for future possible stream widening and to prevent pollution by siltation during construction.

C. Structures. The sewer outfalls, headwalls, manholes, gate boxes, or other structures shall be located so they do not interfere with the free discharge of flood flows of the stream.

D. Alignment

1. Sewers crossing streams should be designed to cross the stream as nearly at right angles to the stream flow as possible, and shall be free from change in grade.

2. Sewer systems shall be designed to minimize the number of stream crossings.

E. Construction

1. Materials. Sewers entering or crossing streams shall be constructed of cast or ductile iron pipe with mechanical joints; otherwise they shall be constructed so they will remain watertight and free from changes in alignment or grade. Material used to backfill the trench shall be stone, coarse aggregate, washed gravel, or other materials which will not cause siltation.

2. Siltation and Erosion. Construction methods that will minimize siltation and erosion shall be employed. The design engineer shall include in the project specifications the method(s) to be employed in the construction of sewers in or near streams to provide adequate control of siltation and erosion. Specifications shall require that cleanup, grading, seeding, and planting or restoration of all work areas shall begin immediately. Exposed areas shall not remain unprotected for more than seven days.

F. Aerial Crossings

1. A carrier pipe shall be provided for all aerial sewer crossings. Support shall be provided for all joints in pipes utilized for aerial crossings. The supports shall be designed to prevent frost heave, overturning and settlement.

2. Precautions against freezing, such as insulation and

increased slope, shall be provided. Expansion jointing shall be provided between above-ground and below-ground sewers.

3. The design engineer shall consider the impact of flood waters and debris for aerial stream crossings. The bottom of the pipe should be placed below the elevation of twenty-five (25) year flood. Crossings, in no case, shall block the channel.

2.9. Protection of Water Supplies. The applicant must review the requirements stated in R309-112-2 - Distribution System Rules, Drinking Water and Sanitation Rules, to assure compliance with the said rule.

A. Water Supply Interconnections. There shall be no physical connections between a public or private potable water supply system and a sewer, or appurtenance thereto which would permit the passage of any sewage or polluted water into the potable supply. No water pipe shall pass through or come in contact with any part of a sewer manhole.

B. Relation to Water Mains

1. Horizontal Separation

a. Sewers shall be laid at least 10 feet (3.0 meters) horizontally from any existing water main. The distance shall be measured edge to edge. In cases where it is not practical to maintain a ten foot separation, a deviation may be allowed based on the supportive data from the design engineer. Such deviation may allow installation of the sewer closer to a water main, provided that the sewer is laid:

- (1) in a separate trench, or
- (2) on an undisturbed earth shelf located on one side of the sewer trench, or

(3) in the sewer trench which has been backfilled and compacted to not less than 95 percent of the optimum density as determined by the ASTM Standard D-690, as amended, and

b. In each of the above cases, the bottom of the water main shall be at least 18 inches (46 centimeters) above the top of the sewer.

2. Crossings. Sewers crossing above water mains shall be laid to provide a minimum vertical distance of 18 inches (46 centimeters) between the outside of the water main and the outside of the sewer. The crossing shall be arranged so that the sewer joints will be equidistant and as far as possible from the water main joints. Where a water main crosses under a sewer, adequate structural support shall be provided for the sewer to prevent damage to the water main.

3. Special Conditions. When it is impossible to obtain proper horizontal and vertical separation as stated above, the sewer shall be designed and constructed of cast iron, ductile iron, galvanized steel or protected steel pipe with mechanical joints for the minimum distance of 10 feet on either side of the point of crossing. The design engineer may use other types of joints if equivalent joint integrity is demonstrated. The lines shall be pressure tested to assure watertightness before backfilling.

R317-3-3. Sewage Pumping Stations.

3.1. General. Sewage pumping station structures, and electrical and mechanical equipment shall be protected from physical damage that would be caused by a 100-year flood. Sewage pumping stations must remain fully operational and accessible during a 25-year flood.

3.2. Design

A. Pumping Rates. The pumps and controls of main pumping stations, and especially pumping stations pumping to the treatment works or operated as part of the treatment works, should be selected to operate at varying delivery rates to permit discharging sewage at approximately its rate of delivery to the pump station.

B. System - Head Calculation

1. The design engineer shall submit system-head

calculations and curves. System-head curves for C values of 100, 120 and 140 in the Hazen William's equation for calculating head loss corresponding to minimum, median and maximum water levels shall be developed.

2. A system-head curve for C value of 120 corresponding to median (normal operating) water level shall be used to make preliminary selection of motor and pump. The pump and motor must operate satisfactorily over the entire range of system-head curves for C values of 100 and 140 corresponding to minimum and maximum water levels intersected by the head-discharge relationship of a given pump.

3. Pumps and motors shall be sized for the 10-year peak flows; preferably the 20-year sewage flow requirements. These operating points shall be shown on the system-head curves.

C. Accessibility. The pumping station shall be readily accessible by maintenance vehicles during all weather conditions. The facility should be located off the traffic way of streets and alleys.

D. Grit. Where it is necessary to pump sewage before grit removal, the design of the wet well and pump station piping shall be such that operational problems from the accumulation of grit are avoided.

E. Odor and Corrosion Control. The pumping station design should incorporate measures for:

1. mitigating the effects of sulfide corrosion to structure and equipment; and

2. effective odor control when a populated area is within close proximity.

F. Structures

1. Dry wells, including their superstructure, shall be completely separated from the wet well.

2. Provision shall be made to facilitate maintenance and removal of pumps, motors, and other mechanical and electrical equipment.

3. Safe means of access and proper ventilation shall be provided to dry wells and to wet wells containing either bar screens or mechanical equipment requiring inspection or maintenance.

a. For built-in-place pump stations, a stairway with rest landings shall be provided at vertical intervals not to exceed 12 feet (3.7 meters). For factory-built pump stations over 15 feet (4.6 meters) deep, a rigidly fixed landing shall be provided at vertical intervals not to exceed 10 feet (3.0 meters). Where a landing is used, a suitable and rigidly fixed barrier shall be provided to prevent an individual from falling past the intermediate landing to a lower level.

b. Where space requirements are insufficient, the design may provide for a manlift or elevator in lieu of landings in a factory-built station if the design includes an emergency access or exit.

c. Local, state and federal safety requirements, including those in applicable fire code, the Uniform Building Code, etc., must be reviewed and complied with. Those requirements, if more stringent than the ones stated above, shall be incorporated in the design.

4. Construction Materials. The materials selected in construction and installation must be safe and able to withstand adverse operating environmental conditions caused by presence of hydrogen sulfide and other corrosive gases, greases, oils, and other constituents frequently present in sewage.

3.3. Pumps and Pneumatic Ejectors

A. Multiple Units

1. At least two pumps or pneumatic ejectors shall be provided. A minimum of three pumps shall be provided for stations handling flows greater than 1 million gallons per day (3,785 cubic meters per day).

2. If only two units are provided, they should have the same capacity. Each shall be capable of handling flows in excess of the expected maximum flow. Where three or more units are provided, they should be designed to fit actual flow conditions and must be of such capacity that with any one of the largest units out of service, the remaining units shall have capacity to handle maximum sewage flows.

B. Protection Against Clogging

1. Pumps handling sewage from 30 inch (76 centimeters) or larger diameter sewers shall be protected by readily accessible bar racks from clogging or damage.

2. Bar racks should have clear openings not exceeding 1-1/2 inches (6.4 centimeters). The design shall provide for a mechanical hoist.

3. The design engineer shall consider installation of mechanically cleaned and duplicate bar racks in the pumping stations handling larger than five million gallons per day (18,900 cubic meters per day) rate of flow.

4. Small pumping stations pumping less than one million gallons per day (3,785 cubic meters per day) shall be equipped with bar racks or inline grinding devices, etc., to prevent clogging.

C. Pump Openings. Except where grinder pumps are used, pumps shall be capable of passing spheres of at least 3 inches (7.6 centimeters) in diameter, and pump suction and discharge piping shall be at least 4 inches (10.2 centimeters) in diameter.

D. Priming. The pump shall be so placed that it will operate under a positive suction head under normal operating conditions, except for submersible pumping stations.

E. Electrical Equipment. Electrical systems and components (e.g., motors, lights, cables, conduits, switchboxes, and control circuits) in raw sewage wet wells, or in enclosed or partially enclosed spaces where hazardous concentrations of flammable gases or vapors may be present, shall comply with the National Electrical Code requirements for Class I Group D, Division 1 locations. In addition, equipment located in the wet well shall be suitable for use under corrosive conditions. Each flexible cable shall be provided with watertight seal and separate strain relief. A fused disconnect switch located above ground shall be provided for all pumping stations. When such equipment is exposed to weather, it shall as a minimum, meet the requirements of weatherproof equipment (NEMA 3R).

F. Intake. Each pump should have an individual intake. Turbulence should be avoided near the intake in wet wells. Intake piping should be as straight and short as possible.

G. Dry Well Dewatering. A separate sump pump equipped with dual check valves shall be provided in dry wells to remove leakage or drainage. Discharge shall be located as high as possible. A connection to the pump suction is also recommended as an auxiliary feature. Water ejectors connected to a potable water supply will not be approved. All floor and walkway surfaces should have an adequate slope to a point of drainage. Pump seal water shall be piped to the sump.

H. Controls

1. Type. Control systems for liquid level monitoring shall be of the air bubbler type, the capacitance type, the encapsulated float type, or the non-contact type. The selection of type of controls must be based on wastewater characteristics and other site related conditions. The Director may approve the existing float-tube control systems on pumping stations being upgraded. The electrical equipment shall comply with the National Electrical Code requirements for Class I, Group D, Division 1 locations.

2. Location. The level control system shall be located away from the turbulence of incoming flow and pump suction.

3. Alternation. The design engineer must consider automatic alternation of the sequencing of pumps in use.

I. Valves

1. Suction Line. An isolation valve shall be placed on the suction line of each pump except on submersible pumps.

2. Discharge Line

a. Isolation and check valves shall be placed on the discharge line of each pump. The check valve shall be located between the isolation valve and the pump.

b. Check valves shall not be placed in the vertical run of discharge piping unless the valve is designed for that specific application.

c. Ball valves may be permitted in the vertical runs.

d. All valves shall be suitable for the material being handled, and capable of withstanding normal operating pressure and water hammer.

e. Where limited pump backspin will not damage the pump and low discharge head conditions exist, a short individual force main for each pump, may be approved by the Director in lieu of a discharge manifold.

3. Location. Valves shall not be located in wet well. They shall be located in a dry well adjacent to the pumps or in an adjacent isolated pit appropriately protected from physical, weather or freezing damage, with proper access for operation and maintenance.

J. Wet Wells

1. Divided Wells. Wet well should be divided into multiple sections, properly interconnected, to facilitate repairs and cleaning, and non-turbulent hydraulic operating condition to each pump inlet.

2. Size. The wet well size and level control settings shall be appropriate to avoid heat buildup in the pump motor due to frequent starting (short cycling), and septic conditions due to excessive detention time.

3. Floor Slope. The wet well floor shall have a minimum slope of one to one to the hopper bottom. The horizontal area of the hopper bottom shall be not greater than necessary for proper installation and function of the pump inlet.

K. Ventilation. All pump stations must be ventilated to maintain safe operating environment. Where the pump pit is below the ground surface, mechanical ventilation is required, so arranged as to independently ventilate the dry well and the wet well if screens or mechanical equipment requiring maintenance or inspection are located in the wet well. There shall be no interconnection between the wet well and dry well ventilation systems. In pits over 15 feet (4.6 meters) deep, multiple inlets and outlets are recommended. Dampers should not be used on exhaust or fresh air ducts. Fine screens or other obstructions in air ducts should be avoided to prevent clogging. Switches for operation of ventilation equipment should be marked and located for convenient operation from outside of the enclosed environment. All intermittently operated ventilating equipment shall be interconnected with the respective pit lighting system. Automatic controls are recommended for intermittently ventilated pump stations. Fan parts should be of non-corrosive material. All parts adjacent to moving ones should be of non-sparking materials. Consideration should be given to installation of automatic heating and dehumidification equipment.

1. Wet Wells. Ventilation may be either continuous or intermittent. Ventilation, if continuous, shall provide at least 12 complete air changes per hour; if intermittent, at least 30 complete air changes per hour. Ventilating equipment should force air into wet well rather than exhaust it from wet well.

2. Dry Wells. Ventilation may be either continuous or intermittent. Ventilation, if continuous, shall provide at least 6 complete air changes per hour; if intermittent, at least 30 complete air changes per hour.

L. Flow Measurement. Continuous measuring and recording of sewage flow shall be provided at all pumping stations with a design pumping capacity greater than one million gallons per day (3,785 cubic meters per day).

M. Water Supply. There shall be no physical connection between any potable water supply and a sewage pumping station which under any condition might cause contamination of the potable water supply. The potable water supply to a pumping station shall be protected against cross connection or backflow.

3.4. Self-Priming Pumps. Self-priming pumps shall be capable of rapid priming and repriming at the lead pump on elevation. Such self-priming and repriming shall be accomplished automatically under design operating conditions. Suction piping should not exceed the size of the pump suction and shall not exceed 25 feet (7.6 meters) in total length. Priming lift at the lead pump on elevation shall include a safety factor of at least 4 feet (1.2 meters) from the maximum allowable priming lift for the specific equipment at design operating conditions. The combined total of dynamic suction lift at the pump off elevation and required net positive suction head at design operating conditions shall not exceed 22 feet (6.7 meters).

3.5. Submersible Pump Stations. Submersible pump stations may be used for flows less than 0.25 million gallons per day (946 cubic meters per day). The Director may approve submersible pump stations for flows greater than 0.25 million gallons per day (946 cubic meters per day), based on operational, reliability and maintenance considerations. The submersible pumps stations shall meet the design requirements stated above, except as modified in this section.

A. Construction. Submersible pumps and motors shall be designed specifically for raw sewage use, including totally submerged operation during a portion of each pumping cycle. An effective method to detect shaft seal failure or potential seal failure shall be provided, and the motor shall be of squirrel-cage type design without brushes or other arc-producing mechanisms.

B. Pump Removal. Submersible pumps shall be readily removable and replaceable without dewatering the wet well or disconnecting any piping in the wet well.

C. Electrical

1. Power Supply and Control. Electrical supply, control and alarm circuits shall be designed to allow for disconnection of the equipment from outside and inside of pumping station. Terminals and connectors shall be protected from corrosion by location outside of wet well or through use of watertight seals. If located outside of the pumping station, weatherproof equipment shall be used.

2. Controls. The motor control center shall be located outside of the wet well and be protected by a conduit seal or other appropriate measures meeting the requirements of the National Electrical Code, to prevent the atmosphere of the wet well from gaining access to the control center. The seal shall be so located that the motor may be removed and electrically disconnected without disturbing the seal.

3. Power Cord. Pump motor power cords shall be designed for flexibility and serviceability under severe service conditions and shall meet the requirements of the Mine Safety and Health Administration for trailing cables. Ground fault interruption protection shall be used to deenergize the circuit in the event of any failure in the electrical integrity of the cable. Power cord terminal fittings shall be corrosion-resistant and constructed in a manner to prevent the entry of moisture into the cable, shall be provided with strain relief appurtenances, and shall be designed to facilitate field connecting.

3.6. Valves. Valves shall be located in a separate valve

pit. Accumulated water shall be drained to the wet well or the soil. If the valve pit is drained to the wet well, an effective method shall be provided to prevent sewage gases and liquid from entering the pit during surcharged wet well conditions.

3.7. Alarm Systems.

A. Alarm systems shall be provided for pumping stations. The alarm shall be activated in cases of power failure, high water level in dry or wet well, pump failure, use of the lag pump, air compressor failure, or any other pump malfunction.

B. Pumping station alarms shall be telemetered, including identification of the alarm condition, to the operating agency's facility that is manned 24 hours a day. If such a facility is not available and 24-hour holding capacity is not provided, the alarm shall be telemetered to the operating agency's facility during normal working hours and to the home of the person(s) responsible for the lift station during off-duty hours.

C. The Director may approve audio-visual alarm systems with a self-contained power supply in lieu of the telemetering system outlined above, depending upon location, station holding capacity and inspection frequency.

3.8. Emergency Operation

A. Pumping stations and collection systems shall be designed to prevent bypassing of raw sewage and backup into the sewer system. For use during possible periods of extensive power outages, mandatory power reductions, or uncontrolled storm events, a controlled high-level wet well overflow or emergency power generator shall be provided. Where a high level overflow is utilized, storage or retention tanks, or basins, shall be provided having at least a 2-hour retention capacity at the anticipated overflow rate.

B. The applicant must review the requirements of R317-6 (Ground Water Quality Protection Rule) for compliance with the said rule for earthen retention basins.

C. The operating agency shall provide:

1. an in-place or portable pump, driven by an internal combustion engine or an emergency generator capable of pumping from the wet well to the discharge side of the station for pump stations with a capacity in excess of one million gallons per day (3,785 cubic meters per day), and

2. an engine-driven generating equipment or an independent source of electrical power or emergency generators capable of pumping from the wet well to the discharge side of the station for pump stations with a capacity in excess of five million gallons per day (18,925 cubic meters per day).

3.9. Auxiliary and Emergency Equipment Requirements

A. General. The following general requirements shall apply to all internal combustion engines used to drive auxiliary pumps, service pumps through special drives, or electrical generating equipment.

1. Engine Protection. The engine must be protected from damaging operating conditions. Protective equipment shall shut down the engine and activating an alarm on site unless continuous manual supervision is planned. Protective equipment shall monitor for conditions of low oil pressure and overheating. Oil pressure monitoring is not required for engines with splash lubrication.

2. Size. The engine shall have adequate rated power to start and continuously operate all connected loads.

3. Fuel Type. The type of fuel must be carefully selected for maintaining reliability and ease of starting, especially during cold weather conditions. Unused fuel from the fuel storage tank should be removed annually, and the tank refilled with fresh fuel.

4. Engine Ventilation. The engine shall be located above grade with adequate ventilation of fuel vapors and exhaust gases.

5. Routine Start-up. All emergency equipment shall be provided with instructions indicating the need for regular starting and running of such units at full loads.

6. Protection of Equipment. Emergency equipment shall be protected from damage at the restoration of regular electrical power.

B. Engine-Driven Pumping Equipment. Where permanently installed or portable engine-driven pumps are used, the following requirements in addition to general requirements apply:

1. Pumping Capacity. Engine-driven pump(s) shall be capable of pumping at the design pumping rates unless storage capacity is available for flows in excess of pump capacity. Pumps shall be designed for anticipated operating conditions, including suction lift if applicable.

2. Operation. Provisions shall be made for automatic and manual start-up and load transfer. The pump must be protected against damage from adverse operating conditions. Provisions should be considered to allow the engine to start and stabilize at operating speed before assuming the load. Where manual start-up and transfer is justified, storage capacity and alarm system must meet the requirements stated hereinabove.

3. Portable Generating Equipment. Where portable generating equipment or manual transfer of power to the pumping equipment is provided, sufficient storage capacity shall be provided in the design of pumping station, to allow time for detection of pump station failure and transportation and connection of generating equipment. The use of special electrical connections and double throw switches are recommended for connecting portable generating equipment.

3.10. Instructions and Equipment

A. Sewage pumping stations and their operators must be supplied with a complete set of operational instructions, including emergency procedures, maintenance schedules, special tools, and necessary spare parts.

B. Local, state and federal safety requirements, including those in applicable fire code, the Uniform Building Code etc., must be reviewed and complied with. Those requirements take precedence over the foregoing requirements, if more stringent, and should be incorporated in the design.

3.11. Force Mains

A. Velocity. A velocity of not less than 2 feet per second (0.61 meter per second) shall be maintained at the average design flow, to avoid septic sewage and resulting odors.

B. Air Relief Valve. An automatic air relief valve shall be placed at high points in the force main to prevent air locking.

C. Termination. Force mains should enter the gravity sewer system at a point not more than 2 feet (30 centimeters) above the flow line of the receiving manhole.

D. Design Pressure. The force main and fittings, including reaction blocking, shall be designed to withstand normal pressure and pressure surges (water hammer).

E. Special Construction. Force main construction near streams or used for aerial crossings shall meet the requirements stated in Sewers.

F. Design Friction Losses

1. Friction losses through force mains shall be based on the Hazen and Williams formula or other hydraulic analysis to determine friction losses. When the Hazen and Williams formula is used, the design shall be based on the value of C equal to 120; for unlined iron or steel pipe the value of C equal to 100 shall be used.

2. When initially installed, force mains will have a significantly higher C factor. The higher C factor should be considered only in calculating maximum power requirements.

G. Separation from Water Main. The applicant or the design engineer must review the requirements stated in R309-112.2 - Distribution System rules, Drinking Water and Sanitation Rules, to assure compliance with the said rule.

H. Identification. A clearly labelled tracer location tape shall be placed two feet above the top of force mains less than or equal to 24 inch (61 centimeters) in diameter, along its entire length.

R317-3-4. Treatment Works.

4.1. Plant Location

A. The treatment plant structures and all related equipment shall be protected from physical damage by the 100-year flood. Treatment works must remain fully operational and accessible during the 25-year flood.

B. These conditions shall apply to all new facilities under construction as well as the existing facilities being expanded, upgraded or modified.

4.2. Quality of Effluent. The effluent requirements and water quality standards established in the discharge permit, R317-1 (Definitions and General Requirements), R317-2 (Standards of Quality for Waters of the State) shall be used to determine the required degree of wastewater treatment, and unit processes and operations.

4.3. Design

A. Basis of Design. The plant design shall be based on the higher value of:

1. a moving average of daily rates of flow and wastewater strength as measured by five-day biochemical oxygen demand (BOD₅) and suspended solids determination tests over a period of 30 consecutive days; or

2. an average of values rate of flow and wastewater strength as measured by five-day biochemical oxygen demand (BOD₅) and suspended solids determination tests, over a period of month; or

3. the rate of flow and wastewater strength as measured by five-day biochemical oxygen demand (BOD₅) and suspended solids determination tests, equal to or greater than 92 percent of the daily flow rate and wastewater strength data.

B. Hydraulic Design. The hydraulic capacities of all units and conveyance structures shall be computed and checked for the maximum and average design rates of flow with one largest unit out of service. No overtopping of any structure under any condition shall be permitted.

1. New Systems. The design for sewage treatment plants shall be based upon an average daily per capita flow of 100 gallons (0.38 cubic meter) unless the applicant provides and justifies a better estimate of flow based on water use data. An allowance shall be made in the design for industrial wastewaters and rates of infiltration/inflow.

2. Existing Systems. For an existing system, the applicant may use the data based on both dry-weather and wet-weather conditions. The data over a minimum period of one year shall be taken as the basis for the design.

C. Organic Design

1. New System Design

a. Domestic waste treatment design shall be on the basis of at least 0.17 pounds (0.08 kilogram) or 200 milligrams per liter of BOD₅ per capita per day and 0.20 pounds (0.09 kilogram) or 250 milligrams per liter of suspended solids per capita per day, unless information is submitted to justify alternate designs.

b. When garbage grinders are used in areas tributary to a domestic treatment plant, the design basis may be increased to 0.22 pounds (0.10 kilogram) or 260 milligram per liter of BOD₅ per capita per day and 0.25 pounds (0.11 kilogram) or 300 milligram per liter of suspended solids per capita per day.

c. An allowance shall be made in the design for industrial wastewaters and rates of infiltration/inflow.

d. Other approved methods for measurement of organic strength of wastewater published in Standard Methods for Examination of Water and Wastewater, jointly prepared by American Public Health Association (APHA), American Society of Civil Engineers (ASCE), American Water Works Association (AWWA), and Water Pollution Control Federation (WPCF), will be accepted in lieu of the five-day biochemical oxygen demand (BOD₅) test.

2. Existing Systems

a. For an existing system, the applicant may use the data based on the actual strength of the wastewater as determined by analysis of composite samples for five-day biochemical oxygen demand (BOD₅) and suspended solids. An appropriate increment for growth shall be included in the basis of design.

b. The data over a minimum period of one year shall be taken as the basis for the design.

D. Shock Loadings. The applicant shall consider the shock loadings of high concentrations and diurnal peaks for short periods of time on the treatment process, particularly for small treatment plants.

E. Design by Analogy. The applicant may utilize the data from similar municipalities in the case of new systems, provided that the reliability and applicability of such data is established through thorough investigations and documentation.

F. Flow Conduits. All piping and channels shall be designed to carry the maximum rates of flows. The incoming sewer shall be designed for unrestricted flow. Bottom corners of the channels must be filleted. Conduits shall be designed to avoid creation of pockets and corners where solids can accumulate. Suitable gates shall be placed in channels to seal off unused sections which might accumulate solids. The use of shear gates or stop planks is permitted where they can be used in place of gate valves or sluice gates. Corrosion resistant materials shall be used for these control gates.

G. Arrangement of Process Units. The design should provide for an arrangement of component parts of the plant, for greatest operating and maintenance convenience, reliability flexibility, economy, continuity of maximum effluent quality, and ease of installation of future units.

H. Flow Division Control. The design shall provide for flow division control facilities to insure organic and hydraulic loading control to various process units. Convenient, easy and safe access, change, observation, and maintenance shall be considered in the design of such facilities. Flow division shall be measured using flow measurement devices to assure uniform loading of all unit processes and operations.

4.4. Plant Design Details

A. Mechanical Equipment. The specifications should provide for:

1. services of a representative of the manufacturer to supervise the installation and initial operation of major items of mechanical equipment; and

2. performance tests of the installed equipment before acceptance by the applicant.

B. Unit Bypasses

1. A minimum of two units in the liquid treatment process train shall be provided for all unit processes and operations in all plants rated at over 1 million gallons per day (3,785 cubic meters per day).

2. The Director will approve any exceptions based on reliability and operability of the components.

3. The design shall provide for properly located and arranged bypass structures and piping so that each unit of the plant can be removed from service independently. The bypass design shall facilitate plant operation during unit maintenance and emergency repair so as to minimize deterioration of effluent quality and insure rapid process

recovery upon return to normal operational mode.

C. **Unit Bypass During Construction.** Any bypass during construction or operation must be approved by the Director before such bypass occurs, as provided in this rule.

D. **Drains.** The design shall incorporate means to completely drain each unit with a discharge to a point within the process or the plant.

E. **Protection of Structures.** The design shall incorporate hydrostatic pressure relief devices to prevent flotation of structures.

F. **Pipe Cleaning and Maintenance.** Fittings, valves, and other appurtenances shall be provided for pipes subject to clogging, to facilitate proper cleaning through mechanical cleaning or flushing. Pipes subject to clogging, such as pipes carrying sludge, shall be lined with a material which creates a smooth and nonadhering surface, thereby reducing clogging and resistance to flow.

G. **Construction Materials.** The materials of construction and equipment shall be resistant to hydrogen sulfide and other corrosive gases, greases, oils, chemicals, and similar constituents frequently present in sewage. This is particularly important in the selection of metals and paints. Contact between dissimilar metals should be avoided to minimize galvanic action, and consequent corrosion.

H. Painting

1. Piping within the plant shall be color coded to facilitate identification of piping, particularly in the plants rated over 5 million gallons per day (18,925 cubic meters per day). Table R317-3-4.4(H)(1) shows color and identification scheme recommended by the American National Standards Institute (ANSI 253.1 and 13.1) shall be used for the purposes of standardization.

2. The labels shall be stenciled in conformance with the ANSI standard A13.1.

3. The Director may approve painting of piping with one color with a labelling scheme in conformance with the ANSI standard A13.1 provided that:

- a. labels are color coded as directed above;
- b. piping contents and direction of flow are legibly stenciled on the label; and
- c. labels are securely on the piping at interval and all locations required in the above referenced standard.

I. **Operating Equipment.** A complete outfit of tools, accessories, and spare parts necessary for the plant operator's use should be provided. Readily-accessible storage space and workbench facilities should be provided, and consideration be given to provision of a garage for large equipment storage, maintenance, and repair.

J. **Erosion Control During Construction.** Effective site erosion control shall be provided during construction.

K. **Grading and Landscaping.** The site should be graded and landscaped upon completion of the plant. Concrete or gravel walkways should be provided for access to all units. Steep slopes should be avoided to prevent erosion. Surface water shall not be permitted to drain into any unit. Particular care shall be taken to protect all treatment plant components from storm water runoff.

4.5. Plant Outfall Lines

A. **Discharge Impact Control.** The outfall sewer shall be designed to discharge to the receiving stream in a manner not to impair the beneficial uses of the receiving stream and acceptable to the Director. The outfall design should provide for:

1. Free fall or submerged discharge at the site selected;
2. Cascading of effluent to increase dissolved oxygen concentration in the effluent; and
3. Limited or complete dispersion of discharge across stream to minimize impact on aquatic life movement, and growth in the immediate reaches of the receiving stream; and

B. **Protection and Maintenance.** The outfall sewer shall be so constructed and protected against the effects of floodwater, ice, or other hazards as to reasonably insure its structural stability and freedom from stoppage.

C. **Sampling Provisions.** All outfall lines shall be designed with a safe and convenient access, preferably using a manhole, so that a sample of the effluent can be obtained at a point after the final treatment process, and before discharge to or mixing with the receiving waters.

4.6. Essential Facilities

A. Emergency Power Facilities

1. **General.** All plants shall have an alternate source of electric or mechanical power to allow continuity of operation during power failures. Methods of providing alternate sources include:

- a. provision of at least two independent sources of power, such as feeders, grid, etc., to the plant;
- b. portable or in-place internal combustion engine equipment which will generate electrical or mechanical energy; or
- c. portable pumping equipment when only emergency pumping is required.

2. **Power for Aeration.** Standby power generating capacity normally is not required for aeration equipment used in the activated sludge type processes or aerated lagoons. In cases where a history of long-term (4 hours or more) power outages have occurred, auxiliary power for minimum aeration of the activated sludge type processes or aerated lagoon will be required. Full power generating capacity may be required when discharge is to critical stream segments to protect downstream uses identified in R317-2 (Standards for Quality for Waters of the State).

3. **Power for Disinfection.** Standby power generating capacity shall include the capacity needed for continuous disinfection of wastewater during power outages.

B. Plant Water Supply

1. **General.** An adequate supply of potable water under pressure should be provided for use in the laboratory and for general cleanliness around the plant. No piping or other connections shall exist in any part of the treatment works which, under any conditions, might cause the contamination of a potable water supply. The chemical quality of the water should be checked for suitability for its intended uses such as in heat exchangers, chlorinators, etc.

2. Direct Connections

a. Potable water from a municipal or separate supply may be used directly at points above grade for hot and cold supplies in lavatory, water closet, laboratory sink (with vacuum breaker), shower, drinking fountain, eye wash fountain, and safety shower; unless local authorities require a positive break at the property line.

b. The applicant must review the requirements stated in R309-112.2 - Distribution System Rules, Drinking Water and Sanitation Rules, to assure compliance with the said rule.

c. Hot water for any of the above units shall not be taken directly from a boiler or piping used for supplying hot water to a sludge heat exchanger or digester heating unit.

3. Indirect Connections

a. Where a potable water supply is used for any purpose in a plant, a break tank, pressure pump, and pressure tank shall be provided. Water shall be discharged to the break tank through an air gap at least 6 inches (15.2 centimeters) above the maximum flood line or the spill line of the tank, whichever is higher.

b. A sign shall be permanently posted at every hose bib, faucet, hydrant, or sill cock located on the water system beyond the break tank to indicate that the water is not safe for drinking.

4. **Separate Potable Water Supply.** Where it is not

possible to provide potable water from a public water supply, a separate well may be provided. Location and construction of the well shall be in accordance with the requirements of R309, Drinking Water and Sanitation Rules.

5. Separate Non-Potable Water Supply. Where a separate non-potable water supply or plant effluent is to be provided, a break tank will not be necessary, but all system outlets shall be posted with a permanent sign indicating the water is not safe for drinking.

C. Sanitary Facilities. Toilet, shower, lavatory, and locker facilities shall be provided in convenient locations to serve the expected staffing level at the plant.

D. Floor Slope. All floor surfaces shall be sloped adequately to a collection floor drain system.

E. Stairways

1. Stairways shall be installed wherever possible in lieu of ladders. Spiral or winding stairs are permitted only for secondary access where dual means of egress are provided. Stairways shall have slopes between 50 degrees and 30 degrees (preferably nearer the latter) from the horizontal to facilitate carrying samples, tools, etc. Each tread and riser shall be of uniform dimension in each flight. Minimum tread run shall not be less than 8 inches (20.3 centimeters). The sum of the tread run and riser shall not be less than 17 inches (43 centimeters) nor more than 18 inches (46 centimeters). A flight of stairs shall consist of not more than a 12-foot (3.7 meters) continuous rise without a platform.

2. Local, state and federal safety requirements, including those in applicable fire code, the Uniform Building Code, etc., must be reviewed and complied with. Those requirements take precedence over the foregoing requirements, if more stringent, and should be incorporated in the design.

4.7. Flow Measurement. Flow measurement devices, preferably of the primary type (devices which create a hydrodynamic condition that is sensed by the secondary element), shall be provided at the plant to continuously indicate, totalize and record volume of wastewater entering the plant in a unit time.

A. Flumes. Installation of flumes shall be as follows:

1. Flumes with throat widths of less than 6 inches (15 centimeters) shall not be installed. Throat width shall be selected to measure the entire range of anticipated flow rates at all measurement locations.

2. Locations close to turbulent, surging or unbalanced flow, or a poorly distributed velocity pattern shall be avoided. For super-critical upstream flow, a hydraulic jump should be forced to occur in a section upstream of the flume at a distance of at least 30 times maximum upstream operating depth of flume followed by a straight approach section of a length specified in this rule.

3. For flumes with throat width less than half the width of the approach channel, the length of approach channel - straight upstream section - shall be the greater of 20 times the throat width or ten times maximum upstream operating depth in flume.

4. For flumes with throat width greater than half the width of the approach channel, the length of approach channel - straight upstream section - shall be not less than ten times the maximum upstream operating depth in flume.

5. Parshall flumes shall be permitted only in locations where free discharge conditions exist on the downstream side at the average design flow. Submergence must not exceed 60 percent at the maximum design flow.

6. The stilling well, if used, and secondary measuring elements, such as floats, sensors, or gages, shall be protected against extreme weather conditions.

B. Other Flow Measurement Devices. Effluent discharged to receiving waters should be measured using flow

measurement devices, such as weirs, sonic or capacitance type, etc.

C. Flow Recorders

1. Clock-wound mechanisms for recording of flow are not permitted.

2. Battery powered flow measurement devices may be permitted at locations where electrical power is not available, and continuous operability of flow measurement devices is demonstrated.

4.8. Safety and Hazardous Chemical Handling. Adequate provision shall be made to effectively protect the operator and visitors from hazards. Local, state and federal safety requirements must be reviewed and complied with. Typical items for consideration are fence, splash guards, hand and guard rails, labeling of containers and process piping, warning signs, protective clothing, first aid equipment, containments, eye-wash fountains and safety showers, dust collection, portable emergency lighting, etc.

4.9. Laboratory.

A. Treatment plants rated in excess of 1 million gallons per day (3,785 cubic meters per day) shall include a laboratory for making the necessary analytical determinations and operating control tests. Otherwise, the applicant shall show availability of services of state-certified laboratories on a continuous contract basis.

B. The laboratory size, bench space, equipment and supplies shall be such that it can perform analytical work for:

1. All self-monitoring parameters required by discharge permits;
2. The process control necessary for good management of each treatment process included in the design; and
3. Industrial waste control or pretreatment programs.

R317-3-5. Screening and Grit Removal.

5.1. Screening Devices. Coarse bar racks or screens shall be used to protect pumps, comminutors, flow measurement devices and other equipment.

5.2. Bar Racks and Screens

A. Location

1. Indoor. Screening devices, installed in a building where other equipment or offices are located, shall be accessible only through a separate outside entrance to protect the operating personnel and the equipment from damage and nuisance caused by gases, odors and potential flooding.

2. Outdoors. Screening devices not installed in enclosures or buildings shall be protected from freezing or other adverse environmental conditions.

B. Access. Screening areas shall be provided with proper work and safe access and egress, proper and emergency lighting, ventilation, and a convenient and safe means for removing the screenings.

C. Design and Installation

1. Bar Spacing. Clear openings between bars should be:

- a. not more than 1 inch (2.54 centimeters) for manually cleaned screens; and
- b. less than 5/8 of an inch (1.59 centimeters) for mechanically cleaned screens.

2. Bar Slope. Manually cleaned screens, except those for emergency use, should be placed on a slope of 30 to 45 degrees from the horizontal.

3. Approach Velocities. At average design flow conditions, approach velocities should be no less than 1.25 feet per second (38 centimeters per second), to prevent settling; and no greater than three (3) feet per second (91 centimeters per second) to prevent forcing material through the openings.

4. Channels. Dual channels shall be provided and equipped with the necessary gates to isolate flow from any screening unit. Provisions shall also be made to facilitate

dewatering each unit. The channel preceding and following the screen shall be shaped to eliminate stranding and settling of solids. Entrance channels should be designed to provide equal and uniform distribution of flow to the screens.

5. Reliability. A minimum of two screens shall be provided. Each screen shall be designed to handle the peak design rate of flow. Where more than two screens are provided, the peak design rate of flow shall be handled with one of the largest units out of service. Where a single mechanical screen handles the peak design rate of flow, then other unit can be a manually cleaned screen.

6. Flow Measurement. The types and locations of flow measurement devices should be selected for reliability and accuracy. The effect of changes in backwater elevations, due to intermittent blinding and cleaning of screens, should be considered in the selection of the locations for flow measurement equipment.

7. Invert. The screen channel invert should be 3.0 to 6.0 inches (7.6-15.2 centimeters) below the invert of the incoming sewer.

D. Safety

1. Railings and Gratings.

a. All screening installations shall be equipped with guard rails and deck grating to insure operator safety.

b. The manually cleaned bar rack shall be accessible for cleaning insuring operator safety.

c. Proper guard rails and enclosures shall be used to protect the operator from moving parts of mechanically operated and cleaned screens. These guard rails and enclosures shall be removable for safe access to maintain and repair mechanically operated and cleaned screens. Catchments shall be provided to prevent dripping of liquids in multi-level installations.

2. Equipment Deactivation and Lockout. Each piece of electrical power mechanical equipment shall be equipped with a positive means of deactivating or locking out or isolating from its power source. Such device shall be located in close proximity to the equipment.

3. Removal of Screenings. The design shall provide for mechanical conveying or lifting systems for safe transport of screenings from a subgrade installation to a collection point on grade.

E. Power Control Systems

1. Timing Devices. All mechanical units which are operated by timing devices shall be provided with auxiliary override controls which will set the cleaning mechanism in operation at a preset high water elevation or water differential across the screen.

2. Electrical Fixtures and Controls. Electrical fixtures and controls in screening areas where hazardous gases may accumulate shall meet the requirements of the National Electrical Code for Class I, Group D, Division 1 locations.

3. Manual Override. Automatic controls shall be supplemented with a manual override.

F. Disposal of Screenings

1. Facilities shall be provided for removal, handling, storage, and disposal of screenings in a sanitary manner. Separate grinding of screenings and return to the sewage flow is unacceptable. Manually cleaned screening facilities should include an accessible platform from which the operator may rake screenings easily and safely. Suitable drainage facilities shall be provided for both the platform and the storage areas.

2. Screenings may be landfilled. The ultimate disposal of screenings shall conform to and comply with the requirements for the ultimate disposal of residues or sludge management plan.

5.3. Comminutors

A. General. Comminutors may be used in plants, excepting aerated or facultative or total containment lagoons,

where mechanically cleaned bar screens are not used.

B. Design Considerations

1. Location. Comminutors should be located downstream of bar screen and any grit removal equipment.

2. Size. Comminutor capacity shall be adequate to handle the peak design rate of flow.

3. Installation.

a. A comminutor bypass channel, with manually cleaned bar screen, shall be provided. The use of the bypass channel should be automatic at depths of flow exceeding the design capacity of the comminutor. The bypass channel should be able to pass the peak design rate of flow when the comminutor channel is out of service.

b. Each comminutor that is not preceded by grit removal equipment should be protected by a 6-inch (15.2 centimeters) deep easily cleaned gravel trap.

PC Maintenance. Gates shall be provided for isolation of comminutor, comminutor channel including bypass channel for draining, repairs and maintenance. Provisions shall be made to facilitate servicing of units in place and removing units from their location for servicing.

5. Electrical Power Controls and Motors. Electrical equipment in comminutor chambers where hazardous gases may accumulate shall meet the requirements of the National Electrical Code for Class 1, Group D, Division 1 locations. Motors in areas not governed by this requirement may need protection against accidental submergence.

5.4. Grit Removal Facilities

A. General. Grit removal facilities shall be provided for all mechanical treatment plants. Pumps, comminutors, and other mechanical equipment preceding grit removal, shall be protected from the damaging effects of grit. Storage capacity shall be provided in treatment units where grit is likely to accumulate.

B. Location. Grit removal facilities should be located ahead of pumps and comminuting devices. Coarse bar racks should be placed ahead of grit removal facilities.

C. Enclosed Facilities

1. Ventilation. Uncontaminated air shall be introduced continuously at a minimum rate of 12 air changes per hour, or intermittently at a minimum rate of 30 air changes per hour. Odor control facilities are recommended.

2. Access. Grit removal facilities shall be provided with proper and safe access, and egress from equipment and facilities.

3. Electrical Work. All electrical work in enclosed grit removal areas where hazardous gases may accumulate shall meet the requirements of the National Electrical Code for Class 1, Group D, Division 1 locations.

D. Outdoor Facilities. Grit removal facilities located outside the buildings shall be protected from freezing, and other adverse environmental conditions.

E. Type and Number of Units

1. Number of Units. For plants treating:

a. more than 1 million gallons per day rate of flow (3,785 cubic meters per day), two mechanically cleaned grit removal units shall be installed in a parallel configuration. Each grit channel shall be designed to handle the peak design rate of flow.

b. less than 1 million gallons per day rate of flow (3,785 cubic meters per day), a single manually cleaned or mechanically cleaned grit chamber with a bypass channel shall be provided.

2. Other types. When arrangements other than channel-type of grit removal is considered, equipment for agitation, air supply, grit collection, grit removal, and grit washing shall be provided with controls for handling variations in rates of flow, and providing operating flexibility.

F. Design Factors

1. General. The designed effectiveness of a grit removal system shall be commensurate with the requirements of the subsequent process units.

2. Inlet Configuration. Inlet turbulence shall be minimized. The inlet flow direction must be parallel to the induced roll direction within aerated grit chambers.

3. Velocity and Detention Time.

a. Horizontal Channel-type Grit Chambers.

(1) Velocity of flow through a channel-type chamber shall be controlled such that it is not less than one foot per second (30 centimeters per second) during normal variations in flow.

(2) The detention time shall be based on the size of particle to be removed but not less than 20 seconds at the maximum design flow. Velocity and detention time in the channel shall be regulated by installation of control devices such as proportional flow, Sutro weirs, etc.

b. Aerated grit chambers.

(1) The velocity of flow through an aerated grit chamber shall not be less than 1 foot per second (30 centimeters per second) during normal variations in flow, in the direction of induced roll.

(2) A minimum detention time of two to five minutes at the maximum design flow shall be provided. Rate of aeration shall not be less than 4 cubic feet per minute per lineal foot (1.5 liters per second per meter). Outlet weir shall be provided parallel to the direction of induced roll.

c. Square grit chambers. Detention time and overflow rate for square grit chambers shall be based on the size of particles intended to be removed. Overflow rate should not exceed 40,000 gallons per day per square foot of the chamber area (1,600 cubic meters per day per square meter).

4. Grit Washing. Grit should be washed before the disposal.

5. Drains. Provision shall be made for to adequately bypass, isolate and dewater each grit removal unit for maintenance.

6. Water. An adequate supply of service or non-potable plant water under pressure shall be provided for cleanup.

G. Grit Handling.

1. Mechanical equipment for hoisting or transporting grit to ground level shall be provided in grit removal facilities located in deep pits. Impervious, non-slip, working surfaces with adequate drainage shall be provided for grit handling areas. Grit transporting facilities shall be provided with protection against freezing and loss of material.

2. Grit may be landfilled. The ultimate disposal of grit shall conform to and comply with the requirements for the ultimate disposal of residues or sludge management plan.

R317-3-6. Settling.

6.1. General Considerations

A. Number of Units. Multiple units capable of independent operation shall be provided in all plants where the design rate of flow exceed 1 million gallons per day (3,785 cubic meters per day). Plants where the design rate of flow is less than one (1) million gallons per day (3,785 cubic meters per day), shall include other provisions to assure continuity of treatment.

B. Arrangement. Settling tanks shall be arranged for optimum site utilization, and shall be consistent with the hydraulic head requirements for other ancillary units.

C. Flow Distribution. Effective flow measurement devices and control appurtenances (e.g. valves, gates, splitter, boxes, etc.) should be provided to permit proper proportioning of flow to each unit.

D. Tank Configuration. The selection of tank size and shape, and inlet and outlet type and location shall be based on the site and flow patterns.

6.2. Design Considerations

A. Dimensions.

1. The minimum length of flow from inlet to outlet should not be less than 10 feet (3 meters) unless special provisions are made to prevent short circuiting. The sidewater depth for primary clarifiers shall be not less than 8 feet (2.4 meters).

2. Clarifiers following an activated sludge process shall have sidewater depths of at least 12 feet (3.7 meters) to provide adequate separation zone between the sludge blanket and the overflow weirs.

3. Clarifiers following fixed film reactors shall have sidewater depth of at least 8 feet (2.4 meters).

B. Surface Loading (Overflow) Rates

1. Primary Settling Tanks

a. Surface loading or overflow rates at the average design rate of flow for primary tanks shall not exceed:

(1) 600 gallons per day per square foot (24 cubic meters per square meter per day) for plants treating at the rate of flow less than 1 million gallons per day (3,785 cubic meter per day), or

(2) 1,000 gallons per day per square foot (41 cubic meters per square meter per day) for plants treating at the rate of flow more than 1 million gallons per day (3,785 cubic meter per day).

b. For primary settling, expected influent BOD₅ removal and surface loading is as shown by the relationship: $E = (41.5 - (0.01 \times \text{Surface loading at average design } Q))$ where, E = efficiency, percent, and surface loading less than or equal to 2,000 gallons per day per square foot (82 cubic meters per square meter per day). However, anticipated higher BOD₅ removal than the one predicted using above relationship for sewage or sewage containing appreciable quantities of industrial wastes (or chemical additions to be used), shall be validated by plant performance data.

2. Intermediate Settling Tanks. Surface loading or overflow rates for intermediate settling tanks following fixed film reactor processes shall not exceed 1,000 gallons per day per square foot (41 cubic meters per square meter per day) at the average design rate of flow.

3. Final Settling Tanks

a. Settling tests should be conducted wherever a pilot study of biological treatment is warranted by unusual waste characteristics or treatment requirements.

b. The applicant will conduct pilot testing where proposed loadings go beyond the limits set forth in this section.

c. Surface loading or overflow rates for settling tanks following fixed film processes shall not exceed 800 gallons per day per square foot (33 cubic meters per square meter per day) at the average design rate of flow.

d. Settling tanks following activated sludge processes must be designed to meet thickening as well as solids separation requirements. Surface loading or overflow, and weir overflow rates must be adjusted for the various processes to minimize the problems with sludge loadings, density currents, inlet hydraulic turbulence, and occasional poor sludge settleability. The high rate of recirculation of return sludge from the final settling tanks to the aeration or reaeration tanks requires careful consideration of above factors. The hydraulic design of intermediate and final settling tanks following the activated sludge process shall be based upon the average design rate of flow excluding activated sludge return flow as shown in Table R317-3-6.2(B)(3)(d).

C. Inlet Structures. Inlets should be designed to dissipate the inlet velocity and to distribute the flow equally both horizontally and vertically and to prevent short circuiting. Channels should be designed to maintain a

velocity of at least one foot per second (0.3 meter per second) at the minimum design flow. Corner pockets and dead ends should be eliminated and corner fillets or channeling used where necessary. Provisions shall be made for elimination or removal of floating materials in inlet structures.

D. Effluent Overflow Weirs

1. General. Effluent overflow weirs shall be adjustable for leveling.

2. Location. Effluent overflow weirs shall be located to optimize actual hydraulic detention time, and minimize short circuiting.

3. Design Rates. Weir loadings shall not exceed 10,000 gallons per day per lineal foot (124 cubic meters per meter per day) for plants treating the average design rate of flow of one (1) million gallons per day (3,785 cubic meters per day) or less. Higher weir loadings may be used for plants designed for larger average flows, but shall not exceed 15,000 gallons per day per lineal foot (186 cubic meters per meter per day). If pumping is required, weir loadings must be related to pump delivery rates to avoid short circuiting.

4. Weir Troughs. Weir troughs shall be designed to prevent submergence at the maximum design rate of flow (peak daily flow), and to maintain a velocity of at least one foot per second (0.3 meter per second) at one-half of the average design rate of flow. Submergence may be permitted at the maximum design rate of flow (peak daily flow) with one unit out of service.

E. Submerged Surfaces. The tops of troughs, beams, and similar submerged construction elements shall have a minimum slope of 1.4 vertical to 1 horizontal; the underside of such elements should have a slope of 1 to 1 to prevent the accumulation of scum and solids.

F. Unit Dewatering. The bypass design shall provide for redistribution of the plant flow to the remaining units in operation.

G. Freeboard. Walls of settling tanks shall extend at least 6 inches (15 centimeters) above the surrounding ground surface and shall provide not less than 12 inches (30 centimeters) freeboard. Additional freeboard or the use of wind screens should be provided where larger settling tanks are subject to high velocity wind currents that would cause tank surface waves and inhibit effective scum removal.

6.3. Sludge and Scum Removal

A. Scum Removal. Effective scum collection and removal facilities, including baffling, shall be provided for primary, intermediate and secondary settling tanks. The unusual characteristics of scum which may adversely affect pumping, piping, sludge handling and disposal, should be recognized in design. Provisions may be made for the discharge of scum with the sludge; however, other special provisions for disposal may be necessary.

B. Sludge Removal. Sludge collection and withdrawal facilities shall be designed to assure rapid removal of the sludge. Suction withdrawal of sludge from the tank floor should be provided for activated sludge plants designed for reduction of the nitrogenous oxygen demand.

1. Sludge Hopper. When scrapers are used to move sludge into a discharge hopper, the minimum slope of the side walls shall be 1.7 vertical to 1 horizontal. Hopper wall surfaces should be made smooth with rounded corners to aid in sludge removal. Hopper bottoms shall have a maximum dimension of two feet (0.6 meter). Deep sludge hoppers for sludge thickening are not acceptable.

2. Sludge Removal Piping. Each hopper shall have an individually valved sludge withdrawal line at least six inches (15 centimeters) in diameter. The static head available for withdrawal of sludge shall be 30 inches (76 centimeters) or greater, as necessary to maintain a three foot per second (0.91 meter per second) velocity in the withdrawal pipe. Clearance

between the end of the withdrawal line and the hopper walls shall be sufficient to prevent bridging of the sludge. Adequate provisions shall be made for rodding or back-flushing individual pipe runs for activated sludge secondary clarifiers except for oxidation ditch clarifiers. Piping shall also be provided to return waste sludge to primary clarifiers.

3. Sludge Removal Control. Sludge wells shall be provided with telescoping valves or other equipment for viewing, sampling and controlling the rate of sludge withdrawal. The use of sight glass and sampling valves may be appropriate. A means of measuring the sludge removal rate shall be provided. Air lift type of sludge removal must not be used for removal of primary sludges. Sludge pump motor control systems shall include time clocks and valve controls for regulating the duration and sequencing of sludge removal.

6.4. Protective and Service Facilities

A. Operator Protection. All settling tanks shall be equipped to provide safe working conditions for operators. Such features shall include machinery covers, life lines, stairways, walkways, handrails and slip resistant surfaces.

B. Mechanical Maintenance Access. The design shall provide for convenient and safe access to routine maintenance items such as gear boxes, scum removal mechanisms, baffles, weirs, inlet stilling baffle area, sludge and scum pumps, and effluent channels.

C. Electrical Fixtures and Controls. Electrical fixtures and controls in enclosed settling basins shall meet the requirements of the National Electrical Code for Class 1, Group D, Division 1 locations. The fixtures and controls shall be located so as to provide convenient and safe access for operation and maintenance. Walkways, bridge area and area around settling tanks shall be illuminated with area lighting for operating personnel safety.

R317-3-7. Biological Treatment.

7.1. Trickling Filters

A. General. Trickling filters shall be preceded by effective settling tanks equipped with scum and grease collecting devices, or other suitable pretreatment facilities.

B. Hydraulics

1. Distribution. The sewage may be distributed over the filter by rotary distributors or other suitable devices which will ensure uniform wastewater distribution to the surface area. Uniform hydraulic distribution of sewage on the filters is required.

2. For reaction type distributors, a minimum head of 24 inches (61 centimeters) between low water level in the siphon chamber and center of the arms is required. Similar allowance in design shall be provided for added pumping head requirements where pumping to the reaction type distributor is used. The applicant should evaluate other types of drivers and drives.

3. A minimum clearance of 6 inches (15 centimeters) between media and distributor arms shall be provided. Larger clearance than 6 inches (15 centimeters) must be provided where ice buildup may occur.

C. Wastewater Application. Application of the sewage shall be continuous. The piping system shall be designed for recirculation. The design must provide for routine flushing of filters by heavy dosing at intermittent intervals.

D. Piping System. The piping system, including dosing equipment and distributor, shall be designed to provide capacity for the peak design rate of flow, including recirculation.

E. Media

1. Quality

a. The media may be crushed rock, slag, or specially manufactured material. The media shall be durable, resistant

to spalling or flaking and insoluble in sewage. The top 18 inches (46 centimeters) shall have a loss by the 20-cycle, sodium sulfate soundness test of not more than 10 percent. The balance is to pass a ten-cycle test using the same criteria. Slag media shall be free from iron.

b. Manufactured media shall be resistant to ultraviolet degradation, disintegration, erosion, aging, all common acids and alkalis, organic compounds, and fungus and biological attack. Such media shall be structurally capable of supporting a man's weight or a suitable access walkway shall be provided to allow for distributor maintenance.

2. Depth. The filter design shall provide for a depth of:

a. not less than 5 feet (1.5 meters) above the underdrains, but not more than 10 feet (3 meters) when rock or slag media is used in the filters.

b. not less than 10 feet (3 meters) above the underdrains to provide adequate contact time with the wastewater, but not more than 30 feet (9 meters) unless additional structural construction and aeration are provided, when manufactured media is used in the filters.

3. Size and Grading of Media

a. Rock, Slag and Similar Media

(1) Rock, slag, and similar media shall not contain more than 5 percent by weight of pieces whose longest dimension is three times the least dimension.

(2) Media shall be free from thin, elongated and flat pieces, dust, clay, sand or fine material and shall conform to the size and grading when mechanically graded over vibrating screens with square openings, as shown in Table R317-3-7.1(E)3(a)(2).

b. Manufactured Media. The applicant must evaluate suitability of manufactured media on the basis of experience with installations handling similar wastes and loadings.

c. Handling and Placing of Media. Material delivered to the filter site shall be stored on wood-planked or other approved clean, hard-surfaced areas. All material shall be rehandled at the filter site and no material shall be dumped directly into the filter. Crushed rock, slag and similar media shall be washed and rescreened or forked at the filter site to remove all fines. Such material shall be placed by hand to a depth of 12 inches (30 centimeters) above the tile underdrains. The remainder of material may be placed by means of belt conveyors or equally effective methods approved by the design engineer. All material shall be carefully placed so as not to damage the underdrains. Manufactured media shall be handled and placed as approved by the engineer. Trucks, tractors, and other heavy equipment shall not be driven over the filter during or after construction.

F. Underdrain System

1. Arrangement. Underdrains with semicircular inverts or equivalent should be provided and the underdrainage system shall cover the entire floor of the filter. Inlet openings into the underdrains shall have an unsubmerged gross combined area equal to at least 15 percent of the surface area of the filter.

2. Hydraulic Capacity and Ventilation.

a. The underdrains shall have a minimum slope of 1 percent. Effluent channels shall be designed to produce a minimum velocity of two (2) feet per second (0.61 meters per second) at average daily rates of application to the filter.

b. The underdrainage system, effluent channels, and effluent pipe shall be designed to permit a free passage of air preventing septicity within the filter. The size of drains, channels, and pipe should be such that not more than 50 percent of their cross-sectional area will be submerged under the design peak hydraulic loading, including proposed or possible future recirculated flows. Forced air ventilation must be provided for deep or covered filters using manufactured media. The design of filters should be compatible for the

installation of odor control equipment such as covers, forced air ventilation, scrubber, etc., as a retrofit.

3. Flushing. The design should include means for flushing of the underdrains. In small filters, use of a peripheral head channel with vertical vents is acceptable for flushing purposes. Means or facilities of inspection of underdrainage should be provided.

G. Special Features

1. Flooding. Appropriate valves, sluice gates, or other structures shall be provided to enable flooding of filters comprised of rock or slag media.

2. Freeboard. A freeboard of not less than 4 feet (1.2 meters) should be provided for tall filters using manufactured media, to maximize the containment of windblown spray.

3. Maintenance. All distribution devices, underdrains, channels, and pipes shall be installed so that they may be properly maintained, flushed or drained.

4. Freeze Protection. When climatic conditions are expected to result in operational problems due to cold temperatures, the filters may be covered for protection against freezing; maintaining operation and treatment efficiencies.

5. Recirculation. The piping and pumping systems shall be designed for recirculation rates as required to achieve sufficient wetting of biofilm and the design efficiency.

6. Recirculation Measurement. Recirculation rate to the filters shall be measured using flow measurement and recording devices. Time lapse meters and pump head recording devices are acceptable for facilities treating less than 1 million gallons per day (3,785 cubic meters per day).

H. Rotary Distributor Seals. Mercury seals are not permitted. The design of the distributor support septum shall provide for convenient and easy seal replacement to assure continuity of operation.

I. Multi-Stage Filters. The foregoing standards in this rule also apply to all multi-stage filters.

J. Unit Sizing

1. Required volumes of rock or slag media filters shall be based upon the following equations: For Single or First stage of Trickling Filter: $E = 100 - ((100 / (3 + 2 (R/I))) + (0.4 \times (W/V) - 10))$. For Second stage of Trickling Filter: $E = 100 \times ((1 + (R_2 / I)) / (2 + (R_2 / I)))$ where, E = Efficiency, percent R = recirculated flow through trickling filter, mgd I = raw sewage flow, mgd W = pounds of BOD₅ per day in raw sewage V = volume of filter media in 1000 cubic feet R₂ = recirculated flow through second-stage trickling filter, mgd.

2. The required volume of media may be determined by pilot testing or use of any of the various empirical design equations that have been verified through actual full scale experience. Such calculations must be submitted if pilot testing is not utilized. Pilot testing is recommended to verify performance predictions based upon the various design equations, particularly when significant amounts of industrial wastes are present.

3. Expected performance of filters packed with manufactured media shall be determined from documented full scale experience on similar installations or through actual use of a pilot plant on site.

K. Nitrification

1. Trickling filters may be used for nitrification. The design should be based as shown in Table R317-3-7.1(K)(1).

2. Nitrification is affected by variations in flow, loadings and temperature, and other factors. Therefore, the applicant must conduct pilot studies before developing the design criteria.

L. Design Safety Factors. Trickling filters are affected by diurnal load conditions. The volume of media determined from either pilot plant studies or use of acceptable design equations shall be based upon organic loading at the

maximum design rate of flow rather than the average design rate of flow.

7.2. Activated Sludge

A. General. The activated sludge process and its several modifications may be used to accomplish varied degrees of removal of suspended solids, and reduction of carbonaceous and nitrogenous oxygen demand. The degree and consistency of treatment required, type of waste to be treated, proposed plant size, anticipated degree of operation and maintenance, and operating and capital costs determine the choice of the process to be used. The design shall provide for flexibility in operation. Plants over 1 million gallons per day (3,785 cubic meters per day) shall be designed to facilitate easy conversion to various operational modes. In severe climates, protection against freezing shall be provided to ensure continuity of operation and performance.

B. Aeration

1. Capacities and Permissible Loadings

a. The design of the aeration tank for any particular adaptation of the process shall be based on full scale experience at the plants receiving wastewater of similar characteristics under similar climatic conditions, pilot plant studies, or calculations based on process kinetics parameters reported in technical literature. The size of treatment plant, diurnal load variations, degree of treatment required, temperature, pH, and reactor dissolved oxygen when designing for nitrification, influence the design. Calculations using values differing substantially from those in the table shown below must reference actual operational data.

b. The applicant must substantiate capability of the aeration and clarification systems in the processes using mixed liquor suspended solids levels greater than 5,000 milligrams per liter.

c. The applicant shall use the values shown in Table R317-3-7.2(B)(1)(c) to determine the aeration tank capacities and permissible loadings for the several adaptations of the processes, when process design calculations are not submitted. These values are based on the average design rate of flow, and apply to plants receiving peak to average diurnal load ratios ranging from about 2:1 to 4:1.

2. Arrangement of Aeration Tanks

a. Dimensions. Effective mixing and utilization of air must be the basis of dimensions of each independent mixed liquor aeration tank or return sludge reaeration tank. Liquid depths should not be less than 10 feet (3 meters) or more than 30 feet (9 meters) unless the applicant justifies the need for shallower or deeper tanks.

b. Short-circuiting. The shape of the tank and the installation of aeration equipment should provide for positive control of short-circuiting through the aeration tank.

c. Number of Units. Total aeration tank volume shall be divided among two or more units, capable of independent operation, to meet applicable effluent limitations and reliability guidelines.

d. Inlets and Outlets. Inlets and outlets for each aeration tank unit shall be suitably equipped with valves, gates, stop plates, weirs, or other devices to permit controlling the flow to any unit and to maintain reasonable constant liquid level. The hydraulic properties of the system shall permit the maximum instantaneous hydraulic load to be carried with any single aeration tank unit out of service.

e. Conduits. Channels and pipes carrying liquids with solids in suspension shall be designed to maintain self-cleaning velocities or shall be agitated to keep such solids in suspension at all rates of flow within the design limits. Drains shall be installed in the aeration tank to drain segments or channels which are not being used due to alternate flow patterns.

f. Freeboard. All aeration tanks should have a freeboard

of not less than 18 inches (46 centimeters). Additional freeboard or windbreak may be necessary to protect against freezing or windblown spray.

3. Aeration Requirements

a. Oxygen requirements must be calculated based on factors such as, maximum organic loading, degree of treatment, level of suspended solids concentration (mixed liquor) to be maintained, and uniformly maintaining a minimum dissolved oxygen concentration in the aeration tank, at all times, of two milligrams per liter.

b. When pilot plant or experimental data on oxygenation requirements are not available, the design oxygen requirements shall be calculated on the basis of:

(1) 1.2 pounds O_2 per pound of maximum BOD_5 applied to the aeration tanks (1.2 kilograms O_2 per kilogram of maximum BOD_5), for carbonaceous BOD_5 removal in all activated sludge processes with the exception of the extended aeration process,

(2) 2 pounds O_2 per pound of maximum BOD_5 applied to the aeration tanks (two kilograms O_2 per kilogram of maximum BOD_5) for carbonaceous BOD_5 removal in the extended aeration process,

(3) 4.6 pounds O_2 per pound of maximum total kjeldahl nitrogen (TKN) applied to the aeration tanks (1.2 kilograms O_2 per kilogram of maximum TKN), for oxidizing ammonia in the case of nitrification, and

(4) oxygen demand due to the high concentrations of BOD_5 and TKN associated with recycle flows such as, digester supernatant, heat treatment supernatant, belt filter pressate, vacuum filtrate, elutriates, etc.

c. Oxygen utilization should be maximized per unit power input. The aeration system should be designed to match the diurnal organic load variation while economizing on power input.

4. Diffused Air Systems

a. The design of the diffused air system to provide the oxygen requirements shall be done using data derived from pilot testing or an empirical approach.

b. Air requirements for a diffused air system may be determined by use of any of the recognized equations incorporating such factors as:

- (1) tank depth;
- (2) alpha factor of waste;
- (3) beta factor of waste;
- (4) certified aeration device transfer efficiency;
- (5) minimum aeration tank dissolved oxygen concentrations;
- (6) critical wastewater temperature; and
- (7) altitude of plant.

c. In the absence of experimentally determined alpha and beta factors by an independent laboratory for the manufacturer or at the site, wastewater transfer efficiency shall be assumed to be 50 percent of clean water efficiency for plants treating primarily (90 percent or greater) domestic sewage. Treatment plants where the waste contains higher percentages of industrial wastes shall use a correspondingly lower percentage of clean water efficiency and shall submit calculations to justify such a percentage.

d. The design air requirements shall be calculated on the basis of:

(1) 1,500 cubic feet per pound of maximum BOD_5 applied to the aeration tanks (94 cubic meters per kilogram of maximum BOD_5), for carbonaceous BOD_5 removal in all activated sludge processes with the exception of the extended aeration process,

(2) 2,000 cubic feet per pound of maximum BOD_5 applied to the aeration tanks (125 cubic meters per kilogram of maximum BOD_5) for carbonaceous BOD_5 removal in the extended aeration process,

(3) 5800 cubic feet per pound of maximum total kjeldahl nitrogen (TKN) applied to the aeration tanks (360 cubic meters per kilogram of maximum TKN), for oxidizing ammonia in the case of nitrification,

(4) corresponding air quantities for satisfaction of oxygen demand due to the high concentrations of BOD₅ and TKN associated with recycle flows such as, digester supernatant, heat treatment supernatant, belt filter pressate, vacuum filtrate, elutriates, etc., and

(5) air required for channels, pumps, aerobic digesters, or other uses.

e. The capacity of blowers or air compressors, particularly centrifugal blowers, must be calculated on the basis of air intake temperature of 40 degrees Centigrade (104 degrees Fahrenheit) or higher and the less than normal operating pressure. The capacity of drive motor must be calculated on the basis of air intake temperature of -30 degrees Centigrade (-22 degrees Fahrenheit) or less. The design must include means of controlling the rate of air delivery to prevent overheating or damage to the motor.

f. The blowers shall be provided in multiple units, so arranged and in such capacities as to meet the maximum air demand with the single largest unit out of service. The design shall also provide for varying the volume of air delivered in proportion to the load demand of the plant. Aeration equipment shall be easily adjustable in increments and shall maintain solids suspension within these limits.

g. Diffuser systems shall be capable of providing for the maximum design oxygen demand or 200 percent of the average design oxygen demand, whichever is larger. The air diffusion piping and diffuser system shall be capable of delivering normal air requirements with minimal friction losses.

h. Air piping systems should be designed such that total head loss from blower outlet (or silencer outlet where used) to the diffuser inlet does not exceed 0.5 pounds per square inch (0.04 kilogram per square centimeter) at average operating conditions.

i. The spacing of diffusers should be in accordance with the oxygen requirements through the length of the channel or tank, and should be designed to facilitate adjustment of their spacing without major revision to air header piping. Removable diffuser assemblies are recommended to minimize downtime of aeration tanks.

j. Individual assembly units of diffusers shall be equipped with control valves, preferably with indicator markings for throttling, or for complete shutoff. Diffusers in any single assembly shall have substantially uniform pressure loss.

k. Air filters shall be provided in numbers, arrangements, and capacities to furnish, at all times, an air supply sufficiently free from dust to prevent damage to blowers and clogging of the diffuser system used.

5. Mechanical Aeration Systems

a. Oxygen Transfer Performance. The mechanism and drive unit shall be designed for the expected conditions in the aeration tank in terms of the power performance. The mechanical aerator performance shall be verified by certified testing.

b. Design Requirements. The design requirements of a mechanical aeration system shall accomplish the following:

(1) Maintain a minimum of 2.0 milligrams per liter of dissolved oxygen in the mixed liquor at all times throughout the tank or basin;

(2) Maintain all biological solids in suspension;

(3) Meet maximum oxygen demand and maintain process performance with the largest unit out of service; and

(4) Provide for varying the amount of oxygen transferred in proportion to the load demand on the plant.

c. Winter Protection. Due to high heat loss and the nature of spray-induced agitation, the mechanism, as well as subsequent treatment units, shall be protected from freezing where extended cold weather conditions occur.

6. Return Sludge Equipment

a. Return Sludge Rate

(1) The minimum permissible return sludge rate of withdrawal from the final settling tank is a function of the concentration of suspended solids in the mixed liquor entering it, the sludge volume index of these solids, and the length of time these solids are retained in the settling tank. Since undue retention of solids in the final settling tanks may be deleterious to both the aeration and sedimentation phases of the activated sludge process, the rate of sludge return expressed as a percentage of the average design flow of sewage should be between the limits set forth in Table R317-3-7.2(B)(6)(a)(1).

(2) The rate of sludge return shall be varied by means of variable speed motors, drives, or timers (in plants designed for less than one million gallons per day - 3,785 cubic meters per day) to pump sludge at the above rates.

b. Return Sludge Pumps

(1) If motor driven return sludge pumps are used, the maximum return sludge capacity shall be with the largest pump out of service. A positive head should be provided on pump suction. Pumps should have at least 3 inch (7.6 centimeters) suction and discharge openings.

(2) If air lifts are used for returning sludge from each settling tank hopper, no standby unit is required provided the design of the air lifts are such to facilitate their rapid and easy cleaning and provided standby air lifts are provided. Air lifts should be at least 3 inches (7.6 centimeters) in diameter.

c. Return Sludge Piping. Discharge piping shall not be less than 4 inches (10 centimeters) in diameter, and should be designed to maintain a velocity of not less than two (2) feet per second (0.61 meters per second) when return sludge facilities are operating at normal return sludge rates. Sight glasses, sampling ports and rate of flow controllers for return activated sludge flow from each settling tank hopper shall be provided.

7. Waste Sludge Facilities

a. The design of waste sludge control facilities should be based on a logically developed solids mass balance at the maximum design flow. Otherwise, a maximum capacity of not less than 25 percent of the average design flow shall be provided, and function satisfactorily at rates of 0.5 percent of average sewage flow or a minimum of 10 gallons per minute (0.63 liters per second), whichever is larger.

b. Sight glasses, sampling ports and rate of flow controllers for waste activated sludge flow shall be provided.

c. Waste sludge may be discharged to the concentration or thickening tank, primary settling tank, sludge digestion tank, vacuum filters, other thickening equipment, or any practical combination of these units.

7.3. Flow Measurement. Instrumentation should be provided in all plants for indicating flow rates of raw sewage or primary effluent, return sludge, and air to each tank unit. For plants designed for the average design rate of flow of 1 million gallons per day (3,785 cubic meters per day) or more, these devices should total, record, and indicate the rate of flow. Where the design provides for all return sludge to be mixed with the raw sewage (or primary effluent) at one location, then the mixed liquor flow rate to each aeration unit should be measured.

7.4. Other Biological Systems. The Director may consider and approve new biological treatment processes with promising applicability in wastewater treatment. The approval will be based on the required engineering data for new process evaluation as provided in this rule.

7.5. Packaged Plants. The Director may consider and approve packaged biological treatment plants only when there are no other and appropriate alternatives for waste treatment. These type of plants shall be designed for handling large flow variations and to meet all requirements contained in this rule. The applicant must consider the need for close attention and competent operating supervision, including routine laboratory control, when proposing a packaged plant.

R317-3-8. Disinfection.

8.1. General

A. All wastewaters containing pathogens or coliform bacteria must be disinfected before discharge to a water course. The disinfection procedures must consider any effect on the natural aquatic habitat and biota of the receiving water course. Effectiveness of disinfection also varies with BOD₅ and suspended solids in the effluent. If chlorination is utilized, it may be necessary to dechlorinate if the residual chlorine level would otherwise impair the receiving water course. The applicant must submit justification to the Director for the determination of the acceptability of any disinfection system other than chlorination or ultraviolet irradiation.

B. If effluent to be discharged meets applicable bacteriologic standards before disinfection, the Director may waive the disinfection process. However, all plants must have an ability to introduce a disinfectant in the effluent with proper reaction time before discharge. An example could be multi-celled (more than three cells) lagoon discharge following extended storage in excess of 150 days.

C. The disinfection method should be selected after due consideration of wastewater flow rates, application rates, demand rates and effects, pH of the wastewater, cost of equipment, availability, maintenance, reliability and safety problems.

D. Chlorine is the most commonly used chemical for wastewater disinfection. The forms most often used are liquid-gaseous chlorine and sodium and calcium hypochlorite. The Director may review and accept other disinfection methods based on the information submitted.

8.2. Design

A. Capacity of System

1. Required disinfection capacity will vary, depending on the uses and points of application of the disinfectant, e.g., prechlorination, post chlorination, odor and process control uses, etc.

2. For disinfection of the wastewater before its discharge to a water course, the disinfection system capacity shall be sufficient to produce an effluent that will meet the coliform bacteria limits specified for that installation at all times. This condition must be attainable when maximum flow rates occur and during emergency conditions. For non-chemical disinfecting systems, an equivalent installed capacity shall be provided. Normal dosage requirements for disinfection will vary with the quality of effluent to be treated.

3. Duplicate disinfection systems shall be provided. Where only two units are installed, each shall be capable of feeding the expected maximum dosage rate.

4. Disinfection system equipment should be provided with necessary changeable parts to permit operation of system at initial anticipated flows at mid-scale on flow meters and other devices. Spare parts shall be provided for all disinfection equipment to replace parts which are subject to wear and breakage. Operation and maintenance data for all equipment shall be furnished.

5. Dosage control based on effluent flow rate should be provided because of the diurnal variations in the disinfectant demand of the wastewater. A residual disinfectant concentration must be maintained to insure the pathogen

destruction, and subsequent reactivation, if any.

B. Contact Period

1. For a chlorination system, a minimum contact period is required after a thorough mixing of disinfectant with the effluent. The minimum contact period shall be greater of:

a. 30 minutes at the maximum design rate of flow (peak daily rate of flow) or the maximum pumping rate, or

b. 60 minutes at the average design rate of flow.

2. This contact period shall normally be provided in the contact tank. Contact period in pipeline or outfalls before discharge into a water course, may be credited towards the contact time if the effluent discharge point can be sampled.

C. Contact Chambers

1. The contact chambers must be designed such that:

a. effectiveness of disinfection is maximized;

b. accumulation of solids is minimized;

c. maintenance and cleaning is facilitated; and

d. short circuiting of flow is reduced to a practical minimum by installation of baffles.

2. Two tanks are required for all plants treating more than 1 million gallons per day (3,785 cubic meters per day). Means of removal of solids from the tank bottom shall be provided. Solids and drainage water must be returned to the head end of the plant. Skimming devices should be provided in all contact tanks. Covered tanks must have means of access for maintenance and cleaning.

3. Pipelines and outfall sewers may be acceptable as effective plug-flow contact chambers.

4. The applicant must incorporate all of the above process and design features in devices using other disinfecting methods.

D. Point of Application

1. The design shall provide for application of chlorine or other disinfectants to all fully treated, partially treated, or untreated wastewater discharged from the treatment plant. Other points of application shall be incorporated in the design for process considerations such as prechlorination, odor control, control of sludge bulking, etc. All application points shall be submerged below the wastewater surface.

2. Chlorine shall be positively mixed as rapidly as possible, with a complete mix being effected in three seconds. This may be accomplished by either the use of turbulent flow regime or a mechanical flash mixer.

8.3. Disinfection Methods

A. Chlorination (Liquid or Gaseous Chlorine)

1. Equipment

a. The installed capacity of a chlorine feed system shall be sufficient to provide a dosage of 25 milligrams per liter at the maximum design rate of flow. Procedures recommended by the Chlorine Institute and the Occupational Safety and Health Administration, the US Department of Labor, and succeeding organizations should be carefully followed in handling, installation, operation and maintenance of chlorination equipment. The requirements, procedures and recommendations from these organizations take precedence over the requirements stated herein, if more stringent.

b. Liquid chlorine lines from tank cars to evaporators shall be buried and installed in a conduit and shall not be exposed in below grade spaces. Systems shall be designed for the shortest possible pipe transportation of liquid chlorine. When chlorine cylinders are used, two scales, indicating and recording type, should be used for weighing the cylinders in use. Each scale should be sized to accommodate the maximum number of cylinders required to deliver chlorine at the maximum chlorine feeding rate. Adequate means for supporting cylinders on the scales should be provided. Scales shall be of corrosion-resistant material.

c. Separate manifolds shall be provided for the bank of cylinders on each scale. The manifolds shall be properly

valved so that one bank of cylinders may be replaced while chlorine is being withdrawn from the other bank of cylinders. Provision should be made for automatically changing the withdrawal of chlorine from one bank of cylinders to the second when the chlorine in the first bank of cylinders has been exhausted.

d. Gas chlorinators shall be of the solution feed type. The design capacity of evaporators must correspond to gaseous chlorine demand, where several cylinders or ton containers are manifolded to evaporate sufficient chlorine. Chlorine gas systems and piping should be of vacuum type.

2. Housing and Storage

a. Local, state and federal safety requirements, including fire code, shall be carefully followed in storing and handling of chlorine containers, cylinders or tank cars.

b. Gaseous chlorine and chlorination equipment rooms shall be isolated from other sections of the building by gas-tight partitions. Separation of the chlorine storage room and the chlorination equipment room is required for safety. All doors and rooms containing gas chlorination equipment and rooms used for chlorine gas storage should open only to the outside of the building, and all doors should be equipped with panic hardware and a viewing window. Multiple exits to the outside should be provided for each room in which chlorine gas is stored or used. Rooms housing chlorination equipment should be heated to 70 degrees Fahrenheit (21 degrees Centigrade), but never in excess of normal summer temperatures. Rooms containing chlorine cylinders from which chlorine is being withdrawn should be heated to above 60 degrees Fahrenheit (16 degrees Centigrade), but never above the temperature of the equipment room. Where chlorine containers are stored out of doors, the storage area shall be provided with a canopy. Similar precautions should be taken for tank cars. Also, if containers are stored out of doors, cylinders and containers must be allowed to reach room temperature before being placed in use. Floor drains from chlorine rooms must not be connected to floor drains from other rooms.

c. Chlorine rooms shall be at ground level, and should permit easy access to all equipment. The storage area should be separated from the feed area. Chlorination equipment should be situated as close to the application point as reasonably possible.

3. Ventilation and Heating

a. With chlorination systems, forced, mechanical ventilation shall be installed which will provide one complete air change per minute when the room is occupied.

b. When unoccupied, facilities in the ventilation system may be provided with means to reduce the number of air changes to twenty per hour to conserve energy. Whenever such a two-speed ventilation system is used, adequate provisions shall be made to insure that one complete air change per minute is provided when the room is occupied.

c. The entrance to the air exhaust duct from the room shall be near the floor and the point of discharge shall be so located as not to contaminate the air inlet to any buildings or inhabited areas.

d. Air inlets shall be so located as to provide cross ventilation with air and at such temperature that will not adversely affect the chlorination equipment. The vent hose from the chlorinator shall discharge to the outside atmosphere above grade or to the scrubbing system.

e. Switches for exhaust fans and cylinders shall be kept at essentially room temperature.

f. Chlorine scrubbing systems should be incorporated in the design of handling and storage areas where required by the state or local codes.

4. Ancillary Services

a. Water Supply. An ample supply of water meeting a

minimum of secondary effluent quality, R317-1, Definitions and General Requirements, shall be available for operating the chlorinator. All in-plant use of effluent shall be taken from downstream of the sampling point for effluent quality monitoring and permit compliance. Where a booster pump is required, a standby booster pump shall be provided, and standby power shall be available.

b. Other Equipment. All electrical fixtures and drainage conduits in chlorination equipment rooms and chlorine storage rooms shall be gas-tight to prevent the spread of chlorine gas in the event of a leak.

5. Piping and Material. Piping systems should be as simple as possible, specifically selected and manufactured to be suitable for chlorine service, with a minimum number of joints. Piping should be well supported and protected against temperature extremes. Low pressure lines made of hard rubber, saran-lined, rubber-lined, polyethylene, polyvinyl chloride (PVC), or Uscolite materials are satisfactory for wet chlorine or aqueous solutions of chlorine.

6. Reliability. The design of the system must include the necessary provisions that will either prevent failures or allow immediate corrective action to be taken. Standby power, duplicate equipment and water storage shall be incorporated in the design to prevent interruption of feed, water supply and backup to power and equipment failures.

7. Residual Monitoring

a. An indicating and recording type residual chlorine analyzer using accepted test procedures shall be installed to monitor residual chlorine as required in the discharge permit.

b. Where dechlorination is used, residual chlorine analyzers shall be equipped with audible and visual alarms to indicate discharge of chlorine in the effluent.

8. Safety

a. At least two complete sets of respiratory air-pac protection equipment, meeting the requirements of the Occupational Safety and Health Administration (OSHA), shall be available where chlorine gas is handled, and shall be stored at a convenient location, but not inside any room where chlorine is used or stored. Instructions for using the equipment shall be posted near the equipment. The equipment shall, using compressed air, have at least 30-minute capacity, and be compatible with the equipment used by the fire department responsible for the plant.

b. Where ton containers or tank cars are used, a leak repair kit approved by the Chlorine Institute shall be provided. Caustic soda solution reaction tanks for absorbing the contents of leaking ton containers must be provided where such containers are in use. The installation of automatic gas detection and related alarm equipment must be provided.

B. Ultraviolet Irradiation

1. The Director will consider and approve the use of ultraviolet irradiation for disinfection of wastewater treatment plant effluent based on the information submitted. Effectiveness of this system depends upon shallowness of depth or contact volume at the point of application and relative absence of suspended solids.

a. The applicant must submit supporting data describing the proposed system and including such items as contact geometry between the ultraviolet light source and water, reliability, and suitability of the effluent for this process. Designs should be investigated for sound application of the fundamentals of UV disinfection theory.

b. The design shall be based on factors such as, plug-flow hydraulics, intimate contact with the UV light for a sufficient period, short-circuiting, illumination. Tracer test results are helpful in assessment of hydraulic characteristics.

c. Materials of construction should be consistent with the wastewater and environment.

2. The design of ultraviolet disinfection systems shall be

based on on-site testing and the following considerations:

a. Wastewater characteristics. Concentration of total suspended solids (TSS), calcium, magnesium, iron, etc., should be such that UV disinfection is effective. The wastewater should contain low levels of total suspended solids, preferably 20 milligrams per liter or below, and must transmit at least 50 percent of UV light through a wastewater depth of one (1) centimeter.

b. Layout

(1) Adequate space around the UV units to accommodate maintenance activities is required.

(2) Easy removal and replacement of lamps without the use of special tools by one man should be a feature of the equipment design.

(3) The ballasts should be arranged for ready and unhindered access for removal or replacement of any ballast without having a need to remove others.

(4) The layout design must provide adequate floor space for any separate components of the UV system in addition to the UV reactor itself, including requirements for power supply cabinets or cleaning equipment.

(5) Modular design with multiple units to allow uninterrupted service when performing maintenance must be specified.

3. Electrical Requirements

a. power consumption of this process alone should be separately metered.

b. UV lamps and ballasts must be properly matched. The proper matching of lamp and ballast will improve the lamps output and extend its useful life.

c. arrangements for shutting off banks of lamps within a single unit must be provided for lamp replacement or maintenance.

d. power controls should be provided for matching output of lamps with the rate of flow, and system maintenance by the plant staff.

e. minimum electrical standards of construction shall conform to the National Electrical Code, and other applicable codes and standards, consistent with the location or environment surrounding the UV unit and associated equipment.

4. Ventilation. Adequate ventilation to the structure housing the electrical components of the system must be provided to prevent failures from overheating.

5. Cleaning

a. The various means of chemical cleaning available must be evaluated. The evaluation must cover methods required for the unit to be drained; volume of cleansing agent required per cleaning; disposition of spent cleaning solution; manpower requirements to accomplish a cleaning cycle; capital costs of the cleaning and equipment; cleaner cost availability; and special storage and handling needs.

b. The system design must provide for complete draining and easy cleaning.

c. Ultrasonic cleaning must be considered for prevention of biofilm growth on non-illuminated quartz sleeves.

6. Monitoring and Instrumentation

i. Adequate staffing and resources to conduct the data collection and monitoring required for assessing performance must be provided.

ii. Each individual lamp output shall be measured and recorded.

8.4. Dechlorination

A. Sulfur Dioxide (SO₂)

1. Sulfur dioxide is most readily available in liquid (gaseous) form in ton containers similar to chlorine. Approximately, 1 milligram per liter of sulfur dioxide is required to dechlorinate 1 milligram per liter of chlorine residual (free or combined).

2. The dechlorination reaction between sulfur dioxide and both free and combined chlorine is a rapid reaction and requires only a few seconds of contact. The design of sulfur dioxide system must be based on the following considerations:

a. Equipment. Generally sulfur dioxide shall be fed as a gas similar to chlorine gas, as described in R317-3-8. The sulfur dioxide header should be heated to prevent re-liquefaction.

b. Housing and Storage. These requirements are same as to those for chlorine, as described in R317-3-8.

c. Ventilation. These requirements are same as to those for chlorine, as described in R317-3-8.

d. Ancillary Services. These requirements are same as to those for chlorine, as described in R317-3-8.

e. Piping and Material. Pipe material (plastics) inside the sulfonator must be compatible with continuous exposure to sulfur dioxide gas.

f. Reliability. These requirements are same as to those for chlorine, as described in R317-3-8.

g. Residual Monitoring. Control is critical when sulfur dioxide is used as the dechlorinating agent because excess sulfur dioxide consumes excess dissolved oxygen in the wastewater or receiving waters. The dechlorination reaction between sulfur dioxide and both free and combined chlorine is rapid, a few seconds at the most, so sampling can be performed immediately downstream of good mixing. The system should be monitored with a residual chlorine analyzer.

h. The design shall incorporate reaeration of the effluent to be in compliance with the dissolved oxygen requirement, if any, of the discharge permit.

i. Safety

(1) Adequate precautions must be taken for storing sulfur dioxide as it is a potentially hazardous chemical to store.

(2) Provide the same amount of air changes per hour as would be required for chlorine, together with a sulfur dioxide sensing and alarm detector.

B. Other Dechlorinating Agents. The Director may review and approve other methods and chemicals for dechlorination based on the information submitted.

R317-3-9. Sludge Processing and Disposal.

9.1. Design Considerations

A. Process Selection

1. The selection of sludge handling and disposal methods must be based on the following considerations:

a. Energy requirements;

b. Efficiency of equipment for sludge thickening;

c. Complexity and costs of equipment and operations;

d. Staffing requirements;

e. Toxic effects of heavy metals and other substances on sludge stabilization and disposal alternatives;

f. Treatment and disposal of side-stream flows, such as digester and thickener supernatant;

g. Process considerations and good house keeping procedures for minimum waste stream generation;

h. A back-up method of sludge handling and disposal; and

i. The long term effects and regulatory requirements on methods of ultimate sludge disposal.

2. The selected process shall be designed to result in stabilized sludge prior to disposal. Significant reduction of odors, volatile solids and reduction or deactivation of pathogenic organisms can be achieved by chemical, physical, thermal or biological treatment processes; thereby reducing public health hazards and nuisance conditions.

B. Sludge Quantities

1. The sludge treatment system shall be designed to

accommodate the quantities of sludge generated through the design period. Individual process sizing shall consider the sludge generation peaking factors appropriate for the size and type of facility, with allowance for: seasonal variations, industrial loads, and type of collection system. Reserve capacity in the form of off-line storage, standby units or use of extended hours of operation should be considered to handle peak sludge loads.

2. In plants treating less than one million gallons per day (3,785 cubic meters per day), sludge dewatering equipment may operate for less than 35 hours per week. Sludge processing equipment must be designed to operate efficiently over the range of sludge characteristics expected from the preceding unit process. The design engineer shall submit to the Director, copies of design sizing calculations and relevant information to include:

- a. average and maximum sludge quantities;
- b. number and size of units;
- c. equipment characteristics, conditioning chemical requirements and basic sizing parameters;
- d. hours of operation;
- e. expected capture efficiency;
- f. expected percent solids yield.

C. Recycle loads. The sludge system as well as the liquid handling system shall be designed to take into consideration the recycle BOD₅, suspended solids, nitrogen and phosphorus from the solids processing units. The magnitude of such recycle loads and resulting additional sludge will normally range from 5 to 30 percent of the influent loads. Solids balances to account for the additional solids must be calculated.

D. Sludge Storage

1. Design Considerations

a. When the plant design, except for the lagoons, does not include aerobic or anaerobic digesters, or gravity thickeners, etc., a minimum sludge storage for the entire sludge production over a two week period must be provided.

b. In-line storage by increasing mixed liquor solids concentration in aeration tanks or increasing retention in settling tanks is not permitted.

c. Aerated off-line sludge storage of not less than seven days shall be provided for oxidation ditch type activated sludge plants without a sludge digestion process.

2. Equipment Design. The sludge storage system should be equipped with mixing devices to prevent separation of solids and provide a more uniform feed to dewatering devices. Provision for adding lime, chlorine or air to prevent septicity and resulting odors is desirable. Decanting systems to provide thicker solids and flushing water to clean out tankage are necessary. Covering and odor control devices should be provided to minimize nuisance conditions.

9.2. Sludge Pumps and Piping

A. Design Basis

1. Pump Capacity. Capacity shall be adequate to cover the full range of solid concentrations and sludge production. Variable speed or other rate control systems should be provided for all sludge pumps. Maximum operating pressure should be calculated to account for the high friction factor when pumping thixotropic sludges in low velocity laminar ranges.

2. Duplicate Units. Duplicate units shall be provided where failure of one unit would seriously hamper plant operation. Pump suction and discharge manifolds should be interconnected so that one pump discharge can be used to backflush other suction piping.

3. Minimum Head. A minimum positive static head of 24 inches (61 cm) shall be provided at the suction side of centrifugal type pumps and is desirable for all types of sludge pumps. Maximum suction lift should not exceed 10 feet (3

meters) for plunger or diaphragm pumps.

4. Piping

a. Size. Sludge withdrawal piping shall have a minimum diameter of 8 inches (20 cm) for gravity withdrawal and 6 inches (15 cm) for pump suction and discharge lines. Where withdrawal is by gravity, available head shall be adequate to provide sufficient velocity in pipe; thereby preventing solids deposition in pipe.

b. Slope. Gravity flow piping should be laid on a uniform grade and alignment. The slope of gravity discharge lines should not be less than 3 percent.

c. Lining. Scum and primary sludge conveying piping should be lined with a low roughness material such as, glass lining, to reduce friction and to aid in cleaning and maintenance.

B. Equipment Features

1. Plunger type, screw feed type, rotary lobe type, recessed-impeller centrifugal type, progressive cavity type or other types of pumps with demonstrated solids handling capability shall be provided for handling raw sludge. Plunger pump backup for centrifugal pumps is recommended. The abrasive nature of sludges, especially those containing grit, must be considered in the selection of pump type and materials of construction.

2. Sludge grinders should be used where downstream process equipment, such as frame and plate presses, centrifuges, heat exchangers, sludge mixing devices or progressive cavity pumps, is susceptible to rag or trash build-up.

3. Valves. The piping system shall be equipped with isolation valves to allow for repairs and replacement of equipment or metering devices.

4. Piping Layout. Provisions should be made for cleaning, draining and flushing sludge piping. Flanges tees and crosses and cleanouts to allow rodding of suction line are desirable. Provision for back flushing with positive displacement pump discharge is desirable. Provision for cleaning by hot water, steam injection, in-line pigging or chemical degreasing should be considered in long lines containing raw sludge or scum.

C. Control Devices

1. Flow meters should be provided on all process and ancillary lines such as feed, withdrawal, gas, transfer, recirculation, hot water etc. Provision should be made for equipment isolation, cleaning and calibrating.

2. Sludge pumps used on intermittent withdrawal service should be equipped with variable timer equipment.

3. Quick-closing sampling valves shall be installed at the sludge pump, unless sludge sampling is provided separately elsewhere. The size of the valve and piping shall be at least 1 1/2 inches in diameter (3.8 centimeters).

9.3. Sludge Thickeners

1. The design of thickeners (gravity, dissolved-air flotation, centrifuge, and others) should consider the type and concentration of sludge, the sludge stabilization processes, the method of ultimate sludge disposal, chemical needs, and the cost of operation. The pumping rate and piping of the concentrated sludge should be selected such that anaerobic conditions are prevented.

2. No credit towards sludge storage or digestion, if any, in thickeners shall be permitted.

A. Gravity Thickening

1. Design Basis

a. Typical loading rates and resulting solids concentration for gravity thickening are as shown in Table R317-3-9.3(A)(1)(a).

b. Equipment and piping must be designed to deliver sufficient dilution water to gravity thickeners. Flow rate of dilution water shall be measured and recorded. Hydraulic

loading to produce overflow rates of 400 to 800 gallons per day per square foot (16-33 cubic meter per day per square meter) shall be maintained to prevent septicity.

2. Equipment Features

a. Heavy duty scrapers capable of withstanding extra heavy torque loads should be provided.

b. Sidewater depths of 10-14 feet (3-4.2 meters) are recommended.

c. Ability to add chlorine solution should be provided to prevent septicity.

d. Tank covers and odor control systems should be considered depending on adjacent land use.

B. Co-Settling. Trickling filter or activated sludge may be returned to primary clarifiers for co-settling. If this method is utilized:

1. Peak design overflow rates for the primary clarifier shall not exceed 1,500 gallons per day per square foot (61 cubic meters per day per square meter), including recirculated sludge flow, and

2. Minimum sidewater depth in the primary clarifier must not be less than 12 feet (3.7 meters).

9.4. Anaerobic Digestion

A. Design Basis

1. The anaerobic digestion system shall provide for active digestion, supernatant separation, sludge concentration and storage. Heating and gas collection systems are required. Mixing systems for primary digesters shall be provided, and are recommended for secondary digesters.

2. Multiple digestion units shall be provided in all plants designed for more than 1 million gallons per day (3,785 cubic meter per day) rate of flow. For plants designed for less than one million gallons per day (3,785 cubic meters per day), alternative methods of sludge stabilization and emergency storage must be available if only one unit is available.

3. The total digestion tank capacity should be determined by rational calculations based upon the following factors:

- a. sludge characteristics - volume and percent solids,
- b. the temperature to be maintained in the digesters,
- c. the degree and extent of mixing in the digesters, and
- d. the degree of volatile solids reduction desired.

4. Calculations shall be submitted to justify the basis of design. Otherwise, the following assumptions shall be used:

- a. sludge characteristics - domestic wastewater sludge volume generated as shown in Table R317-3-9.4(A)(4)(a).
- b. the temperature to be maintained in the digesters: 90 to 100 degrees Fahrenheit (32-38 degrees Centigrade).
- c. the degree and extent of mixing in the digesters: 40 horsepower per million gallons (8 watts per cubic meter).
- d. volatile solids in digested sludge: 50 percent.

5. Completely-mixed systems, mixed at an intensity such that digester contents are completely turned over every 30 minutes, may be loaded at a rate up to 120 pounds of volatile solids per 1,000 cubic feet of volume per day (1.92 kilograms per cubic meter per day) in the active digestion units. When grit removal facilities are not provided, the digester volume must be increased to accommodate grit accumulation.

6. Moderately mixed digestion systems, mixed by circulating sludge through an external heat exchanger, may be loaded at a rate up to 40 pounds of volatile solids per 1,000 cubic feet of volume per day (0.64 kilograms per cubic meter per day) in the active digestion units. This loading may be modified upward or downward depending upon the degree of mixing provided.

7. For those units intended to serve as supernatant separation tanks, the depth should be sufficient to allow for the formation of a reasonable depth of supernatant liquor. A minimum sidewater depth of 20 feet (6.1 meters) is

recommended.

B. Tank Covers

1. All anaerobic digestion tanks shall be covered. Primary tanks may be equipped with gas-tight, fixed steel or concrete covers or floating steel covers made gas-tight by extended rims. Secondary tank covers may be of the fixed type or floating steel type, including gas storage type units.

2. Floating covers shall be equipped with a guide rail system to prevent tipping and lower-landing ridges, and cover restraints.

C. Sludge Inlets and Outlets

1. Multiple recirculation, withdrawal and return points, should be provided, to enhance flexible operation and effective mixing, unless mixing facilities are incorporated within the digester. The returns, in order to assist in scum breakup, should discharge above the liquid level and be located near the center of the tank.

2. Raw sludge feed to the digester should be through the sludge heater and recirculation return piping, or directly to the tank if internal mixing facilities are provided.

3. Sludge withdrawal to disposal should be from the bottom of the tank. This pipe should be interconnected with the recirculation piping, if such piping is provided, to increase versatility in mixing the tank contents. Additional alternative withdrawal lines should be provided.

D. Supernatant Withdrawal

1. Supernatant piping should not be less than 6 inches (15 centimeters) in diameter. Piping should be arranged so that withdrawal can be made from three or more levels in the digester. A positive, unvalved, vented overflow shall be provided with a drop leg for a liquid seal and downstream vent.

2. If a supernatant selector is provided, provisions shall be made for at least one other draw-off level, located in the supernatant zone of the tank, in addition to the unvalved emergency supernatant draw-off pipe. High pressure back-wash facilities shall be provided.

3. Multiple supernatant draw-offs should be provided for sampling at different levels. Sampling pipes must be at least 1 1/2 inches (3.8 centimeters) in diameter, and should terminate at a suitably-sized sampling sink or basin.

E. Sampling. Sampling hatches shall be provided in all tank covers with water seal tubes extending to beneath the liquid surface.

F. Gas Collection, Piping and Appurtenances

1. General. All portions of the gas system, including the space above the tank liquor, storage facilities and piping, shall be so designed that under normal operating conditions, including sludge withdrawal, the gas will be maintained under positive pressure. All enclosed areas where any gas leakage might occur shall be adequately ventilated.

2. Safety Equipment. All safety equipment shall be provided where gas is produced. Pressure and vacuum relief valves, flame traps, gas detectors, and automatic safety shut off valves, shall be provided.

3. Gas Piping and Condensate. Gas piping shall be of adequate diameter for gas flow rate and shall slope to condensate traps at low points. The use of float-controlled condensate traps is not permitted.

4. Gas Utilization Equipment.

a. Gas-fired boilers for heating digesters shall be located in a separate room not directly connected to the digester gallery. Gas lines to these units shall be provided with flame traps.

b. Dual fuel engines on major pumps or blowers, should be installed with possible recovery of exhaust and jacket cooling heat for use in heating digester or building spaces. An alternate system would consist of direct electric power generation. Gas cleaning and storage may be desirable.

5. Electrical Fixtures. Electrical fixtures and controls in enclosed places where hazardous gases may accumulate shall comply with the National Electrical Code for Class I, Division I Group D locations. Digester galleries must be isolated from normal operating areas to avoid an extension of the hazardous location.

6. Waste Gas.

a. Waste gas burners shall be readily accessible and should be located at least 25 feet (7.6 meters) away from any plant structure if placed at ground level, or they may be located on the roof of the control building at a height of not less than three feet (0.9 meter) from the top of the roof.

b. All waste gas burners shall be equipped with automatic ignition, such as a pilot light or a device using a photoelectric cell sensor. Consideration should be given to the use of natural or propane gas to insure reliability of the pilot light.

c. Necessary approvals from the Director, shall be obtained for burning any waste gas and any other emissions from the treatment plant.

7. Ventilation. Any underground enclosures connecting with digesters or containing sludge or gas piping or equipment shall be forced ventilated. The piping gallery for digesters should not be connected to other passages.

8. Metering. Gas meters, with by-pass, shall be provided to meter total and waste gas production.

G. Digester Heating

1. Insulation. Wherever possible, digesters should be constructed above ground water level and should be suitably insulated to minimize heat loss.

2. Heating Facilities

a. External Heating. Sludge may be heated by circulating the sludge through external heaters. Piping should be designed to provide for the preheating of feed sludge before introduction to the digesters, especially if sludge thickeners are not used, or if feed is a batch feed resulting in high intermittent feed rates. Provisions shall be made in the lay-out of the piping and valving to facilitate cleaning of these lines. Heat exchanger sludge piping should be sized for heat transfer requirements.

b. Other Heating Methods. The Director may approve review other types of heating facilities based on the information submitted by the applicant.

3. Heating Capacity. Heating capacity sufficient to consistently maintain the design sludge temperature shall be provided. Where digester tank gas is used for sludge heating, an auxiliary fuel supply is required.

4. Hot Water Internal Heating Controls

a. A suitable automatic mixing valve shall be provided to temper the boiler water with return water so that the inlet water to the heat jacket can be held below a temperature at which caking will be accentuated. Manual control should also be provided by suitable by-pass valves.

b. The boiler should be provided with suitable automatic controls to maintain the boiler temperature at approximately 180 degrees Fahrenheit (82.2 degrees Centigrade), to minimize corrosion, and to shut off the main gas supply in the event of pilot burner or electrical failure, low boiler water level, or excessive temperatures.

c. Thermometers shall be provided to show temperatures of the sludge, hot water feed, hot water return, and boiler water.

H. Mixing Systems. Sludge mixing systems shall be gas recirculation, draft tube mixing, mechanical mixer or pump recirculation types. The mixing system should be designed such that routine maintenance can be performed without taking the digester out of service.

I. Operational Considerations

1. Piping Flexibility. Where two stage digestion is

practiced, provision shall be made to feed and heat the secondary digester. Mixing systems should be installed in secondary digestion units.

2. Provision to pump secondary sludge to primary units for reseeded and extending sludge detention time is recommended.

3. When digested sludge is pumped to the dewatering unit, piping shall be laid out so as to prevent uncontrolled gravity flow.

4. Provisions to adjust pH and alkalinity by addition of chemicals shall be made.

J. Maintenance Features for draining, cleaning, and maintenance must be considered in the design of the digesters.

1. Slope. The tank bottom should slope to drain toward the withdrawal pipe. For tanks equipped with a suction mechanism for withdrawal of sludge, a bottom slope of 1:12 or greater is recommended. Where the sludge is to be removed by gravity alone, 1:4 slope is recommended.

2. Access Manholes. At least two 36 inch (91 centimeters) diameter access manholes should be provided in the top of the tank in addition to the gas dome. There should be stairways to reach the access manholes. A separate sidewall manhole shall be provided. The opening should be large enough to permit the use of mechanical equipment to remove grit and sand.

3. Safety. Local, state and federal safety requirements, including those in applicable fire code, the Uniform Building Code etc., must be reviewed and complied with. Those requirements take precedence over the requirements stated herein, if more stringent, and should be incorporated in the design. Nonsparking tools, safety lights, rubber-soled shoes, safety harness, gas detectors for inflammable and toxic gases, and at least two self-contained breathing units shall be provided for emergency use.

9.5. Aerobic Digestion

A. General. Aerobic digestion may be used for stabilization of primary sludge, and activated or trickling filter sludge. Digestion may take place in single or multiple tanks designed to provide effective air mixing, reduction of the organic matter, supernatant separation, and sludge concentration under controlled conditions.

B. Tank Capacity. The digestion tank capacity shall be based on such factors as, quantity of sludge produced, sludge concentration and related characteristics, time of aeration, sludge temperature, etc.

1. Volatile Solids Loading. Volatile suspended solids loading shall not exceed 100 pounds per 1,000 cubic feet of volume per day (1.60 kilograms per cubic meter per day) in the digestion units.

2. Detention Time. The minimum detention time of 15 days shall be provided for aerobic digestion. The detention time may vary with sludge characteristics. Where sludge temperature is lower than 50 degrees Fahrenheit (10 degrees Centigrade) additional detention time should be considered. Covering of the aerobic digesters may be considered to prevent heat losses to atmosphere.

3. Multiple Units. Multiple tanks are required for plants designed to treat more than 1 million gallons per day (3,785 cubic meters per day). Adequate provision must be made for sludge handling and storage for the plants treating less than 1 million gallons per day (3,785 cubic meters per day). When multiple units are provided, ability to utilize them in serial operation is recommended.

4. Mixing and Air Requirements

a. Aerobic sludge digestion tanks shall be designed for effective mixing. Sufficient air shall be provided to keep the solids in suspension and maintain dissolved oxygen between 1 to 2 milligrams per liter.

b. A minimum air volume of 30 cubic feet per minute per 1,000 cubic feet of tank volume (0.51 liters per cubic meter per second) shall be provided with the largest blower out of service for the mixing and aeration requirements. For the diffused aeration systems, the nonclog type air diffusers are recommended, and shall be designed to permit continuity of service.

c. A minimum of 75 horsepower per million gallon of tank volume (15 watts per cubic meter) shall be provided for mechanical aeration systems. Mechanical aerators must be protected where freezing temperatures are expected. Submerged turbine units or floating surface aerators may be considered to allow for liquid level variation.

5. Supernatant Separation. Facilities shall be provided for effective separation and withdrawal of supernatant and for effective collection and removal of scum and grease. Multiple level decant withdrawal lines should be provided.

6. Foam Spray. Foam suppression spray water piping and nozzles should be provided.

9.6. Sludge Dewatering

A. Belt Filter Press

1. Design Basis

a. Hydraulic and solids loading rates, conditioning requirements, and performance shall be based on pilot unit performance or operational results on similar sludges.

b. Multiple units are required unless storage capacity or alternate dewatering methods are available to handle sludge during prolonged power outage.

c. In plants designed for 1 million gallons per day (3,785 cubic meters per day), the operational period should not usually exceed 35 hours per week which allows one shift operation with time for chemical makeup, cleanup and delays. In plants designed for over 1 million gallons per day (3,785 cubic meters per day), the operational period may approach 20 hours per day.

2. Equipment Features

a. The facility should provide for chemical storage, feed equipment, belt wash water, and filtrate return and for conveying and loading sludge cake onto transport vehicles.

b. Belt alignment and tensioning should be regulated automatically.

c. If a single unit is provided, standby equipment should be provided for the sludge feed pump, belt wash, and chemical feed.

d. Facilities or piping for filtrate and wash water sampling should be provided.

3. Operational Considerations. Good house keeping and maintenance features should include press housing, ventilation, safe and convenient access for cleanup and maintenance, floor drains, minimum splashing of filtrate or wash water, etc.

9.7. Sludge Drying Beds

A. Design Basis

1. The area of sludge drying beds is determined by factors such as, climatic conditions, the character and volume of the sludge to be dewatered, the method and schedule of sludge removal, and other methods of sludge disposal.

2. The applicant or the design engineer must submit the basis of design including calculations for review. When the basis of design is not submitted, the drying bed area shall be determined on the basis of 4 square feet per population equivalent (0.38 square meter per population equivalent) when the drying bed is the primary method of dewatering, and 2.0 square feet per population equivalent (0.19 square meter per population equivalent) if it is to be used as a backup dewatering unit. An increase of bed area by 25 percent is required for paved beds. Sludge storage or alternate dewatering methods should be considered for winter weather.

3. A ground water discharge permit may be required for

beds without an impervious base. Hydraulic conductivity shall not be greater than 1 x 10⁻⁶ centimeters per second or as required for compliance with the provisions of R317-6 (Ground Water Quality Protection Regulations).

B. Design Features

1. Gravel. The lower course of gravel around the underdrains should be properly graded and not less than 12 inches (30.5 centimeters) in depth, extending at least 6 inches (15.2 centimeters) above the top of the underdrains. It is desirable to place this in two or more layers. The top layer of at least 3 inches (7.6 centimeters) must consist of gravel 1/8 inch to 1/4 inch (3.18 to 6.35 millimeters) in size. The remaining layer of gravel below the top 3-inch (7.6 centimeters) layer may be 3/4 to 1 inch (1.9 to 2.5 centimeters) in size.

2. Sand. The top course placed above the gravel should consist of at least 6 to 9 inches (15.2 to 22.9 centimeters) of clean coarse sand. The finished sand surface should be level.

3. Underdrains. Underdrains should be clay pipe or concrete drain tile at least 4 inches (10.2 centimeters) in diameter laid with open joints. Underdrains should be spaced not more than 20 feet (6.1 meters) apart. Underdrainage should be returned to the process with raw or settled sewage.

4. Partially Paved Type. The partially paved drying bed should be designed with consideration for the space requirement to operate mechanical equipment for removing the dried sludge. Paving must positively slope to the underdrains.

5. Containment Walls. Walls should be water-tight and extend 15 to 18 inches (38 to 46 centimeters) above and at least 6 inches (15 centimeters) below the surface of the drying bed. Outer walls should be curbed to prevent soil from washing onto the beds.

6. Sludge Removal. Not less than two beds should be provided and they should be arranged to facilitate sludge removal. Paved truck tracks should be provided for all percolation-type sludge beds.

7. Sludge Feed Line. The sludge pipe to the drying beds should terminate at least 12 inches (30.5 centimeters) above the floor surface and be so arranged that it will drain into the bed. Concrete splash blocks should be provided at sludge discharge points.

9.8. Other Sludge Treatment Methods. Other methods for sludge dewatering, treatment, and stabilization will be considered by the Director based on such factors as the need, suitability of application and process, reliability and flexibility, etc.

R317-3-10. Lagoons.

10.1. Lagoon Siting

A. Distance from Habitation. A lagoon should be sited as far as practicable, with a minimum of 1/4 mile (0.4 kilometer), from areas developed for residential or commercial or institutional purposes or may be developed for such purposes within a foreseeable future. Site characteristics such as topography, prevailing wind direction, forests, etc., must be considered in siting the lagoon.

B. Prevailing Winds. The lagoon should be sited where the direction of local prevailing winds is towards uninhabited areas.

C. Surface Runoff. The lagoon should not be sited in watersheds receiving significant amounts of storm-water runoff. Storm-water runoff should be diverted around the lagoon and protect lagoon embankments from erosion.

D. Hydrology and hydrogeology. Close proximity to water supplies and other facilities subject to wastewater contamination should be avoided in siting the lagoon. A minimum separation of four (4) feet (1.2 meters) between the bottom of the lagoon and the maximum ground water

elevation should be maintained.

E. Geology

1. The lagoon shall not be located in areas which may be subjected to karstification, i.e., sink holes or underground streams generally occurring in area underlain by porous limestone or dolomite or volcanic soil.

2. A minimum separation of 10 feet (3.0 meters) between the lagoon bottom and any bedrock formation is recommended.

10.2. Small Facilities. The Director will review and approve the construction of a lagoon for a design rate of flow less than 25,000 gallons per day (95 cubic meters per day) only if:

A. there are no other alternatives for wastewater treatment and disposal available to the applicant;

B. there is no other appropriate technology for wastewater treatment and disposal except lagoon; and

C. the applicant has resources to satisfactorily operate and maintain the lagoon.

10.3. Basis of Design. Design variables such as lagoon depth, number of units, detention time, and additional treatment units must be based on effluent standards for BOD₅, total suspended solids (TSS), E. coli, dissolved oxygen (DO), and pH.

A. Design for Discharging and Total Containment Lagoons

1. The design shall be based on BOD₅ loading ranging from 15 to 35 pounds per acre per day (16.8-39.2 kilograms per hectare per day).

2. The design for total containment lagoons shall be based on conservative estimates of precipitation, evaporation, seepage or percolation and inflow relevant to the site. A mass diagram showing each of the foregoing factors on a month-by-month basis, shall be prepared and submitted with the design and plans for review.

B. Design Depth. The minimum operating depth should be such that growth of aquatic plants is suppressed to prevent damage to the dikes, bottom, control structures, aeration equipment and other appurtenances.

1. Discharging or Total Containment Lagoons. The maximum water depth shall be 6 feet (1.8 meters) in primary cells. Greater depth in subsequent cells may be deeper than 6 feet provided that supplemental aeration or mixing is incorporated in the design. Minimum operating depth shall be three feet.

2. Aerated Lagoons. The design water depth should range from 10 to 15 feet (three to 4.5 meters). The type of the aeration equipment, waste strength and climatic conditions affect the selection of the design water depth.

3. Sludge Accumulation. The minimum depth of 18 inches (45 centimeters) for sludge accumulation shall be provided in primary cells of facultative lagoons.

C. Freeboard. The minimum freeboard shall be three (3) feet (1.0 meter). For small systems - less than 50,000 gallons per day (190 cubic meters per day), the minimum freeboard can be reduced to two (2) feet (0.6 meter).

D. Slope

1. Maximum Dike Slope. The inner and outer dike slopes shall not be steeper than 3 horizontal to 1 vertical (3:1).

2. Minimum Dike Slope. Inner dike slope shall not be flatter than 4 horizontal to 1 vertical (4:1). A flatter slope can be specified for larger installations because of wave action, but have the disadvantages of added shallow areas, that are conducive to emergent vegetation.

E. Seepage

1. The bottom of lagoons treating domestic sewage shall be no less than 12-inch (30 centimeters) in thickness, constructed in two six-inch (15 centimeters) lifts. The

selection of the type of seals using soils, bentonite, or synthetic liners for the lagoon bottom shall be based on the design hydraulic conductivity, durability, and integrity of the proposed material.

2. Hydraulic conductivity of the lagoon bottom as constructed or installed, shall be such that it meets the requirements of ground water discharge permit issued under R317-6, (Ground Water Quality Protection rules). It shall not exceed 1.0×10^{-6} centimeters per second.

3. The seepage loss may vary with the thickness of the bottom seal and hydraulic head thereon. Detailed calculations on the determination of seepage loss shall be submitted with the design. It shall not exceed 6,500 gallons per acre per day (60.8 cubic meters per hectare per day).

4. Results of field and laboratory hydraulic conductivity tests, including a correlation between them, shall meet the design and ground water discharge permitting requirements, before the use of lagoon can be authorized.

5. Hydraulic conductivity for the lagoon where industrial waste is a significant component of sewage, shall be based on ground water protection criteria contained in R317-6 (Ground Water Quality Protection rules).

F. Detention time

1. Discharging Lagoons. Detention time in the lagoon shall be the greater, and exclusive of the capacity provided for sludge build-up, of:

a. 120 days based on winter flow and the maximum operating depth of the entire system; or

b. 60 days based on summer flow and peak monthly infiltration/inflow.

c. The detention time shall not be less than 150 days at the mean operating depth for effluent discharge without chlorination. In order to meet bacteriologic standards in such a case, at least 5 cells shall be provided. The detention time and organic loading rate shall depend on climatic or stream conditions.

2. Aerated Lagoons

a. The detention time shall be the greater of:

(1) 30 days minimum; or

(2) the value determined using the following formula: $E = (1/(1 + (2.3 \times K_1 \times t)))$ where: t = detention time, days; E = fraction of BOD₅ remaining in an aerated lagoon; K₁ = reaction coefficient, aerated lagoon, base 10. For normal domestic sewage, the K₁ value may be assumed to be 0.12 day⁻¹ at 20 degrees Centigrade, and 0.06 day⁻¹ at one degree Centigrade.

b. The reaction rate coefficient for domestic sewage which includes some industrial wastes must be determined experimentally for various conditions which might be encountered in the aerated lagoons. The reaction rate coefficient based on temperature used in the experimental data, shall be adjusted for the minimum sewage temperature.

G. Aeration Requirements for Aerated Lagoons

1. The design parameters for the aerated lagoon should be based on pilot testing or validated experimental data.

2. When pilot testing is not conducted, the design should be based on two pounds of oxygen input per pound of BOD₅ applied (two kilograms of oxygen input per kilogram of BOD₅ applied). However, it may vary with the degree of treatment, and the concentration of suspended solids to be maintained. A tapered mode of aeration is permitted based on applied BOD₅ to each cell.

3. Aeration equipment shall be capable of maintaining a minimum dissolved oxygen level of 2 milligrams per liter in the lagoon at all times such that their circles of influence meet.

a. Circle of Influence. It is that area in which return velocity is greater than 0.15 feet per second as indicated by the manufacturer's certified data. Table R317-3-10.3(G)(3)(a)

may be used when the manufacturer's certified data is not available.

b. Freezing. Suitable protection from weather shall be provided for aerators and electrical controls.

H. Industrial Wastes. For industrial waste treatment using lagoon, the design parameters shall be based on the type and treatability of industrial wastes using biological processes. In some cases it may be necessary to pretreat industrial waste or combine with domestic sewage.

10.4. Lagoon Construction Details

A. Cell Shape. The shape of all cells should be such that there are no narrow or elongated portions. Round, square or rectangular lagoons with a length not exceeding three times the width are most desirable. No islands, peninsulas or coves are permitted. Dikes should be rounded at corners to minimize accumulations of floating materials. Common-wall dike construction, wherever possible, is strongly encouraged.

B. Multiple Units

1. At a minimum, the lagoon system shall consist of three cells of approximately equal capacity designed to facilitate both series and parallel operations.

2. The Director may approve less than three cells on the basis of review of factors such as, the rate of flow, the need, treatment reliability, etc.

3. All systems shall be designed with piping:

a. to permit isolation of any cell without affecting the transfer and discharge capabilities of the total system, and

b. to split the influent waste load to a minimum of two cells or all primary cells in the system.

C. Embankments and Dikes

1. Material. Dikes shall be constructed of relatively impervious material and compacted to no less than 90 percent Standard Proctor Density at 3 percent above the optimum moisture density to form a stable structure. The area where the embankment is to be placed shall be from vegetation and unstable organic material.

2. Top Width. The minimum dike width shall be 8 feet (2.4 meters) and shall permit access by maintenance vehicles.

D. Lagoon Bottom

1. Soil. Soil used in constructing the lagoon bottom (not including seal) and dike cores shall be incompressible and tight and compacted at a moisture content of 3 percent above the optimum water content to at least 90 percent Standard Proctor Density.

2. Uniformity. The lagoon bottom should be as level as possible at all points. Finished elevations shall not be more than three (3) inches (7.5 centimeters) from the average elevation of the bottom.

3. Prefilling. The lagoon should be prefilled to a level which protects the liner, prevents weed growth, reduces odor, and maintains moisture content of the seal. However, the dikes must be completely prepared before the introduction of any water.

E. Construction Quality Control and Assurance. A construction quality control and assurance plan showing frequency and type of testing for materials used in construction shall be submitted with the design for review and approval. Results of such testing, gradation, compaction, field permeability, etc., shall be submitted to the Director.

F. Erosion Control

1. The site shall be protected from erosion. The design of control measures shall be based on factors, such as lagoon location and size, seal material, topography, prevailing winds, cost breakdown, application procedures, etc.

2. For aerated lagoons, the slopes and bottom shall be protected from erosion resulting from turbulence.

3. Exterior face of the dike slope shall be protected from erosion due to severe flooding of a water course.

4. Seeding. The outside surface of dikes shall have a

cover layer of at least 4 inches (10 centimeters), of fertile topsoil to promote establishment of an adequate vegetative cover wherever riprap is not utilized. Prior to prefilling, adequate vegetation shall be established on dikes from the outside toe to 2 feet (0.6 meter) above the lagoon bottom on the interior as measured on the slope. Perennial-type, low-growing, native, spreading grasses that minimize erosion and can be mowed are most satisfactory for seeding on dikes. Alfalfa and other deep-rooted crops must not be used for seeding since the roots of this type are apt to impair the water holding efficiency of the dikes.

5. Riprap or equivalent material shall be placed from 1 foot (0.3 meter) above the high water mark to two feet (0.6 meter) below the low water mark (measured on the vertical) for protection from severe wave action.

a. Riprap. The interior face of dikes must be protected from erosion by riprap or other equivalent methods of erosion control.

(1) Riprap layer shall be of durable, angular, sound and hard, field or quarry stones, and shall be free from seams, cracks and structural defects.

(2) The thickness of riprap layer shall be at least 8 inches (20 centimeters).

(3) Stones to be used in the riprap layer shall meet the following requirements:

(a) A minimum of 50 percent of stones by weight, shall be of sizes between two-thirds and one and one-half of the layer thickness;

(b) No more than ten percent of stones by weight, shall be of a size less than one-tenth of the layer thickness;

(c) The specific weight of stones must range between 2.5 and 2.82;

(d) Durability shall be tested in accordance with ASTM Standard C-535, as amended, and stones wearing in excess of 40 percent shall not be used.

(e) Stones shall be graded and manipulated in size so as to produce a regular surface of dense and stable mass. A stable foundation for the placed riprap shall be provided at the toe of the dike.

10.5. Influent Piping

A. Influent and Effluent Structures

1. All influent and effluent structures shall be located to minimize short-circuiting within lagoons, and to avoid blocking of lagoon circulation. Such structures must have protection against freezing or ice damage under winter conditions.

2. Inlets to the primary cells shall meet the following criteria:

a. Surcharging of upstream sewer from the inlet manhole is not permitted.

b. Multiple influent discharge points for primary cells of 20 acres (8 hectares) or larger should be provided to enhance the distribution of waste load in the cell.

c. Discharge shall be in the center of a round or a square cell, or at the third point farthest from the outlet structure in a rectangular cell, or at least 100 feet (30 meters) from the toe of the dike.

d. All aerated cells shall have an influent line which distributes the load within the mixing zone of the aeration equipment. Multiple inlets may be considered for a diffused aeration system.

e. Force mains shall be valved at the lagoon, and may terminate in a vertically or horizontally discharging section. The discharge end of the vertical pipe must be located no more than one foot above the lagoon bottom. Flow velocities in the discharge section entering the lagoon must not be in excess of two feet per second.

B. Influent Discharge Apron

1. The influent line shall discharge horizontally into a

shallow, saucer-shaped, depression extending below the lagoon bottom not more than the diameter of the influent pipe plus 1 foot.

2. The end of the discharge line shall rest on a suitable concrete apron large enough to prevent the terminal influent velocity at the end of the apron from causing soil erosion. A 2-foot (0.6 meter) square apron shall be provided at the minimum.

C. Flow Measurement. Influent flow to the lagoon shall be continuously indicated and recorded. Flow measurement and recording equipment shall be weatherproof.

D. Level Gauges. Level gauges with clear markings shall be provided in:

1. each cell to measure and manually record the depth; and
2. the primary flow measurement device structure to indicate the depth or the rate of flow.

E. Manhole

1. A manhole or vented cleanout wye shall be installed prior to entrance of the influent line into the primary cell and shall be located close to the dike as topography permits. Its invert shall be at least 6 inches (15 centimeters) above the maximum operating level of the lagoon and provide sufficient hydraulic head without surcharging the manhole.

2. A manhole is required for small systems to house flow measurement device. For larger systems, flow measurement device and related instrumentation must be housed in a headworks type structure.

F. Flow Distribution. Flow distribution structures shall be designed to effectively split hydraulic and organic loads equally to primary cells.

G. Material. The material for influent line to the lagoon should meet the requirements of material for underground sewer construction described in this rule. Unlined corrugated metal pipe is not permitted due to corrosion problems. The material selection shall be based on factors such as, wastewater characteristics, heavy external loadings, abrasion, soft foundations, etc.

10.6. Control Structures and Interconnecting Piping

A. Structure

1. As a minimum, control structures shall:
 - a. be accessible for maintenance and adjustment of controls;
 - b. be adequately ventilated for safety and to minimize corrosion;
 - c. be locked to discourage vandalism;
 - d. contain controls to permit water level and flow rate control, and complete shutoff;
 - e. be constructed of non-corrodible materials (metal-on-metal); and
 - f. be located to minimize short-circuiting within the cell and avoid freezing and ice damage.
2. Recommended devices to regulate water level are valves, slide tubes or dual slide gates. Regulators should be designed so that they can be preset to stop flows at any lagoon elevation.

B. Piping. All piping shall be of cast iron or other material for installation of underground piping. The piping shall be located along the bottom of the lagoon with the top of the pipe just below average elevation of the lagoon bottom. Pipes should be anchored and protected from erosion.

10.7. Effluent Discharge Piping

A. Submerged Takeoffs. For lagoons designed for shallow or variable depth operations, submerged takeoffs are required. Intakes shall be located a minimum of 10 feet (3.0 meters) from the toe of the dike and 2 feet (0.6 meter) from the seal, and shall employ vertical withdrawal.

B. Multi-level Takeoffs. For lagoons that are designed deeper than 10 feet (3 meters), enough to permit stratification

of lagoon content, multiple takeoffs are required. There shall be a minimum of three withdrawal pipes at different elevations. Adequate structural support for takeoffs shall be provided.

C. Emergency Overflow. An emergency overflow should be provided to prevent overtopping of dikes. The hydraulic capacity for continuous discharge structures and piping shall allow for a minimum of 250 percent of the design flow of the system. The hydraulic capacity for controlled-discharge systems shall permit transfer of water at a minimum rate of six (6) inches (15 centimeters) of lagoon water depth per day at the available head.

10.8. Miscellaneous

A. Fencing. The lagoon area shall be enclosed with not less than 6 feet high chain link fence to prevent entering of livestock and to discourage trespassing. Fencing must not obstruct vehicle traffic on top of the dikes. A vehicle access gate of sufficient width to accommodate all maintenance equipment shall be provided. All access gates shall be provided with locks.

B. Access. An all-weather access road shall be provided to the lagoon site to allow year-round maintenance of the facility.

C. Warning Signs. Permanent signs shall be provided along the fence around the lagoon to designate the nature of the facility and advise against trespassing. At least one sign shall be provided on each side of the site and one for every 500 feet (150 meters) of its perimeter.

D. Service Building A service building for laboratory and maintenance equipment should be considered.

10.9. Industrial Waste Lagoons. The Director will review the design of lagoons for treatment of industrial wastes on the basis of such factors as treatability, operability, reliability, ground water protection levels, water quality objectives, etc.

R317-3-11. Use, Land Application and Alternate Methods for Disposal of Treated Wastewater Effluents.

11.1. General. Design requirements for effluent disposal or water reuse of municipal wastewater treatment plant effluents shall comply with the requirements of this section. Administrative and approval requirements for these land application systems are found in R317-13 and R317-14 for water reuse and effluent disposal, respectively. Land application of effluent from industrial wastewater treatment plants shall comply with the requirements of R317-1-5.

11.2. Effluent Criteria. Land application of treated effluents is permitted following treatment if standards are met as defined in this section.

11.3. Submittal of Project Plan. If a person intends to use or provide for the use of treated domestic wastewater directly for any purpose, except on the treatment plant site as described in R317-1-4.2, a Project Plan must be submitted to and approved by the Director. A copy of the plan must also be submitted to the local health department. Any needed construction of wastewater treatment and delivery systems would also be covered by a construction permit as required in section R317-1-2.2. The plan must contain the following information. At least items A, B, D and E should be provided before construction begins. All items must be provided before any water deliveries are made.

A. A description of the quantity, quality, and use of the treated wastewater to be delivered, the location of the site, an assessment of the direct hydrologic effects of the action, and how the requirements of this rule would be met. A nutrient management and agronomic uptake analysis may be required to document the proposed management of all nutrients.

B. A description of public notification and participation in the development of the Project Plan may be required.

C. An operation and management plan to include:

1. A copy of the contract with the user, if other than the treatment entity.

2. A labeling and separation plan for the prevention of cross connections between treated effluent distribution lines and potable water lines. Guidance for distribution systems is available from the Division of Water Quality.

3. Schedules for routine maintenance.

4. A contingency plan for system failure or upsets.

D. If the water will be delivered to other entities for transmission, distribution and/or use, a copy of the contract covering how the requirements of this rule will be met.

E. Requirements for ground water discharge permits, underground injection control (U.I.C.) permits, surface water discharge permits, total maximum daily load (TMDL) or nutrient loading considerations, if required, shall be determined in accordance with R317-1, R317-2, R317-6, R317-7, R317-8.

11.4 Use of Treated Domestic Wastewater Effluent Where Human Exposure is Likely (Type I)

A. Uses Allowed

1. Residential irrigation, including landscape irrigation at individual houses.

2. Urban uses, which includes non-residential landscape irrigation, golf course irrigation, toilet flushing, fire protection, and other uses with similar potential for human exposure. Internal building uses of treated effluent will not be allowed in individual, wholly-owned residences; and are only permitted in situations where maintenance access to the building's utilities is strictly controlled and limited only to the services of a professional plumbing entity. Projects involving effluent reuse within a building must be approved by the local building code official.

3. Irrigation of food crops where the applied reuse water is likely to have direct contact with the edible part. Type I water is required for all spray irrigation of food crops.

4. Irrigation of pasture for milking animals.

5. Impoundments of wastewater where direct human contact is likely to occur.

6. All Type II uses listed in 11.5.A below.

B. Required Treatment Processes

1.a. Treatment processes that are expected to produce effluent in which both the BOD and total suspended solids concentrations do not exceed secondary quality effluent limits as defined in R317-1-3.2.

b. Filtration, which includes passing the wastewater through filter media such as sand and/or anthracite, approved membrane processes or other approved filtration processes.

c. Disinfection to destroy, inactivate, or remove pathogenic microorganisms by chemical, physical, or biological means. Disinfection may be accomplished by chlorination, ozonation, or other chemical disinfectants, UV radiation, or other approved processes.

2. Other approved treatment processes in which any of the unit process functions of secondary treatment, filtration and disinfection may be combined, but still achieve the same secondary quality effluent limits as required above.

C. Water Quality Limits. The quality of treated effluent before use must meet the following standards. Testing methods and procedures shall be performed according to test procedures approved under R317-2-10, or as otherwise approved by the Director. Water quality sampling requirements specified in this section shall apply to the point of compliance at all times during use of treated effluent.

1. The monthly arithmetic mean of BOD shall not exceed 10 mg/l as determined by composite sampling conducted once per week. Composite samples shall be comprised of at least six flow proportionate samples taken over a 24-hour period.

2. The daily arithmetic mean turbidity shall not exceed 2 NTU, and turbidity shall not exceed 5 NTU at any time. Turbidity shall be measured continuously. The turbidity standard shall be met prior to disinfection. If the turbidity standard cannot be met, but it can be demonstrated to the satisfaction of the Director that there exists a consistent correlation between turbidity and the total suspended solids, then an alternate turbidity standard may be established. This will allow continuous turbidity monitoring for quality control while maintaining the intent of the turbidity standard, which is to have 5 mg/l total suspended solids or less to assure adequate disinfection.

3. The weekly median E. coli concentration shall be none detected, as determined from daily grab samples, and no sample shall exceed 9 organisms/100 ml.

4. The total residual chlorine shall be measured continuously and shall at no time be less than 1.0 mg/l after 30 minutes contact time at peak flow. If an alternative disinfection process is used, it must be demonstrated to the satisfaction of the Director that the alternative process is comparable to that achieved by chlorination with a 1 mg/l residual after 30 minutes contact time. If the effectiveness cannot be related to chlorination, then the effectiveness of the alternative disinfection process must be demonstrated by testing for pathogen destruction as determined by the Director. A 1 mg/l total chlorine residual is recommended after disinfection and before the treated effluent goes into the distribution system.

5. The pH as determined by daily grab samples or continuous monitoring shall be between 6 and 9.

D. Other Requirements

1. An alternative disposal option or diversion to storage must be automatically activated if turbidity exceeds the maximum instantaneous limit for more than 5 minutes, or chlorine residual drops below the instantaneous required value for more than 5 minutes, where chlorine disinfection is used.

2. Any irrigation must be at least 50 feet from any potable water well. Impoundments of treated effluent, if not sealed, must be at least 500 feet from any potable water well. The use should not result in a surface runoff and must not result in the creation of an unhealthy or nuisance condition, as determined by the local health department.

3. For residential landscape irrigation at individual homes, additional quality control restrictions may be required by the Director. Proposals for such uses should also be submitted to the local health authority to determine any conditions they may require. When secondary residential irrigation systems are planned utilizing treated effluent in new subdivisions, it is recommended that a notification of the type of irrigation system and possible sources of irrigation waters be made on the deed for the property. Such notification could be made during the plat approval process.

11.5 Use of Treated Domestic Wastewater Effluent Where Human Exposure is Unlikely (Type II)

A. Uses Allowed

1. Irrigation of sod farms, silviculture, limited access highway rights of way, and other areas where human access is restricted or unlikely to occur.

2. Irrigation of food crops where the applied treated effluent is not likely to have direct contact with the edible part, whether the food will be processed or not (spray irrigation not allowed).

3. Irrigation of animal feed crops other than pasture used for milking animals.

4. Impoundments of wastewater where direct human contact is not allowed or is unlikely to occur.

5. Cooling water. Use for cooling towers which produce aerosols in populated areas may have special

restrictions imposed.

6. Soil compaction or dust control in construction areas.

B. Required Treatment Processes

1. Treatment processes that are expected to produce effluent in which both the BOD and total suspended solids concentrations do not exceed secondary quality effluent limits as defined in R317-1-3.2.

2. Disinfection to destroy, inactivate, or remove pathogenic microorganisms by chemical, physical, or biological means. Disinfection may be accomplished by chlorination, ozonation, or other chemical disinfectants, UV radiation, or other approved processes.

C. Water Quality Limits. The quality of effluent before use must meet the following standards. Testing methods and procedures shall be performed according to test procedures approved under R317-2-10, or as otherwise approved by the Director. Water quality sampling requirements specified in this section shall apply to the point of compliance at all times during use of treated effluent.

1. The monthly arithmetic mean of BOD shall not exceed 25 mg/l as determined by composite sampling conducted once per week. Composite samples shall be comprised of at least six flow proportionate samples taken over a 24-hour period.

2. The monthly arithmetic mean total suspended solids concentration shall not exceed 25 mg/l as determined by daily composite sampling. The weekly mean total suspended solids concentration shall not exceed 35 mg/l. Properly calibrated, continuous monitoring of turbidity may be substituted for the suspended solids testing.

3. The weekly median E. coli concentration shall not exceed 126 organisms/100 ml, as determined from daily grab samples, and no sample shall exceed 500 organisms/100 ml.

4. The pH as determined by daily grab samples or continuous monitoring shall be between 6 and 9.

5. At the discretion of the Director, the sampling frequency to determine compliance with water quality limits for effluent from lagoon systems used to irrigate agricultural crops, may be reduced to monthly grab sampling for BOD, and weekly grab sampling for E. coli, TSS and pH. The Director may also allow a relaxation of lagoon effluent BOD and suspended solids concentrations, in accordance with R317-1-3.2.

D. Other Requirements

1. An alternative disposal option or diversion to storage must be available in case quality requirements are not met.

2. Any irrigation must be at least 300 feet from any potable water well. Spray irrigation must be at least 100 feet from areas intended for public access. This distance may be reduced or increased by the Director, based on the type of spray irrigation equipment used and other factors. Impoundments of treated effluent, if not sealed, must be at least 500 feet from any potable water well. The use should not result in a surface runoff and must not result in the creation of an unhealthy or nuisance condition, as determined by the local health department.

3. Public access to effluent storage and irrigation or disposal sites shall be restricted by a stock-tight fence or other comparable means which shall be posted and controlled to exclude the public.

11.6 Records. Records of volume and quality of treated wastewater used shall be maintained and submitted monthly in accordance with R317-1-2.7. If monthly operating reports are already being submitted to the Division of Water Quality, the data on treated effluent delivered may be submitted on the same form.

11.7 Other Uses of Effluents. Proposed uses of effluents not identified above, including industrial uses, shall be considered for approval by the Director based on a case-

specific analysis of human health and environmental concerns.

11.8 Treated Effluent Water Distribution Systems. Where treated effluent is to be provided by pressure pipeline, unless contained in surface pipes wholly on private property and for agricultural purposes, the following requirements will apply. The requirements will apply to all new systems and it is recommended that the accessible portions of existing reuse water distribution systems be retrofitted to comply with these rules. Requirements for irrigation systems proposed for conversion from use of secondary water to use with treated effluent will be considered on an individual basis considering protection of public health and the environment. Any person or agency that is constructing all or part of the distribution system must obtain a construction permit from the Director prior to beginning construction.

A. Distribution Lines

1. Minimum Separation.

a. Horizontal Separation. Treated effluent main distribution lines parallel to potable (culinary) water lines should be installed in separate trenches. Treated effluent main distribution lines parallel to sanitary sewer lines shall be installed at least ten feet horizontally from the sanitary sewer line if the sanitary sewer line is located above the treated effluent main and three feet horizontally from the sanitary sewer line if the sanitary sewer line is located below the reuse water main.

b. Vertical Separation. At crossings of treated effluent main distribution lines with potable water lines and sanitary sewer lines the order of the lines from lowest in elevation to highest should be; sanitary sewer line, treated effluent line, and potable water line. A minimum 18 inches vertical separation between the treated effluent line and sewer line shall be provided as measured from outside of pipe to outside of pipe. The crossings shall be arranged so that the reuse water line joints will be equidistant and as far as possible from the water line joints and the sewer line joints. If the treated effluent line must cross above the potable water line, the vertical separation should be a minimum 18 inches. If the treated effluent line must cross below the sanitary sewer line, the vertical separation shall be a minimum 18 inches and the treated effluent line shall be encased in a continuous pipe sleeve to a distance on each side of the crossing equal to the depth of the treated effluent line from the ground surface.

c. Special Provisions. Where the horizontal and/or vertical separation as required above cannot be maintained, special construction requirements shall be provided in accordance with requirements in this Rule for protection of potable water lines and treated effluent lines. Existing pressure lines carrying treated effluent shall not be required to meet these requirements.

2. Depth of Installation. To provide protection of the installed pipeline, treated effluent lines should be installed with a minimum depth of bury of three feet.

3. Treated Effluent Pipe Identification.

a. General. All new buried pipe within the public domain, including service lines, valves, and other appurtenances, shall be colored purple, Pantone 522 or equivalent. If fading or discoloration of the purple pipe is experienced during construction, identification tape is recommended. A clearly labeled tracer location tape or wire shall be placed two feet above the top of treated effluent lines less than or equal to 24 inch (61 centimeters) in diameter, along its entire buried length.

b. Identification Tape. If identification tape is installed along with the purple pipe, it shall be prepared with white or black printing on a purple field, color Pantone 512 or equivalent, having the words, "Caution: Treated Wastewater-Do Not Drink". The overall width of the tape shall be at least

three inches. Identification tape shall be installed 12 inches above the transmission pipe longitudinally and shall be centered.

4. Conversion of existing water lines. Existing water lines that are being converted to use with treated effluent shall first be accurately located and comply with leak test standards in accordance with AWWA Standard C-600 and in coordination with regulatory agencies. The pipeline must be physically disconnected from any potable water lines and brought into compliance with current State cross connection rules and requirements (R309-102-5), and must meet minimum separation requirements in section 4.8.A.1 of this rule above. If the existing lines meet approval of the water supplier and the Division, the lines shall be approved for treated effluent distribution. If regulatory compliance of the system (accurate location and verification of no cross connections) cannot be verified with record drawings, televising, or otherwise, the lines shall be uncovered, inspected, and identified prior to use. All accessible portions of the system must be retrofitted to meet the requirements of this rule.

5. Valve Boxes and Other Surface Identification. All valve covers shall be of non-interchangeable shape with potable water covers, and shall have an inscription cast on the top surface stating "Reclaimed Water" or "Treated Wastewater". Valve boxes shall meet AWWA standards. All above ground facilities shall be consistently color coded (purple, Pantone 512 or equivalent color) and marked to differentiate treated effluent facilities from potable water facilities.

6. Blow-off Assemblies. If either an in-line type or end-of-line type blow-off or drain assembly is installed in the system, the Division of Water Quality shall be consulted on acceptable discharge or runoff locations.

7. Line Drains. All distribution pipes and sprinklers must have the capability to be completely drained.

8. Flow Measurement. Main distribution headers must have flow measurement devices and pressure gages. All land applied flow must be totalized.

B. Storage. If storage or impoundment of treated effluent is provided, the following requirements apply:

1. Fencing. For Type I effluent, no fencing is required by this rule, but may be required by local laws or ordinances. For Type II effluent, see R317-3-11.5.D.2 above.

2. Identification. All storage facilities shall be identified by signs prepared according to the requirements of Section 11.8.D.6 below. Signs shall be posted on the surrounding fence at minimum 500 foot intervals and at the entrance of each facility. If there is no fence, signs shall be located at a minimum on each side of the facility or at minimum 250 foot intervals or at all accessible points.

C. Pumping Facilities.

1. Marking. All exposed and above ground piping, fittings, pumps, valves, etc., shall be painted purple, Pantone 512 or equivalent color. In addition, all piping shall be identified using an accepted means of labeling reading "Caution: Treated Wastewater - Do Not Drink." In a fenced pump station area, signs shall be posted on the fence on all sides.

2. Sealing Water. Any potable water used as seal water for reuse water pumps seals shall be protected from backflow with a reduced pressure principle device.

D. Other Requirements.

1. Backflow Protection. In no case shall a connection be made between the potable and treated effluent system. If it is necessary to put potable water into the treated effluent distribution system, an approved air gap must be provided to protect the potable water system. A reduced pressure principle device may be used only when approved by the

Director, the local health department, and the potable water supplier.

2. Drinking Fountains. Drinking fountains and other public facilities shall be placed out of any spray irrigation area in which reuse water is used, or shall be otherwise protected from contact with the treated effluent. Exterior drinking fountains and other public facilities shall be shown and called out on the construction plans. If no exterior drinking fountains, picnic tables, food establishments, or other public facilities are present in the design area, then it shall be specifically stated on the plans that none are to exist.

3. Hose Bibs. Hose bibs on treated effluent systems in public areas and at individual residences are permitted for Type I water, with the following restrictions:

a. All exposed hose bib piping must be painted purple, Pantone 512 or equivalent color and,

b. Hose bibs shall be fitted with a valve having a non-permanently attachable operating handle. To discourage inappropriate casual use, it is recommended that each hose bib be posted with a warning label or sign, as detailed in R317 -3.11.8.D.5, and/or placed in a lockable subsurface valve box in accordance with R317-3-11.8.A.5.

In public, non-residential areas, replacement of hose bibs with quick couplers is recommended.

4. Equipment and Facilities. To ensure the protection of public health, any equipment or facilities such as tanks, temporary piping or valves, and portable pumps which have been used for conveying treated effluent may not be reused for conveying potable water.

5. Warning Labels. Warning labels shall be installed on designated facilities such as, but not limited to, controller panels and washdown or blow-off hydrants on water trucks, and temporary construction services. The labels shall indicate the system contains treated wastewater that is unsafe to drink.

6. Warning signs. Where treated effluent is stored or impounded, or used for irrigation in public areas, warning signs shall be installed and contain, as a minimum, 1/2 inch purple letters (Pantone 512 or equivalent color) on a white or other high contrast background notifying the public that the water is unsafe to drink. Signs may also have a purple background with white or other high contrast lettering. Warning signs and labels shall read, "Warning: Treated Wastewater - Do Not Drink". The signs shall include the international symbol for Do Not Drink.

7. Public Education Program. Where treated effluent is used in individual residential landscape or public landscape area irrigation systems, a public education program must be implemented prior to initial operation of the program and, as necessary, during operation of the system.

R317-3-12. Effluent Filtration.

12.1. Granular Media Filters. Granular media filters may be used as a tertiary treatment device for the removal of residual suspended solids from secondary effluents. A pretreatment process such as chemical coagulation and sedimentation or other acceptable process must precede the filter units, where effluent suspended solids requirements are less than 10 milligrams per liter, or where secondary effluent quality can be expected to fluctuate significantly, or where filters follow a treatment process and where significant amounts of algae will be present.

12.2. Design Considerations. The plant design should incorporate flow-equalization facilities to moderate filter influent quality and quantity. The selection of pumping equipment ahead of filter units should be designed to minimize shearing of floc particles.

A. Filter Types. Filters may be of the gravity or pressure type. Pressure filters shall be provided with ready and convenient access to the media for treatment or cleaning.

Where greases or similar solids which result in filter plugging are expected, filters should be of the gravity type.

B. Filtration Rates. Filtration rates shall not exceed 5 gallons per minute per square foot. (3.4 liters per square meter per second) based on the maximum hydraulic flow rate applied to the filter units.

C. Number of Units. Total filter area shall be provided in two or more units, and the filtration rate shall be calculated on the total available filter area with one unit out of service.

D. Filter Backwash

1. Backwash Rate. The backwash rate shall be adequate to fluidize and expand each media layer a minimum of 20 percent based on the media selected. The backwash system shall be capable of providing a variable backwash rate having a maximum of at least 20 gallons per minute per square foot, (13.6 liters per square meter per second) and a minimum backwash period of 10 minutes.

2. Backwash Pumps. Pumps for backwashing filter units shall be sized and interconnected to provide the required rate to any filter with the largest pump out of service. Filtered water should be used as the source of backwash water. Waste filter backwash shall be returned to the treatment process or otherwise adequately treated.

E. Filter Media

1. Selection. Selection of proper media size will depend on the rate of filtration rate, the type of pretreatment, filter configuration, and effluent quality objectives. In dual or multi-media filters, media size selection must consider compatibility among media.

2. Media Specifications. Table R317-3-12.2(E)(2) provides minimum media depths and the normally acceptable range of media sizes. The applicant has the responsibility for selection of media to meet specific conditions and treatment requirements relative to the project under consideration.

12.3. Filter Appurtenances. The filters shall be equipped with wash water troughs, surface wash or air scouring equipment, means of measurement and positive control of the backwash rate, equipment for measuring filter head loss, positive means of shutting off flow to a filter being backwashed, and filter influent and effluent sampling points. If automatic controls are provided, there shall be a manual override for operating equipment, including each individual valve essential to the filter operation. The underdrain system shall be designed for uniform distribution of backwash water (and air if provided) without danger of clogging from solids in the backwash water. Provision shall be made to allow periodic chlorination of the filter influent or backwash water to control slime growths.

12.4. Reliability. Each filter unit shall be designed and installed so that there is ready and convenient access to all components and the media surface for inspection and maintenance without taking other units out of service. The need for enclosing filter units shall depend on expected extreme climatic conditions at the treatment plant site. As a minimum, all controls shall be protected from adverse process and climatic conditions. The structure housing filter controls and equipment shall be provided with adequate heating and ventilation equipment to minimize problems with excess humidity.

12.5. Backwash Surge Control. The rate of waste filter backwash water return to treatment units shall be controlled such that the rate does not exceed 15 percent of the design average daily flow rate to the treatment units. The hydraulic and organic loads from waste backwash water shall be considered in the overall design of the treatment plant. Where waste backwash water is returned for treatment by pumping, adequate pumping capacity shall be provided with the largest unit out of service.

12.6. Backwash Water Storage. Total backwash water

storage capacity provided in an effluent clearwell or surge tank or other unit shall equal or exceed the volume required for two complete backwash cycles. Additional storage capacity should be considered for operational flexibility.

12.7. Proprietary Equipment. Where proprietary filtration equipment, not conforming to the preceding requirements is proposed, data which supports the capacity of the equipment to meet effluent requirements under design conditions shall be submitted for review and approval by the Director.

TABLE R317-3-2.3(D) (4).
Minimum Slopes

| Sewer Size, inch (centimeter) | Minimum Slope, feet per foot or meter per meter |
|----------------------------------|---|
| 8 (20) | 0.00334 |
| 9 (23) | 0.00285 |
| 10 (25) | 0.00248 |
| 12 (30) | 0.00194 |
| 14 (36) | 0.00158 |
| 15 (38) | 0.00144 |
| 16 (41) | 0.00132 |
| 18 (46) | 0.00113 |
| 21 (53) | 0.00092 |
| 24 (61) | 0.00077 |
| 27 (69) | 0.00066 |
| 30 (76) | 0.00057 |
| 36 (91) | 0.00045 |

TABLE R317-3-4.4(H) (1).
Painting

| Service | Color |
|-------------------|--|
| Sludge | Brown |
| Gas | Orange |
| Potable Water | Blue |
| Non-Potable Water | Blue with a 6-inch (15 centimeters) red band spaced 30 inches (76 centimeters) apart |
| Chlorine | Yellow |
| Compressed Air | Green |
| Sewage | Gray |

TABLE R317-3-6.2(B) (3) (d).
Loadings for Final Settling Tanks
Following Activated Sludge Process

| Process | Average Design Rate of Flow, million gallons per day (cubic meters per day) | Surface Loading, gallons per day per square foot (cubic meters per day per square meter) | Surface Loading, pounds per day per square foot (kilograms per day per square meter) |
|-----------------------|---|--|--|
| Contact Stabilization | 0.5 (1,893) to 1.5 (5,678) | 400 (16.3) to 600 (24.5) | |
| | Greater than or equal to 1.5 (5,678) | 500 (20.4) to 700 (28.5) | |
| Extended Aeration | Less than or equal to 0.5 (1,893) | 200 (8.2) to 400 (16.3) | |
| | 0.5 (1,893) to 1.5 (5,678) | 300 (12.3) to 500 (20.4) | 25 (122.1) |

| | | | |
|--|--------------------------------------|--------------------------|------------|
| | Greater than or equal to 1.5 (5,678) | 400 (16.3) to 600 (24.5) | |
| Other than Contact Stabilization and Extended Aeration | Less than or equal to 0.5 (1,893) | 400 (16.3) to 600 (24.5) | |
| | 0.5 (1,893) to 1.5 (5,678) | 500 (20.4) to 700 (28.5) | 25 (122.1) |
| | Greater than or equal to 1.5 (5,678) | 600 (24.5) to 800 (32.6) | |

| | | | | | |
|---------------------------------------|-----------------|------|--------|----------|-------------|
| Step Aeration | | | | | |
| Complete Mix | | | | | |
| Contact Stabilization | 1-3 (4) 3-6 (5) | 3-10 | 50 (3) | 0.2-0.6 | 2,000-4,000 |
| Extended Aeration, or Oxidation Ditch | 24 | 30 | 10-12 | 0.05-0.1 | 2,000-4,000 |

TABLE R317-3-7.1(E)(3)(a)(2).
Media Grading

| | Percent by Weight |
|--|-------------------|
| Passing 4-1/2 inch (11.4 centimeters) screen | 100 |
| Retained on 3 inch (7.6 centimeters) screen | 95 - 100 |
| Retained on 2 inch (5.1 centimeters) screen | 98 |

Notes:
 (1) Mixed Liquor Suspended Solids (MLSS) values are dependent upon the surface area provided for sedimentation and the rate of sludge return as well as the aeration process.
 (2) Mixed Liquor Volatile Suspended Solids (MLVSS)
 (3) Total Aeration capacity, includes both contact and reaeration capacities. Normally, the contact zone equals 30 to 35 percent of the total aeration capacity.
 (4) Contact zone
 (5) Reaeration zone

TABLE R317-3-7.1(K)(1).
Hydraulic and Organic Loadings
for Nitrification in Trickling Filters

| Trickling Filter Configuration | Loadings |
|---------------------------------|--|
| Rock or Slag Media Filters | |
| Hydraulic Loading | Less than or equal to 4 million gallons per acre per day, or less than or equal to 4 cubic meters per square meter per day |
| Organic Loading | Less than or equal to 25 pounds BOD ₅ per day per 1000 cubic feet, or less than or equal to 0.4 kilograms BOD ₅ per day per cubic meter |
| Deep Manufactured Media Filters | |
| Hydraulic Loading | Less than or equal to 25 million gallons per acre per day, or less than or equal to 25 cubic meters per square meter per day |
| Organic Loading | Less than or equal to 100 pounds BOD ₅ per day per 1000 cubic feet, or less than or equal to 1.6 kilograms BOD ₅ per day per cubic meter |

TABLE R317-3-7.2(B)(6)(a)(1).
Return Sludge Rate

| Process | Q _s / Q, Percent |
|---|-----------------------------|
| Standard Rate | 15-75 |
| Carbonaceous stage of separate stage nitrification | 15-75 |
| Step Aeration | 15-75 |
| Contact stabilization | 50-150 |
| Extended aeration | 50-150 |
| Nitrification stage of separate stage nitrification | 50-200 |

TABLE R317-3-9.3(A)(1)(a).
Gravity Thickening

| Type solids | Solids Loading Rate, pounds per day per square foot (kilograms per square meter per day) | Percent in thickened sludge |
|---|--|-----------------------------|
| Primary sludge | 20-30 (98-146) | 8-10 |
| Trickling filter sludge | 8-10 (39-49) | 7-9 |
| Activated sludge | 4-8 (20-49) | 2.5-3 |
| Combined primary and trickling filter sludges | 10-12 (49-59) | 7-9 |
| Combined primary and activated sludges | 6-10 (29-49) | 3-6 |

TABLE R317-3-7.2(B)(1)(c).
Permissible Aeration Tank Capacities and Loadings

| Process | Hydraulic Retention Time (HRT), hours | Solids Retention Time (SRT), days | Aeration Tank Loading, BOD ₅ per 1000 cubic feet | Food:Mass Ratio, BOD ₅ per day per pound of MLVSS (2) | Mixed Liquor Suspended Solids (MLSS) per liter |
|--------------|---------------------------------------|-----------------------------------|---|--|--|
| (1) | | | | | |
| milligrams | | | | | |
| Conventional | 4-8 | 4-8 | 20-40 | 0.2-0.4 | 1,500-4,000 |

TABLE R317-3-9.4(A)(4)(a).
Sludge Volume Generated

| Type of Plant | cubic feet per Population Equivalent (P.E.) or meters per Population Equivalent (P.E.) |
|------------------|--|
| Trickling Filter | 5 (0.14) |
| Activated Sludge | 6 (0.17) |

TABLE R317-3-10.3(G)(3)(a).
Circle of Influence

| Nameplate Horsepower | Radius, Feet |
|----------------------|--------------|
| 5 | 35 |
| 10-25 | 50 |
| 40-60 | 50-100 |
| 75 | 60-100 |
| 100 | 100 |

TABLE R317-3-12.2(E)(2).
Media Depths and Size

| Media Material | Single Media | Multi-Media | |
|------------------------------------|--------------|-------------|---------|
| | | Two | Three |
| Anthracite: | | | |
| Minimum Depth, inches | | 20 | 20 |
| Effective Size, millimeters | | 1-2 | 1-2 |
| Sand: | | | |
| Minimum Depth, inches | 48 | 12 | 10 |
| Effective Size, millimeters | 1-4 | 0.5-1 | 0.6-0.8 |
| Garnet or Similar Material: | | | |
| Minimum Depth, inches | | | 2 |
| Effective Size, millimeters | | | 0.3-0.6 |

Uniformity Coefficient shall be less than or equal to 1.7

KEY: wastewater, water quality, water pollution
September 24, 2013 **19-5**
Notice of Continuation May 9, 2017 **19-5-104**
40 CFR 503

R317. Environmental Quality, Water Quality.

R317-9. Administrative Procedures.

R317-9-1. Administrative Procedures.

Administrative proceedings under Utah Water Quality Act are governed by Rule R305-7.

KEY: adjudicative proceedings, administrative proceedings, hearings

| | |
|---|-----------------------------|
| August 29, 2011 | 19-1-103 |
| Notice of Continuation January 31, 2013 | 19-5-104 |
| | 63G-4-201 through 63G-4-205 |
| | 63G-4-503 |

R388. Health, Disease Control and Prevention; HIV/AIDS, Tuberculosis Control/Refugee Health.

R388-804. Special Measures for the Control of Tuberculosis.

R388-804-1. Authority and Purpose.

(1) This rule establishes standards for the control and prevention of tuberculosis as required by Section 26-6-4, Section 26-6-6, Section 26-6-7, Section 26-6-8, and Section 26-6-9 of the Utah Communicable Disease Control Act and Title 26, Chapter 6b, Communicable Diseases-Treatment, Isolation and Quarantine Procedures.

(2) The purpose of this rule is to focus the efforts of tuberculosis control on disease elimination. The standards outlined in this rule constitute the minimum expectations in the care and treatment of individuals diagnosed with, suspected to have, or exposed to tuberculosis.

R388-804-2. Definitions.

(1) The definitions described in Section 26-6b apply to this rule, and in addition:

(a) Tuberculosis. A disease caused by *Mycobacterium tuberculosis* complex, i.e., *Mycobacterium tuberculosis*, *Mycobacterium bovis*, or *Mycobacterium africanum*.

(b) Acid-fast bacilli (AFB). Denotes bacteria that are not decolorized by acid-alcohol after having been stained with dyes such as basic fuchsin; e.g., the mycobacteria and nocardiae.

(c) Case of tuberculosis. An episode of tuberculosis disease meeting the clinical or laboratory criteria for tuberculosis as defined in the National Notifiable Diseases Surveillance System (NNDSS). The Department incorporates by reference the Tuberculosis 2009 Case Definition, CSTE (Council of State and Territorial Epidemiologists) Position Statement, 09-ID-65.

(d) Tuberculosis infection. The presence of *M. tuberculosis* in the body but the absence of clinical or radiographic evidence of active disease as documented by a significant tuberculin skin test, or Interferon Gamma Release Assay (IGRA), e.g. Quantiferon or T-SPOT, a negative chest radiograph and the absence of clinical signs and symptoms.

(e) Tuberculosis disease. A state of active tuberculosis, pulmonary or extra-pulmonary, as determined by a chest radiograph, the bacteriologic examination of body tissues or secretions, other diagnostic procedures or physician diagnosis.

(f) Directly observed therapy. A method of treatment in which health-care providers or other designated individuals physically observe the individual ingesting anti-tuberculosis medications.

(g) Drug resistant tuberculosis. Tuberculosis bacteria which is resistant to one or more anti-tuberculosis drug.

(h) Multi-drug resistant tuberculosis. Tuberculosis bacteria which is resistant to at least isoniazid and rifampin.

(i) Suspect case. An individual who is suspected to have tuberculosis disease, e.g., a known contact to an active tuberculosis case or a person with signs and symptoms consistent with tuberculosis.

(j) Program. Utah Department of Health: Bureau of Epidemiology; Prevention, Treatment, and Care Program.

(k) Department. Utah Department of Health.

R388-804-3. Required Reporting.

(1) Tuberculosis is a reportable disease. Individuals shall immediately notify the Department by telephone of all suspect and confirmed cases of pulmonary and extra-pulmonary tuberculosis as required by R386-702-2, R386-702-3.

(2) The report may also be made to the local health department, who shall notify the Department of all suspect

and confirmed cases within 72 hours of report.

R388-804-4. Screening Priorities and Procedures.

(1) Private providers and local health departments shall screen individuals considered to be at high risk for tuberculosis disease and infection before screening is conducted in the general population. Priorities shall be established based on those at greatest risk for disease and in consideration of the resources available.

(2) Individuals considered at high risk for tuberculosis include the following:

(a) Close contacts of those with infectious tuberculosis;

(b) Persons infected with human immunodeficiency virus;

(c) Individuals who inject illicit drugs;

(d) Inmates of adult and youth correctional facilities;

(e) Residents of nursing homes, mental institutions, other long term residential facilities and homeless shelters;

(f) Recently arrived foreign-born individuals, within five years, from countries that have a high tuberculosis incidence or prevalence;

(g) Low income or traditionally under-served groups with poor access to health care, e.g., migrant farm workers and homeless persons;

(h) Individuals who are substance abusers and members of traditionally under-served groups;

(i) Individuals with certain medical conditions that may predispose them to tuberculosis infection and disease, e.g., diabetes, cancer, silicosis, and immune-suppressive disorders;

(j) Individuals who have traveled for extended periods of time in countries that have a high tuberculosis incidence or prevalence;

(k) Other groups may be identified by order of the Department, as needed to protect public health.

(3) Employers who are required to follow Occupational Safety and Health Administration guidelines for the prevention of tuberculosis transmission disease shall develop and implement an employee screening program.

(4) Tuberculosis screening shall be completed using either the Mantoux tuberculin skin test method or an FDA approved in-vitro serologic test, e.g. IGRA.

(a) Screening for tuberculosis with chest radiographs or sputum smears to identify individuals with tuberculosis disease is acceptable in places where the risk of transmission is high and the time required to give the skin test makes the method impractical.

(b) If the skin test or serologic test yields results indicating tuberculosis exposure, the individual shall be referred for further medical evaluation.

R388-804-5. Diagnostic Criteria.

In diagnosing tuberculosis, health care providers shall be expected to adhere to the standards listed in this document.

(1) The Department incorporates by reference the (IDSA/ATS/CDC) diagnostic and classification standards as described in the segment entitled "Clinical Practice Guidelines: Diagnosis of Tuberculosis in Adults and Children," Clinical Infectious Diseases (2016) doi: 10.1093/cid/ciw694 First published online: December 8, 2016.

(2) The Department incorporates by reference the CDC diagnostic and classification standards for use of Nucleic Acid Amplification test in the document entitled "Updated Guidelines for the Use of Nucleic Acid Amplification Tests in the Diagnosis of Tuberculosis," MMWR; 58 (01); 7-10, 2010.

(3) The Department incorporates by reference the CDC diagnostic and classification standards for use of Interferon Gamma Release Assays as described in the document entitled, "Updated Guidelines for Using Interferon Gamma Release

Assays to Detect Mycobacterium tuberculosis Infection, United States, 2010" MMWR; 59 (no. RR-5); 1-25, 2010.

R388-804-6. Treatment and Control.

(1) The Department incorporates by reference the IDSA/ATS/CDC treatment standards as described in the segment entitled "Infectious Diseases Society of America. Official ATS/CDC/IDSA Clinical Practice Guidelines: Treatment of Drug-Susceptible Tuberculosis". Clinical Infectious Diseases (2016) doi: 10.1093/cid/ciw376, August 10, 2016, "Centers for Disease Control and Prevention. Treatment of Tuberculosis, American Thoracic Society, CDC, and Infectious Diseases Society of America." MMWR 2003; 52 (No. RR-11), Centers for Disease Control and Prevention. Controlling Tuberculosis in the United States: Recommendations from the American Thoracic Society; CDC, and the Infectious Diseases Society of America. MMWR 2005; 54 (No. RR-12)" and "Centers for Disease Control and Prevention. Targeted Tuberculin Testing and Treatment of Latent Tuberculosis Infection. MMWR 2000; 49 (No. RR-6)."

(2) A health-care provider who treats an individual with tuberculosis disease shall use the IDSA/ATS/CDC treatment standards as a reference for the development of a comprehensive treatment and follow-up plan for each individual. The plan shall be developed in cooperation with the individual and approved by the local health department or the Program. Health-care providers shall routinely document an individual's adherence to prescribed therapy for tuberculosis infection and disease. If isolation is indicated, the plan for isolation shall be approved by the local health department or the Program. Discharge from an inpatient facility shall not occur without the knowledge of, and in agreement with the local health department and/or the Program.

(3) A health-care provider who treats an individual with suspect or active tuberculosis disease shall provide for directly observed therapy.

(4) Individuals with infectious tuberculosis disease shall comply with the treatment plan as set forth by the provider and public health, including but not limited to isolation if necessary, wearing a mask approved by the local health department or the Program when outside the isolation area, abiding by a plan of directly observed therapy, providing laboratory samples, and attending all scheduled provider visits.

(5) Any individual who will not comply with public health shall be subject to involuntary isolation as establish in the Utah Communicable Disease Control Act.

R388-804-7. Epidemiologic Investigations.

(1) The local health department shall conduct a contact investigation immediately upon report of an AFB smear positive suspected or confirmed case of laryngeal, respiratory, or pleural tuberculosis disease.

(2) The contact investigation shall include interviewing, counseling, educating, examining and obtaining comprehensive information about those who have been in contact with individuals who have infectious tuberculosis.

(a) The investigation shall begin within three days of notification of an AFB smear positive suspected or confirmed case and the initial evaluation shall be completed within fourteen days of notification.

(b) Investigations of contacts to persons with active TB disease shall include the evaluation of contacts and the treatment of infected contacts.

(c) The local health department shall submit demographic data to the Department at 30 days and at 120 days after initiation of the contact investigation, and following

the completion of prophylactic treatment.

R388-804-8. Payment for Isolation and Quarantine.

(1) Individuals who are isolated or quarantined at the expense of the Department shall provide the Department with information to determine if any other payment source for the costs associated with isolation or quarantine is available.

R388-804-9. Penalty for Violation.

(1) Any person who violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

KEY: tuberculosis, screening, communicable diseases

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| Notice of Continuation September 30, 2016 | 26-6-6 |
| | 26-6-7 |
| | 26-6-8 |
| | 26-6-9 |
| | 26-6b |

R392. Health, Disease Control and Prevention, Environmental Services.**R392-302. Design, Construction and Operation of Public Pools.****R392-302-1. Authority and Purpose of Rule.**

This rule is authorized under Sections 26-1-5, 26-1-30(23) and 26-15-2. It establishes minimum standards for the design, construction, operation and maintenance of public pools and provides for the prevention and control of health hazards associated with public pools which are likely to affect public health.

R392-302-2. Definitions.

The following definitions apply in this rule.

- (1) "AED" means automated external defibrillator.
- (2) "Backwash" means the process of cleaning a swimming pool filter by reversing the flow of water through the filter.
- (3) "Bather Load" means the number of persons using a pool at any one time or specified period of time.
- (4) "Cleansing shower" means the cleaning of the entire body surfaces with soap and water to remove any matter, including fecal matter, that may wash off into the pool while swimming.
- (5) "Collection Zone" means the area of an interactive water feature where water from the feature will be collected and drained for treatment.
- (6) "CPR" means Cardiopulmonary Resuscitation.
- (7) "Department" means the Utah Department of Health.
- (8) "Executive Director" means the Executive Director of the Utah Department of Health, or his designated representative.
- (9) "Facility" means any premises, building, pool, equipment, system, and appurtenance which appertains to the operation of a public pool.
- (10) "Float Tank" means a tank containing a skin-temperature solution of water and Epsom salts at a specific gravity high enough to allow the user to float supine while motionless and require a deliberate effort by the user to turn over and that is designed to provide for solitary use and sensory deprivation of the user.
- (11) "Gravity Drain System" means a pool drain system wherein the drains are connected to a surge or collector tank and rather than drawing directly from the drain, the circulation pump draws from the surge or collector tank and the surface of the water contained in the tank is maintained at atmospheric pressure.
- (12) "High Bather Load" means 90% or greater of the designed maximum bather load."
- (13) "Hydrotherapy Pool" means a pool designed primarily for medically prescribed therapeutic use.
- (14) "Illuminance Uniformity" means the ratio between the brightest illuminance falling on a surface compared to the lowest illuminance falling on a surface within an area. The value of illuminance falling on a surface is measured in foot candles.
- (15) "Interactive Water Feature" means a recirculating water feature designed, installed or used for recreational use, in which there is direct water contact from the feature with the public, and when not in operation, all water drains freely so there is no ponding.
- (16) "Lamp Lumens" means the quantity of light, illuminance, produced by a lamp.
- (17) "Lifeguard" means an attendant who supervises the safety of bathers.
- (18) "Living Unit" means one or more rooms or spaces that are, or can be, occupied by an individual, group of individuals, or a family, temporarily or permanently for residential or overnight lodging purposes. Living units

include motel and hotel rooms, condominium units, travel trailers, recreational vehicles, mobile homes, single family homes, and individual units in a multiple unit housing complex.

(19) "Local Health Officer" means the health officer of the local health department having jurisdiction, or his designated representative.

(20) "Onsite Septic System" means an approved onsite waste water system designed, constructed, and operated in accordance with Rule 317-4.

(21) "Pool" means a man-made basin, chamber, receptacle, tank, or tub, above ground or in-ground, which, when filled with water, creates an artificial body of water used for swimming, bathing, diving, recreational and therapeutic uses.

(22) "Pool Deck" means the area contiguous to the outside of the pool curb, diving boards, diving towers and slides.

(23) "Pool Shell" means the rigid encasing structure of a pool that confines the pool water by resisting the hydrostatic pressure of the pool water, resisting the pressure of any exterior soil, and transferring the weight of the pool water (sometimes through other supporting structures) to the soil or the building that surrounds it.

(24) "Private Residential Pool" means a swimming pool, spa pool or wading pool used only by an individual, family, or living unit members and guests, but not serving any type of multiple unit housing complex of four or more living units.

(25) "Public Pool" means a swimming pool, spa pool, wading pool, or special purpose pool facility which is not a private residential pool and may be above ground or in-ground.

(26) "Saturation Index" means a value determined by application of the formula for calculating the saturation index in Table 5, which is based on interrelation of temperature, calcium hardness, total alkalinity and pH which indicates if the pool water is corrosive, scale forming or neutral.

(27) "Spa Pool" means a pool which uses therapy jet circulation, hot water, cold water, bubbles produced by air induction, or any combination of these, to impart a massaging effect upon a bather. Spa pools include, spas, whirlpools, hot tubs, or hot spas.

(28) "Special Purpose Pool" means a pool with design and operational features that provide patrons recreational, instructional, or therapeutic activities which are different from that associated with a pool used primarily for swimming, diving, or spa bathing.

(29) "Splash Pool" means the area of water located at the terminus of a water slide or vehicle slide.

(30) "Swimming Pool" means a pool used primarily for recreational, sporting, or instructional purposes in bathing, swimming, or diving activities.

(31) "Surge Tank" means a tank receiving the gravity flow from an overflow gutter and main drain or drains from which the circulation pump takes water which is returned to the system.

(32) "Turnover" means the circulation of a quantity of water equal to the pool volume through the filter and treatment facilities.

(33) "Vehicle Slide" means a recreational pool where bathers ride vehicles, toboggans, sleds, etc., down a slide to descend into a splash pool.

(34) "Unblockable Drain" means a drain of any size or shape such that a representation of the torso of a 99 percentile adult male cannot sufficiently block it to the extent that it creates a body suction entrapment hazard.

(35) "Wading Pool" means any pool or pool area used or designed to be used by children five years of age or younger for wading or water play activities.

(36) "Waste Water" means discharges of pool water resulting from pool drainage or backwash.

(37) "Water Slide" means a recreational facility consisting of flumes upon which bathers descend into a splash pool.

R392-302-3. General Requirements.

(1) This rule does not require a construction change in any portion of a public pool facility if the facility was installed and in compliance with law in effect at the time the facility was installed, except as specifically provided otherwise in this rule. However if the Executive Director or the Local Health Officer determines that any facility is dangerous, unsafe, unsanitary, or a nuisance or menace to life, health or property, the Executive Director or the Local Health Officer may order construction changes consistent with the requirements of this rule to existing facilities.

(2) This rule does not regulate any private residential pool. A private residential pool that is used for swimming instruction purposes shall not be regulated as a public pool.

(3) This rule does not regulate any body of water larger than 30,000 square feet, 2,787.1 square meters, and for which the design purpose is not swimming, wading, bathing, diving, a water slide splash pool, or children's water play activities.

(4) This rule does not regulate float tanks.

(5) All public pools shall meet the requirements of this rule unless otherwise specified in R392-302.

R392-302-4. Water Supply.

(1) The water supply serving a public pool and all plumbing fixtures, including drinking fountains, lavatories and showers, must meet the requirements for drinking water established by the Department of Environmental Quality.

(2) All portions of water supply, re-circulation, and distribution systems serving the facility must be protected against backflow. Water introduced into the pool, either directly or through the circulation system, must be supplied through an air gap or a backflow preventer in accordance with the International Plumbing Code as incorporated and amended in Title 15a, State Construction and Fire Codes Act.

(a) The backflow preventer must protect against contamination, backsiphonage and backpressure.

(b) Water supply lines protected by a backflow prevention device shall not connect to the pool recirculation system on the discharge side of the pool recirculation pump.

R392-302-5. Waste Water.

(1) Each public pool must connect to a public sanitary sewer or an onsite septic system.

(a) Each public pool must connect to a sanitary sewer or onsite septic system through an air break to preclude the possibility of sewage or waste backup into the piping system. Pools constructed and approved after December 31, 2010 shall be connected through an air gap.

(2) Each public pool shall discharge waste water:

(a) to a public sanitary sewer system when available within 300 feet of the property line with authorization by the local sanitary sewer authority; or

(b) to an onsite septic system when public sanitary sewer system is not within 300 feet of the property line or authorization is not available; or

(c) in accordance with Subsection R392-302-5(4) and Subsection R392-302-5(5) except for any public pool utilizing salt in the pool water.

(i) Public pools utilizing salt in the pool water shall only discharge waste water to a public sanitary sewer system or an onsite septic system which has been designed for such.

(3) A public pool shall not discharge waste water directly to storm sewers or surface waters.

(4) Except for pools utilizing salt in the pool water, a public pool may discharge waste water that is not backwash according to Subsection R392-302-5(5) if:

(a) a public sanitary sewer is not available within 300 feet of a property line or authorization to discharge to a sanitary sewer is not available; and

(b) an onsite septic system is not available or designed for the discharge amount.

(5) If a public pool meets the criteria of Subsection R392-302-5(4), the public pool shall reduce the disinfectant level to less than one part per million and:

(a) may discharge as irrigation in an area where the water will not flow into a storm drain or surface water; or

(b) may discharge on the facility's property as long as it does not flow off the property.

(6) Public pools shall not discharge waste water in a manner that will create a nuisance condition.

R392-302-6. Construction Materials.

(1) Each public pool and the appurtenances necessary for its proper function and operation must be constructed of materials that are inert, non-toxic to humans, impervious, enduring over time, and resist the effects of wear and deterioration from chemical, physical, radiological, and mechanical actions.

(2) All public pools shall be constructed with a pool shell that meets the requirements of this section R392-302-6. Vinyl liners that are not bonded to a pool shell are prohibited. A vinyl liner that is bonded to a pool shell shall have at least a 60 mil thickness. Sand, clay or earth walls or bottoms are prohibited.

(3) The pool shell of a public pool must withstand the stresses associated with the normal uses of the pool and regular maintenance. The pool shell shall by itself withstand, without any damage to the structure, the stresses of complete emptying of the pool without shoring or additional support.

(4) In addition to the requirements of R392-302-6(3), the interior surface of each pool must be designed and constructed in a manner that provides a smooth, easily cleanable, non-abrasive, and slip resistant surface. The pool shell surfaces must be free of cracks or open joints with the exception of structural expansion joints. The owner of a non-cementitious pool shall submit documentation with the plans required in R392-302-8 that the surface material has been tested and passed by an American National Standards Institute (ANSI) accredited testing facility using one of the following standards that is appropriate to the material used:

(a) for a fiberglass reinforced plastic spa pool, the International Association of Plumbing and Mechanical Officials (IAPMO) standard IAPMO/ANSI Z 124.7-2013;

(b) for a fiberglass reinforced plastic swimming pool, the IAPMO IGC 158-2000 standard;

(c) for pools built with prefabricated pool sections or pool members, the International Cast Products Association (ICPA) standard ANSI/ICPA SS-1-2001; or

(d) a standard that has been approved by the Department based on whether the standard is applicable to the surface and whether it determines compliance with the requirements of this section R392-302-6.

(5) The pool shell surface must be of a white or light pastel color.

R392-302-7. Bather Load.

(1) The bather load capacity of a public pool is determined as follows:

(a) Ten square feet, 0.929 square meters, of pool water surface area must be provided for each bather in a spa pool during maximum load.

(b) Twenty-four square feet, 2.23 square meters, of pool

water surface area must be provided for each bather in an indoor swimming pool during maximum load.

(c) Twenty square feet, 1.86 square meters, of pool water surface area must be provided for each bather in an outdoor swimming pool during maximum load.

(d) Fifty square feet, 4.65 square meters, of pool water surface must be provided for each bather in a slide plunge pool during maximum load.

(2) The department may make additional allowance for bathers when the facility operator can demonstrate that lounging and sunbathing patrons will not adversely affect water quality due to over-loading of the pool.

R392-302-8. Design Detail and Structural Stability.

(1) The designing architect or engineer is responsible to certify the design for structural stability and safety of the public pool.

(2) The shape of a pool and design and location of appurtenances must be such that the circulation of pool water and control of swimmer's safety are not impaired. The designing architect or engineer shall designate sidewalls and endwalls on pool plans.

(3) A pool must have a circulation system with necessary treatment and filtration equipment as required in R392-302-16, unless turnover rate requirements as specified in sub-section R392-302-16(1) can be met by continuous introduction of fresh water and wasting of pool water under conditions satisfying all other requirements of this rule.

(4) Where a facility is subject to freezing temperatures, all parts of the facility subject to freezing damage must be adequately and properly protected from damage due to freezing, including the pool, piping, filter system, pump, motor, and other components and systems.

(5) No new pool construction or modification project of an existing pool shall begin until the requirements of Subsection R392-302-8(6) have been met.

(6) The pool owner or designee shall submit a set of plans for a new pool or modification project of an existing pool to the local health department. This includes the replacement of equipment which is different from that originally approved by the local health department.

(a) The set of plans shall have sufficient details to address all applicable requirements of R392-302 and shall bear a stamp from an engineer licensed in the State of Utah.

(b) The local health department may exempt the pool owner from Subsection R392-302-8(6) for a modification of an existing pool if health and safety are not compromised.

(c) The set of plans shall be initially reviewed by the local health department and a letter of review sent by the local health department to the submitter, pool owner, or designee within 30 days of submittal.

(d) The pool owner shall make required changes to the plans to meet the local health department's review criteria.

(7) All manufactured components of the pool shall be installed as per manufacturer's recommendations.

R392-302-9. Depths and Floor Slopes.

(1) In determining the horizontal slope ratio of a pool floor, the first number shall indicate the vertical change in value or rise and the second number shall indicate the horizontal change in value or run of the slope.

(a) The horizontal slope of the floor of any portion of a pool having a water depth of less than 5 feet, 1.52 meters, may not be steeper than a ratio of 1 to 10 except for a pool used exclusively for scuba diving training.

(b) The horizontal slope of the floor of any portion of a pool having a water depth greater than 5 feet, 1.52 meters, must be uniform, must allow complete drainage and may not exceed a ratio of 1 to 3 except for a pool used exclusively for

scuba diving training. The horizontal slope of the pool bottom in diving areas must be consistent with the requirements for minimum water depths as specified in Section R392-302-11 for diving areas.

R392-302-10. Walls.

(1) Pool walls must be vertical or within 11 degrees of vertical for a minimum distance of 2 feet 9 inches, 83.82 centimeters, below the water line in areas with a depth of 5 feet, 1.52 meters, or greater. Pool walls must be vertical or within 11 degrees of vertical for a minimum distance equal to or greater than one half the pool depth as measured from the water line.

(2) Where walls form an arc to join the floors, the transitional arc from wall to floor must:

(a) have its center no less than 2 feet 9 inches, 83.82 centimeters, below the normal water level in areas with a depth greater than 5 feet, 1.52 meters;

(b) have its center no less than 75% of the pool depth beneath the normal water level, in areas of the pool with a depth of 5 feet, 1.52 meters, or less;

(c) be tangent to the wall;

(d) have a radius at least equal to or greater than the depth of the pool minus the vertical wall depth measured from the water line, as described in Subsection R392-302-9(1), minus 3 inches, 7.62 centimeters, to allow draining to the main drain. Radius minimum = Pool Depth - Vertical wall depth - 3 inches, 7.62 centimeters, where the water depth is greater than 5 feet, 1.52 meters; and

(e) have a radius which may not exceed a length greater than 25% of the water depth, in areas with a water depth of 5 feet, 1.52 meters, or less.

(3) Underwater ledges are prohibited except when approved by the local health officer for a special purpose pool. Underwater ledges are prohibited in areas of a pool designed for diving. Where underwater ledges are allowed, a line must mark the extent of the ledge within 2 inches, 5.08 centimeters, of its leading edge. The line must be at least 2 inches, 5.08 centimeters, in width and in a contrasting dark color for maximum visual distinction.

(4) Underwater seats and benches are allowed in pools so long as they conform to the following:

(a) Seats and benches shall be located completely inside of the shape of the pool. Where seats and benches are not located on the perimeter walls of the pool, seats and benches shall have a wall on the back of the seats and benches that extend above the operating level of the pool and is clearly visible to users.

(b) The horizontal surface shall be a maximum of 20 inches, 51 centimeter, below the water line;

(c) An unobstructed surface shall be provided that is a minimum of 10 inches, 25 centimeters, and a maximum of 20 inches front to back, and a minimum of 24 inches, 61 centimeters, wide;

(d) Seats and benches shall not transverse a depth change of more than 24 inches, 61 centimeters;

(e) The minimum horizontal separation between sections of seats and benches shall be five feet, 1.52 meters.

(f) The pool wall under the seat or bench shall be flush with the leading edge of the seat or bench and meet the requirements of R392-302-10(1) and (2);

(g) Seats and benches may not replace the stairs or ladders required in R392-302-12, but are allowed in conjunction with pool stairs;

(h) Underwater seats may be located in the deep area of the pool where diving equipment (manufactured or constructed) is installed, provided they are located outside of the minimum water envelope for diving equipment; and

(i) A line must mark the extent of the seat or bench

within 2 inches, 5.08 centimeters, of its leading edge. The line must be at least 2 inches, 5.08 centimeters, in width and in a contrasting dark color for maximum visual distinction.

(5) Recessed footholds are allowed so long as they are at least four feet, 1.21 meters, under water and meet the requirements of R392-302-12(5)(b) and (c).

R392-302-11. Diving Areas.

(1) Where diving is permitted, the diving area design, equipment placement, and clearances must meet the minimum standards established by the USA Diving Rules and Regulations 2004, Appendix B, which are incorporated by reference.

(2) Where diving from a height of less than 3.28 feet, 1 meter, from normal water level is permitted, the diving bowl shall meet the minimum depths outlined in Section 6, Figure 1 and Table 2 of ANSI/NSPI-1, 2003, which is adopted by reference, for type VI, VII and VIII pools according to the height of the diving board above the normal water level. ANSI/NSPI pool type VI is a maximum of 26 inches, 2/3 meter, above the normal water level; type VII is a maximum of 30 inches, 3/4 meter, above the normal water level; and type VIII is a maximum of 39.37 inches, 1 meter, above the normal water level.

(3) The use of a starting platform is restricted to competitive swimming events or supervised training for competitive swimming events.

(a) If starting platforms are used for competitive swimming or training, the water depth shall be at least four feet.

(b) The operator shall either remove the starting platforms or secure them with a lockable cone-type platform safety cover when not in competitive use.

(4) Areas of a pool where diving is not permitted must have "NO DIVING" or the international no diving icon, or both provided in block letters at least four inches, 10.16 centimeters, in height, as required in R392-302-34(3)(a), in a contrasting color on the deck, located on the horizontal surface of the deck or coping as close to the water's edge as practical.

(a) Where the "NO DIVING" warnings are used, the spacing between each warning may be no greater than 25 feet, 7.62 centimeters.

(b) Where the icon alone is used on the deck as required, the operator shall also post at least one "NO DIVING" sign in plain view within the enclosure. Letters shall be at least four inches, 10.16 centimeters, in height with a stroke width of at least one-half inch.

R392-302-12. Ladders, Recessed Steps, and Stairs.

(1) Location.

(a) In areas of a pool where the water depth is greater than 2 feet, 60.96 centimeters, and less than 5 feet, 1.52 meters, as measured vertically from the bottom of the pool to the mean operating level of the pool water, steps or ladders must be provided, and be located in the area of shallowest depth.

(b) In areas of the pool where the water depth is greater than 5 feet, 1.52 meters, as measured vertically from the bottom of the pool to the mean operating level of the pool water, ladders or recessed steps must be provided.

(c) A pool over 30 feet, 9.14 meters, wide must be equipped with steps, recessed steps, or ladders as applicable, installed on each end of both side walls.

(d) A pool over 30 feet, 9.14 meters, wide and 75 feet, 22.8 meters, or greater in length, must have ladders or recessed steps midway on both side walls of the pool, or must have ladders or recessed steps spaced at equal distances from each other along both sides of the pool at distances not to

exceed 30 feet, 9.14 meters, in swimming and diving areas, and 50 feet, 15.23 meters, in non-swimming areas.

(e) Ladders or recessed steps must be located within 15 feet, 4.56 meters, of the diving area end wall.

(f) No pool shall be equipped with fewer than two means of entry or exit as outlined above.

(2) Handrails.

(a) Handrails must be rigidly installed and constructed in such a way that they can only be removed with tools.

(b) Handrails must be constructed of corrosion resistant materials.

(c) The outside diameter of handrails may not exceed 2 inches, 5.08 centimeters.

(3) Steps.

(a) Steps must have at least one handrail. The handrail shall be mounted on the deck and extend to the bottom step either attached at or cantilever to the bottom step. Handrails may also be mounted in the pool bottom of a wading area at the top of submerged stairs that lead into a swimming pool; such handrails must also extend to the bottom step either attached at or cantilever to the bottom step.

(b) Steps must be constructed of corrosion-resistant material, be easily cleanable, and be of a safe design.

(c) Steps leading into pools must be of non-slip design, have a minimum run of 10 inches, 25.4 centimeters, and a maximum rise of 12 inches, 30.48 centimeters.

(d) Steps must have a minimum width of 18 inches, 45.72 centimeters, as measured at the leading edge of the step.

(e) Steps must have a line at least 1 inch, 2.54 centimeters, in width and be of a contrasting dark color for a maximum visual distinction within 2 inches, 5.08 centimeters, of the leading edge of each step.

(4) Ladders.

(a) Pool ladders must be corrosion-resistant and must be equipped with non-slip rungs.

(b) Pool ladders must be designed to provide a handhold, must be rigidly installed, and must be maintained in safe working condition.

(c) Pool ladders shall have a clearance of not more than 5 inches, 12.7 centimeters, nor less than 3 inches, 7.62 centimeters, between any ladder rung and the pool wall.

(d) Pool ladders shall have rungs with a maximum rise of 12 inches, 30.5 centimeters, and a minimum width of 14 inches, 35.6 centimeters.

(5) Recessed Steps.

(a) Recessed steps shall have a set of grab rails located at the top of the course with a rail on each side which extend over the coping or edge of the deck.

(b) Recessed steps shall be readily cleanable and provide drainage into the pool to prevent the accumulation of dirt on the step.

(c) Full or partial recessed steps must have a minimum run of 5 inches, 12.7 centimeters, and a minimum width of 14 inches, 35.56 centimeters.

R392-302-13. Decks and Walkways.

(1) A continuous, unobstructed deck at least 5 feet, 1.52 meters, wide must extend completely around the pool. The deck is measured from the pool side edge of the coping if the coping is flush with the pool deck, or from the back of the pool curb if the coping is elevated from the pool deck. Pool curbs shall be a minimum of 12 inches wide. The pool deck may include the pool coping if the coping is installed flush with the surrounding pool deck. If the coping is elevated from the pool deck, the maximum allowed elevation difference between the top of the coping surface and the surrounding deck is 19 inches, 38.1 centimeters. The minimum allowed elevation is 4 inches.

(2) Deck obstructions are allowed to accommodate diving boards, platforms, slides, steps, or ladders so long as at least 5 feet, 1.52 meters, of deck area is provided behind the deck end of any diving board, platform, slide, step, or ladder. Other types of deck obstructions may also be allowed by the local health officer so long as the obstructions meet all of the following criteria:

(a) the total pool perimeter that is obstructed equals less than 10 percent of the total pool perimeter; likewise, no more than 15 feet, 4.56 meters, of pool perimeter can be obstructed in any one location;

(b) multiple obstructions must be separated by at least five feet, 1.52 meters;

(c) an unobstructed area of deck not less than five feet, 1.52 meters, is provided around or through the obstruction and located not more than fifteen feet, 4.55 meters, from the edge of the pool.

(d) the design of the obstruction does not endanger the health or safety of persons using the pool; and

(e) written approval for the obstruction is obtained from the local health official prior to, or as part of, the plan review process.

(3) The deck must slope away from the pool to floor drains at a grade of 1/4 inch, 6.35 millimeters, to 3/8 inch, 9.53 millimeters, per linear foot.

(a) The Local Health Officer may allow decks to slope towards the pool for deck level gutter pools if it can be demonstrated that it will not adversely affect the pool's water quality and:

(i) the deck must slope back towards the pool for a maximum distance of five feet, 1.52 meters, from the water's edge; and

(ii) the portion of the deck that slopes back towards the pool must slope towards the pool at grade of 1/4 inch, six millimeters, to 3/8 inch, ten millimeters, per linear foot; and

(iii) a minimum of three feet, 91.4 centimeters, of deck that meets 392-302-13(3) must be provided beyond the high point of said deck.

(4) Decks and walkways must be constructed to drain away any standing water and must have non-slip surfaces.

(5) Wooden decks, walks or steps are prohibited.

(6) Deck drains may not return water to the pool or the circulation system.

(7) The operator shall maintain decks in a sanitary condition and free from litter.

(8) Carpeting may not be installed within 5 feet, 1.52 meters, of the water side edge of the coping. The operator shall wet vacuum any carpeting as often as necessary to keep it clean and free of accumulated water.

(9) Steps serving decks must meet the following requirements:

(a) Risers of steps for the deck must be uniform and have a minimum height of 4 inches, 10.2 centimeters, and a maximum height of 7 inches, 17.8 centimeters.

(b) The minimum run of steps shall be 10 inches, 25.4 centimeters.

(c) Steps must have a minimum width of 18 inches, 45.72 centimeters.

R392-302-14. Fencing and Barriers.

(1) A fence or other barrier is required and must provide complete perimeter security of the facility, and be at least 6 feet, 1.83 meters, in height. Openings through the fence or barrier, other than entry or exit access when the access is open, may not permit a sphere greater than 4 inches, 10.16 centimeters, to pass through it at any location. Horizontal members shall be equal to or more than 45 inches, 114.3 centimeters, apart.

(a) If the local health department determines that the

safety of children is not compromised, it may exempt indoor pools from the fencing requirements.

(b) The local health department may grant exceptions to the height requirements in consideration of architectural and landscaping features for pools designed for hotels, motels and apartment houses.

(2) A fence or barrier that has an entrance to the facility must be equipped with a self-closing and self-latching gate or door. Except for self-locking mechanisms, self-latching mechanisms must be installed 54 inches, 1.37 meters, above the ground and must be provided with hardware for locking the gate when the facility is not in use. A lock that is separate from the latch and a self locking latch shall be installed with the lock's operable mechanism (key hole, electronic sensor, or combination dial) between 34 inches, 86.4 centimeters, and 48 inches, 1.219 meters, above the ground. All gates for the pool enclosure shall open outward from the pool.

(3) The gate or door shall have no opening greater than 0.5 inches, 1.27 centimeters, within 18 inches, 45.7 centimeters, of the latch release mechanism.

(4) Any pool enclosure which is accessible to the public when one or more of the pools are not being maintained for use, shall protect those closed pools from access by a sign meeting R392-302-34(3)(a) indicating the pool is closed and by using:

(a) a safety cover which restricts access and meets the minimum ASTM standard F1346-91; or

(b) a secondary barrier that is approved by the Department; or

(c) any method approved by the Department.

R392-302-15. Depth Markings and Safety Ropes.

(1) The depth of the water must be plainly marked at locations of maximum and minimum pool depth, and at the points of separation between the swimming and non-swimming areas of a pool. Pools must also be marked at intermediate 1 foot, 30.48 centimeters, increments of depth, spaced at distances which do not exceed 25 feet, 7.62 meters. Markings must be located above the water line or within 2 inches, 5.08 centimeters, from the coping on the vertical wall of the pool and on the edge of the deck or walk next to the pool with numerals at least 4 inches, 10.16 centimeters, high as required in R392-302-34(3).

(2) A pool with both swimming and diving areas must have a floating safety rope separating the swimming and diving areas. An exception to this requirement is made for special activities, such as swimming contests or training exercises when the full unobstructed length of the pool is used.

(a) The safety rope must be securely fastened to wall anchors. Wall anchors must be of corrosion-resistant materials and must be recessed or have no projections that may be a safety hazard if the safety rope is removed.

(b) The safety rope must be marked with visible floats spaced at intervals of 7 feet, 2.13 meters or less.

(c) The rope must be at least 0.5 inches, 1.27 centimeters, in diameter, and of sufficient strength to support the loads imposed on it during normal bathing activities.

(3) A pool constructed with a change in the slope of the pool floor must have the change in slope designated by a floating safety rope and a line of demarcation on the pool floor.

(a) The floating safety rope designating a change in slope of the pool floor must be attached at the locations on the pool wall that place it directly above and parallel to the line on the bottom of the pool. The floating safety rope must meet the requirements of Subsections R392-302-15(2)(a),(b),(c).

(b) A line of demarcation on the pool floor must be

marked with a contrasting dark color.

(c) The line must be at least 2 inches, 5.08 centimeters, in width.

(d) The line must be located 12 inches, 30.48 centimeters, toward the shallow end from the point of change in slope.

(4) The department may exempt a spa pool from the depth marking requirement if the spa pool owner can successfully demonstrate to the department that bather safety is not compromised by the elimination of the markings.

R392-302-16. Circulation Systems.

(1) A circulation system, consisting of pumps, piping, filters, water conditioning and disinfection equipment and other related equipment must be provided. The operator shall maintain the normal water line of the pool at the overflow rim of the gutter, if an overflow gutter is used, or at the midpoint of the skimmer opening if skimmers are used whenever the pool is open for bathing. An exemption to this requirement may be granted by the department if the pool operator can demonstrate that the safety of the bathers is not compromised.

(a) The circulation system shall meet the minimum turnover time listed in Table 1.

(b) If a single pool incorporates more than one the pool types listed in Table 1, either:

(i) the entire pool shall be designed with the shortest turnover time required in Table 1 of all the turnover times for the pool types incorporated into the pool or

(ii) the pool shall be designed with pool-type zones where each zone is provided with the recirculation flow rate that meets the requirements of Table 1.

(c) The Health Officer may require the pool operator to demonstrate that a pool is performing in accordance with the approved design.

(d) The operator shall run circulation equipment continuously except for periods of routine or other necessary maintenance. Pumps with the ability to decrease flow when the pool has little or no use are allowed as long as the same number of turnovers are achieved in 24 hours that would be required using the turnover time listed in Table 1 and the water quality standards of R392-302-27 can be maintained. The circulation system must be designed to permit complete drainage of the system.

(e) Piping must be of non-toxic material, resistant to corrosion and be able to withstand operating pressures.

(f) Plumbing must be identified by a color code or labels.

(2) The water velocity in discharge piping may not exceed 10 feet, 3.05 meters, per second, except for copper pipe where the velocity for piping may not exceed 8 feet, 2.44 meters, per second.

(3) Suction velocity for all piping may not exceed 6 feet, 1.83 meters, per second.

(4) The circulation system must include a strainer to prevent hair, lint, etc., from reaching the pump.

(a) Strainers must be corrosion-resistant with openings not more than 1/8 inch, 3.18 millimeters, in size.

(b) Strainers must provide a free flow capacity of at least four times the area of the pump suction line.

(c) Strainers must be readily accessible for frequent cleaning.

(d) Strainers must be maintained in a clean and sanitary condition.

(e) Each pump strainer must be provided with necessary valves to facilitate cleaning of the system without excessive flooding.

(5) A vacuum-cleaning system must be provided.

(a) If this system is an integral part of the circulation system, connections must be located in the walls of the pool,

at least 8 inches, 20.32 centimeters, below the water line. This requirement does not apply to vacuums operated from skimmers.

(b) The number of connections provided must facilitate access to all areas of the pool through hoses less than 50 feet, 15.24 meters, in length.

(6) A rate-of-flow indicator, reading in gallons per minute, must be properly installed and located according to manufacturer recommendations. The indicator must be located in a place and position where it can be easily read.

(7) Pumps must be of adequate capacity to provide the required number of turnovers of pool water as specified in Subsection R392-302-16, Table 1. The pump or pumps must be capable of providing flow adequate for the backwashing of filters. Under normal conditions, the pump or pumps must supply the circulation rate of flow at a dynamic head which includes, in addition to the usual equipment, fitting and friction losses, an additional loss of 15 feet, 4.57 meters, for rapid sand filters, vacuum precoat media filters or vacuum cartridge filters and 40 feet, 12.19 meters, for pressure precoat media filters, high rate sand filters or cartridge filters, as well as pool inlet orifice loss of 15 feet, 4.57 meters.

(8) A pool equipped with heaters must meet the requirements for boilers and pressure vessels as required by the State of Utah Boiler and Pressure Vessel Rules, R616-2, and must have a fixed thermometer mounted in the pool circulation line downstream from the heater outlet. The heater must be provided with a heatsink as required by manufacturer's instructions.

(9) The area housing the circulation equipment must be designed with adequate working space so that all equipment may be easily disassembled, removed, and replaced for proper maintenance.

(10) All circulation lines to and from the pool must be regulated with valves in order to control the circulation flow.

(a) All valves must be located where they will be readily and easily accessible for maintenance and removal.

(b) Multiport valves must comply with NSF/ANSI 50-2015.

(11) Written operational instructions must be immediately available at the facility at all times.

TABLE 1
Circulation

| Pool Type | Min. Number of Wall Inlets | Min. Number of Skimmers per 3,500 square ft. or less | Min. Turnover Time |
|---------------------------|--|--|--------------------|
| 1. Swim | 1 per 10 ft., 3.05 m. | 1 per 500 sq. ft., 46.45 sq. m. | 8 hrs. |
| 2. Swim, high bather load | 1 per 10 ft., 3.05 m. | 1 per 500 sq. ft., 46.45 sq. m. | 6 hrs. |
| 3. Wading pool | 1 per 20 ft., 6.10 m. min. of 2 equally spaced | 1 per 500 sq. ft., 46.45 sq. m. | 1 hr. |
| 4. Spa | 1 per 20 ft., 6.10 m. | 1 per 100 sq. ft., 9.29 sq. m. | 0.5 hr. |
| 5. Wave | 1 per 10 ft., 3.05 m. | 1 per 500 sq. ft., 46.45 sq. m. | 6 hrs. |
| 6. Slide | 1 per 10 ft., | 1 per 500 sq. ft., | 1 hr. |

| | | | | |
|-------------------------|-----------------------------|---------|---------------------------------------|-------|
| | | 3.05 m. | 46.45 sq. m. | |
| 7. Vehicle slide | 1 per 10 ft., 3.05 m. | | 1 per 500 sq. ft., 46.45 sq. m. | 1 hr. |
| 8. Special Purpose Pool | 1 per 10 ft., 3.05 m. | | 1 per 500 sq. ft., 46.45 sq. m. | 1 hr. |

(12) Each air induction system installed must comply with the following requirements:

(a) An air induction system must be designed and maintained to prevent any possibility of water back-up that could cause electrical shock hazards.

(b) An air intake may not introduce contaminants such as noxious chemicals, fumes, deck water, dirt, etc. into the pool.

(13) The circulation lines of jet systems and other forms of water agitation must be independent and separate from the circulation-filtration and heating systems.

R392-302-17. Inlets.

(1) Inlets for fresh or treated water must be located to produce uniform circulation of water and to facilitate the maintenance of a uniform disinfectant residual throughout the entire pool.

(2) If wall inlets from the circulation system are used, they must be flush with the pool wall and submerged at least 5 feet, 1.52 meters, below the normal water level or at the bottom of the vertical wall surface tangent to the arc forming the transition between the vertical wall and the floor of the pool. Except as provided in Subsections R392-302-31 (2)(l) and (3)(e), wall inlets must be placed every 10 feet, 3.05 meters, around the pool perimeter.

(a) The department or the local health officer may require floor inlets to be installed in addition to wall inlets if a pool has a width greater than 50 feet, 4.57 meters, to assure thorough chemical distribution. If floor inlets are installed in addition to wall inlets, there must be a minimum of one row of floor inlets centered on the pool width. Individual inlets and rows of inlets shall be spaced a maximum of 15 feet, 4.57 meters, from each other. Floor inlets must be at least 15 feet, 4.57 meters, from a pool wall with wall inlets.

(b) Each wall inlet must be designed as a non-adjustable orifice with sufficient head loss to insure balancing of flow through all inlets. The return loop piping must be sized to provide less than 2.5 feet, 76.20 centimeters, of head loss to the most distant orifice to insure approximately equal flow through all orifices.

(3) If floor inlets from the circulation system are used, they must be flush with the floor. Floor inlets shall be placed at maximum 15 foot, 4.46 meter, intervals. The distance from floor inlets to a pool wall shall not exceed 7.5 feet, 2.29 meters if there are no wall inlets on that wall. Each floor inlet must be designed such that the flow can be adjusted to provide sufficient head loss to insure balancing of flow through all inlets. All floor inlets must be designed such that the flow cannot be adjusted without the use of a special tool to protect against swimmers being able to adjust the flow. The return supply piping must be sized to provide less than 2.5 feet, 76.20 centimeters, of head loss to the most distant orifice to insure approximately equal flow through all orifices.

(4) The department may grant an exemption to the inlet placement requirements on a case by case basis for inlet designs that can be demonstrated to produce uniform mixing of pool water.

R392-302-18. Outlets.

(1) No feature or circulation pump shall be connected to less than two outlets unless the pump is connected to a gravity

drain system or the pump is connected to an unblockable drain. All pool outlets shall meet the following design criteria:

(a) The grates or covers of all submerged outlets in pools shall conform to the standards of ANSI/APSP-16 2011.

(b) The outlets must be constructed so that if one of the outlets is completely obstructed, the remaining outlets and related piping will be capable of handling 100 percent of the maximum design circulation flow.

(c) All pool outlets that are connected to a pump through a single common suction line must connect to the common suction line through pipes of equal diameter. The tee feeding to the common suction line from the outlets must be located approximately midway between outlets.

(d) An outlet system with more than one outlet connected to a pump suction line must not have any valve or other means to cut any individual outlet out of the system.

(e) At least one of the circulation outlets shall be located at the deepest point of the pool and must be piped to permit the pool to be completely and easily emptied.

(f) The center of the outlet covers or grates of multiple main drain outlets shall not be spaced more than 30 feet, 9.14 meters, apart nor spaced closer than 3 feet, 0.914 meters, apart.

(g) Multiple pumps may utilize the same outlets only if the outlets are sized to accommodate 100 percent of the total combined design flow from all pumps and only if the flow characteristics of the system meet the requirements of subsection R392-302-18(2) and (3).

(h) There must be one main drain outlet for each 30 feet, 9.14 meters, of pool width. The centers of the outlet covers or grates of any outermost main drain outlets must be located within 15 feet, 4.57 meters, of a side wall.

(i) Devices or methods used for draining pools shall prevent overcharging the sanitary sewer.

(j) No operator shall allow the use of a pool with outlet grates or covers that are broken, damaged, missing, or not securely fastened.

(2) Notwithstanding Section R392-302-3, all public pools must comply with Subsections R392-302-18(2) and (3). The pool operator shall not install, allow the installation of, or operate a pool with a drain, drain cover, or drain grate in a position or an application that conflicts with any of the following mandatory markings on the drain cover or grate under the standard required in R392-302-18(1)(a):

- (a) whether the drain is for single or multiple drain use;
- (b) the maximum flow through the drain cover; and
- (c) whether the drain may be installed on a wall or a floor.

(3) The pool operator shall not install, allow the installation of, or operate a pool with a drain cover or drain grate unless it is over or in front of:

- (a) the sump that is recommended by the drain cover or grate manufacturer;
- (b) a sump specifically designed for that drain by a Registered Design Professional as defined in ANSI/APSP-16 2011; or
- (c) a sump that meets the ANSI/APSP-16 2011 standard.

(4) Notwithstanding Section R392-302-3, all public pools must comply with this subsection R392-302-18(4). The pool owner or certified pool operator shall retrofit by December 19, 2009 each pool circulation system on existing pools that do not meet the requirements of subsections R392-302-18(1) through R392-302-18(1)(g) and R392-302-18(2) through (3)(c). The owner or operator shall meet the retrofit requirements of this subsection by any of the following means:

- (a) Meet the requirements of R392-302-18(1)(a) and

R392-302-18(2) through (3)(c) and install a safety vacuum release system which ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when it detects a blockage; that has been tested by an independent third party; and that conforms to ASME standard A112.19.17-2010 or ASTM standard F2387-04(2012);

(i) To ensure proper operation, the certified pool operator shall inspect and test the vacuum release system at least once a week but no less often than established by the manufacturer. The certified pool operator shall test the vacuum release system in a manner specified by the manufacturer. The certified pool operator shall log all inspections, tests and maintenance and retain the records for a minimum of two years for review by the Department and local health department upon request.

(ii) The vacuum release system shall include a notification system that alerts patrons and the pool operator when the system has inactivated the circulation system. The pool operator shall submit to the local health department for approval the design of the notification systems prior to installation. The system shall activate a continuous clearly audible alarm that can be heard in all areas of the pool or a continuous visible alarm that can be seen in all areas of the pool. A sign that meets the requirements of a "2 Inch Safety Sign" in R392-302-34(1),(2) and (3)(b) shall be posted next to the sound or visible alarm source. The sign shall state, "DO NOT USE THE POOL IF THIS ALARM IS ACTIVATED." and provide the phone number of the pool operator.

(iii) No operator shall allow the use of a pool that has a single drain with a safety vacuum release system if the safety vacuum release system is not functioning properly.

(b) Install an outlet system that includes no fewer than two suction outlets separated by no less than 3 feet, 0.914 meters, on the horizontal plane as measured from the centers of the drain covers or grates or located on two different planes and connected to pipes of equal diameter. The outlet system shall meet the requirements of R392-302-18(1)(a) through R392-302-18(1)(g) and 18(2) through (3)(c);

(c) Meet the requirements of R392-302-18(1)(a) and R392-302-18(2) through (3)(c) and installing (or having an existing) gravity drain system;

(d) Install an unblockable drain that meets the requirements of R392-302-18(1)(a) and R392-302-18(2) through (3)(c); or

(e) Any other system determined by the federal Consumer Products Safety Commission to be equally effective as, or better than, the systems described in 15 USC 8003 (c)(1)(A)(ii)(I), (III), or (IV) at preventing or eliminating the risk of injury or death associated with pool drainage systems.

R392-302-19. Overflow Gutters and Skimming Devices.

(1) A pool having a surface area of over 3,500 square feet, 325.15 square meters, must have overflow gutters. A pool having a surface area equal to or less than 3,500 square feet, 325.15 square meters, must have either overflow gutters or skimmers provided.

(2) Overflow gutters must extend completely around the pool, except at steps, ramps, or recessed ladders. The gutter system must be capable of continuously removing pool water at 100 percent of the maximum flow rate. This system must be connected to the circulation system by means of a surge tank.

(3) Overflow gutters must be designed and constructed in compliance with the following requirements:

(a) The opening into the gutter beneath the coping or grating must be at least 3 inches, 7.62 centimeters, in height

with a depth of at least 3 inches, 7.62 centimeters.

(b) Gutters must be designed to prevent entrapment of any part of a bather's body.

(c) The edge must be rounded so it can be used as a handhold and must be no thicker than 2.5 inches, 6.35 centimeters, for the top 2 inches, 5.08 centimeters.

(d) Gutter outlet pipes must be at least 2 inches, 5.08 centimeters, in diameter. The outlet grates must have clear openings and be equal to at least one and one-half times the cross sectional area of the outlet pipe.

(4) Skimmers complying with NSF/ANSI 50-2015 standards or equivalent are permitted on any pool with a surface area equal to or less than 3,500 square feet, 325.15 square meters. At least one skimming device must be provided for each 500 square feet, 46.45 square meters, of water surface area or fraction thereof. Where two or more skimmers are required, they must be spaced to provide an effective skimming action over the entire surface of the pool.

(5) Skimming devices must be built into the pool wall and must meet the following general specifications:

(a) The piping and other components of a skimmer system must be designed for a total capacity of at least 80 percent of the maximum flow rate of the circulation system.

(b) Skimmers must be designed with a minimum flow rate of 25 gallons, 94.64 liters, per minute and a maximum flow rate of 55 gallons, 208.12 liters, per minute. The local health department may allow a higher maximum flow through a skimmer up to the skimmer's NSF rating if the piping system is designed to accommodate the higher flow rates. Alternatively, skimmers may also be designed with a minimum of 3.125 gallons, 11.83 liters, to 6.875 gallons, 26.02 liters, per lineal inch, 2.54 centimeters, of weir.

(6) Each skimmer weir must be automatically adjustable and must operate freely with continuous action to variations in water level over a range of at least 4 inches, 10.16 centimeters. The weir must operate at all flow variations. Skimmers shall be installed with the normal operating level of the pool water at the midpoint of the skimmer opening or in accordance with the manufacturer's instructions.

(7) An easily removable and cleanable basket or screen through which all overflow water passes, must be provided to trap large solids.

(8) The skimmer must be provided with a system to prevent air-lock in the suction line. The anti-air-lock may be accomplished through the use of an equalizer pipe or a surge tank or through any other arrangement approved by the Department that will assure a sufficient amount of water for pump suction in the event the pool water drops below the weir level. If an equalizer pipe is used, the following requirements must be met:

(a) An equalizer pipe must be sized to meet the capacity requirements for the filter and pump;

(b) An equalizer pipe may not be less than 2 inches, 5.08 centimeters, in diameter and must be designed to control velocity through the pipe in accordance with section R392-302-16(3);

(c) This pipe must be located at least 1 foot, 30.48 centimeters, below a valve or equivalent device that will remain tightly closed under normal operating conditions. In a shallow pool, such as a wading pool, where an equalizer outlet can not be submerged at least one foot below the skimmer valve, the equalizer pipe shall be connected to a separate dedicated outlet with an anti-entrapment outlet cover in the floor of the pool that meets the requirements of ANSI/APSP-16 2011; and

(d) The equalizer pipe must be protected with a cover or grate that meets the requirements of ANSI/APSP-16 2011 and is sized to accommodate the design flow requirement of R392-302-19(5).

(9) The operator shall maintain proper operation of all skimmer weirs, float valves, check valves, and baskets. Skimmer baskets shall be maintained in a clean and sanitary condition.

(10) Where skimmers are used, a continuous handhold is required around the entire perimeter of the pool except in areas of the pool that are zero depth and shall be installed not more than 9 inches, 2.86 centimeters, above the normal operating level of the pool. The decking, coping, or other material may be used as the handhold so long as it has rounded edges, is slip-resistant, and does not exceed 3.5 inches, 8.89 centimeters, in thickness. The overhang of the coping, decking, or other material must not exceed 2 inches, 5.08 centimeters, nor be less than 1 inch, 2.54 centimeters beyond the pool wall. An overhang may be up to a maximum of 3 inches to accommodate an automatic pool cover track system.

R392-302-20. Filtration.

(1) The filter system must provide for isolation of individual filters for backwashing or other service.

(2) The filtration system must be designed to allow the pool operator to easily observe the discharge backwash water from the filter in order to determine if the filter cells are clean.

(3) A public pool must use either a rapid sand filter, hi-rate sand filter, precoat media filter, a cartridge filter or other filter types deemed equivalent by the Department. All filters must comply with the standard NSF/ANSI 50-2015.

(4) Gravity and pressure rapid sand filter requirements.

(a) Rapid sand filters must be designed for a filter rate of 3 gallons, 11.36 liters, or less, per minute per square foot, 929 square centimeters, of bed area at time of maximum head loss. The filter bed surface area must be sufficient to meet the design rate of flow required by Section R392-302-16, Table 1, for required turnover.

(b) The filter system must be provided with influent pressure, vacuum, or compound gauges to indicate the condition of the filters. Air-relief valves must be provided at or near the high point of the filter or piping system.

(c) The filter system must be designed with necessary valves and piping to permit:

(i) filtering of all pool water;

(ii) individual backwashing of filters to a sanitary sewer at a minimum rate of 15 gallons, 56.78 liters, per minute per square foot, 929 square centimeters, of filter area;

(iii) isolation of individual filters;

(iv) complete drainage of all parts of the system;

(v) necessary maintenance, operation and inspection in a convenient manner.

(d) Each pressure type filter tank must be provided with an access opening of at least a standard size 11 inch, 27.94 centimeters, by 15 inch, 38.10 centimeters, manhole with a cover.

(5) Hi-rate sand filter requirements.

(a) Hi-rate sand filters must be designed for a filter rate of less than 18 gallons, 68.14 liters, per minute per square foot, 929 square centimeters, of bed area. The filter bed area must be sufficient to meet the design rate of flow required by Section R392-302-16, Table 1, for required turnover. Minimum flow rates must be at least 13 gallons, 49.21 liters, per minute per square foot, 929 square centimeters, of bed area. The minimum flow rate requirement may be reduced to a rate of no less than 10 gallons per minute per square foot of bed area where a multiple filter system is provided, and where the system includes a valve or other means after the filters which is designed to regulate the backwash flow rate and to assure that adequate backwash flow can be achieved through each filter per the filter manufacturer's requirements.

(b) The filter tank and all components must be installed

in compliance with the manufacturer's recommendations.

(c) An air-relief valve must be provided at or near the high point of the filter.

(d) The filter system must be provided with an influent pressure gauge to indicate the condition of the filter.

(6) Vacuum or pressure type precoat media filter requirements.

(a) The filtering area must be compatible with the design pump capacity as required by R392-302-16(7). The design rate of filtration may not exceed 2.0 gallons per minute per square foot, 7.57 liters per 929 square centimeters, of effective filtering surface without continuous body feed, nor greater than 2.5 gallons per minute per square foot, 9.46 liters per 929 square centimeters, with continuous body feed.

(b) Where body feed is provided, the feeder device must be accurate to within 10 percent, must be capable of continual feeding within a calibrated range, and must be adjustable from two to six parts per million. The device must feed at the design capacity of the circulation pump.

(c) Where fabric is used, filtering area must be determined on the basis of effective filtering surfaces.

(d) The filter and all component parts must be designed and constructed of materials which will withstand normal continuous use without significant deformation, deterioration, corrosion or wear which could adversely affect filter operations.

(e) If a precoat media filter is supplied with a potable water supply, then the water must be delivered through an air gap.

(f) The filter plant must be provided with influent pressure, vacuum, or compound gauges to indicate the condition of the filter. In vacuum-type filter installations where the circulating pump is rated at two horsepower or higher, an adjustable high vacuum automatic shut-off device must be provided to prevent damage to the pump. Air-relief valves must be provided at or near the high point of the filter system.

(g) A filter must be designed to facilitate cleaning by one or more of the following methods: backwashing, air-bump-assist backwashing, automatic or manual water spray, or agitation.

(h) The filter system must provide for complete and rapid draining of the filter.

(i) Diatomaceous earth filter backwash water must discharge to the sanitary sewer system through a separation tank. The separation tank must have a sign that meets the requirements of a "2 Inch Safety Sign" in R392-302-34(1), (2) and (3)(b) warning the user not to start up the filter pump without first opening the air relief valve.

(j) Personal protection equipment suitable for preventing inhalation of diatomaceous earth or other filter aids must be provided.

(7) The department may waive NSF/ANSI 50-2015 standards for precoat media filters and approve site-built or custom-built vacuum precoat media filters, if the precoat media filter elements are easily accessible for cleaning by hand hosing after each filtering cycle. Site-built or custom-built vacuum precoat media filters must comply with all design requirements as specified in Subsection R392-302-20(6). Any design which provides the equivalent washing effectiveness as determined by the department may be acceptable. Where the department or the local health department determines that a potential cross-connection exists, a hose bib in the vicinity of the filter to facilitate the washing operation must be equipped with a vacuum breaker listed by the International Association of Plumbing and Mechanical Officials, IAPMO, the American Society of Sanitary Engineering, A.S.S.E., or other nationally recognized standard.

(8) Vacuum or pressure type cartridge filter requirements.

(a) Sufficient filter area must be provided to meet the design pump capacity as required by Subsection R392-302-16, Table 1.

(b) The designed rate of filtration may not exceed 0.375 gallons, 1.42 liters, per minute per square foot, 929 square centimeters, of effective filter area.

(c) The filter and all component parts must be designed and constructed of materials which will withstand normal continuous use without significant deformation, deterioration, corrosion or wear which could adversely affect filter operations. The filter element must be constructed of polyester fiber only.

(d) The filter must be fitted with influent and effluent pressure gauges, vacuum, or compound gauges to indicate the condition of the filter. In vacuum type filter installations where the circulating pump is rated at two horsepower or higher, an adjustable high vacuum automatic shut-off must be provided to prevent damage to the pump. Air-relief valves must be provided at or near the high point of the filter system.

(e) Cleaning of cartridge type filters must be accomplished in accordance with the manufacturer's recommendations.

R392-302-21. Disinfectant and Chemical Feeders.

(1) A pool must be equipped with disinfectant dosing or generating equipment which conform to the NSF/ANSI 50-2015, standards relating to mechanical chemical feeding equipment, or be deemed equivalent by the department.

(2) All chlorine dosing and generating equipment, including erosion feeders, or in-line electrolytic and brine/bath generators, shall be designed with a capacity to provide the following, depending on the intended use:

(a) Outdoor pools: 4.0 pounds of free available chlorine per day per 10,000 gallons of pool water; or

(b) Indoor pools: 2.5 pounds of free available chlorine per day per 10,000 gallons of pool water.

(2) Where oxidation-reduction potential controllers are used, the operator shall perform supervisory water testing, calibration checks, inspection and cleaning of sensor probes and chemical injectors in accordance with the manufacturer's recommendations. If specific manufacturer's recommendations are not made, the operator shall perform inspections, calibration checks, and cleaning of sensor probes at least weekly.

(3) Where compressed chlorine gas is used, the following additional features must be provided:

(a) Chlorine and chlorinating equipment must be located in a secure, well-ventilated enclosure separate from other equipment systems or equipment rooms. Such enclosures may not be below ground level. If an enclosure is a room within a building, it must be provided with vents near the floor which terminate at a location out-of-doors. Enclosures must be located to prevent contamination of air inlets to any buildings and areas used by people. Forced air ventilation capable of providing at least one complete air change per minute, must be provided for enclosures.

(b) The operator shall not keep substances which are incompatible with chlorine in the chlorine enclosure.

(c) The operator shall secure chlorine cylinders to prevent them from falling over. The operator shall maintain an approved valve stem wrench on the chlorine cylinder so the supply can be shut off quickly in case of emergency. The operator shall keep valve protection hoods and cap nuts in place except when the cylinder is connected.

(d) A sign that meets the requirements of a "4 Inch Safety Sign" in R392-302-34(1), (2) and (3)(a) shall be attached to the entrance door to chlorine gas and equipment

rooms that reads, "DANGER CHLORINE GAS" and display the United States Department of Transportation placard and I.D. number for chlorine gas.

(e) The chlorinator must be designed so that leaking chlorine gas will be vented to the out-of-doors.

(f) The chlorinator must be a solution feed type, capable of delivering chlorine at its maximum rate without releasing chlorine gas to the atmosphere. Injector water must be furnished from the pool circulation system with necessary water pressure increases supplied by a booster pump. The booster must be interlocked with both the pool circulation pump and with a flow switch on the return line.

(g) Chlorine feed lines may not carry pressurized chlorine gas.

(h) The operator shall keep an unbreakable bottle of ammonium hydroxide, of approximately 28 percent solution in water, readily available for chlorine leak detection.

(i) A self-contained breathing apparatus approved by NIOSH for entering environments that are immediately dangerous to life or health must be available and must have a minimum capacity of fifteen minutes.

(j) The breathing apparatus must be kept in a closed cabinet located outside of the room in which the chlorinator is maintained, and must be accessible without use of a key or lock combination.

(k) The facility operator shall demonstrate to the local health department through training documentation, that all persons who operate, or handle gas chlorine equipment, including the equipment specified in Subsections R392-203-21(3)(h) and (i) are knowledgeable about safety and proper equipment handling practices to protect themselves, staff members, and the public from accidental exposure to chlorine gas.

(l) The facility operator or his designee shall immediately notify the local health department of any inadvertent escape of chlorine gas.

(4) Bactericidal agents, other than chlorine and bromine, and their feeding apparatus may be acceptable if approved by the department. Each bactericidal agent must be registered by the U.S. Environmental Protection Agency for use in swimming pools.

(5) Equipment of the positive displacement type and piping used to apply chemicals to the water must be sized, designed, and constructed of materials which can be cleaned and maintained free from clogging at all times. Materials used for such equipment and piping must be resistant to the effects of the chemicals in use.

(6) All auxiliary chemical feed pumps must be wired electrically to the main circulation pump so that the operation of these pumps is dependent upon the operation of the main circulation pump. If a chemical feed pump has an independent timer, the main circulation pump and chemical feed pump timer must be interlocked.

R392-302-22. Safety Requirements and Lifesaving Equipment.

(1) Areas of a public pool with water depth greater than six feet or a width greater than forty feet and a depth greater than four feet where a lifeguard is required under Subsection R392-302-30(2) shall provide for a minimum number of elevated lifeguard stations in accordance with Table 2. Elevated lifeguard stations shall be located to provide a clear unobstructed view of the pool bottom by lifeguards on duty.

(2) A public pool must have at least one unit of lifesaving equipment. One unit of lifesaving equipment must consist of the following: a Coast Guard-approved ring buoy with an attached rope equal in length to the maximum width of the pool plus 10 feet and a life pole or shepherd's crook type pole with blunted ends and a minimum length of 12 feet,

3.66 meters. The facility operator may substitute a rescue tube for a ring buoy where lifeguard service is provided. Additional units must be provided at the rate of one for each 2,000 square feet, 185.8 square meters, of surface area or fraction thereof. The operator of a pool that has lifeguard services shall provide at least one backboard designed with straps and head stabilization capability.

(3) A public pool must be equipped with a first aid kit which includes a minimum of the following items:

- 2 Units eye dressing packet;
- 2 Units triangular bandages;
- 1 CPR shield;
- 1 scissors;
- 1 tweezers;
- 6 pairs disposable medical exam gloves; and

Assorted types and sizes of the following: self adhesive bandages, compresses, roller type bandages and bandage tape.

(a) The operator shall keep the first-aid kit filled, available, and ready for use.

(4) Lifesaving equipment must be mounted in readily accessible, conspicuous places around the pool deck. The operator shall maintain it in good repair and operable condition. The operator and lifeguards shall prevent the removal of lifesaving equipment or use of it for any reason other than its intended purpose.

(5) Where no lifeguard service is provided in accordance with Subsection R392-302-30(2), a warning sign that meets the requirements of a "4 Inch Safety Sign" in R392-302-34(1), (2) and (3)(a) shall be posted. The sign shall state: WARNING - NO LIFEGUARD ON DUTY. In addition, the sign shall state in text that meets the requirements of "2 Inch Safety Sign" in R392-302-34(1), (2) and (3)(b) "BATHERS SHOULD NOT SWIM ALONE", and CHILDREN 14 AND UNDER SHALL NOT USE POOL WITHOUT RESPONSIBLE ADULT SUPERVISION.

(6) Where lifeguard service is required, the facility must have a readily accessible area designated and equipped for emergency first aid care.

TABLE 2
Safety Equipment and Signs

| | POOLS WITH LIFEGUARD | POOLS WITH NO LIFEGUARD |
|--|---|---|
| Elevated Station | 1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction | None |
| Backboard | 1 per facility | None |
| Room for Emergency Care | 1 per facility | None |
| Ring Buoy with an attached rope equal in length to the maximum width of the pool plus 10 feet, 3.05 meters | 1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction | 1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction |
| Rescue Tube (used as a substitute for ring buoys when lifeguards are present) | 1 per 2,000 | None sq. ft., 185 sq. meters, of pool area or fraction |
| Life Pole or Shepherds Crook | 1 per 2,000 sq. ft. 185, sq. meters, of pool area or fraction | 1 per 2,000 sq. ft. 185, sq. meters, of pool area or fraction |
| First Aid Kit | 1 per facility | 1 per facility |

R392-302-23. Lighting, Ventilation and Electrical

Requirements.

(1) A pool constructed after September 16, 1996 may not be used for night swimming in the absence of underwater lighting. The local health officer may grant an exemption to this if the pool operator demonstrates that a 6 inch, 15.24 centimeters, diameter black disk on a white background placed in the deepest part of the pool can be clearly observed from the pool deck during night time hours. The local health department shall keep a record of this exemption on file. The pool operator shall keep a record of this exemption on file at the facility.

(2) Where night swimming is permitted and underwater lighting is used, artificial lighting shall be provided so that all areas of the pool, including the deepest portion of the pool shall be visible. Underwater lights shall provide illumination equivalent to 0.5 watt of incandescent lamp light per square foot, 0.093 square meter, of pool water surface area. The Local Health Officer may waive underwater lighting requirements if overhead lighting provides a minimum of 15 foot candles, 161 lux, illumination over the entire pool surface.

(3) Where night swimming is permitted and underwater luminaires are used, area lighting must be provided for the deck areas and directed away from the pool surface as practical to reduce glare. The luminance must be at least 5 horizontal foot candles of light per square foot, 929 square centimeters, of deck area, but less than the luminance level for the pool shell.

(4) Electrical wiring must conform with Article 680 of the National Electrical Code as incorporated under Title 15a, State Construction and Fire Codes Act.

(a) Wiring may not be routed under a pool or within the area extending 5 feet, 1.52 meters, horizontally from the inside wall of the pool as provided in Article 680 of the National Electric Code as incorporated under Title 15a, State Construction and Fire Codes Act, without the written approval of the department. The department may deny the installation and use of any electrical appliance, device, or fixture, if its power service is routed under a pool or within the area extending 5 feet, 1.52 meters, horizontally from the inside wall of the pool, except in the following circumstances;

- (i) For underwater lighting,
- (ii) electrically powered automatic pool shell covers, and
- (iii) competitive judging, timing, and recording apparatus.

(5) Buildings containing indoor pools, pool equipment rooms, access spaces, bathhouses, dressing rooms, shower rooms, and toilet spaces must be ventilated in accordance with American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 62.1-2004, which is incorporated and adopted by reference.

R392-302-24. Dressing Rooms.

(1) The operator shall maintain all areas and fixtures within dressing rooms in an operable, clean and sanitary condition.

(2) Where dressing rooms are provided, a separate dressing room must be provided for each gender. The entrances and exits must be designed to break the line of sight into the dressing areas from other locations.

(3) Dressing rooms must be constructed of materials that have smooth, non-slip surfaces, and are impervious to moisture.

(4) Floors must slope to a drain and be constructed to prevent accumulation of water.

(5) Carpeting may not be installed on dressing room floors.

(6) Junctions between walls and floors must be coved.

(7) Partitions between dressing cubicles must be raised at least 10 inches, 25.4 centimeters, above the floor or must be placed on continuous raised masonry or concrete bases at least 4 inches, 10.16 centimeters, high.

(8) Lockers must be set either on solid masonry bases 4 inches, 10.16 centimeters, high or on legs elevating the bottom locker at least 10 inches, 25.4 centimeters, above the floor.

(a) Lockers must have louvers for ventilation.

(9) At least one covered waste receptacle must be provided in each dressing room.

R392-302-25. Restroom and Shower Facilities.

(1) The facility shall provide a restroom with shower facility for each gender.

(a) The entrances and exits must be designed to break the line of sight into the restroom and shower facilities.

(2) The minimum number of toilets and showers must be based upon the designed maximum bather load.

(a) Required numbers of fixtures must be based upon 50 percent of the total number of bathers being male and 50 percent being female, except where the facility is used exclusively by one gender.

(b) The minimum number of sanitary fixtures must be in accordance with Table 4.

(i) The local health department may exempt any bathers who have private use fixtures available within 150 feet, 45.7 meters, of the pool from the total number of bathers used to calculate the number of fixtures required.

(c) Disposable towels or air dryers must be provided for all lavatories.

(7) Fixtures must be designed so that they may be readily cleaned. Fixtures must withstand frequent cleaning and disinfecting.

(8) The operator shall maintain all areas and fixtures within restroom facilities in an operable, clean and sanitary condition.

(9) Restroom and shower facilities must be constructed of materials that have smooth, non-slip surfaces, and are impervious to moisture.

(10) Floor must slope to a drain and be constructed to prevent accumulation of water.

(11) Carpeting may not be installed on restroom and shower floors.

(12) Junctions between walls and floors must be covered.

(13) At least one covered waste receptacle must be provided in each restroom.

R392-302-26. Visitor and Spectator Areas.

(1) Visitors, spectators, or animals may not be allowed within 10 feet, 3.05 meters, of the pool. Service animals are exempt from this requirement.

(2) Food or drink is prohibited within ten feet, 3.05 meters, of the pool. Beverages must be served in non-breakable containers.

(3) Trash containers must be provided in visitor and spectator areas. The entire area must be kept free of litter and maintained in a clean, sanitary condition.

R392-302-27. Disinfection and Quality of Water.

(1) Disinfection Process.

(a) A pool must be continuously disinfected by a product which:

(i) Is registered with the United States Environmental Protection Agency as a disinfecting process or disinfectant product for water;

(ii) Imparts a disinfectant residual which may be easily and accurately measured by a field test procedure appropriate to the disinfectant in use;

(iii) Is compatible for use with other chemicals normally used in pool water treatment;

(iv) Does not create harmful or deleterious effects on bathers if used according to manufacturer's specifications; and

(v) Does not create an undue safety hazard if handled, stored and used according to manufacturer's specifications.

(b) The concentration levels of the active disinfectant within the pool water shall be consistent with the label instructions of the disinfectant and with the minimum levels listed in Table 6 for all circumstances, bather loads, and the pH level of the water.

(i) At no time shall the concentration level of free available chlorine reach a level above ten parts per million while the facility is open to bathers.

(2) Products used to treat or condition pool water shall be used according to the product label.

(3) Testing Kits.

(a) An easy to operate pool-side disinfectant testing kit, compatible with the disinfectant in use and accurate to within 0.5 milligrams per liter, must be provided at each pool.

(b) If chlorine is the disinfectant used, it must be tested by the diethyl-p-phenylene diamine method, the leuco crystal violet method, or another test method approved by the Department.

(c) If cyanuric acid or stabilized chlorine is used, a testing kit for cyanuric acid, accurate to within 10.0 milligrams per liter must be provided.

(d) Expired test kit reagents may not be used.

(4) Chemical Quality of Water.

TABLE 4

Sanitary Fixture Minimum Requirements

| Water Closets | |
|---------------|--------------|
| Male | Female |
| 1:1 to 25 | 1:1 to 25 |
| 2:26 to 75 | 2:26 to 75 |
| 3:76 to 125 | 3:76 to 125 |
| 4:126 to 200 | 4:126 to 200 |
| 5:201 to 300 | 5:201 to 300 |
| 6:301 to 400 | 6:301 to 400 |

Over 400, add one fixture for each additional 200 males or 150 females.

Where urinals are provided, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases may not be reduced to less than one half of the minimum specified.

(3) Lavatories must be provided on the basis of one for each water closet up to four, then one for each two additional water closets.

(4) The facility shall provide showers for each gender and shall enclose these showers for privacy. A minimum of one shower head for each gender must be provided for each 50 bathers or fraction thereof.

(a) Potable water must be provided at all shower heads. Water heaters and thermostatically controlled mixing valves must be inaccessible to bathers and must be capable of providing 2 gallons per minute, 7.57 liters per minute, of 90 degree F. water to each shower head for each bather.

(5) If unisex facilities are provided they may count toward the total number of required fixtures in this section as long as the unisex facilities are provided in multiples of two.

(6) Soap must be dispensed at all lavatories and showers.

(a) Soap dispensers must be constructed of metal or plastic.

(b) Use of bar soap or any communal soap item is prohibited.

(a) If cyanuric acid is used to stabilize the free residual chlorine, or if one of the chlorinated isocyanurate compounds is used as the disinfecting chemical, the concentration of cyanuric acid in the water must be at least ten milligrams per liter, but may not exceed 100 milligrams per liter.

(b) The difference between the total chlorine and the free chlorine in a pool shall not be greater than 0.5 milligrams per liter. If the concentration of combined residual chlorine is greater than 0.5 milligrams per liter the operator shall breakpoint chlorinate the pool water to reduce the concentration of combined chlorine.

(c) Total dissolved solids shall not exceed 1,500 milligrams per liter over the startup total dissolved solids of the pool water.

(d) Total alkalinity must be within the range from 100 to 125 milligrams per liter for a plaster lined pool, 80 to 150 milligrams per liter for a spa pool lined with plaster, and 125 to 150 milligrams per liter for a pool lined with other approved construction materials.

(e) A calcium hardness of at least 200 milligrams per liter must be maintained.

(f) The saturation index value of the pool water must be within the range of positive 0.3 and minus 0.3. The saturation index shall be calculated in accordance with Table 5.

(5) Water Clarity and Temperature.

(a) The water must have sufficient clarity at all times that the drain grates or covers in the deepest part of the pool are readily visible. As an alternative test for clarity, a black disk, six inches in diameter, must be readily visible if placed on a white field in the deepest part of the pool.

(b) Pool water temperatures for general use should be within the range of 82 degrees Fahrenheit, 28 degrees Celsius, to 86 degrees Fahrenheit, 30 degrees Celsius.

(c) The minimum water temperature for a pool is 78 degrees Fahrenheit, 26 degrees Celsius.

(d) The local health department may grant exemption to the pool water temperature requirements for a special purpose pool including a cold plunge pool, but may not exempt maximum hot water temperatures for a spa pool.

| | |
|---------------------------|-------|
| 3000 to 3999 | 12.4 |
| 4000 to 4999 | 12.5 |
| 5000 to 5999 | 12.55 |
| 6000 to 6999 | 12.6 |
| 7000 to 7999 | 12.65 |
| each additional 1000, add | .05 |

If the SATURATION INDEX is 0, the water is chemically in balance.
 If the INDEX is a minus value, corrosive tendencies are indicated.
 If the INDEX is a positive value, scale-forming tendencies are indicated.
 EXAMPLE: Assume the following factors:
 pH 7.5; temperature 80 degrees F, 19 degrees C;
 calcium hardness 235; total alkalinity 100; and total dissolved solids 999.
 pH = 7.5
 TF = 0.7
 CF = 1.9
 AF = 2.0
 TDSF = 12.1
 TOTAL: 7.5 + 0.7 + 1.9 + 2.0 - 12.1 = 0.0
 This water is balanced.

TABLE 6

| | DISINFECTANT LEVELS AND CHEMICAL PARAMETERS | | |
|--|---|-------------------|-------------------|
| | POOLS | SPAS | SPECIAL PURPOSE |
| Stabilized Chlorine (milligrams per liter) | | | |
| pH 7.2 to 7.6 | 2.0(1) | 3.0(1) | 2.0(1) |
| pH 7.7 to 8.0 | 3.0(1) | 5.0(1) | 3.0(1) |
| Non-Stabilized Chlorine (milligrams per liter) | | | |
| pH 7.2 to 7.6 | 1.0(1) | 2.0(1) | 2.0(1) |
| pH 7.7 to 8.0 | 2.0(1) | 3.0(1) | 3.0(1) |
| Bromine (milligrams per liter) | 4.0(1) | 4.0(1) | 4.0(1) |
| Iodine (milligrams per liter) | 1.0(1) | 1.0(1) | 1.0(1) |
| Ultraviolet and Hydrogen Peroxide (milligrams per liter hydrogen peroxide) | 40.0(1) | 40.0(1) | 40.0(1) |
| pH | 7.2 to 7.8 | 7.2 to 7.8 | 7.2 to 7.8 |
| Total Dissolved Solids (TDS) over start-up TDS (milligrams per liter) | 1,500 | 1,500 | 1,500 |
| Cyanuric Acid (milligrams per liter) | 10 to 100 | 10 to 100 | 10 to 100 |
| Maximum Temperature (degrees Fahrenheit) | 104 | 104 | 104 |
| Calcium Hardness (milligrams per liter as calcium carbonate) | 200(1) | 200(1) | 200(1) |
| Total Alkalinity (milligrams per liter as calcium carbonate) | | | |
| Plaster Pools | 100 to 125 | 80 to 150 | 100 to 125 |
| Painted or Fiberglass Pools | 125 to 150 | 80 to 150 | 125 to 150 |
| Saturation Index (see Table 5) | Plus or Minus 0.3 | Plus or Minus 0.3 | Plus or Minus 0.3 |
| Chloramines (combined chlorine residual, milligrams per liter) | 0.5 | 0.5 | 0.5 |

Note (1): Minimum Value

(6) Pool Water Sampling and Testing.

(a) At the direction of the Local Health Officer, the pool operator or a representative of the local health department shall collect a pool water sample from each public pool at least once per month or at a more frequent interval as determined by the Local health Officer. A seasonal public pool during the off season and any public pool while it is temporarily closed, if the pool is closed for an interval exceeding half of that particular month, are exempt from the requirement for monthly sampling. The operator or local health department representative shall submit the pool water sample to a laboratory approved under R444-14 to perform

TABLE 5

CHEMICAL VALUES AND FORMULA FOR CALCULATING SATURATION INDEX

The formula for calculating the saturation index is:

$$SI = pH + TF + CF + AF - TDSF$$

SI means saturation index

TF means temperature factor

CF means calcium factor

mg/l means milligrams per liter

deg F means degrees Fahrenheit

AF means alkalinity factor

TDSF means total dissolved solids factor.

| Temperature | | Calcium Hardness | | Total Alkalinity | |
|-------------|-----|------------------|-----|------------------|-----|
| deg. F | TF | mg/l | CF | mg/l | AF |
| 32 | 0.0 | 25 | 1.0 | 25 | 1.4 |
| 37 | 0.1 | 50 | 1.3 | 50 | 1.7 |
| 46 | 0.2 | 75 | 1.5 | 75 | 1.9 |
| 53 | 0.3 | 100 | 1.6 | 100 | 2.0 |
| 60 | 0.4 | 125 | 1.7 | 125 | 2.1 |
| 66 | 0.5 | 150 | 1.8 | 150 | 2.2 |
| 76 | 0.6 | 200 | 1.9 | 200 | 2.3 |
| 84 | 0.7 | 250 | 2.0 | 250 | 2.4 |
| 94 | 0.8 | 300 | 2.1 | 300 | 2.5 |
| 105 | 0.9 | 400 | 2.2 | 400 | 2.6 |
| 128 | 1.0 | 800 | 2.5 | 800 | 2.9 |

Total Dissolved Solids

| mg/l | TDSF |
|--------------|------|
| 0 to 999 | 12.1 |
| 1000 to 1999 | 12.2 |
| 2000 to 2999 | 12.3 |

total coliform and heterotrophic plate count testing.

(b) The operator or local health department shall have the laboratory analyze the sample for total coliform and heterotrophic plate count using methods allowed under R444-14-4.

(c) If the operator submits the sample as required by local health department, the operator shall require the laboratory to report sample results within five working days to the local health department and operator.

(d) A pool water sample fails bacteriological quality standards if it:

(i) Contains more than 200 bacteria per milliliter, as determined by the heterotrophic plate count or

(ii) Shows a positive test for presence of coliform or contains more than 1.0 coliform organisms per 100 milliliters.

(e) Not more than 1 of 5 samples may fail bacteriological quality standards. Failure of any bacteriological water quality sample shall require submission of a second sample within one lab receiving day after the sample report has been received.

R392-302-28. Cleaning Pools.

(1) The operator shall clean the bottom of the pool as often as needed to keep the pool free of visible dirt.

(2) The operator shall clean the surface of the pool as often as needed to keep the pool free of visible scum or floating matter.

(3) The operator shall keep all pool shell surfaces, handrails, floors, walls, and ceilings of rooms enclosing pools, dressing rooms and equipment rooms clean, sanitary, and in good repair.

(4) The operator shall respond to all discovered releases of fecal matter into a public pool in accordance with the following protocol: Centers for Disease Control and Prevention. Fecal Accident Response Recommendations for Pool Staff and Notice to Readers--Revised Guidance for Responding to Fecal Accidents in Disinfected Swimming Venues. Morbidity Mortality Weekly Report February 15, 2008 Volume 57, pages 151-152 and May 25, 2001 Volume 50, pages 416-417, which are incorporated by reference. The operator shall include in the records required in R392-302-29 (2) information about all fecal matter releases into a public pool. The records shall include date, time, and where the fecal matter was discovered; whether the fecal matter was loose or solid; and the responses taken. The Local Health Officer may approve the alteration of the required Centers for Disease Control protocol for the hyperchlorination step for a loose fecal release if an operator is able to achieve a 99.9 percent kill or removal of cryptosporidium oocysts in the entire pool system by another method such as ultraviolet light, ozone, or enhanced filtration prior to allowing bathers to reenter the pool.

R392-302-29. Supervision of Pools.

(1) Public pools must be supervised by an operator that is certified or recertified by a program of training and testing that is approved by the Utah Department of Health. The local health department may determine the appropriate numbers of pools any one certified operator may supervise using criteria based on pool compliance history, local considerations of time and distance, and the individual operator's abilities.

(2) The pool operator must keep written records of all information pertinent to the operation, maintenance and sanitation of each pool facility. Records must be available at the facility and be readily accessible. The pool operator must make records available to the department or the local health department having jurisdiction upon their request. These records must include disinfectant residual in the pool water, pH and temperature of the pool water, pool circulation rate,

quantities of chemicals and filter aid used, filter head loss, filter washing schedule, cleaning and disinfecting schedule for pool decks and dressing rooms, occurrences of fecal release into the pool water or onto the pool deck, bather load, and other information required by the local health department. The pool operator must keep the records at the facility, for at least two operating seasons.

(3) The public pool owner, in consultation with the qualified operator designated in accordance with 392-302-29 (1), shall develop an operation, maintenance and sanitation plan for the pool that will assure that the pool water meets the sanitation and quality standards set forth in this rule. The plan shall be in writing and available for inspection by the local health department. At a minimum the plan shall include the frequency of measurements of pool disinfectant residuals, pH and pool water temperature that will be taken. The plan shall also specify who is responsible to take and record the measurements.

(4) If the public pool water samples required in Section R392-302-27 (5) fail bacteriological quality standards as defined in Section R392-302-27 (5), the local health department shall require the public pool owner and qualified operator to develop an acceptable plan to correct the problem. The local health department may require more frequent water samples, additional training for the qualified operator and also may require that:

(a) the pool operator measure and record the level of disinfectant residuals, pH, and pool water temperature four times a day (if oxidation reduction potential technology is used in accordance with this rule, the local health department may reduce the water testing frequency requirement) or

(b) the pool operator read flow rate gauges and record the pool circulation rate four times a day.

(5) Bather load must be limited if necessary to insure the safety of bathers and pool water quality as required in Section R392-302-27.

(6) A sign that meets the requirements of a "2 Inch Safety Sign" in R392-302-34(1), (2) and (3)(b) must be posted in the immediate vicinity of the pool stating the location of the nearest telephone and emergency telephone numbers which shall include 911 or other local emergency numbers.

R392-302-30. Supervision of Bathers.

(1) Access to the pool must be prohibited when the facility is not open for use.

(2) Lifeguard service must be provided at a public pool if direct fees are charged or public funds support the operation of the pool. If a public pool is normally exempt from the requirement to provide lifeguard services, but is used for some purpose that would require lifeguard services, then lifeguard services are required during the period of that use. For other pools, lifeguard service must be provided, or signs must be clearly posted indicating that lifeguard service is not provided.

(3) The Department shall approve programs which provide training and certifications to lifeguards. These programs shall meet the standards set in Subsection R392-302-30(4)(a).

(4) A lifeguard must:

(a) Obtain training and certification in:

(i) lifeguarding by the American Red Cross or an equivalent program; and

(ii) professional level skills in CPR, AED use, and other resuscitation skills consistent with the 2010 American Heart Association Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiovascular Care; and

(iii) first aid consistent with the 2010 American Heart Association Guidelines for First Aid.

(b) Be on duty at all times when the pool is open to use by bathers, except as provided in Subsection R392-302-30(2); and

(c) Have full authority to enforce all rules of safety and sanitation.

(5) A lifeguard shall not have any other duties to perform other than the supervision and safety of bathers while he or she is assigned lifeguarding duties.

(6) Where lifeguard service is required, the number of lifeguards must be sufficient to allow for continuous supervision of all bathers, and surveillance over total pool floor areas.

(7) Lifeguards must be relieved in the rotation of lifeguarding responsibilities at least every 30 minutes with a work break of at least 10 minutes every hour.

(8) The facility operator and staff are responsible for the enforcement of the following personal hygiene and behavior rules:

(a) A bather using the facility must take a cleansing shower before entering the pool enclosure. A bather leaving the pool to use the toilet must take a second cleansing shower before returning to the pool enclosure.

(b) The operator and lifeguards shall exclude any person having a communicable disease transmissible by water from using the pool. A person having any exposed sub-epidermal tissue, including open blisters, cuts, or other lesions may not use a public pool. A person who has or has had diarrhea within the last two weeks caused by an unknown source or from any communicable or fecal-borne disease may not enter any public pool.

(c) Any child under three years old, any child not toilet trained, and anyone who lacks control of defecation shall wear a water resistant swim diaper and waterproof swimwear. Swim diapers and waterproof swimwear shall have waist and leg openings fitted such that they are in contact with the waist or leg around the entire circumference.

(d) Running, boisterous play, or rough play, except supervised water sports, are prohibited.

(e) Where no lifeguard service is provided, children 14 and under shall not use a pool without responsible adult supervision. Children under the age of five shall not use a spa or hot tub.

(f) The lifeguards and operator shall ensure that diapers shall be changed only in restrooms not at poolside. The person or persons who change the diaper must wash their hands thoroughly with soap before returning to the pool. The diapered person using a swim diaper and waterproof swimwear discussed in subsection R392-302-30(7)(c) above must undergo a cleansing shower before returning to the pool.

(f) Placards that meet the requirements of "Rule Sign" in R392-302-34(1), (2) and (3)(c) and embody the above rules of personal hygiene and behavior must be conspicuously posted in the pool enclosure and in the dressing rooms and lifeguard rooms (where applicable).

R392-302-31. Special Purpose Pools.

(1) Special purpose pools must meet all applicable requirements of all Sections of R392-302 in addition to those of this Section as they apply to special design features and uses of special purpose pools.

(a) Special purpose pool projects require consultation with the local health department having jurisdiction in order that consideration can be given to areas where potential problems may exist and before deviations from some of the requirements are approved.

(b) The local health officer shall require such measures as deemed necessary to assure the health and safety of special purpose pool patrons.

(2) Spa Pools.

(a) This subsection supercedes R392-302-6(5). A spa pool shell may be a color other than white or light pastel.

(b) Spa pools shall meet the bather load requirement of R392-302-7(1)(a).

(c) A spa pool may not exceed a maximum water depth of 4 feet, 1.22 meters. The department may grant exceptions to the maximum depth requirement for a spa pool designed for special purposes, such as instruction, treatment, or therapy.

(d) This subsection supercedes R392-302-12(1)(f). A spa pool may be equipped with a single entry/exit. A spa pool must be equipped with at least one handrail for each 50 feet, 15.24 meters, of perimeter, or portion thereof, to designate the point of entry and exit. Points of entry and exit must be evenly spaced around the perimeter of the spa pool and afford unobstructed entry and egress.

(e) This subsection supercedes R392-302-12(3)(c). In a spa pool where the bottom step serves as a bench or seat, the bottom riser may be a maximum of 14 inches, 35.56 centimeters.

(f) This subsection supercedes R392-302-13(1). A spa pool must have a continuous, unobstructed deck at least 3 feet, 91.44 centimeters, wide around 25 percent or more of the spa.

(g) This subsection supercedes R392-302-13(5). The department may allow spa decks or steps made of sealed, clear-heart redwood.

(h) A pool deck may be included as part of the spa deck if the pools are separated by a minimum of 5 feet, 1.52 meters. An exception is allowed to the deck and pool separation requirements if a spa pool and another pool are constructed adjacent to each other and share a common pool sidewall which separates the two pools. The top surface of the common pool side wall may not exceed 18 inches, 45.7 centimeters, in width and shall have markings indicating "No Walking" or an icon that represents the same, provided in block letters at least four inches, 10.16 centimeters, in height, as required by R392-302-34(3)(a), in a contrasting color on the horizontal surface of the common wall. Additionally the deck space around the remainder of the spa shall be a minimum of five feet, 1.52 meters.

(i) This subsection supercedes R392-302-15. The local health officer may exempt a spa pool from depth marking requirements if the spa pool owner can successfully demonstrate to the local health officer that bather safety is not compromised by the elimination of the markings.

(j) A spa pool must have a minimum of one turnover every 30 minutes.

(k) Spa pool air induction systems shall meet the requirements of R392-302-16(12)(a) through (b). Jet or water agitation systems shall meet the requirements of R392-302-16(13).

(l) Spa pool filtration system inlets shall be wall-type inlets and the number of inlets shall be based on a minimum of one for each 20 feet, 6.10 meters, or fraction thereof, of pool perimeter.

(m) Spa pool outlets shall meet all of the requirements of subsections R392-302-18(1) through R392-302-18(4)(e); however, the following exceptions apply:

(i) Multiple spa outlets shall be spaced at least three feet apart from each other as measured from the centers of the drain covers or grates or a third drain shall be provided and the separation distance between individual outlets shall be at the maximum possible spacing.

(ii) The department may exempt an acrylic or fiberglass spa from the requirement to locate outlets at the deepest point in the pool if the outlets are located on side walls within three inches of the pool floor and a wet-vacuum is available on site to remove any water left in the pool after draining.

(n) A spa pool must have a minimum number of surface skimmers based on one skimmer for each 100 square feet, 9.29 square meters of surface area.

(o) A spa pool must be equipped with an oxidation reduction potential controller which monitors chemical demands, including pH and disinfectant demands, and regulates the amount of chemicals fed into the pool circulation system. A spa pool constructed and approved prior to September 16, 1996 is exempt from this requirement if it is able to meet bacteriological quality as required in Subsection R392-302-27 (5)(e).

(p) A spa pool is exempt from the Section R392-302-22, except for Section R392-302-22(3).

(q) The maximum water temperature for a spa pool is 104 degrees Fahrenheit, 40 degrees Celsius.

(r) A spa pool shall meet the total alkalinity requirements of R392-302-27 (3)(d).

(s) A spa pool must have a sign that meets the requirements of a "Rule Sign" in R392-302-34(1),(2) and (3)(c) which contains the following information:

(i) The word "caution" centered at the top of the sign.

(ii) Elderly persons and those suffering from heart disease, diabetes or high blood pressure should consult a physician before using the spa pool.

(iii) Persons suffering from a communicable disease transmissible via water may not use the spa pool. Persons using prescription medications should consult a physician before using the spa.

(iv) Individuals under the influence of alcohol or other impairing chemical substances should not use the spa pool.

(v) Bathers should not use the spa pool alone.

(vi) Pregnant women should not use the spa pool without consulting their physicians.

(vii) Persons should not spend more than 15 minutes in the spa in any one session.

(viii) Children under the age of 14 must be accompanied and supervised by at least one responsible adult over the age of 18 years, when lifeguards are not on duty.

(ix) Children under the age of five years are prohibited from bathing in a spa or hot tub.

(x) Running or engaging in unsafe activities or horseplay in or around the spa pool is prohibited.

(t) Water jets and air induction ports on spa pools must be controlled by an automatic timer which limits the duration of their use to 15 minutes per each cycle of operation. The operator shall mount the timer switch in a location which requires the bather to exit the spa before the timer can be reset for another 15 minute cycle or part thereof.

(3) Wading Pools.

(a) Wading pools shall be separated from other pools. Wading pools may not share common circulation, filtration, or chemical treatment systems, or walls.

(b) A wading pool may not exceed a maximum water depth of 2 feet, 60.96 centimeters.

(c) The deck of a wading pool may be included as part of adjacent pool decks.

(d) A wading pool must have a minimum of one turnover per hour and have a separate circulation system.

(e) A wading pool that utilizes wall inlets shall have a minimum of two equally spaced inlets around its perimeter at a minimum of one in each 20 feet, 6.10 meters, or fraction thereof.

(f) A wading pool shall have drainage to waste through a quick opening valve to facilitate emptying the wading pool should accidental bowel discharge or other contamination occur.

(4) Hydrotherapy Pools.

(a) A hydrotherapy pool shall at all times comply with R392-302-27 Disinfection and Quality of Water, R392-302-

28 Cleaning of Pools and R392-302-29 Supervision of Pools unless it is drained cleaned, and sanitized after each individual use.

(b) A hydrotherapy pool is exempt from all other requirements of R392-302, only if use of the hydrotherapy pool is restricted to therapeutic uses and is under the continuous and direct supervision of licensed medical or physiotherapy personnel.

(c) Local health departments may enter and examine the use of hydrotherapy pools to respond to complaints, to assure that use of the pool is being properly supervised, to examine records of testing and sampling, and to take samples to assure that water quality and cleanliness are maintained.

(d) A local health officer may grant an exception to section R392-302-31(4)(a) if the operator of the hydrotherapy pool can demonstrate that the exception will not compromise pool sanitation or the health or safety of users.

(5) Water Slides.

(a) Slide Flumes.

(i) The flumes within enclosed slides must be designed to prevent accumulation of hazardous concentrations of toxic chemical fumes.

(ii) All curves, turns, and tunnels within the path of a slide flume must be designed so that body contact with the flume or tunnel does not present an injury hazard. The slide flume must be banked to keep the slider's body safely inside the flume.

(iii) The flume must be free of hazards including joints and mechanical attachments separations, splinters, holes, cracks, or abrasive characteristics.

(iv) Wall thickness of flumes must be thick enough so that the continuous and combined action of hydrostatic, dynamic, and static loads and normal environmental deterioration will not cause structural failures which could result in injury. The facility operator or owner shall insure that repairs or patchwork maintains original designed levels of safety and structural integrity. The facility operator or owner shall insure that repairs or patchwork is performed in accordance with manufacturer's guidelines.

(v) Multiple-flume slides must have parallel exits or be constructed, so that the projected path of their centerlines do not intersect within a distance of less than 8 feet, 2.44 meters, beyond the point of forward momentum of the heaviest bather permitted by the engineered design.

(vi) A slide flume exit must provide safe entry into the splash pool. Design features for safe entry include a water backup, and a deceleration distance adequate to reduce the slider's exit velocity to a safe speed. Other methods may be acceptable if safe exiting from the slide flume is demonstrated to the department.

(b) Flume Clearance Distances.

(i) A distance of at least 4 feet, 1.22 meters, must be provided between the side of a slide flume exit and a splash pool side wall.

(ii) The distance between nearest sides of adjacent slide flume exits must be at least 6 feet, 1.83 meters.

(iii) A distance between a slide flume exit and the opposite end of the splash pool, excluding steps, must be at least 20 feet, 6.10 meters.

(iv) The distance between the side of the vehicle flume exit and the pool side wall must be at least 6 feet, 1.83 meters.

(v) The distance between nearest sides of adjacent vehicle slide flume exits must be at least 8 feet, 2.44 meters.

(vi) The distance between a vehicle slide flume exit and the opposite end of the splash pool, excluding steps, must be long enough to provide clear, unobstructed travel for at least 8 feet, 2.44 meters, beyond the point of forward momentum of the heaviest bather permitted by the engineered design.

(c) Splash Pool Dimensions.

(i) The depth of a water slide splash pool at the end of a horizontally oriented slide flume exit must be at least 3 feet, 9.14 centimeters, but may be required to be deeper if the pool design incorporates special features that may increase risks to bathers as determined by the department.

(ii) The depth must be maintained in front of the flume for a distance of at least 20 feet, 6.10 meters, from which point the splash pool floor may have a constant slope upward. Slopes may not be designed or constructed steeper than a 1 to 10 ratio.

(iii) The operating water depth of a vehicle slide splash pool, at the flume exit, must be a minimum of 3 feet 6 inches, 1.07 meters. This depth must be maintained to the point at which forward travel of the vehicle ends. From the point at which forward travel ends, the floor may have a constant upward slope to the pool exit at a ratio not to exceed 1 to 10.

(iv) The department may waive minimum depth and distance requirements for a splash pool and approve a special exit system if the designer can demonstrate to the department that safe exit from the flume into the splash pool can be assured.

(v) A travel path with a minimum width of 4 feet, 1.22 meters, must be provided between the splash pool deck and the top of the flume.

(d) General Water Slide Requirements.

(i) Stairways serving a slide may not retain standing water. Stairways must have non-slip surfaces and shall conform to the requirements of applicable building codes.

(ii) Vehicles, including toboggans, sleds, inflatable tubes, and mats must be designed and manufactured of materials which will safeguard the safety of riders.

(iii) Water slides shall meet the bather load requirements of R392-302-7(1)(d).

(e) Water Slide Circulation Systems.

(i) Splash pool overflow reservoirs must have sufficient volume to contain at least two minutes of flow from the splash pool overflow. Splash pool overflow reservoirs must have enough water to insure that the splash pool will maintain a constant water depth.

(ii) The circulation and filtration equipment of a special purpose pool must be sized to turn over the entire system's water at least once every hour.

(iii) Splash pool overflow reservoirs must circulate water through the water treatment system and return when flume supply service pumps are turned off.

(iv) Flume pumps and motors must be sized, as specified by the flume manufacturer, and must meet all NSF/ANSI 50-2015, Section 6. Centrifugal Pumps, standards for pool pumps.

(v) Flume supply service pumps must have check valves on all suction lines.

(vi) The splash pool and the splash pool overflow reservoir must be designed to prohibit bather entrapment as water flows from the splash pool to the overflow reservoir.

(vii) Perimeter overflow gutter systems must meet the requirements of Section R392-302-19, except that gutters are not required directly under slide flumes or along the weirs which separate splash pools and splash pool overflow reservoirs.

(viii) Pump reservoir areas must be accessible for cleaning and maintenance.

(f) Slide Signs.

(i) Signs that meet the requirements in R392-302-34(1), (2) and (3)(c) and reflecting the slide manufacturer's recommendations must be mounted adjacent to the entrance to a water slide and at other appropriate areas in accordance with R392-302-34(1). The heading of the signs shall be, "SLIDE INSTRUCTIONS, WARNINGS, AND REQUIREMENTS". The body of the signs shall state at least the following:

(A) Instructions including:

- (I) proper riding position,
- (II) expected rider conduct,
- (III) dispatch procedures,
- (IV) exiting procedures, and
- (V) obeying slide attendants or lifeguards.

(B) Warnings to include:

- (I) slide characteristics such as speed, and
- (II) depth of water in splash zone.

(C) Requirements which include that riders being free of medical conditions identified by the manufacturer such as pregnancy, heart conditions, back conditions, or musculoskeletal conditions.

(6) Interactive Water Feature Requirements.

(a) All parts of the interactive water feature shall be designed, constructed, maintained, and operated so there are no slip, fall, or other safety hazards, and shall meet the standards of the State Construction Code Title 15a, State Construction and Fire Codes Act.

(b) Interactive water feature nozzles that spray from the ground level shall be flush with the ground, with openings no greater than one-half inch in diameter. Spray devices that extend above ground level shall be clearly visible.

(c) Areas adjacent to the water feature collection zones shall be sloped away at a minimum of two percent from the interactive water feature to deck drains or other approved surface water disposal systems. A continuous deck at least 3 feet, 0.91 meters, wide as measured from the edge of the collection zones must extend completely around the interactive water feature.

(d) Water discharged from all interactive water feature fountain or spray features shall freely drain by gravity flow through a main drain fitting to a below grade sump or collection system which discharges to a collector tank.

(e) All interactive water feature foggers and misters that produce finely atomized mists shall be supplied directly from a potable water source and not from the underground reservoir.

(f) The interactive water feature shall have an automated oxidation reduction potential (ORP) and pH controller installed and in operation whenever the feature is open for use. The controller shall be capable of maintaining disinfection and pH levels within the requirements for special purpose pools listed in Table 6. In addition, an approved secondary disinfection system that meets the requirements of in R392-302-33 (4)(c) through (4)(f)(iii) shall be installed and in operation whenever the feature is open for use.

(g) A sign that meets the requirement R392-302-34(1), (2) and (3)(c) stating:

(i) The word "CAUTION" centered at the top of the sign.

(ii) No running on or around the interactive water feature.

(iii) Children under the age of 12 must have adult supervision.

(iv) No food, drink, glass or pets are allowed on or around the interactive water feature.

(v) For the health of all users restrooms shall be used for the changing of diapers.

(h) If the interactive water feature is operated at night, five foot-candles of light shall be provided in the all areas of the water feature. Lighting shall be installed in accordance with manufacturer's specifications and approved for such use by UL or NSF.

(i) Hydraulics.

(i) The interactive water feature filter system shall be capable of filtering and treating the entire water volume of the water feature within 30 minutes.

(ii) The interactive water feature filter system shall draft

from the collector tank and return filtered and treated water to the tank via a minimum of 4 equally spaced inlet fittings. Inlet spacing shall also meet the requirements of section R392-302-17.

(iii) The interactive water feature circulation system shall be on a separate loop and not directly interconnected with the interactive water feature pump.

(iv) The suction intake of the interactive water feature pump in the underground reservoir shall be located adjacent to the circulation return line and shall be located to maximize uniform circulation of the tank.

(v) An automated water level controller shall be provided for the interactive water feature, and the drinking water line that supplies the feature shall meet the requirements of R392-302-4.

(vi) The water velocity through the feature nozzles of the interactive water features shall meet manufacturer's specifications and shall not exceed 20 feet per second.

(vii) The minimum size of the interactive water feature sump or collector tank shall be equal to the volume of 3 minutes of the combined flow of all feature pumps and the filter pump. Access lids or doors shall be provided to the sump and collector tank. The lids or doors shall be sized to allow easy maintenance and shall provide security from unauthorized access. Stairs or a ladder shall be provided as needed to ensure safe entry into the tank for cleaning and inspection.

(viii) The suction intake from the interactive water feature circulation pump shall be located in the lowest portion of the underground reservoir.

(ix) A means of vacuuming and completely draining the interactive water feature tank shall be provided.

(j) An interactive water feature is exempt from:

(i) The wall requirement of section R392-302-10;

(ii) The ladder, recessed step, stair, and handrail requirements of section R392-302-12;

(iii) The fencing and access barrier requirements of section R392-302-14;

(iv) The outlet requirements of section R392-302-18 except any submerged outlet that may create an entrapment hazard to users of the feature shall meet the requirements of R392-302-18(1)(a);

(v) The overflow gutter and skimming device requirements of section R392-302-19;

(vi) The safety and lifesaving requirements of section R392-302-22, except that an interactive water feature shall be equipped with a first aid kit as required by subsection R392-302-22(3);

(vii) The restroom and shower facility requirements of section R392-302-25 as long as toilets, lavatories and changing tables are available within 150 feet;

(viii) The pool water clarity and temperature requirements of subsection R392-302-27(4);

(ix) The diving area requirement of R392-302-11 except R392-302-11(4)(a) and (b) may be required by the Local Health Officer if the Local Health Officer determines that a diving risk exists;

(x) The depth marking and safety rope requirements of R392-302-15;

(xi) The underwater lighting requirements of R392-302-23(1),(2), and (3);

(xii) The supervision of bathers requirements of R392-302-30;

(xiii) The bather load requirements of R392-302-7; and

(xiv) The pool color requirements of R392-302-6(5).

(k) All interactive water features shall be constructed with a collection zone that meets the requirements of R392-302-6. Vinyl liners that are not bonded to a collection zone surface are prohibited. A vinyl liner that is bonded to a

collection zone shall have at least a 60 millimeter thickness. Sand, clay, or earth collection zones are prohibited.

(i) The collection zone material of an interactive water feature must withstand the stresses associated with the normal uses of the interactive water feature and regular maintenance. The collection zone structure and associated tanks shall withstand, without any damage to the structure, the stresses of complete emptying of the interactive water feature and associated tanks without shoring or additional support.

(ii) The collection zone of an interactive water feature must be designed and constructed in a manner that provides a smooth, easily cleanable, non-abrasive, and slip resistant surface. The collection zone surfaces must be free of cracks or open joints with the exception of structural expansion joints or openings that allow water to drain to the collector tank. Openings that drain to the collector tank shall not pass a one-half inch sphere. The owner of a non-cementitious interactive water feature shall submit documentation with the plans required in R392-302-8 that the surface material has been tested and passed by an American National Standards Institute (ANSI) accredited testing facility using one of the following standards that is appropriate to the material used:

(A) for pools built with prefabricated pool sections or pool members, the International Cast Products Association (ICPA) standard ANSI/ICPA SS-1-2001; or

(B) a standard that has been approved by the Department based on whether the standard is applicable to the surface and whether it determines compliance with the requirements of Section R392-302-6.

R392-302-32. Advisory Committee.

(1) An advisory committee to the Department regarding regulation of public pools is hereby authorized.

(2) The advisory committee shall be appointed by the Executive Director. Representatives from local health departments, pool engineering, construction or maintenance companies and pool owners may be represented on the committee.

(3) Consistent with R380-1, the Executive Director may seek the advice of the advisory committee regarding interpretation of this rule, the granting of exemptions and related matters.

R392-302-33. Cryptosporidiosis Watches and Warnings.

(1) The Executive Director or local health officer may issue cryptosporidiosis watches or cryptosporidiosis warnings as methods of intervention for likely or indicated outbreaks of cryptosporidiosis. The Executive Director or local health officer may issue a cryptosporidiosis watch if there is a heightened likelihood of a cryptosporidiosis outbreak. The Executive Director or local health officer may issue a cryptosporidiosis warning if there have been reports of cryptosporidiosis above the background level reported for the disease. The Executive Director or local health officer shall include the geographic area and pool type covered in the warning and may restrict certain persons from using public pools.

(2) If a cryptosporidiosis watch or a cryptosporidiosis warning has been issued, the operator of any public pool shall post a notice sign meeting at a minimum the ANSI Z535.2-2011 requirements for NOTICE signs with a 10-foot viewing distance and approved by the local health officer. An Adobe Acrobat .pdf version of the sign that meets the requirements of this section shall be made available from the Department or the local health department. The notice sign shall be placed so that all patrons are alerted to the cryptosporidium-targeted requirements prior to deciding whether to use the swimming pool. The sign shall be at least 17 inches, 43 centimeters, wide by 11 inches, 28 centimeters, high.

(a) Centered immediately below the blue panel shall appear the words "CRYPTO DISEASE PREVENTION" in capital letters.

(b) The body of the notice sign shall be in upper case letters at least 1.0 centimeters high and include the following four bulleted statements in black letters:

- All with diarrhea in the past 2 weeks shall not use the pool.

- All users must shower with soap to remove all fecal material prior to pool entry and after using the toilet or a diaper change.

- All less than 3 yrs or who wear diapers must wear a swim diaper and waterproof swimwear. Diapers may only be changed in restrooms or changing stations.

- Keep pool water out of your mouth.

(3) If a cryptosporidium warning has been issued, each operator of a public pool subject to the warning shall, at a minimum, implement the following cryptosporidium counter measures:

- (a) maintain the disinfectant concentration within the range between two mg/l (four mg/l for bromine) and the concentration listed on the product's Environmental Protection Agency mandated label as the maximum reentry concentration, but in no case more than five mg/l (10 mg/l for bromine);

- (b) maintain the pH between 7.2 and 7.5; and

- (c) maintain the cyanuric acid level that meets the requirement of R392-302-27(3), except the maximum level shall be reduced to 30 mg/l.

(4)(a) If a cryptosporidium warning has been issued, in addition to the requirements listed in R392-302-33(3), the owner or operator of a public pool shall implement any additional cryptosporidium countermeasures listed in subsection below sufficient to achieve at least a 99.9 percent destruction or removal of cryptosporidium oocysts twice weekly, except as provided in R392-302-33(4)(b).

- (b) Hyperchlorination using sodium hypochlorite or calcium hypochlorite to achieve a concentration multiplied by time (CT) value of 15,300 mg/l minutes. Table 7 lists examples of chlorine concentrations and time periods that may be used to achieve the required CT value. The operator shall not allow anyone to use the pool if the chlorine concentration exceeds the Environmental Protection Agency maximum reentry concentration listed on the product's label, but in no case if the concentration exceeds five mg/l. The operator of any public pool not required to have a lifeguard by R392-302-30 (2) shall hyperchlorinate at least once weekly.

- (c) A full flow ultraviolet treatment system that meets the requirements of standard NSF/ANSI 50-2015 for ultraviolet light process equipment. The owner or operator shall ensure that the system is installed and operated according to the manufacturer's recommendations. The owner or operator shall obtain from the manufacturer of the system documentation of third-party challenge testing that the system can achieve a single pass 99.9 percent inactivation of cryptosporidium or the bacteriophage MS2 at the pool design flow rate and during normal operating conditions. The owner or operator shall maintain and make available for inspection the manufacturer's documentation.

- (d) An ozone treatment system that achieves a CT value of 7.4 and a flow-through rate at least four times the volume of the pool every three and a half days. The system shall meet the requirements of standard NSF/ANSI 50-2015 for ozone process equipment. The owner or operator shall ensure that the system is installed and operated according to the manufacturer's recommendations.

- (e) A cryptosporidium oocyst-targeted filter system installed and operated according to the manufacturer's

recommendations. The filter shall meet the requirements of R392-302-20. The owner or operator shall obtain from the manufacturer of the system documentation of third-party challenge testing that the system can achieve a single pass 99 percent reduction of particles in the range of 4 to 6 microns or cryptosporidium oocysts at the pool design flow rate and normal operating conditions. The owner or operator shall maintain and make available for inspection the manufacturer's documentation.

- (f) A system approved by the local health officer. The health officer's approval of a system for use as an alternative shall be based on the system's documented ability to:

- (i) achieve cryptosporidium removal or inactivation to a level at least equivalent to the requirements in R392-302-33(4)(a);

- (ii) assure safety for swimmers and pool operators; and

- (iii) comply with all other applicable rules and federal regulations.

TABLE 7

Chlorine Concentration and Contact Time to Achieve CT = 15,300

| Chlorine Concentration | Contact Time |
|------------------------|----------------------------|
| 1.0 mg/l | 15,300 minutes (255 hours) |
| 10 mg/l | 1,530 minutes (25.5 hours) |
| 20 mg/l | 765 minutes (12.75 hours) |

- (5) If the Executive Director or local health officer issues a restriction on the use of public pools by certain persons as part of the cryptosporidium warning the operator shall restrict persons within that segment of the population from using the facility.

- (6) If the Executive Director or local health officer determines that a pool is a cryptosporidiosis threat to public health, he may order the pool to close. The owner or operator of the pool may not reopen until the person issuing the order has rescinded it.

R392-302-34. Signs.

- (1) Signs required in R392-302 shall be placed to alert and inform patrons in enough time that the patrons may take appropriate actions.

- (2) Signs shall be written in a lettering style, stroke width, spacing, and contrast with the background such that the sign is clearly visible.

- (3) As required in different subsections of this rule, sign lettering shall meet one or more, if stated, of the following minimum size standards:

- (a) "4 Inch Safety Sign" shall be written in all capital letters that are at least four inches, 10.2 centimeters in height.

- (b) "2 Inch Safety Sign" shall be written in all capital letters that are at least two inches, 5.1 centimeters, in height.

- (c) "Rule Signs" shall be written with any required signal word, warning or caution, as the sign heading in letters at least two inches, 5.1 centimeters, in height and the body or bulleted rules in letters at least 1.5 inches, 3.8 centimeters, in height.

- (i) If the sign can only be viewed from more than a distance of ten feet, 3.048 meters, the letter height shall be larger in the same proportion as the required viewing distance is to ten feet, 3.048 meters.

- (ii) The Local Health Officer may approve smaller letter sizes than those required in R392-302-34(3)(c) if the sign will always be viewed from less than a ten foot, 3.048 meters, distance and if the Local Health Officer agrees that the sign meets the requirements of R392-302-34(1) and (2).

**KEY: pools, spas, swimming, water
June 1, 2017**

Notice of Continuation November 7, 2016

26-1-30
26-15-2

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-100. Medicaid Primary Care Network Services.****R414-100-1. Introduction and Authority.**

This rule lists the services under the Medicaid Primary Care Network (PCN). The Primary Care Network is authorized by a waiver of federal Medicaid requirements approved by the federal Center for Medicare and Medicaid Services and allowed under Section 1115 of the Social Security Act effective January 1, 1999. This rule is authorized by Title 26, Chapter 18, UCA.

R414-100-2. Definitions.

(1) "Emergency" means the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- (a) placing the enrollee's health in serious jeopardy;
- (b) serious impairment to bodily functions;
- (c) serious dysfunction of any bodily organ or part; or
- (d) death.

(2) "Emergency services" means:

(a) attention provided within 24 hours of the onset of symptoms or within 24 hours of diagnosis;

(b) for a condition that requires acute care, and is not chronic;

(c) reimbursed only until the condition is stabilized sufficient that the patient can leave the hospital emergency department; and

(d) is not related to an organ transplant procedure.

(2) "Outpatient" means an enrollee who receives services from a licensed outpatient care facility.

(3) "Primary care" means services to diagnose and treat illness and injury as well as preventive health care services. Primary care promotes early identification and treatment of health problems, which can help to reduce unnecessary complications of illness or injury and maintain or improve overall health status.

R414-100-3. Services Available.

(1) To meet the requirements of 42 CFR 431.107, the department contracts with each provider who furnishes services under the PCN.

(2) By signing a provider agreement with the department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(3) By signing an application for Medicaid coverage, the enrollee agrees that the department's obligation to reimburse for services is governed by contract between the department and the provider.

(4) Medical or hospital services for which providers are reimbursed under the PCN are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(5) The following services in the Medicaid Primary Care Network are available to those adults found eligible under Section 1931 of the federal Social Security Act (Aid to Families of Dependent Children adults and medically needy adults):

(a) emergency services only in a designated hospital emergency department;

(b) primary care physician services provided directly by licensed physicians or osteopaths, or by licensed certified nurse practitioners, or physician assistants under appropriate supervision of the physician or osteopath, but not including

pregnancy related or mental health services by any of the listed providers;

(c) services associated with surgery or administration of anesthesia are physician services to be provided by physicians or licensed certified nurse anesthetists;

(d) laboratory and radiology services by licensed and certified providers;

(e) durable medical equipment, supplies and appliances used to assist the patient's medical recovery;

(f) preventive services, immunizations and health education methods and materials to promote wellness, disease prevention and manage illnesses;

(g) pharmacy services by a licensed pharmacy limited to four prescriptions per month, per client with no overrides or exceptions in the number of prescriptions;

(h) dental services are limited to examinations, cleanings, fillings, extractions, treatment of abscesses or infections and to be covered must be provided by a dentist in the office;

(i) transportation services limited to ambulance (ground and air) service for medical emergencies;

(j) interpretive services provided by contracting entities competent to provide medical translation services for people with limited English proficiency and interpretive services for the deaf; and

(k) vision services once every 12 months including an eye examination/refraction by a licensed ophthalmologists or optometrists, but not including the cost of glasses or other refractive device.

R414-100-4. Cost Sharing Provisions.

(1) Emergency department visits require a \$30 copayment.

(2) Outpatient office visits require a \$5 copayment for physician and physician-related visits. There is no copayment for preventive services, immunizations and health education.

(3) Dental office visits require a \$5 copayment.

(4) Laboratory and x-ray services:

(a) laboratory services costing less than \$50 require no copayment or co-insurance;

(b) laboratory services costing more than \$50 require a co-insurance of 5% of the Medicaid allowed amount;

(c) x-ray services costing less than \$100 require no copayment or co-insurance; and

(d) x-ray services costing more than \$100 require a co-insurance of 5% of the Medicaid allowed amount.

(5) Pharmacy services require:

(a) a \$5 copayment per prescription for generic drugs;

(b) a 25% of the estimated acquisition cost co-insurance for brand name drugs for which there is no generic equivalent; and

(c) a 100% copay for brand name drugs for which there is a generic equivalent.

(6) Durable medical equipment and supplies require a co-insurance of 10% of Medicaid allowed amount.

(7) The out-of-pocket maximum payment for copayments or co-insurance is limited to \$1000 per enrollee per enrollment year.

(8) Tribal members utilizing the federal Indian Health Care or tribal health care systems will not pay copayments, co-insurance or deductibles.

(9) Vision services require a \$5 copayment per office visit.

KEY: Medicaid, primary care network**July 1, 2002****Notice of Continuation May 5, 2017****26-18**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-200. Non-Traditional Medicaid Health Plan Services.****R414-200-1. Introduction and Authority.**

This rule lists the services under the Non-Traditional Medicaid Health Plan (NTHP). This plan is authorized by a waiver of federal Medicaid requirements approved by the federal Center for Medicare and Medicaid Services and allowed under Section 1115 of the Social Security Act effective January 1, 1999. This rule is authorized by Title 26, Chapter 18, UCA.

R414-200-2. Definitions.

(1) "Emergency" means the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- (a) placing the enrollee's health in serious jeopardy;
- (b) serious impairment to bodily functions;
- (c) serious dysfunction of any bodily organ or part; or
- (d) death.

(2) "Enrollee" means an eligible individual including Section 1931 Temporary Assistance for Needy Families Adults, the Section 1931 related medically needy and those eligible for Transitional Medicaid.

R414-200-3. Services Available.

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the NTHP.

(a) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(b) By signing an application for Medicaid coverage, the applicant agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

(2) Medical or hospital services for which providers are reimbursed under the Non-Traditional Medicaid Health Plan are limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(3) The following services, as more fully described and limited in provider contracts and provider manuals; are available to Non-Traditional Medicaid Health Plan enrollees:

(a) inpatient hospital services, provided by bed occupancy for 24 hours or more in an approved acute care general hospital under the care of a physician if the admission meets the established criteria for severity of illness and intensity of service;

(b) outpatient hospital services which are medically necessary diagnostic, therapeutic, preventive, or palliative care provided for less than 24 hours in outpatient departments located in or physically connected to an acute care general hospital;

(c) emergency services in dedicated hospital emergency departments;

(d) physician services provided directly by licensed physicians or osteopaths, or by licensed certified nurse practitioners, licensed certified nurse midwives, or physician assistants under appropriate supervision of the physician or osteopath.

(e) services associated with surgery or administration of anesthesia provided by physicians or licensed certified nurse anesthetists;

(f) vision care services by licensed ophthalmologists or licensed optometrists, within their scope of practice; limited to one annual eye examination or refraction and no eyeglasses.

(g) laboratory and radiology services provided by licensed and certified providers;

(h) dialysis to treat end-stage renal failure provided at a Medicare-certified dialysis facility;

(i) home health services defined as intermittent nursing care or skilled nursing care provided by a Medicare-certified home health agency;

(j) hospice services provided by a Medicare-certified hospice to terminally ill enrollees (six month or less life expectancy) who elect palliative versus aggressive care;

(k) abortion and sterilization services to the extent permitted by federal and state law and meeting the documentation requirement of 42 CFR 440, Subparts E and F;

(l) certain organ transplants;

(m) services provided in freestanding emergency centers, surgical centers and birthing centers;

(n) transportation services, limited to ambulance (ground and air) service for medical emergencies;

(o) preventive services, immunizations and health education activities and materials to promote wellness, prevent disease, and manage illness;

(p) family planning services provided by or authorized by a physician, certified nurse midwife, or nurse practitioner to the extent permitted by federal and state law;

(q) pharmacy services provided by a licensed pharmacy;

(r) inpatient mental health services, limited to 30 days per enrollee per calendar year;

(s) outpatient mental health services, limited to 30 visits per enrollee per calendar year;

(t) outpatient substance abuse services;

(u) dental services are not covered;

(v) interpretive services if they are provided by entities under contract with the Department of Health to provide medical translation services for people with limited English proficiency and interpretive services for the deaf;

(w) physical therapy services provided by a licensed physical therapist if authorized by a physician, limited to ten aggregated physical or occupational therapy visits per calendar year; and

(x) occupational therapy services provided for fine motor development, limited to ten aggregated physical or occupational therapy visits per year.

(4) Emergency services are:

(a) limited to attention provided within 24 hours of the onset of symptoms or within 24 hours of diagnosis;

(b) for a condition that requires acute care and is not chronic;

(c) reimbursed only until the condition is stabilized sufficient that the patient can leave the hospital emergency department; and

(d) not related to an organ transplant procedure.

(5) The vision care benefit is limited to \$30 per year.

R414-200-4. Cost Sharing.

(1) An enrollee is responsible to pay to the:

(a) hospital a \$220 co-insurance payment for each inpatient hospital admission;

(b) hospital a \$6 copayment for each non-emergency use of hospital emergency services;

(c) provider a \$3 copayment for outpatient office visits for physician, physician-related, mental health services, physical therapy, and occupational therapy services; except, no copayment is due for preventive services, immunizations and health education; and

(d) pharmacy a \$3 copayment per prescription for prescription drugs.

(e) physician costs for services that include family planning purposes. Pharmacy products related to family planning purposes are exempt from copayment requirements.

(2) The out-of-pocket maximum payment for copayments or co-insurance is limited to \$500 per enrollee per calendar year.

(3) The provider shall collect the copayment amount from the Medicaid client. Medicaid shall deduct that amount from the reimbursement it pays to the provider.

(4) Medicaid clients in the following categories are exempt from copayment requirements:

(a) American Indians; and

(b) individuals whose total gross income, before exclusions or deductions, is below the Temporary Assistance to Needy Families (TANF) standard payment allowance. These individuals must indicate their income status to their eligibility case worker on a monthly basis to maintain their exemption from the copayment requirements.

**KEY: Medicaid, non-traditional, cost sharing
May 1, 2010
Notice of Continuation May 5, 2017**

26-18

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-305. Resources.****R414-305-1. Purpose and Authority.**

This rule is established under the authority of Section 26-18-3 and establishes the resource provisions for Medicaid eligibility.

R414-305-2. Definitions.

(1) The definitions in Rules R414-1 and R414-301 apply to this rule.

(2) The following definitions apply in this rule:

(a) "Burial plot" means a burial space and any item related to repositories customarily used for the remains of any deceased member of the household. This includes caskets, concrete vaults, urns, crypts, grave markers, and the cost of opening and closing a grave site.

(b) "Penalty period" means a period of time during which a person is not eligible for Medicaid services for institutional care or services provided under a home and community-based waiver due to a transfer of assets for less than fair market value.

(c) "Transfer" in regard to assets means a person has disposed of assets for less than fair market value.

R414-305-3. Aged, Blind and Disabled Non-Institutional and Institutional Medicaid Resource Provisions.

(1) To determine resource eligibility of an individual on the basis of being aged, blind or disabled, the Department adopts and incorporates by reference 42 CFR 435.840, 435.845, October 1, 2012 ed., and 20 CFR 416.1201, 416.1202, 416.1205 through 416.1224, 416.1229 through 416.1239, and 416.1247 through 416.1250, April 1, 2012 ed. The Department also adopts and incorporates by reference Section 1917(b), (d), (e), (f) and (g) of the Compilation of the Social Security Laws in effect January 1, 2013. The eligibility agency may not count as an available resource any assets that are prohibited under other federal laws from being counted as a resource to determine eligibility for federally-funded medical assistance programs. In addition, the eligibility agency applies the following rules.

(2) A resource is available when the individual owns it or has the legal right to sell or dispose of the resource for the individual's own benefit.

(3) Except for the Medicaid Work Incentive Program, the resource limit for aged, blind or disabled Medicaid is \$2,000 for a one-person household and \$3,000 for a two-person household.

(4) For an individual who meets the criteria for the Medicaid Work Incentive Program, the resource limit is \$15,000. This limit applies whether the household size is one or more than one.

(5) The eligibility agency shall base non-institutional and institutional Medicaid eligibility on all available resources owned by the individual, or considered available to the individual from a spouse or parent. The eligibility agency may not grant eligibility based upon the individual's intent to or action of disposing of non-liquid resources as described in 20 CFR 416.1240, April 1, 2012 ed., unless Social Security is excluding the resources for an SSI recipient while the recipient takes steps to dispose of the excess resources.

(6) The eligibility agency may not count any resource or the interest from a resource held within the rules of the Uniform Transfers to Minors Act. Any money from the resource that is given to the child as unearned income is a countable resource that begins the month after the child receives it.

(7) The eligibility agency shall count the resources of a ward that are controlled by a legal guardian as the ward's

resources.

(8) The eligibility agency may not count lump sum payments that an individual receives on a sales contract for the sale of an exempt home if the entire proceeds are used to purchase a new exempt home within three calendar months of when the property is sold. The eligibility agency shall grant the individual one three-month extension if more than three months is needed to complete the actual purchase. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal.

(9) If a resource is available, but a legal impediment exists, the eligibility agency may not count the resource until it becomes available. The individual must take appropriate steps to make the resource available unless one of the following conditions as determined by a person with established expertise relevant to the resource exists:

(a) Reasonable action does not allow the resource to become available; and

(b) The cost of making the resource available exceeds its value.

(10) Water rights attached to the home and the lot on which the home sits are exempt as long as the home is the individual's principal place of residence.

(11) For an institutionalized individual, the eligibility agency may not consider a home or life estate to be an exempt resource.

(12) To determine eligibility for nursing facility or other long-term care services, the eligibility agency shall exclude the value of the individual's principal home or life estate from countable resources if one of the following conditions is met:

(a) the individual intends to return to the home;

(b) the individual's spouse resides in the home;

(c) the individual's child who is under the age of 21, or who is blind or disabled resides in the home; or

(d) a reliant relative of the individual resides in the home.

(13) Even if the conditions in Subsection R414-305-3(12) are met, an individual is ineligible to receive nursing facility services or other long-term care services if the full equity value of the individual's home or life estate exceeds \$500,000, or increased value according to the provisions of 42 U.S.C. 1396p(f)(1)(C) unless the individual's spouse, or the individual's child who is under the age of 21 or is blind or permanently disabled lawfully resides in the home. The individual may only qualify for Medicaid to cover ancillary services.

(14) For Aged, Blind and Disabled Medicaid, the eligibility agency may not count up to \$6,000 of equity value of non-business property used to produce goods or services essential to home use daily activities.

(15) The eligibility agency may retroactively designate for burial a previously unreported resource that meets the criteria for burial funds found in 20 CFR 416.1231. The effective date of the exclusion cannot be earlier than the first day of the month after the month in which the funds were designated for burial or intended for burial, were separated from non-burial funds, and the client was eligible for Medicaid. The eligibility agency shall treat the resources as funds set aside for burial and the amount exempted cannot exceed the limit established for the SSI program.

(16) One vehicle is exempt if it is used for regular transportation needs of the individual or a household member.

(17) The eligibility agency may not count resources of an SSI recipient who has a plan for achieving self-support approved by the Social Security Administration when the resources are set aside under the plan to purchase work-related equipment or meet self-support goals.

(18) The eligibility agency may not count an irrevocable

burial trust as a resource. Nevertheless, if the owner is institutionalized or on home and community-based waiver Medicaid, the value of the trust, which exceeds \$7,000, is considered a transferred resource.

(19) The eligibility agency may not count business resources that are required for employment or self-employment.

(20) For the Medicaid Work Incentive Program, the eligibility agency may not count the following additional resources of the eligible individual:

(a) Retirement funds held in an employer or union pension plan, retirement plan or account, including 401(k) plans, or an Individual Retirement Account, even if the funds are available to the individual.

(b) A second vehicle when it is used by a spouse or child of the eligible individual living in the household to get to work.

(21) After qualifying for the Medicaid Work Incentive Program, the eligibility agency may not count the resources described in Subsection R414-305-3(20) to allow the individual to qualify for other Medicaid programs for the aged, blind or disabled, and not solely the Medicaid Work Incentive, even if the individual ceases to have earned income or no longer meets the criteria for the Work Incentive Program.

(22) Assets of 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, are considered available to the alien. The eligibility agency shall stop counting assets from a sponsor 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.

(23) The eligibility agency shall not consider a sponsor's assets as being available to applicants who are eligible for Medicaid for emergency services only.

(24) The eligibility agency may not count as a resource any federal tax refund and refundable credit that an individual receives for 12 months after the month of receipt.

(25) The eligibility agency may not count as a resource, for one year after the date of receipt, any payments that an individual receives under the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(26) The eligibility agency may not count certain property and rights of federally-recognized American Indians including certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation; ownership interests in rents, leases, royalties or usage rights related to natural resources (including extraction of natural resources); and 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.

(27) The eligibility agency shall not count as a resource a qualified Achieving a Better Life Experience (ABLE) account.

(28) The eligibility agency shall count only the portion of an asset such as a retirement plan that is legally available to an individual when that asset has been divided between two divorced spouses pursuant to a qualified domestic relations order.

(29) Under the authority of Subsection 1902(r)(2) of the

Social Security Act, to determine an individual's eligibility for Medicaid for long-term care services, the Department disregards otherwise countable assets or resources in an amount equal to the insurance benefit payments made to or on behalf of an individual who is a beneficiary under a qualified long-term care insurance partnership policy that meets the provisions found in 42 U.S.C. 1396p(b)(1)(C)(iii). The amount of the disregard applies to otherwise countable assets the client owns or that are deemed available to the client for the purpose of determining eligibility, and is equal to the amount of benefits the client has received from the partnership policy up through the month immediately before the month of application for long-term care assistance under Utah Medicaid.

(a) This resource disregard applies to aged, blind or disabled individuals who qualify for Medicaid under one of the following eligibility coverage groups found under:

(i) Subsection 1902(a)(10)(A)(ii)(V) of the Social Security Act; or

(ii) Subsection 1902(a)(10)(A)(ii)(VI) of the Social Security Act.

(b) The Department treats payments received after eligibility for long-term care services as a third-party liability that does not result in the disregard of additional resources.

(c) Assets disregarded under Subsection R414-305-3(28) are not subject to estate recovery authorized under Section 26-19-13.7, with the exception defined below in Subsection R414-305-3(28)(e).

(d) This disregard is not specific to any one asset. Any countable assets the individual owns or that are deemed available to the client are subject to the provisions defined in Section R414-305-9 regarding transfers of assets. The Department shall apply a penalty period or an overpayment proceeding for any transfer of assets for less than fair market value. In the event the Department learns of an asset transfer at the time of an estate recovery action for which a penalty period is not assessed or an overpayment is not collected, the Department shall reduce the amount of assets in the estate that could otherwise be excluded from the estate recovery requirements by the value of the assets transferred for less than fair market value. The Department may also take legal steps to recover assets transferred for less than fair market value.

(e) Home equity in excess of the standard described in Subsection R414-305-3(13) is not a countable resource, so this disregard does not affect the application of Subsection R414-305-3(13).

(f) The Department recognizes long-term care insurance partnership policies purchased in other states under the reciprocity requirements of the statute. The beneficiary of the policy must have been a resident in a partnership state when coverage first became effective under the policy.

(30) Life estates.

(a) For non-institutional Medicaid, the eligibility agency shall count life estates as resources only when a market exists for the sale of the life estate as established by knowledgeable sources.

(b) For Institutional Medicaid, the eligibility agency shall count life estates even if no market exists for the sale of the life estate, unless the life estate can be excluded as defined in Subsection R414-305-3(12).

(c) The individual may dispute the value of the life estate by verifying the property value to be less than the established value or by submitting proof based on the age and life expectancy of the life estate owner that the value of the life estate is lower. The value of a life estate shall be based upon the age of the individual and the current market value of the property.

(d) The following table lists the life estate figure

corresponding to the individual's age. The eligibility agency uses this figure to establish the value of a life estate:

TABLE
Age Life Estate Figure

| | |
|----|--------|
| 0 | .97188 |
| 1 | .98988 |
| 2 | .99017 |
| 3 | .99008 |
| 4 | .98981 |
| 5 | .98938 |
| 6 | .98884 |
| 7 | .98822 |
| 8 | .98748 |
| 9 | .98663 |
| 10 | .98565 |
| 11 | .98453 |
| 12 | .98329 |
| 13 | .98198 |
| 14 | .98066 |
| 15 | .97937 |
| 16 | .97815 |
| 17 | .97700 |
| 18 | .97590 |
| 19 | .97480 |
| 20 | .97365 |
| 21 | .97245 |
| 22 | .97120 |
| 23 | .96986 |
| 24 | .96841 |
| 25 | .96678 |
| 26 | .96495 |
| 27 | .96290 |
| 28 | .96062 |
| 29 | .95813 |
| 30 | .95543 |
| 31 | .95254 |
| 32 | .94942 |
| 33 | .94608 |
| 34 | .94250 |
| 35 | .93868 |
| 36 | .93460 |
| 37 | .93026 |
| 38 | .92567 |
| 39 | .92083 |
| 40 | .91571 |
| 41 | .91030 |
| 42 | .90457 |
| 43 | .89855 |
| 44 | .89221 |
| 45 | .88558 |
| 46 | .87863 |
| 47 | .87137 |
| 48 | .86374 |
| 49 | .85578 |
| 50 | .84743 |
| 51 | .83674 |
| 52 | .82969 |
| 53 | .82028 |
| 54 | .81054 |
| 55 | .80046 |
| 56 | .79006 |
| 57 | .77931 |
| 58 | .76822 |
| 59 | .75675 |
| 60 | .74491 |
| 61 | .73267 |
| 62 | .72002 |
| 63 | .70696 |
| 64 | .69352 |
| 65 | .67970 |
| 66 | .66551 |
| 67 | .65098 |
| 68 | .63610 |
| 69 | .62086 |
| 70 | .60522 |
| 71 | .58914 |
| 72 | .57261 |
| 73 | .55571 |
| 74 | .53862 |
| 75 | .52149 |
| 76 | .50441 |
| 77 | .48742 |
| 78 | .47049 |
| 79 | .45357 |
| 80 | .43659 |
| 81 | .41967 |

| | |
|-----|--------|
| 82 | .40295 |
| 83 | .38642 |
| 84 | .36998 |
| 85 | .35359 |
| 86 | .33764 |
| 87 | .32262 |
| 88 | .30859 |
| 89 | .29526 |
| 90 | .28221 |
| 91 | .26955 |
| 92 | .25771 |
| 93 | .24692 |
| 94 | .23728 |
| 95 | .22887 |
| 96 | .22181 |
| 97 | .21550 |
| 98 | .21000 |
| 99 | .20486 |
| 100 | .19975 |
| 101 | .19532 |
| 102 | .19054 |
| 103 | .18437 |
| 104 | .17856 |
| 105 | .16962 |
| 106 | .15488 |
| 107 | .13409 |
| 108 | .10068 |
| 109 | .04545 |

R414-305-4. Parents and Caretaker Relatives, Pregnant Woman and Child using MAGI methodology Resource Provisions.

The Department adopts 42 CFR 435.603(g), October 1, 2012 ed., which is incorporated by reference, regarding no resource test for coverage groups subject to MAGI-based methodologies for determining eligibility.

R414-305-5. Resource Provisions for Parents and Caretaker Relatives, Pregnant Woman, and Child Under Non-MAGI-Based Community and Institutional Medicaid.

(1) To determine resource eligibility for an individual for Parents and Caretaker Relatives, Pregnant Woman, and Child non-MAGI-based Medicaid programs, the Department adopts and incorporates by reference 45 CFR 233.20(a)(3)(i)(B)(1), (2), (3), (4), and (6), and 233.20(a)(3)(vi)(A), October 1, 2012 ed. The Department also adopts and incorporates by reference Section 1917(d), (e), (f) and (g), Section 404(h) and 1613(a)(13) of the Compilation of the Social Security Laws in effect January 1, 2013. The eligibility agency may not count as an available resource retained funds from sources that federal laws specifically prohibit from being counted as a resource to determine eligibility for federally-funded medical assistance programs. In addition, the eligibility agency shall apply the following rules.

(2) A resource is available when the individual owns it or has the legal right to sell or dispose of the resource for the individual's own benefit.

(3) The medically needy resource limit is \$2,000 for a one-person household, \$3,000 for a two-person household and \$25 for each additional household member.

(4) To determine countable resources for Medicaid eligibility, the eligibility agency shall consider all available resources owned by the individual. The agency may not consider a resource unavailable based upon the individual's intent or action of disposing of non-liquid resources.

(5) The eligibility agency shall count resources of a household member who has been disqualified from Medicaid for failure to cooperate with third party liability or duty of support requirements.

(6) If a legal guardian, conservator, authorized representative, or other responsible person controls any resources of an individual, the eligibility agency shall count the resources as the individual's. The arrangement may be formal or informal.

(7) If a resource is available, but a legal impediment

exists, the agency may not count the resource until it becomes available. The individual must take appropriate steps to make the resource available unless one of the following conditions exist:

(a) Reasonable action does not allow the resource to become available; and

(b) The cost of making the resource available exceeds its value.

(8) The eligibility agency shall exclude a maximum of \$1,500 in equity value of one vehicle.

(9) The eligibility agency may not count as resources the value of household goods and personal belongings that are essential for day-to-day living. The agency shall count any single household good or personal belonging with a value that exceeds \$1,000 toward the resource limit. The agency may not count as a resource the value of any item that a household member needs because of the household member's medical or physical condition.

(10) The eligibility agency may not count the value of one wedding ring and one engagement ring as a resource.

(11) For a non-institutionalized individual, the eligibility agency may not count the value of a life estate as an available resource if the life estate is the individual's principal residence. If the life estate is not the principal residence, the provision in Subsection R414-305-3(28) shall apply.

(12) The eligibility agency may not count the resources of a child who is not counted in the household size to determine eligibility of other household members.

(13) For a non-institutionalized individual, the eligibility agency may not count as a resource, the value of the lot on which the excluded home stands if the lot does not exceed the average size of residential lots for the community in which it is located. The agency shall count as a resource the value of the property in excess of an average size lot. If the individual is institutionalized, the provisions of Subsections R414-305-3(12), (13) and (28) shall apply to the individual's home or life estate.

(14) The agency may not count as a resource the value of water rights attached to an excluded home and lot.

(15) The eligibility agency may not count any resource or interest from a resource held within the rules of the Uniform Transfers to Minors Act. The agency shall count as a resource any money that a child receives as unearned income, which the child retains beyond the month of receipt.

(16) The eligibility agency may not count lump sum payments that an individual receives on a sales contract for the sale of an exempt home if the entire proceeds are used to purchase a new exempt home within three calendar months of when the property is sold. The eligibility agency shall grant the individual one three-month extension, if more than three months is needed to complete the actual purchase. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal.

(17) The eligibility agency shall exclude as a resource retroactive benefits received from the Social Security Administration and the Railroad Retirement Board for the first nine months after receipt.

(18) The eligibility agency shall exclude from resources a burial and funeral fund or funeral arrangement up to \$1,500 for each household member who is counted in the household size. Burial and funeral agreements include burial trusts, funeral plans, and funds set aside expressly for the purposes of burial. The client shall separate and clearly designate the burial funds from the non-burial funds. The agency may not count as a resource interest earned on exempt burial funds that is left to accumulate. If an individual uses exempt burial funds for some other purpose, the agency shall count the remaining funds as an available resource beginning on the

date that the funds are withdrawn.

(19) Assets of 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, are considered available to the alien. The eligibility agency shall stop counting a sponsor's assets 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.

(20) The eligibility agency may not consider a sponsor's assets as being available to applicants who are eligible for Medicaid for emergency services only.

(21) The eligibility agency may not count business resources that are required for employment or self-employment. The agency shall treat non-business, income-producing property in the same manner as the SSI program as defined in 42 CFR 416.1222.

(22) The eligibility agency may not count as a resource retirement funds held in an employer or union pension plan, a retirement plan or account including 401(k) plans, and Individual Retirement Accounts of a disabled parent or disabled spouse who is not included in the coverage.

(23) The eligibility agency may not count as a resource any federal tax refund and refundable credit that an individual receives for 12 months after the month of receipt.

(24) The eligibility agency may not count as income, for one year after the date of receipt, any payments that an individual receives under the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(25) The eligibility agency may not count as resources certain property and rights of federally-recognized American Indians 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 (including 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.

(26) The eligibility agency shall count only the portion of an asset such as a retirement plan that is legally available to an individual when that asset has been divided between two divorced spouses pursuant to a qualified domestic relations order.

R414-305-6. Spousal Impoverishment Resource Rules for Married Institutionalized Individuals.

(1) The eligibility agency shall apply the provisions of 42 U.S.C. 1396r-5 to determine the value of the total joint resources of an institutionalized individual and a community spouse, and the spousal assessed share.

(2) The resource limit for an institutionalized individual is \$2,000.

(3) At the request of either the institutionalized individual or the individual's spouse and upon receipt of relevant documentation of resources, the eligibility agency shall assess and document the total value of resources using the methodology described in Subsection R414-305-6(4) as of the first continuous period of institutionalization or upon

application for Medicaid home and community-based waiver services. The eligibility agency shall notify the requester of the results of the assessment. The agency may not require the individual to apply for Medicaid or pay a fee for the assessment.

(4) The assessment is a computation of the total value of resources in which the institutionalized individual or the community spouse has an ownership interest. The spousal share is equal to one-half of the total value computed. The eligibility agency shall count the resources for the assessment that include those the couple has on the date that one spouse becomes institutionalized or applies for Medicaid for home and community-based waiver services, and the other spouse remains in the community and is not eligible for Medicaid for home and community-based waiver services.

(a) The community spouse's assessed share of resources is one-half of the total resources. Nevertheless, the protected resource allowance for the community spouse may be less than the assessed share.

(b) Upon application for Medicaid, the eligibility agency shall set the protected share of resources for the community spouse when countable resources equal no more than the community spouse's protected share as determined under 42 U.S.C. 1396r-5(f) plus the resource limit for the institutionalized spouse.

(c) The eligibility agency shall set the community spouse's protected share of resources at the community spouse's assessed share of the resources with the following exceptions:

(i) If the spouse's assessed share of resources is less than the minimum resource standard, the protected share of resources is the minimum resource standard;

(ii) If the spouse's assessed share of resources is more than the maximum resource standard, the protected share of resources is the maximum resource standard;

(iii) The eligibility agency shall use the minimum and maximum resource standards permitted under 42 U.S.C. 1396r-5(f) to determine the community spouse's protected share.

(d) In making a decision to modify the community spouse's protected share of resources, the eligibility agency shall apply the income first provisions of 42 U.S.C. 1396r-5(d)(6).

(5) The eligibility agency shall count any resource owned by the community spouse in excess of the community spouse's protected share of resources to determine the institutionalized individual's initial Medicaid eligibility.

(6) After the eligibility agency establishes eligibility for the institutionalized spouse, the agency shall allow a protected period for the couple to either use excess resources, or change the ownership of resources held jointly or held only in the name of the institutionalized spouse.

(a) The protected period continues until the resources held in the institutionalized spouse's name do not exceed \$2,000, or until the time of the next regularly scheduled eligibility redetermination, whichever occurs first.

(b) The institutionalized individual may do the following:

(i) use resources held in his name for his benefit or for the benefit of his spouse;

(ii) transfer resources to the community spouse to bring the resources held only in the name of the community spouse up to the amount of the community spouse's protected share of resources and to bring the resources held only in the name of the institutionalized spouse down to the Medicaid resource limit; or

(iii) a combination of both.

(7) The eligibility agency may not count resources held in the name of the community spouse as available to the

institutionalized spouse beginning the month after the month in which the agency establishes eligibility.

(8) If an individual is otherwise eligible for institutional Medicaid, the eligibility agency may not count the community spouse's resources as available to the institutionalized individual due to an uncooperative spouse or because the spouse cannot be located if all of the following criteria are met:

(a) The individual assigns support rights to the agency;

(b) The individual cannot get medical care without Medicaid;

(c) The individual is at risk of death or permanent disability without institutional care.

R414-305-7. Treatment of Trusts.

(1) The eligibility agency shall apply the criteria in 42 U.S.C. 1396a(k), to determine the availability of trusts established before August 11, 1993.

(a) A Medicaid qualifying trust is a trust, or similar legal device, established (other than by will) by an individual (or an individual's spouse) under which the individual may be the beneficiary of all or part of the payments from the trust. The distribution of payments is determined by one or more trustees who are permitted to exercise some amount of discretion with respect to the distribution to the individual.

(b) The amount of the trust property that is counted as an available resource to the individual who established the trust (or whose spouse established the trust) is the maximum amount that the trustee is permitted to distribute under the terms of the trust for the individual's benefit. This amount of property is counted as available whether or not it is actually disbursed by the trustee or received by the beneficiary. It does not matter whether the trust is irrevocable or whether it is established for a purpose other than to qualify for Medicaid.

(c) Payments made from the available portion of the trust do not count as income because the available portion of the trust is counted as a resource. If payments are made from any portion of the trust that is not counted as a resource, the payments are counted as income in the month received.

(2) The Department adopts the provisions of 42 U.S.C. 1396p(d)(4)(A) concerning trusts for a Disabled Person under Age 65. These trusts are commonly known as a special needs trust for a disabled person. Assets held in a trust that complies with the provisions in Subsection R414-305-7(2) and (4) do not count as available resources.

(a) The trust must be established solely for the benefit of the disabled individual by the individual, a parent, grandparent, legal guardian of the individual, or a court. A trust established by the disabled individual must be established on or after December 13, 2016.

(b) The eligibility agency shall treat any additions to the trust corpus with assets not belonging to the disabled trust beneficiary as a gift to the trust beneficiary. The additions irrevocably become part of the trust corpus and are subject to all provisions of Medicaid restrictions that govern special needs trusts.

(c) The trust must be irrevocable. No one may have any right or power to alter, amend, revoke, or terminate the trust or any of its terms, except that the trust may include language that provides that the trust may be amended but only if necessary to conform with subsequent changes to the requirements of 42 U.S.C. 1396p(d)(4)(A) or synonymous state law.

(d) The trust cannot be altered or converted from an individual trust to a "pooled trust" under 42 U.S.C. 1396p(d)(4)(C).

(e) The trust must terminate upon the death of the disabled individual or exhaustion of trust corpus and must

include language that specifically provides that upon the death of the beneficiary or early termination of the trust, whichever occurs first, the trustees will notify Medicaid and will pay all amounts remaining in the trust to the State up to the total amount of medical assistance the State has paid on behalf of the individual. The trust shall comply fully with this obligation to first repay the State without requiring the State to take any action except to establish the amount to be repaid.

(f) The sole lifetime beneficiary of the trust must be the disabled individual, and the Medicaid agency must be the preferred remainder beneficiary. Distributions from the trust during the beneficiary's lifetime may be made only to or for the benefit of the disabled individual.

(g) The eligibility agency shall continue to exclude assets held in the trust from countable resources after the disabled individual reaches age 65. Subsequent additions to the trust other than interest on the corpus after the person turns 65 are not assets of an individual under age 65 and the agency shall treat the transfer as a transfer of resources for less than fair market value, which may create a period of ineligibility for certain Medicaid services.

(h) A trust that provides benefits to other persons is not an individual special needs trust and does not meet the criteria to be excluded from resources.

(i) A corporate trustee may charge a reasonable fee for services.

(j) The trust may compensate a guardian only as provided by law. The trust may not compensate the parent of a minor child from the trust as the child's guardian.

(k) Additional trusts cannot be created within the special needs trust.

(3) The Department adopts the provisions of 42 U.S.C. 1396p(d)(4)(C) concerning pooled trusts for disabled individuals. A pooled trust is a specific trust for disabled individuals that meets all of the following conditions:

(a) The trust contains the assets of disabled individuals;

(b) The trust must be established and managed by an entity that has been granted non-profit status by the Internal Revenue Service. The non-profit entity must submit to the State a letter documenting the non-profit status with the trust documents;

(c) The trustees must maintain a separate account for each disabled beneficiary whose assets are placed in the pooled trust; however, for the purposes of investment and management of the funds, the trust may pool the funds from the individual accounts. If someone other than the beneficiary transfers assets to the pooled trust administrator to be used on behalf of that beneficiary of the pooled trust, the eligibility agency shall treat the assets as a gift to that beneficiary, which the administrator must add to and manage as part of the balance of the beneficiary's account and which are subject to all provisions of Medicaid restrictions that govern pooled trusts.

(d) Accounts in the trust must be established solely for the benefit of individuals who are disabled as defined in 42 U.S.C. 1382c(a)(3).

(e) The trust must be irrevocable; accounts set up in the trust must be irrevocable.

(f) Individual accounts may be established only by the parent, grandparent or legal guardian of the individual, by the individual, or by a court.

(g) An initial transfer of funds or any additions or augmentations to a pooled trust account by an individual 65 years of age or older is a transfer of assets for less than fair market value and may create a period of ineligibility for certain Medicaid services.

(h) The disabled individual cannot control any spending by the trust.

(i) Individual trust accounts may not be liquidated

before the death of the beneficiary without first making payment to the State for medical assistance paid on behalf of the individual.

(j) The trust must include language that specifically provides that upon the death of the trust account beneficiary, the trustees will notify the Medicaid agency and will pay all amounts remaining in the beneficiary's account to the State up to the total medical assistance paid on behalf of the beneficiary. The trust may retain a maximum of 50% of the amount remaining in the beneficiary's account at death to be used for other disabled individuals if the trust has established provisions by which it will assure that the retained funds are used only for individuals meeting the disability criteria found in 42 U.S.C. 1382c(a)(3).

(k) A pooled trust that retains some portion of a deceased beneficiary's trust funds must describe how retained funds are used for other disabled persons. Any funds that are placed in an individual beneficiary's account or that are used to set up an account for an individual beneficiary who does not otherwise have funds to place in the pooled trust are subject to all of the provisions of Medicaid restrictions that govern pooled trusts. The pooled trust may include a plan for using retained funds only for incidental, one-time services to qualified disabled individuals who do not have accounts in the pooled trust.

(4) The following provisions apply to both individual trusts and pooled trusts described in Subsection R414-305-7(2) and (3):

(a) No expenditures may be made after the death of the beneficiary before repayment to the State, except for federal and state taxes and necessary and reasonable administrative costs of the trust incurred in closing the trust;

(b) The trust must provide that if the beneficiary has received Medicaid benefits in more than one state, each state that provided Medicaid benefits shall be repaid. If the remaining balance is insufficient to repay all benefits paid, then each state will be paid its proportionate share;

(c) The trust or an attached schedule must identify the amount and source of the initial trust property. The disabled individual must report subsequent additions to the trust corpus to the eligibility agency;

(d) If the trust is funded, in whole or in part, with an annuity or other periodic payment arrangement, the State must be named in controlling documents as the preferred remainder beneficiary in the first position up to the total amount of medical assistance paid on behalf of the individual;

(i) Any funds remaining after full repayment of the medical assistance can be paid to a secondary remainder beneficiary;

(ii) The eligibility agency shall treat any provision or action that does or will divert payments or principal from the annuity or payment arrangement to someone other than the excluded trust or the Medicaid agency as a transfer of assets for less than fair market value with the exception that any remainder after the Medicaid agency has been fully repaid may be paid to a secondary beneficiary;

(e) The eligibility agency shall count cash distributions from the trust as income in the month received;

(f) The eligibility agency shall count retained distributed amounts as resources beginning the month which follows the month that the amounts are distributed. The agency shall apply the applicable resource rules to assets purchased with trust funds and given to the beneficiary as his or her personal possessions. The disabled individual must report the receipt of payments or assets from the trust within ten days of receipt. The agency shall exclude assets purchased with trust funds if the trust retains ownership;

(g) The eligibility agency shall count distributions from the trust covering the individual's expenses for food or shelter

as in-kind income to determine Medicaid eligibility in the month paid;

(h) If expenditures made from the trust also incidentally provide an ongoing and continuing benefit to other persons, those other persons who also benefit must contribute a pro-rata share to the trust for the expenses associated with their use of the acquisition;

(i) Contracts to provide personal services to the disabled individual must be in writing, describe the services to be provided, pay fair market rate consistent with rates charged in the community for the type and quality of services to be provided, and be executed in advance of any services being provided and paid. The eligibility agency may require a statement of medical need for the services from the individual's medical practitioner. If the person who is to provide the services is a family member or friend, the eligibility agency may require verification of the person's ability to carry out the needed services;

(j) Distributions from the trust made to or for the benefit of a third party that are not for the benefit of the disabled individual are treated as a transfer of assets for less than fair market value and may create a period of ineligibility for certain Medicaid services. This includes such things as payments of the expenses or travel costs of persons other than a medically necessary attendant;

(k) The beneficiary must submit an annual accounting of trust income and expenditures and a statement of trust assets to the eligibility agency upon request or upon any change of trustee.

(5) The eligibility agency may not count assets held in a pooled trust that comply with the provisions in Subsection R414-305-7(3) and (4) as available resources.

(6) 42 U.S.C. 1396p(d)(4)(B), provides for an exemption from the trust provisions for qualified income trusts (also known as Miller Trusts). Special provisions for this form of trust apply, under federal law, only in those states that do not provide medically needy coverage for nursing facility services. Because Utah covers services in nursing facilities under the medically needy coverage group of the Medicaid program, the establishment of a qualified income trust shall be treated as an asset transfer for the purposes of qualifying for Medicaid. This presumption shall apply whether the individual is seeking nursing facility services or home and community-based services under one of the waiver programs.

R414-305-8. Transfer of Resources for Non-Institutional Medicaid Coverage Groups.

The eligibility agency may not impose a penalty period for the transfer of resources to determine eligibility for individuals who are not institutionalized or eligible for home and community-based services waivers.

R414-305-9. Transfer of Resources for Institutional Medicaid and Home and Community Based Services Waivers.

(1) The eligibility agency shall apply the provisions of 42 U.S.C. 1396p(c) and (e) to determine if a penalty period applies for a transfer of assets for less than fair market value.

(2) The transfer requirements of 42 U.S.C. 1396p(c) and (e) apply if an individual or the individual's spouse transfers the home, life estate, assets disregarded for eligibility purposes pursuant to Subsection R414-305-3(28), or any other asset on or after the look-back date based on an application for long-term care Medicaid services.

(3) If an individual or the individual's spouse transfers assets in more than one month after February 7, 2006, the uncompensated value of all transfers including fractional transfers are combined to determine the penalty period. The

eligibility agency shall apply partial month penalty periods for transferred amounts that are less than the monthly average private pay rate for nursing home services.

(4) In accordance with 42 U.S.C. 1396p(c), the penalty period for a transfer of assets that occurs after February 7, 2006, begins the first day of the month during or after which assets are transferred, or the date on which the individual is eligible for Medicaid coverage and would otherwise receive institutional level care based on an approved application for Medicaid, but for the application of the penalty period, whichever is later.

(a) If a previous penalty period is in effect on the date that the new penalty period begins, the new penalty period begins immediately after the previous one ends.

(b) The eligibility agency shall apply penalty periods consecutively so that they do not overlap.

(5) If assets are transferred during any penalty period, the penalty period for those transfers does not begin until the previous penalty period expires.

(6) If a transfer occurs, or the eligibility agency discovers an unreported transfer after the agency approves an individual for Medicaid for nursing home or home and community-based services, the penalty period shall begin on the first day of the month after the month that the individual transfers the asset.

(7) The statewide average private-pay rate for nursing home care in Utah that the eligibility agency shall use to calculate the penalty period for transfers is \$4,526 per month.

(8) To determine if a resource is transferred for the sole benefit of a spouse, disabled or blind child, or disabled individual, a binding written agreement must be in place which establishes that the resource transferred may only be used to benefit the spouse, disabled child, or disabled individual, and must be actuarially sound. The written agreement must specify the payment amounts and schedule. Any provisions in the agreement that benefit another person at any time nullify the sole benefit provision. An excluded trust established under 42 U.S.C. 1396p(d)(4) that meets the criteria in Section R414-305-7 does not have to meet the actuarially sound test.

(9) The eligibility agency may not impose a penalty period if the total value of a whole life insurance policy is:

(a) irrevocably assigned to the State;

(b) the recipient is the owner of and the insured in the policy; and

(c) no further premium payments are necessary for the policy to remain in effect.

(d) When the individual dies, the State shall distribute the benefits of the policy as follows:

(i) The State may distribute up to \$7,000 to cover burial and funeral expenses. The total value of this distribution plus the value of any irrevocable burial trusts and the burial and funeral funds for the individual cannot exceed \$7,000;

(ii) The State may distribute an amount that does not exceed the total amount of previously unreimbursed medical assistance correctly paid on behalf of the individual;

(iii) The State may distribute to a remainder beneficiary named by the individual any amount that remains after payments are made as defined in Subsection R414-305-9(9)(d)(i) and Subsection R414-305-9(9)(d)(ii).

(10) If the eligibility agency determines that a penalty period applies for an otherwise eligible institutionalized person, the agency shall notify the individual that the Department may not pay the costs for nursing home or other long-term care services during the penalty period. The notice shall include when the penalty period begins and ends.

(a) The individual may request a waiver of the penalty period based on undue hardship.

(b) The individual must send a written request for a

waiver of the penalty period due to undue hardship to the eligibility agency within 30 days of the date printed on the penalty period notice.

(c) The request must include an explanation of why the individual believes undue hardship exists.

(d) The eligibility agency shall make a decision on the undue hardship request within 30 days of receipt of the request.

(11) An individual who claims an undue hardship as a result of a penalty period for a transfer of resources must meet both of the following conditions:

(a) The individual or the person who transferred the resources may not access the asset immediately; however, the eligibility agency shall require the individual to exhaust all reasonable means including legal remedies to regain possession of the transferred resource;

(i) The agency may determine that it is unreasonable to require the individual to take action if a knowledgeable source confirms that the individual's efforts cannot succeed;

(ii) The agency may determine that it is unreasonable to require the individual to take action based on evidence that the individual's action is more costly than the value of the resource; and

(b) Application of the penalty period for a transfer of resources deprives the individual of medical care, endangers the individual's life or health, or deprives the individual of food, clothing, shelter, or other necessities of life.

(12) If the eligibility agency waives the penalty period based on undue hardship, the agency shall notify the individual. The Department shall provide Medicaid coverage on the condition that the individual takes all reasonable steps to regain the transferred assets. The eligibility agency shall notify the individual of the date that the individual must provide verifications of the steps taken. The individual must, within the time frames set by the agency, verify to the agency all reasonable actions. The agency shall review the undue hardship waiver and the actions of the individual to try to regain the transferred assets. The time period for the review may not exceed six months. Upon review, the agency shall decide whether:

(a) The individual must take additional steps and whether undue hardship still exists, in which case the agency shall notify the individual of the continuation of undue hardship and the need to take additional steps to recover the assets;

(b) The individual has taken all reasonable steps without success, in which case the agency shall notify the individual that it requires no further action. If the individual continues to meet eligibility criteria, the eligibility agency may not apply the penalty period; or

(c) The individual has not taken all reasonable steps, in which case the eligibility agency shall discontinue the undue hardship waiver. The eligibility agency shall then apply the penalty period and the individual is responsible to repay Medicaid for services and benefits that the individual received during the months that the undue hardship waiver was in place.

(13) Based on a review of the facts about what happened to the assets, whether the individual has taken reasonable steps to recover or regain the assets, the results of those steps, and the likelihood that additional steps will prove unsuccessful or too costly, the eligibility agency may determine that the individual cannot recover or regain the transferred resource. If the agency decides that the assets cannot be recovered and that applying the penalty period may result in undue hardship, the agency may not apply a penalty period or shall end a penalty period that has already begun.

(14) The eligibility agency shall base its decision that undue hardship exists upon the medical condition and the

financial situation of the individual. The agency shall compare the income and resources of the individual, individual's spouse, and parents of an unemancipated individual to the cost of providing medical care and daily living expenses to decide whether the financial situation creates an undue hardship. The agency shall send written notice of its decision on the undue hardship request. The individual has 90 days from the date printed on the notice of decision to file a request for a fair hearing.

(15) The eligibility agency shall consider the portion of an irrevocable burial trust that exceeds \$7,000 a transfer of resources. The agency shall deduct the value of any fully paid burial plot from the burial trust first before determining the transferred amount.

R414-305-10. Qualified Medicare Beneficiary, Specified Low-Income Medicare Beneficiary, and Qualifying Individual Resource Provisions.

(1) To determine eligibility for Qualified Medicare Beneficiaries, Specified Low-Income Medicare Beneficiaries, and Qualifying Individuals, the eligibility agency shall apply the resource limit defined in 42 U.S.C. Sec.1396d(p)(1)(C).

(2) The eligibility agency shall determine countable resources in accordance with the provisions of Section R414-305-3.

R414-305-11. Treatment of Annuities.

(1) An individual must report any annuities in which either the individual or the individual's spouse has any interest at application for Medicaid, at each review, and as part of the change reporting requirements. Parents of a minor individual must report any annuities in which the child or either of the parents has an interest.

(2) For annuities purchased after February 7, 2006, in which the individual or spouse has an interest, the provisions in 42 U.S.C. 1396p(c) apply. The eligibility agency shall treat annuities purchased after February 7, 2006, which do not meet the requirements of 42 U.S.C. 1396p(c), as a transfer of assets for less than fair market value.

(3) With the exception of annuities that meet the criteria in Subsection R414-305-11(4), the eligibility agency shall count annuities in which the individual, the individual's spouse or a minor individual's parent has an interest as an available resource to determine Medicaid eligibility, whether they are irrevocable or non-assignable. The agency shall presume that a market exists to purchase annuities or the stream of income from annuities, which make them available resources. The individual may rebut the presumption that the annuity may be sold by providing evidence that the individual has been rejected by several entities in the business of purchasing annuities or the revenue stream from annuities, in which case, the agency may not consider the annuity as an available resource.

(4) For individuals eligible under the aged, blind, or disabled category of Medicaid, the eligibility agency shall exclude an annuity from countable resources in the form of the periodic payment if it meets the following requirements.

(a) The annuity is either an individual retirement annuity according to Section 408(b) of the Internal Revenue Code (IRC) of 1986 or a deemed Individual Retirement Account under a qualified employer plan according to Section 408(q) of the IRC; or

(b) The annuity is purchased with the proceeds from one of the following:

(i) As described in Sections 408(a), (c), or (p) of the IRC, a traditional IRA, accounts or trusts which are treated as a traditional IRA, or a simplified retirement account;

(ii) A simplified employee pension (Section 408(p) of the IRC); or

(iii) A Roth IRA (Section 408A of the IRC); and

(c) The annuity is irrevocable and non-assignable, the individual who was the owner of the retirement account or plan is receiving equal periodic payments at least quarterly with no deferral or balloon payments, and the scheduled payout period is actuarially sound based on the individual's life expectancy.

(d) If the individual purchases or annuitizes the annuities after February 7, 2006, the annuities must name the State as the preferred remainder beneficiary in the first position upon the individual's death, or as secondary remainder beneficiary after a surviving spouse or minor or disabled child.

(5) For family-related medically needy Medicaid programs, the eligibility agency shall count all annuities as resources if the individual can access the funds, even if the annuities qualify as retirement funds or plans.

(6) Annuities purchased on or after February 8, 2006, in which the individual or the spouse has an interest are a transfer of assets for less than fair market value unless the annuity names the State as the preferred remainder beneficiary in the first position, or in the second position after a surviving spouse, or a surviving minor or disabled child, up to the amount of medical assistance paid on behalf of the institutionalized individual.

(a) The State shall give individuals who have purchased annuities before applying for long-term care Medicaid, 30 days to request the issuing company to name the State as the preferred remainder beneficiary and to verify that fact to Medicaid.

(b) The individual must verify to the eligibility agency that the change in beneficiary has been made by the date requested by the agency.

(c) If the change of beneficiary is not completed and verified, the annuities are a transfer of resources and the eligibility agency shall apply the penalty period. If the eligibility agency has approved institutional Medicaid coverage pending verification, Medicaid coverage for long-term care ends and the penalty period begins the day after the closure date.

(7) The eligibility agency shall treat an annuity purchased before February 8, 2006, as an annuity purchased on or after February 8, 2006, if the individual or spouse take any actions that change the course of payments to be made or the treatment of the income or principal of the annuity. These actions include additions of principal, elective withdrawals, requests to change the distribution of the annuity, elections to annuitize the contract, or other similar actions. Routine changes and automatic events that do not involve an action or decision from the individual or spouse do not cause an annuity purchased before February 8, 2006, to be treated as one purchased on or after February 8, 2006.

(8) If a penalty period for a transfer of assets begins because the individual or the individual's spouse has not changed an annuity to name the State as the preferred remainder beneficiary of the annuity, the penalty period for a transfer does not end until the individual completes and verifies the change of beneficiary to the eligibility agency. The eligibility agency may not rescind the penalty period.

(9) If the individual or spouse does not provide all information about annuities for which they have an interest by the requested due date, the eligibility agency shall deny the application. The individual may reapply, but may not protect the original application date.

(10) The issuer of the annuity shall inform the eligibility agency of any change in the amount of income or principal being withdrawn from the annuities, any change of beneficiaries, or any sale or transfer of the annuity. The issuer of the annuity shall also inform the agency if a surviving

spouse or a surviving minor or disabled child attempts to transfer the annuity or any portion of the annuity to someone other than the agency.

KEY: Medicaid, resources

June 1, 2017

Notice of Continuation January 23, 2013

26-18-3

26-1-5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-310. Medicaid Primary Care Network Demonstration Waiver.****R414-310-1. Authority and Purpose.**

(1) This rule is authorized by Sections 26-1-5 and 26-18-3. The Primary Care Network Demonstration is authorized by a waiver of federal Medicaid requirements approved by the Centers for Medicare and Medicaid Services and allowed under Section 1115(a) of the Social Security Act.

(2) The purpose of this rule is to establish eligibility requirements for enrollment under the Medicaid Primary Care Network Demonstration Waiver.

R414-310-2. Definitions.

The definitions in Rules R414-1 and R414-301 apply to this rule. In addition, the following definitions apply throughout this rule:

(1) "Avenue H" means Utah's Health Insurance Marketplace for Utah employers and their employees where the employees can find information about available employer-sponsored health insurance plans, select a plan and enroll online.

(2) "Best estimate" means the eligibility agency's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.

(3) "Children's Health Insurance Program" or (CHIP) means the program for medical benefits under Title 26, Chapter 40, Utah Children's Health Insurance Act.

(4) "Copayment and coinsurance" means a portion of the cost for a medical service for which the enrollee is responsible to pay for services received under the Primary Care Network.

(5) "Creditable Health Coverage" means any health insurance coverage as defined in 45 CFR 146.113.

(6) "Employer-sponsored health plan" means a health insurance plan offered by an employer either directly or through Avenue H.

(7) "Enrollee" means an individual who has applied for and has been found eligible for the Primary Care Network program.

(8) "Open enrollment" means a period during which the eligibility agency accepts applications for the Primary Care Network program.

(9) "Primary Care Network" or (PCN) means the program for benefits under the Medicaid Primary Care Network Demonstration Waiver.

(10) "Review month" means the last month of the review period for an enrollee during which the eligibility agency shall redetermine eligibility for a new review period if the enrollee completes the review process timely.

(11) "Student health insurance plan" means a health insurance plan that is offered to students directly through a university or other educational facility.

(12) "Utah's Premium Partnership for Health Insurance" or (UPP) means the program described in Rule R414-320.

R414-310-3. Applicant and Enrollee Rights and Responsibilities.

(1) The provisions of Section R414-301-4 apply to applicants and enrollees of the PCN program except that reportable changes for PCN applicants and enrollees are defined in Subsection R414-310-3(2).

(2) An applicant or enrollee must report certain changes to the eligibility agency within ten calendar days of the day the change becomes known. The eligibility agency shall notify the applicant at the time of application of the changes that the enrollee must report. Reportable changes include:

(a) An enrollee in PCN begins to receive coverage or to

have access to coverage under a group health plan or other health insurance coverage;

(b) An enrollee in PCN begins to receive coverage under, or begins to have access to student health insurance, Medicare, or the Veteran's Administration Health Care System;

(c) Changes in household income;

(d) Changes in household composition;

(e) Changes in tax filing status;

(f) Changes in the number of dependents claimed as tax dependents;

(g) An enrollee or the household moves out of state;

(h) Change of address of an enrollee or the household;

or

(i) An enrollee enters a public institution or an institution for mental diseases.

(3) An applicant or enrollee has a right to request an agency conference or a fair hearing as described in Sections R414-301-6 and R414-301-7.

(4) An enrollee in PCN is responsible for paying any required copayments or coinsurance amounts to providers for medical services that the enrollee receives that are covered under PCN.

R414-310-4. General Eligibility Requirements.

(1) The provisions of Sections R414-302-3, R414-302-4, R414-302-7, and R414-302-8 concerning United States (U.S.) citizenship, alien status, state residency, use of social security numbers, and applying for other benefits, apply to applicants and enrollees of PCN.

(2) An individual who is not a U.S. citizen or national, or who does not meet the alien status requirements of Section R414-302-3 is not eligible for any services or benefits under PCN.

(3) An individual must be at least 19 and not yet 65 years of age to enroll in PCN.

(a) The month in which an individual turns 19 years of age is the first month that the person may enroll in PCN.

(b) An individual must apply for the PCN program before he turns 65 years of age.

(c) Enrollment shall end effective the end of the month in which an individual turns 65 years of age.

(4) The eligibility agency only accepts applications during open enrollment periods. The eligibility agency limits the number it enrolls according to the funds available for the program and may stop enrollment at any time.

(a) The open enrollment period may be limited to:

(i) individuals with children under the age of 19 in the home;

(ii) individuals without children under the age of 19 in the home.

(b) The eligibility agency may not accept applications or maintain waiting lists during a period that enrollment of new individuals is stopped.

(5) The provisions of Subsection R414-302-6(1) and (4) apply to applicants and enrollees of PCN who are residents of institutions.

(6) An applicant or enrollee is not required to provide Duty of Support information to enroll in PCN. An adult whose eligibility for Medicaid has been denied or terminated for failure to cooperate with Duty of Support requirements may not enroll in the PCN program.

R414-310-5. Verification and Information Exchange.

(1) The provisions of Section R414-308-4 regarding verification of eligibility factors apply to applicants and enrollees of PCN.

(2) The Department shall safeguard information about applicants and enrollees to comply with the provisions of

Section R414-301-5.

(3) The Department shall enter into agreements with other government agencies as outlined in Section R414-301-3.

R414-310-6. Creditable Health Coverage.

(1) The Department adopts and incorporates by reference 42 CFR 433.138(b) and 435.610, October 1, 2015 ed., and Section 1915(b) of the Compilation of the Social Security Laws, in effect January 1, 2016.

(2) An applicant who is covered under a group health plan or other creditable health insurance coverage as defined in 29 CFR 2590.701-4, July 1, 2013 ed., is not eligible for enrollment in PCN. This includes coverage under student health insurance and the Veteran's Administration Health Care System.

(a) An individual who is enrolled in the Utah Health Insurance Pool or who can receive health coverage through Indian Health Services may enroll in PCN.

(b) An individual who could enroll in Medicare is not eligible for enrollment in PCN, even if the individual must wait for a Medicare open enrollment period to apply.

(c) An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for PCN as long as the individual applies for and takes all necessary steps to enroll. Eligibility for PCN ends once the individual's coverage in the VA Health Care System begins.

(d) Individuals who are full-time students and who can enroll in student health insurance coverage are not eligible to enroll in PCN.

(3) An individual is not eligible for PCN if the individual becomes eligible for Refugee Medical without a spenddown as defined in Section R414-303-10. An individual who is eligible for Refugee Medical with a spenddown may choose to enroll in either Refugee Medical or PCN.

(4) An individual who has access to but has not yet enrolled in employer-sponsored health insurance coverage through an employer or a spouse's employer is not eligible for PCN if the individual's cost for the least expensive health insurance plan offered by the employer directly, or for the employer's default plan offered through Avenue H, does not exceed 15% of the countable MAGI-based income for the individual's household.

(a) The cost of coverage includes a deductible if the employer-sponsored plan has a deductible.

(b) The eligibility agency will include in the cost of coverage for the spouse, the cost to enroll the employee, if the employee must be enrolled to enroll the spouse.

(c) The eligibility agency considers the individual to have access to coverage if the individual has had at least one opportunity to enroll

(5) An individual who voluntarily terminates health insurance coverage is ineligible to enroll in PCN for 180 days from the date the coverage ended. The eligibility agency may not apply a 180-day ineligibility period in the following situations:

(a) Voluntary termination of COBRA.

(b) Voluntary termination of coverage through the Federally Facilitated Marketplace due to the loss of Advanced Premium Tax Credits (APTC).

(6) To be eligible to enroll in PCN, the 180-day ineligibility period must end by the earlier of the following dates or the eligibility agency shall deny the application:

(a) the last day of the open enrollment period during which the individual applies for PCN; or

(b) the last day of the month that follows the month in which the individual applies for PCN, if the open enrollment

period does not expire before that following month ends.

(c) Enrollment in PCN may not begin before the 180-day ineligibility period ends.

R414-310-7. Household Composition and Income Provisions.

(1) The eligibility agency determines household composition and countable household income according to the provisions in R414-304-5.

(2) For an individual to be eligible to enroll in PCN, countable MAGI-based income for the individual must be equal to or less than 95% of the federal poverty guideline for the applicable household size.

R414-310-8. Budgeting.

(1) The Department shall apply the MAGI-based budgeting methodology defined at 42 CFR 435.603(c), (d), (e), (g) and (h), October 1, 2013 ed., which it adopts and incorporates by reference.

(2) The eligibility agency determines an individual's eligibility prospectively at application and at each review for continuing eligibility.

(a) The eligibility agency determines prospective eligibility by using the best estimate of the household's average monthly income that the agency expects the household to receive or to become available to the household during the upcoming review period.

(b) The eligibility agency shall include in the best estimate, reasonably predictable income expected to be received during the review period, such as seasonal income, contract income, income received at irregular intervals, or income received less often than monthly. The income will be prorated over the review 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 best estimate. The best estimate may be a monthly amount that the agency expects the household to receive each month of the review period, or an annual amount that is prorated over the review period. The eligibility agency may use different methods for different types of income that the same household receives.

(4) The eligibility agency determines farm and self-employment income by using the individual's most recent tax return forms or other verification 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 the most recent time period during which the individual had farm or self-employment income. The eligibility agency shall deduct 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.

(5) The eligibility agency may request additional information and verification about how a household is meeting expenses if the average household income appears to be insufficient to meet the household's living expenses.

R414-310-9. Assets.

An asset test is not required for PCN eligibility.

R414-310-10. Application and Signature.

(1) The provisions of Section R414-308-3 apply to PCN applicants, except for paragraph (9), (10) and the three months of retroactive coverage.

(2) A Medicaid or CHIP recipient may make a request during the open enrollment period for the agency to determine

the individual's eligibility for PCN without completing a new application.

(3) The eligibility agency shall reinstate a medical case without requiring a new application if the agency closes the case in error.

(4) An applicant may withdraw an application for PCN any time before the eligibility agency completes an eligibility decision on the application.

R414-310-11. Eligibility Decisions and Reviews.

(1) The Department adopts and incorporates by reference 42 CFR 435.911 and 435.912, October 1, 2013 ed., regarding eligibility determinations.

(2) At application and review, the eligibility agency shall determine whether the individual is eligible for Medicaid, Refugee Medical or CHIP.

(a) An individual who qualifies for Medicaid or Refugee Medical without paying a spenddown or for Medicaid Work Incentive (MWI) without paying an MWI premium may not enroll in PCN.

(b) An applicant who is eligible for Medicaid, Refugee Medical or CHIP during the application month, or a Medicaid, Refugee Medical or CHIP recipient who requests PCN enrollment during an open enrollment period, may enroll in PCN in accordance with Subsection R414-310-12(1).

(3) An individual open on Medicaid, Refugee Medical or UPP may request to enroll in PCN.

(a) A new application form is not required.

(b) The rules in Section R414-310-12 govern the effective date of enrollment.

(c) If the individual is moving from UPP, the eligibility agency shall waive the open enrollment requirement if there is no break in coverage.

(d) If the individual is moving from Medicaid or Refugee Medical, the eligibility agency shall waive the open enrollment period if the individual was previously on PCN, became eligible for Medicaid or Refugee Medical, and requests to reenroll in PCN without a break in coverage.

(e) If the individual is moving from Medicaid or Refugee Medical and was not previously on PCN, or there has been a break in coverage of one or more months, the individual must reapply during an open enrollment period.

(f) All other eligibility requirements must be met.

(4) The eligibility agency shall complete an eligibility determination 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 dies;

(c) the applicant cannot be located; or

(d) the applicant does not respond to requests for information within the 30-day application period or by the verification due date, if the verification date is later.

(5) The eligibility agency shall complete a periodic review of an enrollee's eligibility for medical assistance in accordance with the requirements of 42 CFR 435.916.

(a) The agency may request a recipient to contact the agency to complete the eligibility review.

(b) The agency shall provide the recipient a written request for verification needed to complete the review.

(c) The agency shall provide proper notice of an adverse decision.

(d) If the agency cannot provide proper notice of an adverse decision, the agency extends eligibility to the following month to allow for proper notice.

(6) If a recipient fails to respond to a request to complete the review or fails to provide all requested verification to complete the review, the eligibility agency

shall end eligibility effective the end of the month for which the agency sends proper notice to the recipient.

(a) If the recipient contacts the agency to complete the review or returns all requested verification within three calendar months of the closure date, the eligibility agency shall treat such contact or receipt of verification as a new application. The agency may not require a new application form.

(b) The application processing period applies to this request to reapply.

(c) Eligibility can begin in the month the client contacts the agency to complete the review if all verification is received within the application processing period.

(d) If the recipient fails to return the verification timely, but before the end of the three calendar months, eligibility becomes effective the first day of the month in which all verification is provided and the individual is found eligible.

(e) The eligibility agency may not continue eligibility while it makes a new eligibility determination.

(f) The eligibility agency shall waive the open enrollment requirement during these three calendar months.

(g) If the enrollee does not respond to the request to complete the review for PCN during the three calendar months immediately following the review closure date, the enrollee must reapply for PCN and meet all eligibility criteria.

(7) If the individual files a new application or makes a request to reenroll within the calendar month that follows the effective closure date when the closure is for a reason other than incomplete review, the eligibility agency shall waive the open enrollment period and process the request as a new application.

(8) The enrollee must reapply if the case closes for one or more calendar months for any reason other than an incomplete review.

(9) The eligibility agency shall comply with the requirements of 42 CFR 435.1200(e), regarding transfer of the electronic file for the purpose of determining eligibility for other insurance affordability programs.

R414-310-12. Effective Date of Enrollment and Enrollment Period.

(1) Subject to the limitations in Sections R414-306-4 and R414-310-6, the effective date of PCN enrollment is the first day of the application month with the following exceptions:

(a) An applicant may be eligible for PCN if the applicant applies during an open enrollment period and will turn 19 before the end of the month in which open enrollment ends.

(i) Enrollment in PCN may not begin before an individual turns 19 years of age.

(ii) If an applicant qualifies for Medicaid or CHIP in the application month, enrollment in PCN begins the month after eligibility for Medicaid or CHIP ends.

(b) If the individual is moving from UPP, the effective date of enrollment is the first day after the health insurance coverage ends.

(c) If the individual is moving from Medicaid, or is eligible for Medicaid in the application month or the month following the application month, the effective date of enrollment is the first day of the month after Medicaid coverage ends. To enroll in PCN, Medicaid eligibility must end by the end of the month following the application month.

(2) The effective date of reenrollment for PCN after the eligibility agency completes the periodic review is the first day after either the review month or due process month. Subsection R414-310-11(5) defines the effective date of reenrollment when the enrollee completes the review process in the three calendar months after the case is closed for

incomplete review.

(3) The eligibility agency shall end eligibility for any of the following reasons:

- (a) the individual turns 65 years of age;
- (b) the individual enrolls in a health coverage plan as defined in Subsection 414-310-6(2);
- (c) the individual gains access to an employer-sponsored health plan that meets the requirements of Subsection R414-310-6(2);
- (d) a change in income or household composition results in the individual exceeding the income limit;
- (e) the individual dies;
- (f) the individual moves out of state or cannot be located; or
- (g) the individual enters a public institution or an Institution for Mental Disease.

(4) An enrollee who gains access to or enrolls in an employer-sponsored health plan may switch to the UPP program if the enrollee meets UPP eligibility requirements.

R414-310-13. Change Reporting and Benefit Changes.

(1) Unless otherwise stated, the provisions in Section R414-308-7 apply to the PCN program.

(2) Reportable changes are defined in Subsection R414-310-3(2).

(3) For a decrease in income, the following provisions apply:

(a) If a change is already anticipated in a best estimate of income, the eligibility agency may only re-determine eligibility if the enrollee requests a redetermination of benefits.

(b) If a change is not anticipated, the agency shall re-determine eligibility.

(c) If a change makes the enrollee eligible for Medicaid, the effective date of the change is the first day of the month of report, if the change is verified timely.

(d) If a change is not verified timely, the change is effective on the first day of the month the change is verified.

(4) If an enrollee requests enrollment for a spouse, the application date for the spouse is the date of the request, and the following provisions apply:

(a) The eligibility agency does not require a new application;

(b) Eligibility is determined in accordance with Section R414-310-11;

(c) The effective date of enrollment is determined in accordance with Section R414-310-12; and

(d) The applicant must meet all other eligibility requirements.

R414-310-14. Notice and Termination.

(1) The Department adopts and incorporates by reference 42 CFR 431.206, 431.210, 431.211, 431.213, 431.214, and 435.919, October 1, 2013 ed.

(2) The eligibility agency shall notify an applicant or enrollee in writing of the eligibility decision made on the application or the review.

(3) The eligibility agency shall end an individual's enrollment upon enrollee request or upon discovery that the individual is no longer eligible.

R414-310-15. Improper Medical Coverage.

(1) Improper medical coverage occurs when:

(a) an individual receives medical assistance for which the individual is not eligible, including benefits that the individual receives pending a fair hearing or during an undue hardship waiver if the enrollee fails to act as required by the eligibility agency;

(b) an individual receives a benefit or service that is not

part of the benefit package for which the individual is eligible;

(c) an individual pays too much or too little for medical assistance benefits; or

(d) the Department pays too much or too little for medical assistance benefits on behalf of an eligible individual.

(2) An individual who receives benefits under PCN for which the individual is not eligible must repay the Department for the cost of the benefits that the individual receives.

(3) An alien and the alien's sponsor are jointly liable for benefits that an individual receives for which the individual is not eligible.

(4) An overpayment of benefits includes all amounts paid by the Department for medical services or other benefits on behalf of an enrollee, or for the benefit of the enrollee during a period in which the enrollee is not eligible to receive the benefits.

**KEY: Medicaid, primary care, demonstration
March 28, 2017**

Notice of Continuation April 22, 2017

26-18-1

26-1-5

26-18-3

R432. Health, Family Health and Preparedness, Licensing.**R432-100. General Hospital Standards.****R432-100-1. Legal Authority.**

This rule is adopted pursuant to Title 26, Chapter 21.

R432-100-2. Purpose.

The purpose of this rule is to promote the public health and welfare through establishment and enforcement of the licensure standards. The rule sets standards for the construction and operation of a general hospital. The standards of patient care apply to inpatient, outpatient, and satellite services.

R432-100-3. Construction, Facilities, and Equipment Standards.

Hospitals shall be constructed and maintained in accordance with R432-4-1 through R432-4-24.

R432-100-4. Hospital Swing-Bed and Transitional Care Units.

Hospitals with designated swing bed units or transitional care units shall comply with this section.

(1) In addition to R432-100, designated hospital swing beds shall comply with the following sections of R432-150, Nursing Care Facility Rules: 150-4, 150-5, 150-11 through 150-17, 150-20, 150-22, and 150-24.

(2) Transitional Care Units shall be licensed as Nursing Care Facilities under a separate licensing category and shall conform to the requirements of R432-150, Nursing Care Facility Rules.

R432-100-5. Governing Body.

(1) Each licensed hospital shall have a governing body hereinafter called the board.

(2) The board shall be legally responsible for the conduct of the hospital. The board is also responsible for the appointment of the medical staff.

(3) The board shall be organized in accordance with the Articles of Incorporation or Bylaws.

(a) The Articles or Bylaws shall specify:

- (i) the duties and responsibilities of the board;
- (ii) the method for election or appointment to the board;
- (iii) the size of the board;
- (iv) the terms of office of the board;
- (v) the methods for removal of board members and officers;

(vi) the duties and responsibilities of the officers and any standing committees;

(vii) the numbers or percentages of members that constitute a quorum for board meetings;

(viii) the board's functional organization, including any standing committees;

(ix) to whom responsibility for operation and maintenance of the hospital, including evaluation of hospital practices, may be delegated;

(x) the methods established by the board for holding such individuals responsible;

(xi) the mechanism for formal approval of the organization, bylaws, rules of the medical staff and hospital departments; and

(xii) the frequency of meetings.

(4) The board shall meet not less than quarterly, and shall keep written minutes of meetings and actions, and distribute copies to members of the board.

(5) The board shall employ a competent executive officer or administrator and vest this person with authority and responsibility for carrying out board policies. The administrator's qualifications, responsibilities, authority, and

accountability shall be defined in writing.

(6) The board, through its officers, committees, medical and other staff, shall:

(a) develop and implement a long range plan;

(b) appoint members of the medical staff and delineate their clinical privileges;

(c) approve organization, bylaws, and rules of medical staff and hospital departments; and

(d) maintain a list of the scope and nature of all contracted services.

R432-100-6. Administrator.

(1) The administrator shall establish and maintain an organizational structure for the hospital indicating the authority and responsibility of various positions, departments, and services within the hospital.

(2) The administrator shall designate in writing a person to act in the administrator's absence.

(3) The administrator shall be the direct representative of the board in the management of the hospital.

(4) The administrator shall function as liaison between the board, the medical staff, the nursing staff, and departments of the hospital.

(5) The administrator shall advise the board in the formulation of hospital policies and procedures. The administrator shall review and revise policies and procedures to reflect current hospital practice.

(6) The administrator is responsible to see that hospital policies and procedures are implemented and followed.

(7) The administrator shall maintain a written record of all business transactions and patient services rendered in the hospital and submit reports as requested to the board.

(8) Patient billing practices shall comply with the requirements of 26-21-20 UCA.

(9) The administrator shall appoint a member of the staff to oversee compliance with the requirements of the Utah Anatomical Gift Act.

R432-100-7. Medical and Professional Staff.

(1) Each hospital shall have an organized medical and professional staff that operates under bylaws approved by the board.

(2) The medical and professional staff shall advise and be accountable to the board for the quality of medical care provided to patients.

(3) The medical and professional staff must adopt bylaws and policies and procedures to establish and maintain a qualified medical and professional staff including current licensure, relevant training and experience, and competency to perform the privileges requested. The bylaws shall address:

(a) the appointment and re-appointment process;

(b) the necessary qualifications for membership;

(c) the delineation of privileges;

(d) the participation and documentation of continuing education;

(e) temporary credentialing and privileging of staff in emergency or disaster situations; and

(f) a fair hearing and appeals process.

(4) The medical care of all persons admitted to the hospital shall be under the supervision and direction of a fully qualified physician who is licensed by the state. During an emergency or disaster situation a member of the credentialed and privileged staff must supervise temporary credentialed practitioners.

(5) An applicant for staff membership and privileges may not be denied solely on the ground that the applicant is a licensed podiatrist or licensed psychologist rather than licensed to practice medicine under the Utah Medical Practice Act or the Utah Osteopathic Medical Licensing Act.

(6) Membership and privileges may not be denied on any ground that is otherwise prohibited by law.

(7) Each applicant for medical and professional staff membership must be oriented to the bylaws and must agree in writing to abide by all conditions.

(8) The medical and professional staff shall review each applicant and grant privileges based on the scope of their license and abilities.

(9) The medical and professional staff shall review appointments and re-appointments to the medical and professional staff at least every two years.

(10) During an emergency or disaster situation the hospital shall orient each temporary practitioner to the practitioner's assigned area of the hospital.

R432-100-8. Personnel Management Service.

(1) The personnel management system is organized to ensure personnel are competent to perform their respective duties, services, and functions.

(2) There shall be written policies, procedures, and performance standards that include:

- (a) job descriptions for each position or employee;
- (b) periodic employee performance evaluations;
- (c) employee health screening, including Tuberculosis testing;

(i) Employee skin testing by the Mantoux method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(ii) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

- (A) initial hiring;
- (B) suspected exposure to a person with active tuberculosis; and
- (C) development of symptoms of tuberculosis.

(iii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(d) policies to ensure that all employees receive unit specific training;

(e) policies to ensure that all hospital direct care staff receive continued competency training in current patient care practices;

(f) policies to ensure that all hospital direct care staff have current cardiopulmonary resuscitation certification; and

(g) policies to ensure that OSHA regulations regarding Blood Borne Pathogens are implemented and followed.

(3) All personnel shall be registered, certified or licensed as required by the Utah Department of Commerce within 45 days of employment.

(4) A copy of the current certificate, license or registration shall be available for Department review.

(5) All direct care and housekeeping staff shall receive annual documented inservice training in the requirements for reporting abuse, neglect, or exploitation of children or adults.

(6) Volunteers may be utilized in the daily activities of the hospital, but shall not be included in the hospital staffing plan in lieu of hospital employees.

(a) Volunteers shall be screened and supervised according to hospital policy.

(b) Volunteers shall be familiar with hospital volunteer policies, including patient rights and hospital emergency procedures.

(7) If the hospital participates in a professional graduate education program, there shall be policies and procedures specifying the patient care responsibilities and supervision of the graduate education program participants.

R432-100-9. Quality Improvement Plan.

(1) The Board shall ensure that there is a well-defined

quality improvement plan designed to improve patient care.

(2) The plan shall be consistent with the delivery of patient care.

(3) The plan shall be implemented and include a system for the collection of indicator data.

(a) The plan shall include an incident reporting system to identify problems, concerns, and opportunities for improvement of patient care.

(b) Incident reports shall be available for Department review.

(c) A system shall be implemented for assessing identified problems, concerns, and opportunities for improvement.

(4) The plan shall implement actions that are designed to eliminate identified problems and improve patient care.

(5) Each hospital shall maintain a quality improvement committee. The quality improvement committee shall keep and make available for Department review written minutes documenting corrective actions and results.

(6) The quality improvement committee shall report findings and concerns at least quarterly to the board, the medical staff, and the administrator.

(7) Infection reporting shall be integrated into the quality improvement plan, and shall be reported to the Department in accordance with R386-702 Communicable Diseases.

R432-100-10. Infection Control.

Each hospital must implement a hospital-wide infection control program.

(1) The infection control program shall include at least the following:

- (a) definitions of nosocomial infections;
- (b) a system for reporting, evaluating, and investigating infections;

(c) review and evaluation of aseptic, isolation, and sanitation techniques;

(d) methods for isolation in relation to the medical condition involved;

(e) preventive, surveillance, and control procedures;

(f) laboratory services;

(g) an employee health program;

(h) orientation of all new employees; and

(i) documented in-service education for all departments and services relative to infection control.

(2) Infection control reporting data shall be incorporated into the hospital quality improvement process.

(3) There shall be written infection control policies and procedures for each area of the hospital, including requirements dictated by the physical layout, personnel and equipment involved.

(4) There shall be written policies for the selection, storage, handling, use, and disposition of disposable or reusable items. Single-use items may be reused according to hospital policy.

(a) Reusable items shall have specific policies and procedures for each type of reuse item.

(b) Reuse data shall be incorporated into the quality improvement process.

(c) Reuse data shall be incorporated in the hospital infection control identification and reporting process.

R432-100-11. Patient Rights.

(1) The facility shall inform each patient at the time of admission of patient rights and support the exercise of the patient's right to the following:

- (a) to access all medical records, and to purchase at a cost not to exceed the community standard, photocopies of his record;

(b) to be fully informed of his medical health status in a language he can understand;

(c) to reasonable access to care;

(d) to refuse treatment;

(e) to formulate an advanced directive in accordance with the Advance Health Care Directive Act, UCA 75-2a;

(f) to uniform, considerate and respectful care;

(g) to participate in decision making involved in managing his health care with his physician, or to have a designated representative involved;

(h) to express complaints regarding the care received and to have those complaints resolved when possible;

(i) to refuse to participate in experimental treatment or research;

(j) to be examined and treated in surroundings designed to give visual and auditory privacy; and

(k) to be free from mental and physical abuse, and to be free from chemical and (except in emergencies) physical restraints except as authorized in writing by a licensed practitioner for a specified and limited period of time or when necessary to protect the patient from injury to himself or others.

(2) The hospital shall establish a policy and inform patients and legal representatives regarding the withholding of resuscitative services and the forgoing or withdrawing of life sustaining treatment and care at the end of life. This policy shall be consistent with state law.

R432-100-12. Patient Designated Caregiver.

(1) The hospital shall give a patient admitted to the hospital the opportunity to designate a caregiver who will assist the patient with continuing care after discharge from the hospital.

(a) A caregiver is an individual designated by an inpatient of the hospital to assist with continuing care that can be given in the patient's residence after discharge;

(b) The hospital shall document the designated caregiver in the patient record and include contact information; and

(c) If the patient declines to designate a caregiver, the hospital shall document the patient's choice in the medical record.

(2) The hospital shall notify the designated caregiver as soon as practicable before any of the following circumstances occur:

(a) The patient is transferred to another health facility;

(b) The patient is discharged back to their own residence.

(3) If the hospital is unable to contact the designated caregiver when changes occur, the lack of contact shall not interfere with, delay or otherwise affect the medical care provided to the patient or the transfer or discharge of the patient.

(4) The hospital shall document any attempt to contact the designated caregiver in the patient record, to include dates and times attempted.

(5) The patient may give written consent to allow the hospital to release medical information to the designated caregiver, pursuant to the hospital's established procedures for the release of personal health information.

(6) Prior to the patient being discharged, the hospital shall provide a written discharge plan for continuing care needs to the patient and designated caregiver, which shall include:

(a) The name and contact information of the designated caregiver and relation to the patient;

(b) A description of continuing care tasks that the patient requires, in a culturally competent manner; and

(c) Contact information for any other health care resources necessary to meet the needs of the patient.

(7) Prior to the patient being discharged, the hospital shall provide the designated caregiver with an opportunity for instruction in continuing care tasks outlined in the discharge plan, which shall include:

(a) Demonstration of the continuing care tasks by hospital personnel; and

(b) Opportunity for the patient and designated caregiver to ask questions and receive answers regarding the continuing care tasks; and

(c) Education and counseling about medications, including dosing and proper use of delivery devices.

(8) The hospital shall document the instruction given to the patient and designated caregiver in the patient record, to include the date, time and contents of the instructions.

R432-100-13. Nursing Care Services.

(1) There shall be an organized nursing department that is integrated with other departments and services.

(a) The chief nursing officer of the nursing department shall be a registered nurse with demonstrated ability in nursing practice and administration.

(b) Nursing policies and procedures, nursing standards of patient care, and standards of nursing practice shall be approved by the chief nursing officer.

(c) A registered nurse shall be designated and authorized to act in the chief nursing officer's absence.

(d) Nursing tasks may be delegated pursuant to R156-31-701, Delegation of Nursing Tasks.

(2) Qualified registered nurses shall be on duty at all times to give patients nursing care that requires the judgment and special skills of a registered nurse. The nursing department shall develop and maintain a system for determining staffing requirements for nursing care on the basis of demonstrated patient need, intervention priority for care, patient load, and acuity levels.

(3) Nursing care shall be documented for each patient from admission through discharge.

(a) A registered nurse shall be responsible to document each patient's nursing care and coordinate the provision of interdisciplinary care.

(b) Nursing care documentation shall include the assessments of patient's needs, clinical diagnoses, intervention identified to meet the patient's needs, nursing care provided and the patient's response, the outcome of the care provided, and the ability of the patient, family, or designated caregiver in managing the continued care after discharge.

(c) Patients shall receive prior to discharge written instructions for any follow-up care or treatment.

R432-100-14. Critical Care Unit.

(1) Hospitals that provide critical care units shall comply with the requirements of R432-100-14. Medical direction for the unit(s) shall be according to the scope of services provided as delineated in hospital policy and approved by the board.

(2) Critical care unit nursing direction shall be provided by a designated, qualified registered nurse manager who has relevant education, training and experience in critical care. The supervising nurse shall coordinate the care provided by all nursing service personnel in the critical care unit. The registered nurse manager shall have administrative responsibility for the critical care unit, assuring that a registered nurse who has advanced life support certification is on duty and in the unit at all times.

(3) Each critical care unit shall be designed and equipped to facilitate the safe and effective care of the patient population served. Equipment and supplies shall be available to the unit as determined by hospital policy in accordance

with the needs of the patients.

(4) An emergency cart must be readily available to the unit and contain appropriate drugs and equipment according to hospital policy. The cart, or the cart locking mechanism, must be checked every shift and after each use to assure that all items required for immediate patient care are in place in the cart and in usable condition.

(5) The following support services shall be immediately available to the critical care unit on a 24-hour basis:

- (a) blood bank or supply;
- (b) clinical laboratory; and
- (c) radiology services.

(6) If the hospital provides dialysis services, the dialysis services shall comply with R432-650 End Stage Renal Disease Facility Rules, sections R432-650-7, Required Staffing; and R432-650-12, Water Quality.

R432-100-15. Surgical Services.

(1) Surgical services provided by the hospital shall be integrated with other departments or services of the hospital. The relationship, objective, and scope of all surgical services shall be specified in writing.

(a) Administrative direction of surgical services shall be provided by a person appointed and authorized by the administrator.

(b) Medical direction of surgical services shall be provided by a member of the medical staff.

(c) Qualified registered nurses shall supervise the provision of surgical nursing care.

(d) The operating room suites shall be directed and supervised by a qualified registered nurse. The supervisor shall have authority and responsibility for:

- (i) assuring that the planned procedure is within the scope of privileges granted to the physician.
- (ii) maintaining the operating room register; and
- (iii) other administrative functions, including serving on patient care committees.

(e) The hospital shall establish a policy governing the use of obstetrical delivery and operating rooms to ensure that any patient with parturition imminent, or with an obstetrical emergency requiring immediate medical intervention to preserve the health and life of the mother or her infant, is given priority over other obstetrical and non-emergent surgical procedures.

(f) Qualified surgical assistants shall be used as needed in operations in accordance with hospital by-laws.

(g) Surgical technicians and licensed practical nurses may serve as scrub nurses under the direct supervision of a registered nurse, but may not function as circulation nurses in the operating rooms, unless the scrub nurse is a registered nurse.

(h) Outpatient surgical patients shall not be routinely admitted to the hospital as inpatients. A systematic review process shall evaluate patients who require hospitalization after outpatient surgery.

(2) A safe operating room environment shall be established, controlled and consistently monitored.

(a) Surgical equipment including suction facilities and instruments in good repair shall be provided to assure safe and aseptic treatment of all surgical cases.

(b) Traffic in and out of the operating room shall be controlled. There shall be no through traffic.

(c) There shall be a scavenging system for evacuation of anesthetic waste gases.

(d) The following equipment shall be available to the operating suite:

- (i) a call-in system;
- (ii) a cardiac monitor;
- (iii) a ventilation support system;

(iv) a defibrillator;

(v) an aspirator; and

(vi) equipment for cardiopulmonary resuscitation.

(3) The administration of anesthetics shall conform to the requirements of Anesthesia Services, R432-100-16.

(4) Removal of surgical specimens shall conform with the requirements of Laboratory and Pathology Services, R432-100-22.

R432-100-16. Anesthesia Services.

(1) There shall be facilities and equipment for the administration of anesthesia commensurate with the clinical and surgical procedures planned for the institution. Anesthesia care shall be available on a 24-hour basis.

(a) Administrative direction of anesthesia services shall be provided by a person appointed and authorized by the hospital administrator.

(b) Medical direction of anesthesia services shall be provided by a member of the medical staff.

(c) Anesthesia care shall be provided by anesthesiologists, other qualified physicians, dentists, oral surgeons, or Certified Registered Nurse Anesthetists who are members of the medical staff within the scope of their practice and license.

(i) A qualified physician, dentist or oral surgeon shall have documented training that includes the equivalent of 40 days preceptorship with an anesthesiologist and shall be able to perform at least the following:

(A) procedures commonly used to render the patient insensible to pain during the performance of surgical, obstetrical, and other pain producing clinical procedures;

(B) life support functions during the administration of anesthesia, including induction and intubation procedures; and

(C) provide pre-anesthesia and post-anesthesia management of the patient.

(ii) The responsibilities and privileges of the person administering anesthesia shall be clearly defined by the medical staff.

(iii) Both the patient and the operating surgeon shall be informed prior to surgery of who will be administering anesthesia.

(iv) Medicaid certified hospitals shall comply with the requirements of 42 CFR 482.52(a), Subpart D, Anesthesia Services.

(2) The use of flammable anesthetic agents for anesthesia or for the pre-operative preparation of the surgical field is prohibited.

(3) The anesthetic equipment shall be inspected and tested by the person administering anesthesia before use in accordance with hospital policy.

R432-100-17. Emergency Care Service.

(1) Each hospital shall evaluate and classify itself to indicate its capability in providing emergency care. Acute Hospitals and Critical Access Hospitals shall be classified as Type I, II or III. Type IV category may be used for Specialty Hospitals.

(a) Type I offers comprehensive emergency care 24 hours a day in-house, with at least one physician experienced in emergency care on staff in the emergency care area. There shall be in-hospital support by members of the medical staff for at least medical, surgical, orthopedic, obstetric, pediatric, and anesthesia services. Specialty consultation shall be available within 30 minutes, or two-way voice communication is available for the initial consultation.

(b) Type II offers emergency care 24 hours a day, with at least one physician experienced in emergency care on duty in the emergency care area, and with specialty consultation

available within 30 minutes by members of the medical staff.

(c) Type III offers emergency care 24 hours a day, with at least one physician available to the emergency care area within approximately 30 minutes through a medical staff call roster. Specialty consultation shall be available by request of the attending medical staff member by transfer to a type I or type II hospital where care can be provided.

(d) Type IV offers emergency first aid treatment to patients, staff, and visitors; and to persons who may be unaware of, or unable to immediately reach services in other facilities.

(2) The emergency service shall be organized and staffed by qualified individuals based on the defined capability of the hospital.

(a) Administrative direction of emergency services shall be provided by an individual appointed and authorized by the hospital administrator.

(b) Medical direction of emergency services shall be defined in writing and provided by one or more members of the medical staff. The medical staff shall provide back-up and on-call coverage for emergency services and as needed for emergency specialty services.

(c) The evaluation and treatment of a patient who presents himself or is brought to the emergency care area shall be the responsibility of a licensed practitioner and shall include an appropriate medical screening examination, stabilizing treatment, and, if necessary for definitive treatment, an appropriate transfer to another medical facility that has agreed to accept the patient for care.

(d) The priority by which persons seeking emergency care are seen by a physician may be determined by trained personnel using guidelines established by the emergency room director and approved by the medical staff.

(e) Rosters designating medical staff members on duty or on call for primary coverage and specialty consultation shall be posted in the emergency care area.

(f) A designated registered nurse who is qualified by relevant training, experience, and current competence in emergency care shall supervise the care provided by all nursing service personnel in the department.

(i) The number of nursing service personnel shall be sufficient for the types and volume of patients served.

(ii) Type I and II emergency departments shall have at least one registered nurse with Advanced Cardiac Life Support certification, and sufficient number of other nursing staff assigned and on duty within the emergency care area.

(iii) The emergency nurse supervisor shall participate in internal committee activities concerned with the emergency service.

(g) The emergency service shall be integrated with other departments in the hospital.

(i) Clinical laboratory services with the capability of performing all routine studies and standard analyses of blood, urine, and other body fluids shall be available. A supply of blood shall be available at all times.

(ii) Diagnostic radiology services shall be available at all times.

(h) The duties and responsibilities of all personnel, including physicians and nurses, providing care within the emergency service area shall be defined in writing.

(3) Each hospital shall define its scope of emergency services in writing and implement a plan for emergency care, based on community need and on the capability of the hospital.

(a) Each hospital shall comply with federal anti-dumping regulations as defined in CFR 489.20 and 489.24.

(b) The role of the emergency service in the hospital's disaster plans shall be defined.

(c) Each hospital must have a communication system

that permits instant contact with law enforcement agencies, rescue squads, ambulance services, and other emergency services within the community.

(d) Emergency department policies and protocols shall address the care, security, and control of prisoners or people to be detained for police or protective custody.

(e) Emergency department policies and protocols shall address the provision of care to an unemancipated minor not accompanied by parent or guardian, or to an unaccompanied unconscious patient.

(f) Emergency department policies and procedures shall address the evaluation and handling of alleged or suspected child or adult abuse cases. Criteria shall be developed to alert emergency department and service personnel to possible child or adult abuse. The criteria shall address:

(i) suspected physical assault;

(ii) suspected rape or sexual molestation;

(iii) suspected domestic abuse of elders, spouses, partners and children;

(iv) the collection, retention, and safeguarding of specimens, photographs, and other evidentiary materials; and

(v) visual and auditory privacy during examination and consultation of patients.

(g) A list shall be available in the emergency department of private and public community agencies and resources that provide, arrange, evaluate and care for the victims of abuse.

(h) Emergency department policies and procedures shall address the handling of hazardous materials and contaminated patients.

(i) Emergency department policies and procedures shall address the reporting of persons dead-on-arrival to the proper authorities including the legal requirements for the collection and preservation of evidence.

(4) The hospital shall in a timely manner make reasonable effort to contact the guardian, parents, or next of kin of any unaccompanied minor, or any unaccompanied unconscious patient admitted to the emergency department.

R432-100-18. Perinatal Services.

(1) Each hospital shall comply with the requirements of this section and shall designate its capability to provide perinatal (antepartum, labor, delivery, postpartum and nursery) care in accordance with Level I basic, Level II specialty, or Level III sub-specialty or tertiary care as described in the Guidelines for Perinatal Care, Sixth Edition and the Guidelines for Design and Construction of Health Care Facilities, 2010 Edition, which are incorporated by reference.

(a) A qualified member of the hospital staff shall provide administrative, medical and nursing direction and oversight for perinatal services according to each hospital's designated level of care, Level I, IIA, IIB, IIIA, IIIB or IIIC.

(b) A qualified registered nurse shall be immediately available at all hours of the day and as well as sufficient numbers of trained competent staff to meet the designated level.

(c) Support personnel shall be available to the perinatal care service according to each hospital's designated level of care.

(2) Each hospital shall establish and implement security protocols for perinatal patients.

(3) The perinatal department shall include facilities and equipment for antepartum, labor and delivery, nursery, postpartum, and optional birthing rooms.

(a) Perinatal areas shall be located and arranged to avoid non-related traffic to and from other areas.

(b) The hospital shall isolate patients with infections or other communicable conditions. The use of maternity rooms for patients other than maternity patients shall be restricted

according to hospital policy.

(c) Each hospital shall have at least one surgical suite for operative delivery.

(d) Equipment and supplies shall be immediately available and maintained for the mother and newborn, including:

- (i) furnishings suitable for labor, birth, and recovery;
- (ii) oxygen with flow meters and masks or equivalent;
- (iii) mechanical suction and bulb suction;
- (iv) resuscitation equipment;
- (v) emergency medications, intravenous fluids, and related supplies and equipment;
- (vi) a device to assess fetal heart rate;
- (vii) equipment to monitor and maintain the optimum body temperature of the newborn;
- (viii) a clock capable of showing seconds;
- (ix) an adjustable examination light; and
- (x) a newborn warming unit with temperature controls that comply with Underwriters' Laboratories requirements. The unit must be capable of administering oxygen and suctioning.

(e) The hospital shall maintain a delivery room record keeping system for cross referencing information with other departments.

(4) If birthing rooms are provided, they shall be equipped in accordance with 100-18(3(d)).

(5) The nursery shall include facilities and equipment according to its designated level of care: Level I - Basic Newborn Care; Level II - Specialty Continuing Care; and Level III - Sub-specialty or Tertiary Newborn Intensive Care including an individual bassinets for each infant; with space between bassinets as follows:

(a) Level I Basic: Full Term or Well Baby Nursery 24 inches between bassinets;

(b) Level II Specialty: Continuous Care Nursery four feet between bassinets for Continuing Care nurseries;

(c) Level III Sub-specialty: Newborn Intensive Care Nursery four feet between bassinets.

- (d) accurate scales; and
- (e) a wall thermometer;
- (6) The following equipment and supplies shall be available:

(a) an individual thermometer, or one with disposable tips, for each infant;

(b) a supply of medication shall be immediately available for emergencies;

(c) a covered soiled-diaper container with removable lining;

(d) a linen hamper with removable bag for soiled linen other than diapers;

(e) a newborn warming unit with temperature controls that comply with Underwriters' Laboratories requirements;

(f) oxygen, oxygen equipment, and suction equipment; and

(g) an oxygen concentration monitoring device.

(7) Temperature shall be maintained between 70-80 degrees Fahrenheit in the nursery area.

(8) Infant formula storage space shall be available that conforms to the manufacturer's recommendations. Only single-use bottles shall be used for newborn feeding.

(9) A suspect nursery or isolation area shall be available. Equipment and supplies shall be provided for the isolation area.

- (a) Isolation facilities shall be used for any infant who:
 - (i) has a communicable disease;
 - (ii) is delivered of an ill mother infected with a communicable disease;
 - (iii) is readmitted after discharge from a hospital; or
 - (iv) is delivered outside the hospital.

(b) There shall be separate hand washing facilities for the isolation area.

(10) Each hospital shall comply with the following provisions:

(a) No attempt shall be made to delay the imminent, normal birth of a child;

(b) A prophylactic solution in accordance with R386-702-8 shall be instilled in the eyes of the infant within three hours of birth;

(c) Disease screening including phenylketonuria (PKU) shall be performed in accordance with Section 26-10-6 and R398-1; and

(d) A newborn hearing screening shall be performed in accordance with R398-2.

R432-100-19. Pediatric Services.

(1) If the hospital provides pediatric services, those services shall be under the direction of a member of the medical staff who is experienced in pediatrics and whose functions and scope of responsibility are defined by the medical staff.

(a) A pediatrics qualified registered nurse must supervise nursing care and must supervise the documentation of the implementation of pediatric patient care on an interdisciplinary plan of care.

(b) If the hospital provides a pediatric unit, it shall have an interdisciplinary committee responsible for policy development and review of practice within the unit. This committee must include representatives from administration, the medical and nursing staff, and rehabilitative support staff.

(c) Hospitals admitting pediatric patients shall have written policies and procedures specifying the criteria for admission to the hospital and conditions requiring transfer when indicated. These policies and procedures shall be based upon the resources available at the hospital, specifically, in terms of personnel, space, equipment, and supplies.

(d) The hospital shall assess all pediatric patients for maturity and development. Information obtained from the maturity and development assessment must be incorporated into the plan of care.

(e) The hospital shall establish and implement security protocols for pediatric patients.

(f) The hospital shall provide a safe area for diversional play activities.

(2) Hospitals admitting pediatric patients shall have equipment and supplies in accordance with the hospital's scope of pediatric services.

(3) The hospital shall have written guidelines for the placement or room assignment of pediatric patients according to patient acuity under usual, specific, or unusual conditions within the hospital. The guidelines shall address the use of cribs, bassinets, or beds; including the proper use of restraints, bed rails, and other safety devices.

(a) The hospital shall place infant patients in beds where frequent observation is possible.

(b) Pediatric patients other than infants shall be placed in beds to allow frequent observation according to each patient's assessed care needs.

(4) Personnel working with pediatric patients shall have specific training and experience relating to the care of pediatric patients.

(5) Orientation and inservice training for pediatric care staff shall include pediatric specific training on drugs and toxicology, intravenous therapy, pediatric emergency procedures, infant and child nutrition, the emotional needs and behavioral management of hospitalized children, child abuse and neglect, and other topics according to the needs of the pediatric patients.

R432-100-20. Respiratory Care Services.

(1) Administrative direction of respiratory care services shall be provided by a person authorized by the hospital administrator.

(2) The respiratory care service shall be under the medical direction of a member of the medical staff who has the responsibility and authority for the overall direction of respiratory care services.

(a) When the scope of services warrants, respiratory care services shall be supervised by a technical director who is registered or certified by the National Board For Respiratory Therapy, Inc., or has the equivalent education, training, and experience.

(b) The technical director shall inform physicians about the use and potential hazards in the use of any respiratory care equipment.

(3) Respiratory care services shall be provided to patients in accordance with a written prescription of the responsible licensed practitioner which specifies the type, frequency, and duration of the treatment; and when appropriate, the type and dose of medication, the type of diluent, and the oxygen concentration.

(a) The hospital must have equipment to perform any pulmonary function study or blood-gas analysis provided by the hospital.

(b) Resuscitation, ventilatory, and oxygenation support equipment shall be available in accordance with the needs of the patient population served.

R432-100-21. Rehabilitation Therapy Services.

(1) If rehabilitation therapy services are provided by the hospital, the services may include physical therapy, speech therapy, and occupational therapy.

(a) Rehabilitation therapy services shall be directed by a qualified, licensed provider who shall have clinical responsibility for the specific therapy service.

(b) Patient services performed by support personnel, shall be commensurate with each person's documented training and experience.

(c) Rehabilitation therapy services may be initiated by a member of the medical staff or by a licensed rehabilitation therapist.

(i) A physician's written request for services must include reference to the diagnosis or problems for which treatment is planned, and any contraindications.

(ii) The patient's physician shall retain responsibility for the specific medical problem or condition for which the referral was made.

(2) Rehabilitation therapy services provided to the patient shall include evaluation of the patient, establishment of goals, development of a plan of treatment, regular and frequent assessment, maintenance of treatment and progress records, and periodic assessment of the quality and appropriateness of the care provided.

R432-100-22. Radiology Services.

(1) Each hospital shall provide an organized radiology department offering services that are in accordance with the needs and size of the institution.

(a) Administrative direction of radiology services shall be provided by a person appointed and authorized by the hospital administrator.

(b) Medical direction of the department shall be provided by a member of the medical staff.

(i) If a radiologist is not the medical director of the radiology services, the services of a radiologist shall be retained on a part-time basis.

(ii) If a radiologist provides services on less than a full-time basis, the time commitment shall allow the radiologist to

complete the necessary functions to meet the radiological needs of the patients and the medical staff.

(c) The radiologist is responsible to:

(i) maintain a quality control program that minimizes unnecessary duplication of radiographic studies and maximizes the quality of diagnostic information available;

(ii) develop technique charts that include part, thickness, exposure factors, focal film distances and whether a grid or screen technique; and

(iii) assure the availability of information regarding the purpose and yield of radiological procedures and the risks of radiation.

(d) At least one licensed radiologic technologist shall be on duty or available when needed.

(e) Diagnostic radiology services shall be performed only at the request of a member of the medical staff or other persons authorized by the hospital.

(f) If radiation oncology services are provided, the following applies:

(i) Physicians and staff who provide radiation oncology services have delineated privileges;

(ii) The medical director of the radiation oncology services is a physician member of the medical staff who is qualified by education and experience in radiation oncology.

(2) Radiologic patient records shall be integrated with the hospital patient record.

(a) All requests for radiologic services shall contain the reasons for the examinations.

(b) Authenticated reports of these examinations shall be filed in the patient's medical record as soon as possible. Radiological film shall be retained in accordance with hospital policy.

(c) If requested by the attending physician and if the quality of the radiograph permits, the radiology department may officially enter the interpretations of the radiologic examinations performed outside of the hospital in the patient's medical record.

(d) Radiotherapy summaries shall be filed in the patient's medical record. A copy may be filed in the radiotherapy department. The radiotherapy summary shall be forwarded to the referring physician. Unless otherwise justified, the medical record of the patient receiving radiotherapy for treatment or palliation of a malignancy shall reflect the histologically substantiated diagnosis.

R432-100-23. Laboratory and Pathology Services.

(1) Each hospital shall provide laboratory and pathology services that are in accordance with the needs and size of the institution.

(a) Administrative direction of laboratory and pathology services shall be provided by a person appointed and authorized by the hospital administrator.

(b) Medical direction of laboratory and pathology services shall be provided by a member of the medical staff.

(2) Laboratory and pathology services shall comply with the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). CLIA inspection reports shall be available for Department review.

(3) Laboratories certified by a Health Care Financing Administration (HCFA) approved accrediting agency are determined to be in compliance with this section. Accrediting agency inspection reports shall be available for Department review.

R432-100-24. Blood Services.

(1) Hospital blood services are defined as follows:

(a) A "donor center" means a facility that procures, prepares, processes, stores and transports blood and blood components.

(b) A "transfusion service" means a facility that stores, determines compatibility, transfuses blood and blood components, and monitors transfused patients for any ill effect.

(c) A "blood bank" means a facility that combines the functions of a donor center and transfusion service within the same facility.

(2) The hospital blood service shall establish and maintain an appropriate blood inventory in the hospital at all times, have immediate access to community blood services or other institutions, or have an up-to-date list of donors, equipment and trained personnel to draw and process blood.

(a) Blood or blood components must be collected, stored, and handled in such manner that they retain potency and safety.

(b) Blood or blood components must be properly processed, tested, and labeled.

(3) If the hospital operates a donor center, transfusion service or a blood bank the donor center, transfusion service, or blood bank must be accredited.

(a) Hospital blood banks and donor centers must be accredited by the Food and Drug Administration (FDA).

(b) Hospital transfusion services must be certified by the Health Care Financing Administration to meet Clinical Laboratory Improvement Amendments of 1988 (CLIA), or any accrediting organization approved by the Health Care Financing Administration.

(4) Results of the accrediting organization survey, or current CLIA certification must be available for Department review.

R432-100-25. Pharmacy Services.

(1) The pharmacy of a hospital currently accredited and conforming to the standards of JCAHO shall be determined to be in compliance with these rules.

(a) If a hospital is not accredited by JCAHO, then the pharmacy of such hospital shall comply with rules in this section.

(b) The pharmacy department and service shall be directed by a licensed pharmacist.

(i) Competent personnel shall be employed in keeping with the size and activity of the department and service. If the hospital uses only a drug room and the size of the hospital does not warrant a full-time pharmacist, a consultant pharmacist may be employed.

(ii) The pharmacist shall be responsible for developing, supervising, and coordinating all the activities of the pharmacy.

(iii) Provision shall be made for access to emergency pharmaceutical services.

(iv) The pharmacist shall be trained in the specific functions and scope of the hospital pharmacy.

(2) Facilities shall be provided for the safe storage, preparation, safeguarding, and dispensing of drugs.

(a) All floor-stocks shall be kept in secure areas in the patient care units.

(b) Double-locked storage shall be provided for controlled substances. Electronically controlled storage of narcotics may be permitted if automated dispensing technology is utilized by the hospital.

(c) Medications stored at room temperatures shall be maintained within 59 and 80 degrees F.

(d) Refrigerated medications shall be maintained within 36 and 46 degrees F.

(e) A current toxicology reference, and other references as needed for effective pharmacy operation and professional information shall be available.

(3) Records shall be kept of the transactions of the pharmacy and medication storage unit and coordinated with

other hospital records.

(a) There shall be a recorded and signed floor-stock controlled substance count once per shift or the facility must use automated dispensing technology in accordance with R156-17b-605.

(b) Hospitals that utilize automated dispensing technology must implement a system for accounting of controlled substances dispensed by the automated dispensing system.

(c) The record shall list the name of the patient receiving the controlled substance, the date, type of substance, dosage, and signature of the person administering the substance.

(4) Written policies and procedures that pertain to the intra-hospital drug distribution system and the safe administration of drugs shall be developed by the director of the pharmaceutical department or service in concert with the medical staff.

(a) Drugs that are provided to floor units shall be administered in accordance with hospital policies and procedures.

(b) The medical staff in conjunction with the pharmacist shall establish standard stop orders for all medications not specifically prescribed as to time or number of doses.

(c) The pharmacist shall have full responsibility for dispensing of all drugs.

(d) There shall be a policy stating who may have access to the pharmacy or drug room when the pharmacist is not available.

(e) There shall be a documentation system for the accounting and replacement of drugs, including narcotics, to the emergency department.

(f) Medication errors and adverse drug reactions shall be reported immediately in accordance with written procedures including notification of the practitioner who ordered the drug.

R432-100-26. Social Services.

(1) In a hospital with an organized social services department, a qualified social worker shall direct the provision of social work services. If a hospital does not have a full or part-time qualified social worker, the administrator shall designate an employee to coordinate and assure the provision of social work services. The social worker, or designee shall be knowledgeable about community agencies, institutions, and other resources.

(2) In a hospital without an organized social services department, the hospital shall obtain consultation from a qualified social worker to provide social work services.

(3) The staff shall be oriented to help the patient make the best use of available inpatient, outpatient, extended care, home health, and hospice services.

(4) Social Services shall be integrated with other departments and services of the hospital.

R432-100-27. Psychiatric Services.

(1) If provided by the hospital, psychiatric services shall be integrated with other departments or services of the hospital according to the nature, extent, and scope of service provided.

(a) If the hospital does not provide psychiatric services, the hospital must have procedures to transfer patients to a facility that can provide the necessary psychiatric services.

(b) Administrative direction of psychiatric services shall be provided by a person appointed and authorized by the hospital administrator.

(c) Medical direction of psychiatric services shall be defined in writing and provided by a qualified physician who is a member of the medical staff.

(d) Psychiatric services shall comply with the following sections of R432-101, Specialty Hospitals, Psychiatric:

- (i) R432-101-13 Patient Security;
- (ii) R432-101-14 Special Treatment Procedures;
- (iii) R432-101-17 Admission and Discharge;
- (iv) R432-101-20 Inpatient Services;
- (v) R432-101-21 Adolescent or Child Treatment Programs;
- (vi) R432-101-22 Residential Treatment Services;
- (vii) R432-101-23 Physical Restraints, Seclusion, and Behavior Management;
- (viii) R432-101-24 Involuntary Medication Administration; and
- (ix) R432-101-35 Partial Hospitalization Services.

(2) If outreach services are ordered by a physician as part of the plan of care or hospital discharge plan, the outreach services may be provided in a clinic, physician's office, or the patient's home.

R432-100-28. Substance Abuse Rehabilitation Services.

(1) A hospital may provide inpatient or outpatient substance abuse rehabilitation services. A hospital that provides substance abuse rehabilitation services shall be staffed to meet the needs of the patients or clients.

(a) Administrative direction shall be provided by an individual appointed and authorized by the hospital administrator.

(b) Medical direction shall be defined in writing and provided by a qualified physician who is a member of the medical staff.

(c) Nursing services shall be under the direction of a full-time registered nurse.

(d) Substance abuse counseling shall be under the direction of a licensed mental health therapist.

(e) A licensed substance abuse counselor may serve as the primary therapist under the direction of an individual licensed under the Mental Health Practice Act.

(f) An interdisciplinary team including the physician, registered nurse, licensed mental health therapist, and substance abuse counselor shall be responsible for program and treatment services. The patient or client may be included as a member of the interdisciplinary team.

(2) Substance abuse rehabilitation services shall include at least the following:

(a) Detoxification care shall be available for the systematic reduction or elimination of a toxic agent in the body by use of rest, fluids, medication, counseling, or nursing care.

(b) Counseling shall be available in at least one of the following areas: individual, group, or family counseling. In addition, there shall be provisions for educational, employment, or other counseling as needed.

(c) Treatment services shall be coordinated with other hospital and community services to assure continuity of care through discharge planning and aftercare referrals. Counselors may refer patients or clients to public or private agencies for substance abuse rehabilitation, and employment and educational counseling.

(d) A comprehensive assessment shall be documented that includes at least a physical examination, a psychiatric and psychosocial assessment, and a social assessment.

(3) The confidentiality of medical records of substance abuse patients and clients shall be maintained according to the federal guidelines in 42 CFR, Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

(4) Residential treatment services may be provided under the direction of the medical director or his designee. Residential treatment services shall comply with R432-101-22.

R432-100-29. Outpatient Services.

(1) Outpatient care services provided by the hospital shall be integrated with other departments or services of the hospital according to the nature, extent, and scope of services provided.

(2) Outpatient care shall meet the same standards of care that apply to inpatient care.

(3) Outpatient care includes hospital owned outpatient services, and hospital satellite services.

R432-100-30. Respite Services.

(1) A remote-rural general acute hospital with a federal swing bed designation may provide respite services to provide intermittent, time-limited care to give primary caretakers relief from the demands of caring for an individual.

(a) The hospital may provide respite care services and need comply only with the requirements of this section.

(b) If, however, the hospital provides respite care to an individual for longer than 14 consecutive days, the hospital must admit the individual as an inpatient subject to the requirements of this rule applicable to non-respite inpatient admissions.

(2) Respite services may be provided at an hourly rate or daily rate.

(3) The hospital shall coordinate the delivery of respite services with the recipient of services, case manager, if one exists, and the family member or primary caretaker.

(4) The hospital shall document the individual's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(5) The hospital must complete the following:

(a) a Level 1 Pre-admission Screening upon the person's admission for respite services; and

(b) a service agreement which will serve as the plan of care. The service agreement shall identify the prescribed medications, physician treatment orders, need for assistance for activities of daily living and diet orders.

(6) The hospital shall have written policies and procedures available to staff regarding the respite care patients which include:

(a) medication administration;

(b) notification of a responsible party in the case of an emergency;

(c) service agreement and admission criteria;

(d) behavior management interventions;

(e) philosophy of respite services;

(f) post-service summary;

(g) training and in-service requirement for employees;

and

(h) handling patient funds.

(7) The facility shall provide a copy of the Resident Rights to the patient upon admission.

(8) The facility shall maintain a record for each patient who receives respite services which includes:

(a) a service agreement;

(b) demographic information and patient identification data;

(c) nursing notes;

(d) physician treatment orders;

(e) records made by staff regarding daily care of the patient in service;

(f) accident and injury reports; and

(g) a post-service summary.

(9) If a patient has an advanced directive, the facility shall file a copy of the directive in the record and inform staff.

(10) Retention and storage of records shall comply with R432-100-33.

(11) The hospital shall provide for confidentiality and

release of information in accordance with R432-100-34.

R432-100-31. Pet Therapy.

(1) If a hospital utilizes pet therapy, household pets such as dogs, cats, birds, fish, and hamsters may be permitted.

(a) Pets must be clean and disease free.

(b) The immediate environment of the pets must be clean.

(c) Small pets shall be kept in appropriate enclosures.

(d) Pets that are not confined shall be kept under leash control or voice control.

(e) Pets that are kept at the hospital, or are frequent visitors shall have current vaccinations, including rabies, as recommended by a licensed veterinarian.

(f) Hospitals with birds shall have procedures in place which protect patients, staff, and visitors from psittacosis.

(2) Hospitals that permit pets to remain overnight shall have policies and procedures for the care, housing and feeding of such pets; and for the proper storage of pet food and supplies.

(3) Pets shall not be permitted in any area where their presence would create a significant health or safety hazard or nuisance to others.

(4) Pets shall not be permitted in food preparation and storage areas.

(5) Persons caring for pets shall not have patient care or food handling responsibilities.

R432-100-32. Dietary Service.

(1) There shall be an organized dietary department under the supervision of a certified dietitian or a qualified individual who, by education or specialized training and experience, is knowledgeable in food service management. If the latter is head of the department, there must be a registered dietitian on a full-time, regular part-time, or consulting basis.

(a) Direction of the dietary service shall be provided by a person whose qualifications, authority, responsibilities and duties are approved by the administrator. The director shall have the administrative responsibility for the dietary service.

(b) If the services of a certified dietitian are used on less than a full-time basis, the time commitment shall permit performance of all necessary functions to meet the dietary needs of the patients.

(c) There shall be food service personnel to perform all necessary functions.

(2) If dietetic services are provided by an outside provider, the outside provider shall comply with the standards of this section.

(3) A current diet manual approved by the dietary department and the medical staff shall be available to dietary, medical, and nursing personnel.

(a) The food and nutritional needs of patients, including therapeutic diets, shall be met in accordance with the orders of the physician responsible for the care of the patient, or if delegated by the physician, the orders of a qualified registered dietitian in consultation with the physician, as authorized by the medical staff and in accordance with facility policy.

(b) Regular menus and modifications for basic therapeutic diets shall be written at least one week in advance and posted in the kitchen.

(c) The menus shall provide for a variety of foods served in adequate amounts at each meal.

(d) At least three meals shall be served daily with not more than a 14-hour span between the evening meal and breakfast. If a substantial evening snack is offered, a 16-hour time span is permitted.

(e) A source of non-neutral exchanged water shall be provided for use in preparation of no sodium meals, snacks, and beverages.

(4) The dietary department shall comply with the Utah Department of Health Food Service Sanitation Rule R392-100.

(a) The dietary facilities and equipment shall be in compliance with federal, state, and local sanitation and safety laws and rules.

(b) Traffic of unauthorized individuals through food preparation areas shall be controlled.

(5) Written reports of inspections by state or local health departments shall be on file at the hospital and available for Department review.

(6) The dietitian or authorized designee is responsible for documenting nutritional information in the patient's medical record.

(7) Dietary orders shall be transmitted in writing to the dietary department.

R432-100-33. Telemedicine Services.

If a hospital participates in telemedicine, it shall develop and implement policies governing the practice of telemedicine in accordance with the scope and practice of the hospital.

(1) The policies shall address security, access and retention of telemetric data.

(2) The policies shall define the privileging of physicians and allied health professionals who participate in telemedicine.

R432-100-34. Medical Records.

(1) The hospital shall establish a medical records department or service that is responsible for the administration, custody and maintenance of medical records.

(a) The administrative direction of the department shall be established by the hospital administrator and correspond to the organizational structure and policies of the hospital.

(b) The medical records department shall retain the technical services of either a Registered Health Information Administrator or a Registered Health Information Technician through employment or consultation. If retained by consultation, visits shall be at least quarterly and documented through written reports to the hospital administrator.

(2) The medical records department shall provide secure storage, controlled access, prompt retrieval, and equipment and facilities to review medical records.

(a) Medical records shall be available for use or review by members of the medical and professional staff; authorized hospital personnel and agents; persons authorized by the patient through a consent form; and Department representatives to determine compliance with licensing rules.

(b) Medical records may be stored in multiple locations providing the record is able to be retrieved or accessed in a reasonable time period.

(c) If computer terminals are utilized for patient charting, the hospital shall have policies governing access and identification codes, security, and information retention.

(d) The hospital medical record shall be indexed according to diagnosis, procedure, demographic information and physician or licensed health practitioner. The indexes shall be current within six months following discharge of the patient.

(e) Original medical records are the property of the hospital and shall not be removed from the control of the hospital or the hospital's agent as defined by policy except by court order or subpoena.

(f) Medical records for persons who have received or requested admission to alcohol or drug programs shall comply with 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

(3) All medical record entries shall be legible, complete, authenticated, and dated by the person responsible for

ordering the service, providing or evaluating the service, or making the entry. Prepared transcriptions of dictated reports, evaluations and consultations must be reviewed by the author before authentication.

(a) The authentication may include written signatures, computer key, or other methods approved by the governing body and medical staff to identify the name and discipline of the person making the entry.

(b) Use of computer key or other methods to identify the author of a medical record entry is not assignable or to be delegated to another person.

(c) There shall be a current list of persons approved to use these methods of authentication. Hospital policies shall include appropriate sanctions for the unauthorized or improper use of computer codes.

(d) Verbal orders for the care and treatment of the patient shall be accepted and transcribed by qualified personnel and authenticated within 30 days of the patient's discharge.

(4) Patient records shall be organized according to hospital policy.

(a) Medical records shall be reviewed at least quarterly for completeness, accuracy, and adherence to hospital policy.

(b) Records of discharged patients shall be collected, assembled, reviewed for completeness, and authenticated within 30 days of the patient's discharge.

(c) Medical records shall be retained for at least seven years. Medical records of minors shall be kept until the age of eighteen plus four years, but in no case less than seven years.

(d) The Hospital may destroy medical records after retaining them for the minimum time period. Prior to destroying medical records, the hospital must notify the public by publishing a notice in a newspaper of statewide distribution a minimum of once a week for three consecutive weeks to allow a former patient to access the patient's records.

(e) The hospital shall permanently retain a master patient/person index that shall include:

- (i) the patient name;
- (ii) the medical record number;
- (iii) the date of birth;
- (iv) the admission and discharge dates; and
- (v) the name of each attending physician.

(f) If a hospital ceases operation, the hospital shall make provision for secure, safe storage and prompt retrieval of all medical records, patient indexes and discharges for the period specified in R432-100-34(4)(c). The hospital may arrange for storage of medical records with another hospital, or an approved medical record storage facility, or may return patient medical records to the attending physician if the physician is still in the community.

(5) A complete medical record shall be established and maintained for each patient admitted to, or who receives hospital services. Emergency and outpatient records shall document the service rendered, and shall contain other pertinent information in accordance with hospital policy.

(a) Each medical record shall contain patient identification and demographic information to include at least the patient's name, address, date of birth, sex, and emergency contact information.

(b) Each medical record shall contain initial or admitting medical history, physical and other examinations or evaluations. Recent histories and examinations may be substituted if updated to include changes that reflect the patient's current status.

(c) Each medical record shall contain admitting, secondary and principal diagnoses.

(d) Each medical record shall contain results of consultive evaluations and findings by persons involved in the

care of the patient.

(e) Each medical record shall contain documentation of complications, hospital acquired infections, and unfavorable reactions to medications, treatments, and anesthesia.

(f) Each medical record shall contain properly executed informed consent documents for all procedures and treatments ordered for, and received by, the patient.

(g) Each medical record shall document that the facility requested of each admitted person whether the person has initiated an advanced directive as defined in the Advance Health Care Directive Act, UCA 75-2a.

(h) Each medical record shall contain all practitioner orders, nursing notes, reports of treatment, medication records, laboratory and radiological reports, vital signs and other information that documents the patient condition and status.

(i) Each medical record shall contain a discharge summary including outcome of hospitalization, disposition of case with an autopsy report when indicated, or provisions for follow-up.

(j) Medical records of deceased patients shall contain a completed Inquiry of Anatomical Gift form or a modified hospital death form which has been approved by the Utah Department of Health as required by Section 26-28, UCA.

(k) Medical records of surgical patients shall contain a pre-operative history and physical examination; surgeon's diagnosis; an operative report describing a description of findings; an anesthesia report including dosage and duration of all anesthetic agents and all pertinent events during the induction, maintenance, and emergence from anesthesia; the technical procedures used; the specimen removed; the post-operative diagnosis; and the name of the primary surgeon and any assistants written or dictated by the surgeon within 24 hours after the operation.

(l) Medical records of obstetrical patients shall contain a relevant family history, a pre-natal examination, the length of labor and type of delivery with related notes, the anesthesia or analgesia record, the Rh status and immune globulin administration when indicated, a serological test for syphilis, and a discharge summary for complicated deliveries or final progress note for uncomplicated deliveries.

(m) Medical records of newborn infants shall contain the following documentation in addition to the requirements for obstetrical medical records:

(i) Documentation must include a copy of the mother's delivery room record. In adoption cases where the identity of the mother is confidential, inclusion and access to the mother's delivery room record shall be according to hospital policy.

(ii) Documentation must include the date and hour of birth, period of gestation, sex, reactions after birth, delivery room care, temperature, weight, time of first urination, and number, character, and consistency of stools.

(iii) Documentation must include a record of the physical examination completed at birth and discharge, record of ophthalmic prophylaxis, and the identification number of the newborn screening kit, referred to in R398-1.

(iv) If the infant is discharged to any person other than the infant's parents, the hospital shall record the authorization by the parents, state agency, or court authority.

(v) Documentation of the record and results of the newborn hearing screening according to Section 26-10-6, UCA and R398-2-6.

(n) Emergency department patient medical records shall be integrated into the hospital medical record and include time and means of arrival, emergency care given to the patient prior to arrival, history and physical findings, lab and x-ray reports, diagnosis, record of treatment, and disposition and discharge instructions.

(o) Patient medical social services records shall include a medical-social or psycho-social study of referred inpatients and outpatients; the financial status of the patient, social therapy and rehabilitation of patients, environmental investigations for attending physicians, and cooperative activities with community agencies.

(p) Medical records of patients receiving rehabilitation therapy shall include a written plan of care appropriate to the diagnosis and condition, a problem list, and short and long term goals.

(6) The medical records department shall maintain records, reports and documentation of admissions, discharges, and the number of autopsies performed.

(7) The medical records department shall maintain vital statistic registries for births, deaths, and the number of operations performed. The medical records department shall report vital statistics data in accordance with the Vital Statistics Act, Utah Health Code, (26-2, UCA).

R432-100-35. Central Supply Services.

(1) The central supply service supervisor shall be qualified for the position by education, training, and experience.

(2) The hospital shall provide space and equipment for the cleaning, disinfecting, packaging, sterilizing, storing, and distributing of medical and surgical patient care supplies.

(a) A hospital central service area shall provide for the following:

(i) A decontamination area which shall be separated by a barrier or divider to allow the receiving, cleaning, and disinfection functions to be performed separately from all other central service functions;

(ii) A linen assembly or pack-making area which shall have ventilation to control lint. The linen assembly or pack-making area shall be separated from the general sterilization and processing area.

(iii) The sterilization area shall contain hospital sterilizers with approved controls and safety features.

(b) The accuracy of the sterilizers' performance shall be checked by a method that includes a permanent record of each run.

(c) Sterilizers shall be tested by biological monitors at least weekly.

(d) If gas sterilizers are used, they shall be inspected, maintained, and operated in accordance with the manufacturer's recommendations.

(3) The storage area shall be separated into sterile and non-sterile areas. The storage area shall have temperature and humidity controls, and shall be free of excessive moisture and dust. Outside shipping cartons shall not be stored in this area.

(4) During each shift that the central service area is staffed, counter tops and tables shall be wiped with a broad spectrum disinfectant.

(5) All apparel worn in central supply shall be issued and laundered according to hospital policy.

R432-100-36. Laundry Service.

(1) Direction of the laundry service shall be provided by a person whose qualifications, authority, responsibilities and duties are approved by the administrator.

(2) Hospitals using commercial linen services shall require written assurance from the commercial service that standards in this subsection are maintained.

(a) Clean linen shall be completely packaged and protected from contamination until received by the hospital.

(b) The use of a commercial linen service does not relieve the hospital from its quality improvement responsibilities.

(3) Hospitals that maintain an in-house laundry service

must have equipment, supplies and staff available to meet the needs of the patients.

(a) Soiled linen shall be collected in a manner to minimize cross-contamination. Containers shall be properly closed as filled and before further transport.

(i) Soiled linen shall be sorted only in a sorting area.

(ii) Handwashing is required after handling soiled linen and prior to handling clean items.

(iii) Employees handling soiled linen shall wear protective clothing which must be removed before leaving the soiled work area.

(iv) Soiled linen shall be transported separately from clean linen.

(b) The hospital shall maintain a supply of clean linen.

(i) Clean linen shall be handled and stored in a manner to minimize contamination from surface contact or airborne deposition.

(ii) Clean linen shall be stored in enclosed closet areas or carts.

(iii) Clean linen shall be covered during transport.

(4) The hospital is responsible to launder employee scrubs that are worn in the following areas:

(a) surgical areas;

(b) other areas as required by the Occupational Health and Safety Act.

(5) If hospital employee scrubs are designated as uniforms that may be worn to and from work, policies and procedures shall be developed and implemented defining the scope and usage of scrubs as uniforms including hospital storage of employee scrubs, and provisions for hospital-provided scrubs in case of contamination.

R432-100-37. Housekeeping Services.

(1) There shall be housekeeping services to maintain a clean, safe, sanitary, and healthful environment in the hospital.

(2) If the hospital contracts for housekeeping services with an outside service, there shall be a signed and dated agreement that details the services provided.

(3) The hospital shall provide safe, secure storage of cleaners and chemicals. Cleaners and chemicals stored in areas that may be accessible to patients shall be kept secure in accordance with hospital policy.

(4) Storage and supplies in all areas of the hospital shall be stored at least four inches off the floor, and at least 18 inches below the lowest portion of the sprinkler system.

(5) Personnel engaged in housekeeping or laundry services may not be engaged simultaneously in food service or patient care.

(6) If personnel work in food or direct patient care services, hospital policy shall be established and followed to govern the transition from housekeeping services to patient care.

R432-100-38. Maintenance Services.

(1) There shall be maintenance services to ensure that hospital equipment and grounds are maintained in a clean and sanitary condition and in good repair at all times for the safety and well-being of patients, staff, and visitors.

(a) The administrator shall employ a person qualified by experience and training to be in charge of hospital maintenance.

(b) If the hospital contracts for maintenance services, there shall be a signed and dated agreement that details the services provided.

(c) A pest-control program shall be conducted to ensure the hospital is free from vermin and rodents.

(d) Entrances, exits, steps, ramps, and outside walkways shall be maintained in a safe condition with regard to snow,

ice and other hazards.

(2) All patient care equipment shall be tested, calibrated and maintained in accordance with the specifications from the manufacturer.

(a) Testing frequency and calibration documentation shall be available for Department review.

(b) Testing or calibration procedures conducted by an outside agency or service shall be documented and available for Department review.

(3) Hot water at public and patient faucets shall be delivered between 105 to 120 degrees Fahrenheit.

R432-100-39. Emergency Operations Plan.

(1) There must be provisions for the maintenance of a safe environment in the event of an emergency or disaster which overwhelms the facility.

(2) The administrator or designee is responsible for the development of a plan, coordinated with applicable state and local emergency response partners and agencies. This plan shall be in writing and made available to all hospital staff.

(a) The plan shall be reviewed and updated as necessary and shall be available for review by the Department.

(b) The hospitals' emergency operations plan must delineate individuals who will be in charge during any significant emergency.

(c) Lists of emergency partners shall be readily available, including multiple contact options. Emergency contact lists will be updated and maintained regularly by the hospital.

(3) The hospital's emergency operations plan shall address the following:

(a) an evacuation plan;

(b) delivery of essential care and services when additional persons are present at the hospital during an emergency;

(c) delivery of essential care and services to hospital occupants utilizing crisis standards of care when staff is reduced by an emergency; and

(d) must address planning, mitigation, response and recovery for each of the following six areas:

(i) emergency communications;

(ii) resources and assets;

(iii) safety and security;

(iv) staff responsibilities;

(v) utility management; and

(vi) patient clinical and supportive activities.

(4) The emergency operations plan shall be approved by the board and the hospital administrator.

(a) The hospital's emergency operations plan shall delineate the person or persons with decision-making authority to activate the emergency operations plan;

(b) The hospital's emergency response plan shall address those risks and threats identified in the facility's annual hazard vulnerability analysis.

(c) The hospital shall document all emergency incidents and responses.

(d) Disaster drills/exercises shall be held twice yearly according to threats identified in the facility's annual hazard vulnerability analysis.

(5) There shall be a fire emergency evacuation plan written in consultation with qualified fire safety personnel. This plan may or may not be included in the facility's emergency operations plan. The evacuation routes shall be posted in prominent locations throughout the hospital. Fire drills and fire drill documentation shall be in accordance with R710-4, State of Utah Fire Prevention Board.

(6) A hospital may exceed its licensed capacity by up to 20% in response to any incident that overwhelms the facility.

(a) A hospital which exceeds its licensed capacity under

this provision shall notify the Department within 72 hours of exceeding its licensed capacity.

(b) Approval must be obtained from the Department to exceed 20% above licensed capacity.

(c) The Department may direct that the hospital reduce its patient census to its licensed capacity at any time.

R432-100-40. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-7 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health care facilities

May 16, 2017

Notice of Continuation November 5, 2015

26-21-5

26-21-2.1

26-21-20

R432. Health, Family Health and Preparedness, Licensing.**R432-150. Nursing Care Facility.****R432-150-1. Legal Authority.**

This rule is adopted pursuant to Title 26, Chapter 21.

R432-150-2. Purpose.

The purpose of R432-150 is to establish health and safety standards to provide for the physical and psycho-social well being of individuals receiving services in nursing care facilities.

R432-150-3. Construction Standard.

Nursing Care Facilities shall be constructed and maintained in accordance with R432-5, Nursing Facility Construction.

R432-150-4. Definitions.

(1) The definitions found in R432-1-3 apply to this rule.

(2) The following definitions apply to nursing care facilities.

(a) "Skilled Nursing Care" means a level of care that provides 24 hour inpatient care to residents who need licensed nursing supervision. The complexity of the prescribed services must be performed by or under the close supervision of licensed health care personnel.

(b) "Intermediate Care" means a level of care that provides 24-hour inpatient care to residents who need licensed supervision and supportive care, but do not require continuous nursing care.

(c) "Medically-related Social Services" means assistance provided by the facility licensed social worker to maintain or improve each resident's ability to control everyday physical, mental and psycho-social needs.

(d) "Nurse's Aide" means any individual, other than an individual licensed in another category, providing nursing or nurse related services to residents in a facility. This definition does not include an individual who volunteers to provide such services without pay.

(e) "Unnecessary Drug" means any drug when used in excessive dose, for excessive duration, without adequate monitoring, without adequate indications for its use, in the presence of adverse consequences which indicate the dose should be reduced or discontinued, or any combinations of these reasons.

(f) "Chemical Restraint" means any medication administered to a resident to control or restrict the resident's physical, emotional, or behavioral functioning for the convenience of staff, for punishment or discipline, or as a substitute for direct resident care.

(g) "Physical Restraint" means any physical method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily which restricts the resident's freedom of movement or normal access to his own body.

(h) "Significant Change" means a major change in a resident's status that impacts on more than one area of the resident's health status.

(i) "Therapeutic Leave" means leave pertaining to medical treatment planned and implemented to attain an objective that is specified in the individual plan of care.

(j) "Licensed Practitioner" means a health care practitioner whose license allows assessment, treatment, or prescribing practices within the scope of the license and established protocols.

(k) "Governing Body" means the board of trustees, owner, person or persons designated by the owner with the legal authority and ultimate responsibility for the management, control, conduct and functioning of the health

care facility or agency.

(l) "Nursing Staff" means nurses aides that are in the process of becoming certified, certified nurses aides, and those individuals that are licensed (e.g. licensed practical nurses and registered nurses) to provide nursing care in the State of Utah.

(m) "Licensed Practical Nurse" as defined in the Nurse Practice Act, Title 58, Chapter 31.

(n) "Registered Nurse" as defined in the Nurse Practice Act, Title 58, Chapter 31.

(o) "Palatable" means food that has a pleasant and agreeable taste and is acceptable to eat.

(p) "Dining Assistant" means an individual unrelated to a resident or patient who meets the training requirements defined in this rule to assist nursing care residents with eating and drinking.

R432-150-5. Scope of Services.

(1) An intermediate level of care facility must provide 24-hour licensed nursing services.

(a) The facility shall ensure that nursing staff are present on the premises at all times to meet the needs of residents.

(b) The facility shall provide at least one registered nurse either by direct employ or by contract to provide direction to nursing services.

(c) The facility may employ a licensed practical nurse to act as the health services supervisor in lieu of a director of nursing provided that a registered nurse consultant meets regularly with the health services supervisor.

(d) The facility shall provide at least the following:

(i) medical supervision;

(ii) dietary services;

(iii) social services; and

(iv) recreational therapy.

(e) The following services shall be provided as required in the resident care plan:

(i) physical therapy;

(ii) occupational therapy;

(iii) speech therapy;

(iv) respiratory therapy; and

(v) other therapies.

(2) A skilled level of care facility must provide 24-hour licensed nursing services.

(a) The facility shall ensure that nursing staff are present on the premises at all times to meet the needs of residents.

A licensed nurse shall serve as charge nurse on each shift.

(b) The facility shall employ a registered nurse for at least eight consecutive hours a day, seven days a week.

(c) The facility shall designate a registered nurse to serve as the director of nursing on a full-time basis. A person may not concurrently serve as the director of nursing and as a charge nurse.

(d) A skilled level of care facility shall provide services to residents that preserve current capabilities and prevent further deterioration including the following:

(i) medical supervision;

(ii) dietary services;

(iii) physical therapy;

(iv) social services;

(v) recreation therapy;

(vi) dental services; and

(vii) pharmacy services;

(e) The facility shall provide the following services as required by the resident care plan:

(i) respiratory therapy,

(ii) occupational therapy, and

(iii) speech therapy.

(3) Respite services may be provided in nursing care

facilities.

(a) The purpose of respite is to provide intermittent, time-limited care to give primary caretakers relief from the demands of caring for a person.

(b) Respite services may be provided at an hourly rate or daily rate, but shall not exceed 14-days for any single respite stay. A respite stay which exceeds 14 days is a nursing facility admission subject to the requirements of this rule applicable to non-respite residents.

(c) The facility shall coordinate the delivery of respite services with the recipient of services, the case manager, if one exists, and the family member or primary caretaker.

(d) The facility shall document the person's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(e) The facility must complete the following:

(i) a Level 1 Preadmission Screening upon the persons admission for respite services; and

(ii) a service agreement to serve as the plan of care, which shall identify the prescribed medications, physician treatment orders, need for assistance with activities of daily living, and diet orders.

(f) The facility must have written respite care policies and procedures that are available to staff. Respite care policies and procedures must address:

(i) medication administration;

(ii) notification of a responsible party in the case of an emergency;

(iii) service agreement and admission criteria;

(iv) behavior management interventions;

(v) philosophy of respite services;

(vi) post-service summary;

(vii) training and in-service requirement for employees; and

(viii) handling personal funds.

(g) Persons receiving respite services must receive a copy of the Resident Rights documents upon admission.

(h) The facility must maintain a record for each person receiving respite services. The record shall contain the following:

(i) the service agreement;

(ii) resident demographic information;

(iii) nursing notes;

(iv) physician treatment orders;

(v) daily staff notes;

(vi) accident and injury reports;

(vii) a post service summary; and

(viii) an advanced directive, if available.

(i) Retention and storage of respite records shall comply with R432-150-25(3).

(j) Confidentiality and release of information shall comply with R432-150-25(4).

(4) Hospice care may only be arranged and provided by a licensed hospice agency in accordance with R432-750. The facility shall be licensed as a hospice if it provides hospice care.

(5) A nursing care facility may provide terminal care.

R432-150-6. Adult Day Care Services.

(1) Nursing Care Facilities may offer adult day care and are not required to obtain a license from Utah Department of Human Services. If a facility provides adult day care, it shall submit policies and procedures for Department approval.

(2) In this section:

(a) "Adult Day Care" means nonresidential care and supervision for at least four but less than 24 hours per day, that meets the needs of functionally impaired adults through a comprehensive program that provides a variety of health, social, recreational, and related support services in a

protective setting.

(b) "Consumer" means a functionally impaired adult admitted to or being evaluated for admission in a facility offering adult day care.

(3) The governing board shall designate a qualified Director to be responsible for the day-to-day program operation.

(4) The Director shall maintain written records on-site for each consumer and staff person, which shall include the following:

(a) demographic information;

(b) an emergency contact with name, address and telephone number;

(c) consumer health records, including the following:

(i) record of medication including dosage and administration;

(ii) a current health assessment, signed by a licensed practitioner; and

(iii) level of care assessment.

(d) signed consumer agreement and service plan.

(e) employment file for each staff person which includes:

(i) health history;

(ii) background clearance consent and release form;

(iii) orientation completion; and

(iv) in-service requirements.

(5) The facility shall have a written eligibility, admission, and discharge policy that includes the following:

(a) intake process;

(b) notification of responsible party;

(c) reasons for admission refusal, including the Director's written, signed statement;

(d) resident rights notification; and

(e) reason for discharge or dismissal.

(6) Before a facility admits a consumer, it must first assess, in writing, the consumer's current health and medical history, immunizations, legal status, and social psychological factors to determine whether the consumer may be placed in the program.

(7) The Director or designee, the responsible party, and the consumer if competent shall develop a written, signed consumer agreement. The agreement shall include:

(a) rules of the program;

(b) services to be provided and cost of service, including refund policy; and

(c) arrangements regarding absenteeism, visits, vacations, mail, gifts and telephone calls.

(8) Within three days of admission to the program, the Director or designee, shall develop an individual consumer service plan that the facility shall implement for the consumer. The service plan shall include the specification of daily activities and services. The Director or designees shall reevaluate, and modify if necessary, the consumer's service plan at least every six months.

(9) The facility shall make written incident and injury reports to document consumer death, injuries, elopement, fights or physical confrontations, situations which require the use of passive physical restraint, suspected abuse or neglect, and other situations or circumstances affecting the health, safety or well-being of a consumer while in care. The facility shall document the actions taken, including actions taken to avoid future incident or injury, and keep the reports on file. The Director shall notify and review the incident or injury report with the responsible party no later than when the consumer is picked up at the end of the day.

(10) The facility shall post and implement a daily activity schedule.

(11) Consumers shall receive direct supervision at all times and be encouraged to participate in activities.

(12) There shall be a minimum of 50 square feet of indoor floor space, excluding hallways, office, storage, kitchens, and bathrooms, per consumer designated for adult day care during program operational hours.

(13) All indoor and outdoor areas shall be maintained in a clean, secure and safe condition.

(14) There shall be at least one bathroom designated for consumers use during business hours. For facilities serving more than 10 consumers, there shall be separate male and female bathrooms designated for consumer use.

(15) Staff supervision shall be provided continually when consumers are present.

(a) When eight or fewer consumers are present, one staff member shall provide continuous, direct supervision.

(b) For each eight additional consumers, or fraction thereof, the facility shall provide an additional staff member to provide continuous, direct supervision. For example, ten consumers require two staff members.

(c) If one-half or more of the consumers is diagnosed by a physician's assessment with Alzheimer's or other dementia, the ratio shall be one staff for each six consumers, or fraction thereof.

R432-150-7. Governing Body.

The facility must have a governing body, or designated persons functioning as a governing body.

(1) The governing body must establish and implement policies regarding the management and operation of the facility.

(2) The governing body shall institute bylaws, policies and procedures relative to the general operation of all facility services including the health care of the residents and the protection of resident rights.

(3) The governing body must appoint the administrator in writing.

R432-150-8. Administrator.

(1) The administrator must comply with the following requirements.

(a) The administrator must be licensed as a health facility administrator by the Utah Department of Commerce pursuant to Title 58, Chapter 15.

(b) The administrator's license shall be posted in a place readily visible to the public.

(c) The administrator may supervise no more than one nursing care facility.

(d) The administrator shall have sufficient freedom from other responsibilities to permit attention to the management and administration of the facility.

(e) The administrator shall designate, in writing, the name and title of the person who shall act as administrator in any temporary absence of the administrator. This person shall have the authority and freedom to act in the best interests of resident safety and well-being. It is not the intent of this paragraph to permit an unlicensed de facto administrator to supplant or replace the designated, licensed administrator.

(2) The administrator's responsibilities must be defined in a written job description on file in the facility. The job description shall include at least the following responsibilities:

(a) complete, submit, and file all records and reports required by the Department;

(b) act as a liaison between the licensee, medical and nursing staffs, and other supervisory staff of the facility;

(c) respond to recommendations made by the quality assurance committee;

(d) implement policies and procedures governing the operation of all functions of the facility; and

(e) review all incident and accident reports and

document the action taken or reason for no action.

(3) The administrator shall ensure that facility policies and procedures reflect current facility practice, and are revised and updated as needed.

(4) The administrator shall secure and update contracts for required professional services not provided directly by the facility.

(a) Contracts shall document the following:

(i) the effective and expiration date of contract;

(ii) a description of goods or services provided by the contractor to the facility;

(iii) a statement that the contractor shall conform to the standards required by Utah law or rules;

(iv) a provision to terminate the contract with advance notice;

(v) the financial terms of the contract;

(vi) a copy of the business or professional license of the contractor; and

(vii) a provision to report findings, observations, and recommendations to the administrator on a regular basis.

(b) Contracts shall be signed, dated and maintained for review by the Department.

(5) The administrator shall maintain a written transfer agreement with one or more hospitals to facilitate the transfer of residents and essential resident information. The transfer agreement must include:

(a) criteria for transfer;

(b) method of transfer;

(c) transfer of information needed for proper care and treatment of the resident transferred;

(d) security and accountability of personal property of the resident transferred;

(e) proper notification of hospital and responsible person before transfer;

(f) the facility responsible for resident care during the transfer; and

(g) resident confidentiality.

R432-150-9. Medical Director.

(1) The administrator must retain by formal agreement a licensed physician to serve as medical director or advisory physician according to resident and facility needs.

(2) The medical director or advisory physician shall:

(a) be responsible for the development of resident care policies and procedures including the delineation of responsibilities of attending physicians;

(b) review current resident care policies and procedures with the administrator;

(c) serve as a liaison between resident physicians and the administrator;

(d) review incident and accident reports at the request of the administrator to identify health hazards to residents and employees; and

(e) act as consultant to the director of nursing or the health services supervisor in matters relating to resident care policies.

R432-150-10. Staff and Personnel.

(1) The administrator shall employ personnel who are able and competent to perform their respective duties, services, and functions.

(a) The administrator, director of nursing or health services supervisor, and department supervisors shall develop job descriptions for each position including job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements.

(b) All personnel must have access to facility policy and procedure manuals and other information necessary to effectively perform duties and carry out responsibilities.

(c) All personnel must be licensed, certified or registered as required by the Utah Department of Commerce. A copy of the license, certification or registration shall be maintained for Department review.

(2) The facility shall maintain staffing records, including employee performance evaluations, for the preceding 12 months.

(3) The facility shall establish a personnel health program through written personnel health policies and procedures.

(4) The facility shall complete a health evaluation and inventory for each employee upon hire.

(a) The health inventory shall obtain at least the employee's history of the following:

(i) conditions that predispose the employee to acquiring or transmitting infectious diseases; and

(ii) conditions which may prevent the employee from performing certain assigned duties satisfactorily.

(b) The health inventory shall include health screening and immunization components of the employee's personnel health program.

(c) Infection control shall include staff immunization as necessary to prevent the spread of disease.

(d) Employee skin testing by the Mantoux method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(i) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(A) initial hiring;

(B) suspected exposure to a person with active tuberculosis; and

(C) development of symptoms of tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(e) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-3.

(5) The facility shall plan and document in-service training for all personnel.

(a) The following topics shall be addressed at least annually:

(i) fire prevention;

(ii) review and drill of emergency procedures and evacuation plan;

(iii) the reporting of resident abuse, neglect or exploitation to the proper authorities;

(iv) prevention and control of infections;

(v) accident prevention and safety procedures including instruction in body mechanics for all employees required to lift, turn, position, or ambulate residents; and proper safety precautions when floors are wet or waxed;

(vi) training in Cardiopulmonary Resuscitation (CPR) for licensed nursing personnel and others as appropriate;

(vii) proper use and documentation of restraints;

(viii) resident rights;

(ix) A basic understanding of the various types of mental illness, including symptoms, expected behaviors and intervention approaches; and

(x) confidentiality of resident information.

(6) Any person who provides nursing care, including nurse aides and orderlies, must work under the supervision of an RN or LPN and shall demonstrate competency and dependability in resident care.

(a) A facility may not have an employee working in the facility as a nurse aide for more than four months, on full-time, temporary, per diem, or other basis, unless that individual has successfully completed a State Department of Education-approved training and testing program.

(b) The facility shall verify through the nurse aide registry prior to employment that nurse aide applicants do not have a verified report of abuse, neglect, or exploitation. If such a verified report exists, the facility may not hire the applicant.

(c) If an individual has not performed paid nursing or nursing related services for a continuous period of 24 consecutive months since the most recent completion of a training and competency evaluation program, the facility shall require the individual to complete a new training and competency evaluation program.

(d) The facility shall conduct regular performance reviews and regular in-service education to ensure that individuals used as nurse aides are competent to perform services as nurse aides.

(7) The facility may utilize volunteers in the daily activities of the facility provided that volunteers are not included in the facility's staffing plan in lieu of facility employees.

(a) Volunteers shall be supervised and familiar with resident's rights and the facility's policies and procedures.

(b) Volunteers who provide personal care to residents shall be screened according to facility policy and under the direct supervision of a qualified employee.

(8) An employee who reports suspected abuse, neglect, or exploitation shall not be subject to retaliation, disciplinary action, or termination by the facility for making the report.

R432-150-11. Quality Assurance.

(1) The administrator must implement a well-defined quality assurance plan designed to improve resident care. The plan must:

(a) include a system for the collection of data indicators;

(b) include an incident reporting system to identify problems, concerns, and opportunities for improvement of resident care;

(c) implement a system to assess identified problems, concerns and opportunities for improvement; and

(d) implement actions that are designed to eliminate identified problems and improve resident care.

(2) The plan must include a quality assurance committee that functions as follows:

(a) documents committee meeting minutes including all corrective actions and results;

(b) conducts quarterly meetings and reports findings, concerns and actions to the administrator and governing body; and

(c) coordinates input of data indicators from all provided services and other departments as determined by the resident plan of care and facility scope of services.

(3) Incident and accident reports shall:

(a) be available for Department review;

(b) be numbered and logged in a manner to account for all filed reports; and

(c) have space for written comments by the administrator or medical director.

(4) Infection reporting must be integrated into the quality assurance plan and must be reported to the Department in accordance with R386-702, Communicable Disease Rule.

R432-150-12. Resident Rights.

(1) The facility shall establish written residents' rights.

(2) The facility shall post resident rights in areas accessible to residents. A copy of the residents' rights document shall be available to the residents, the residents' guardian or responsible person, and to the public and the Department upon request.

(3) The facility shall ensure that each resident admitted

to the facility has the right to:

(a) be informed, prior to or at the time of admission and for the duration of stay, of resident rights and of all rules and regulations governing resident conduct.

(b) be informed, prior to or at the time of admission and for the duration of stay, of services available in the facility and of related charges, including any charges for services not covered by the facility's basic per diem rate or not covered under Titles XVIII or XIX of the Social Security Act.

(c) be informed by a licensed practitioner of current total health status, including current medical condition, unless medically contraindicated, the right to refuse treatment, and the right to formulate an advance directive in accordance with UCA Section 75-2-1101;

(d) be transferred or discharged only for medical reasons, for personal welfare or that of other residents, or for nonpayment for the stay, and to be given reasonable advance notice to ensure orderly transfer or discharge;

(e) be encouraged and assisted throughout the period of stay to exercise all rights as a resident and as a citizen, and to voice grievances and recommend changes in policies and services to facility staff and outside representatives of personal choice, free from restraint, interference, coercion, discrimination, or reprisal;

(f) manage personal financial affairs or to be given at least a quarterly accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility;

(g) be free from mental and physical abuse, and from chemical and physical restraints;

(h) be assured confidential treatment of personal and medical records, including photographs, and to approve or refuse their release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or third party payment contract;

(i) be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(j) not be required to perform services for the facility that are not included for therapeutic purposes in the plan of care;

(k) associate and communicate privately with persons of the resident's choice, and to send and receive personal mail unopened;

(l) meet with social, religious, and community groups and participate in activities provided that the activities do not interfere with the rights of other residents in the facility;

(m) retain and use personal clothing and possessions as space permits, unless to do so would infringe upon rights of other residents;

(n) if married, to be assured privacy for visits by the spouse; and if both are residents in the facility, to be permitted to share a room;

(o) have members of the clergy admitted at the request of the resident or responsible person at any time;

(p) allow relatives or responsible persons to visit critically ill residents at any time;

(q) be allowed privacy for visits with family, friends, clergy, social workers or for professional or business purposes;

(r) have confidential access to telephones for both free local calls and for accommodation of long distance calls according to facility policy;

(s) have access to the State Long Term Care Ombudsman Program or representatives of the Long Term Care Ombudsman Program;

(t) choose activities, schedules, and health care consistent with individual interests, assessments and care plan;

(u) interact with members of the community both inside and outside the facility; and

(v) make choices about all aspects of life in the facility that are significant to the resident.

(4) A resident has the right to organize and participate in resident and family groups in the facility.

(a) A resident's family has the right to meet in the facility with the families of other residents in the facility.

(b) The facility shall provide a resident or family group, if one exists, with private space.

(c) Staff or visitors may attend meetings at the group's invitation.

(d) The facility shall designate a staff person responsible for providing assistance and responding to written requests that result from group meetings.

(e) If a resident or family group exists, the facility shall listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

(5) The facility must accommodate resident needs and preferences, except when the health and safety of the individual or other residents may be endangered. A resident must be given at least a 24-hour notice before an involuntary room move is made in the facility.

(a) In an emergency when there is actual or threatened harm to others, property or self, the 24 hour notice requirement for an involuntary room move may be waived. The circumstances requiring the emergency room change must be documented for Department review.

(b) The facility must make and document efforts to accommodate the resident's adjustment and choices regarding room and roommate changes.

(6) If a facility is entrusted with residents' monies or valuables, the facility shall comply with the following:

(a) The licensee or facility staff may not use residents' monies or valuables as his own or mingle them with his own. Residents' monies and valuables shall be separate, intact and free from any liability that the licensee incurs in the use of his own or the institution's funds and valuables.

(b) The facility shall maintain adequate safeguards and accurate records of residents' monies and valuables entrusted to the licensee's care.

(i) Records of residents' monies which are maintained as a drawing account must include a control account for all receipts and expenditures, an account for each resident, and supporting vouchers filed in chronological order.

(ii) Each account shall be kept current with columns for debits, credits, and balance.

(iii) Records of residents' monies and other valuables entrusted to the licensee for safekeeping must include a copy of the receipt furnished to the resident or to the person responsible for the resident.

(c) The facility must deposit residents' monies not kept in the facility within five days of receipt of such funds in an interest-bearing account in a local bank or savings and loan association authorized to do business in Utah, the deposits of which shall be insured.

(d) A person, firm, partnership, association or corporation which is licensed to operate more than one health facility shall maintain a separate account for each such facility and shall not commingle resident funds from one facility with another.

(e) If the amount of residents' money entrusted to a licensee exceeds \$100, the facility must deposit all money in excess of \$100 in an interest-bearing account.

(f) Upon license renewal, the facility shall provide evidence of the purchase a surety bond or other equivalent assurance to secure all resident funds.

(g) When a resident is discharged, all money and valuables of that resident which have been entrusted to the licensee must be surrendered to the resident in exchange for a signed receipt. Money and valuables kept within the facility shall be surrendered upon demand and those kept in an interest-bearing account shall be made available within three working days.

(h) Within 30 days following the death of a resident, except in a medical examiner case, the facility must surrender all money and valuables of that resident which have been entrusted to the licensee to the person responsible for the resident or to the executor or the administrator of the estate in exchange for a signed receipt. If a resident dies without a representative or known heirs, the facility must immediately notify in writing the local probate court and the Department.

R432-150-13. Resident Assessment.

(1) The facility shall upon admission obtain physician orders for the resident's immediate care.

(2) The facility must complete a comprehensive assessment of each resident's needs including a description of the resident's capability to perform daily life functions and significant impairments in functional capacity.

(a) The comprehensive assessment must include at least the following information:

(i) medically defined conditions and prior medical history;

(ii) medical status measurement;

(iii) physical and mental functional status;

(iv) sensory and physical impairments;

(v) nutritional status and requirements;

(vi) special treatments or procedures;

(vii) mental and psycho social status;

(viii) discharge potential;

(ix) dental condition;

(x) activities potential;

(xi) rehabilitation potential;

(xii) cognitive status; and

(xiii) drug therapy.

(b) The facility must complete the initial assessment within 14 calendar days of admission and any revisions to the initial assessment within 21 calendar days of admission.

(c) A significant change in a resident's physical or mental condition requires an interdisciplinary team review and may require the facility to complete a new assessment within 14 calendar days of the condition change.

(d) At a minimum, the facility must complete three quarterly reviews and one full assessment in each 12 month period.

(e) The facility shall use the results of the assessment to develop, review, and revise the resident's comprehensive care plan.

(3) Each individual who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.

(4) The facility must develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing, and mental and psycho-social needs as identified in the comprehensive assessment.

(a) The comprehensive care plan shall be:

(i) developed within seven days after completion of the comprehensive assessment;

(ii) prepared with input from an interdisciplinary team that includes the attending physician, the registered nurse having responsibility for the resident, and other appropriate staff in disciplines determined by the resident's needs, and with the participation of the resident, and the resident's family or guardian, to the extent practicable; and

(iii) periodically reviewed and revised by a team of qualified persons at least after each assessment and as the resident's condition changes.

(b) The services provided or arranged by the facility shall meet professional standards of quality and be provided by qualified persons in accordance with the resident's written care plan.

(5) The facility must prepare at the time of discharge a final summary of the resident's status to include items in R432-150-13(2)(a). The final summary shall be available for release to authorized persons and agencies, with the consent of the resident or representative.

(a) The final summary must include a post-discharge care plan developed with the participation of the resident and resident's family or guardian.

(b) If the discharge of the resident is based on the inability of the facility to meet the resident's needs, the final summary must contain a detailed explanation of why the resident's needs could not be met.

R432-150-14. Restraint Policy.

(1) Each resident has the right to be free from physical restraints imposed for purposes of discipline or convenience, or not required to treat the resident's medical symptoms.

(2) The facility must have written policies and procedures regarding the proper use of restraints.

(a) Physical and chemical restraints may only be used to assist residents to attain and maintain optimum levels of physical and emotional functioning.

(b) Physical and chemical restraints must not be used as substitutes for direct resident care, activities, or other services.

(c) Restraints must not unduly hinder evacuation of the resident in the event of fire or other emergency.

(d) If use of a physical or a chemical restraint is implemented, the facility must inform the resident, next of kin, and the legally designated representative of the reasons for the restraint, the circumstances under which the restraint shall be discontinued, and the hazards of the restraint, including potential physical side effects.

(3) The facility must develop and implement policies and procedures that govern the use of physical and chemical restraints. These policies shall promote optimal resident function in a safe, therapeutic manner and minimize adverse consequences of restraint use.

(4) Physical and chemical restraint policies must incorporate and address at least the following:

(a) resident assessment criteria which includes:

(i) appropriateness of use;

(ii) procedures for use;

(iii) purpose and nature of the restraint;

(iv) less restrictive alternatives prior to the use of more restrictive measures; and

(v) behavior management and modification protocols including possible alterations to the physical environment;

(b) examples of the types of restraints and safety devices that are acceptable for the use indicated and possible resident conditions for which the restraint may be used; and

(c) physical restraint guidelines for periodic release and position change or exercise, with instructions for documentation of this action.

(5) Emergency use of physical and chemical restraints must comply with the following:

(a) A physician, a licensed health practitioner, the director of nursing, or the health services supervisor must authorize the emergency use of restraints.

(b) The facility must notify the attending physician as soon as possible, but at least within 24 hours of the application of the restraints.

(c) The facility must notify the director of nursing or health services supervisor no later than the beginning of the next day shift of the application of the restraints.

(d) The facility must document in the resident's record the circumstances necessitating emergency use of the restraint and the resident's response.

(6) Physical restraints must be authorized in writing by a licensed practitioner and incorporated into the resident's plan of care.

(a) The interdisciplinary team must review and document the use of physical restraints, including simple safety devices, during each resident care conference, and upon receipt of renewal orders from the licensed practitioner.

(b) The resident care plan must indicate the type of physical restraint or safety device, the length of time to be used, the frequency of release, and the type of exercise or ambulation to be provided.

(c) Staff application of physical restraints must ensure minimal discomfort to the resident and allow sufficient body movement for proper circulation.

(d) Staff application of physical restraints must not cause injury or allow a potential for injury.

(e) Leather restraints, straight jackets, or locked restraints are prohibited.

(7) Chemical restraints must be authorized in writing by a licensed practitioner and incorporated into the resident's plan of care in conjunction with an individualized behavior management program.

(a) The interdisciplinary team must review and document the use of chemical restraints during each resident care conference and upon receipt of renewal orders from the licensed practitioner.

(b) The facility must monitor each resident receiving chemical restraints for adverse effects that significantly hinder verbal, emotional, or physical abilities.

(c) Any medication given to a resident must be administered according to the requirements of professional and ethical practice and according to the policies and procedures of the facility.

(d) The facility must initiate drug holidays in accordance with R432-150-15(13)(b).

(8) Facility policy must include criteria for admission and retention of residents who require behavior management programs.

R432-150-15. Quality of Care.

(1) The facility must provide to each resident, the necessary care and services to attain or maintain the highest practicable physical, mental, and psycho-social well-being, in accordance with the comprehensive assessment and care plan.

(a) Necessary care and services include the resident's ability to:

(i) bathe, dress, and groom;

(ii) transfer and ambulate;

(iii) use the toilet;

(iv) eat; and

(v) use speech, language, or other functional communication systems.

(b) Based on the resident's comprehensive assessment, the facility must ensure that:

(i) each resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrates that diminution was unavoidable;

(ii) each resident is given the treatment and services to maintain or improve his abilities; and

(iii) a resident who is unable to carry out these functions receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(2) The facility must assist residents in scheduling

appointments and arranging transportation for vision and hearing care as needed.

(3) The facility's comprehensive assessment of a resident must include an assessment of pressure sores. The facility must ensure that:

(a) a resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable; and

(b) a resident having pressure sores receives the necessary treatment and services to promote healing, prevent infection, and prevent new sores from developing.

(4) The facility's comprehensive assessment of the resident must include an assessment of incontinence. The facility must ensure that:

(a) a resident who is incontinent of either bowel or bladder, or both, receives the treatment and services to restore as much normal functioning as possible;

(b) a resident who enters the facility without an indwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization is necessary;

(c) a resident who is incontinent of bladder receives appropriate treatment and services to prevent urinary tract infections; and

(d) a licensed nurse must complete a written assessment to determine the resident's ability to participate in a bowel and bladder management program.

(5) The facility must assess each resident to ensure that:

(a) a resident who enters the facility without a limited range of motion does not experience reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable; and

(b) a resident with a limited range of motion receives treatment and services to increase range of motion or to prevent further decrease in range of motion.

(6) The facility must ensure that the psycho-social function of the resident remains at or above the level at the time of admission, unless the individual's clinical condition demonstrates that a reduction in psycho-social function was unavoidable. The facility shall ensure that:

(a) a resident who displays psycho-social adjustment difficulty receives treatment and services to achieve as much re-motivation and reorientation as possible; and

(b) a resident whose assessment does not reveal a psycho-social adjustment difficulty does not display a pattern of decreased social interaction, increased withdrawn anger, or depressive behaviors, unless the resident's clinical condition demonstrates that such a pattern is unavoidable.

(7) The facility must assess alternative feeding methods to ensure that:

(a) a resident who has been able to eat enough alone or with assistance is not fed by naso-gastric tube unless the resident's clinical condition demonstrates that use of a naso-gastric tube is unavoidable; and

(b) a resident who is fed by a naso-gastric or gastrostomy tube receives the treatment and services to prevent aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, and nasal-pharyngeal ulcers and to restore, if possible, normal feeding function.

(8) The facility must maintain the resident environment to be as free of accident hazards as is possible.

(9) The facility must provide each resident with adequate supervision and assistive devices to prevent accidents.

(10) Each resident's comprehensive assessment must include an assessment on nutritional status. The facility must ensure that each resident:

(a) maintains acceptable nutritional status parameters,

such as body weight and protein levels, unless the resident's clinical condition demonstrates that this is not possible; and

(b) receives a therapeutic diet when there is a nutritional problem.

(11) The facility must provide each resident with sufficient fluid intake to maintain proper hydration and health.

(12) The facility must ensure that residents receive proper treatment and care for the following special services:

- (a) injections;
- (b) parenteral and enteral fluids;
- (c) colostomy, ureterostomy, or ileostomy care;
- (d) tracheostomy care;
- (e) tracheal suctioning;
- (f) respiratory care;
- (g) foot care; and
- (h) prostheses care.

(13) Each resident's drug regimen must be free from unnecessary drugs and the facility shall ensure that:

(a) residents who have not used anti-psychotic drugs are not given these drugs unless anti-psychotic drug therapy is necessary to treat a specific condition as diagnosed and documented in the clinical record; and

(b) residents who use anti-psychotic drugs receive gradual dose reductions and behavioral interventions, unless clinically contraindicated in an effort to discontinue these drugs.

(14) The quality assurance committee must monitor medication errors to ensure that:

(a) the facility does not have medication error rates of five percent or greater;

(b) residents are free of any significant medication errors.

R432-150-16. Physician Services.

(1) A physician must personally approve in writing a recommendation that an individual be admitted to a nursing care facility.

(a) Each resident must remain under the care of a physician licensed in Utah to deliver the scope of services required by the resident.

(b) Nurse practitioners or physician assistants, working under the direction of a licensed physician may initiate admission to a nursing care facility pending personal review by the physician.

(2) The facility must provide supervision to ensure that the medical care of each resident is supervised by a physician. When a resident's attending physician is unavailable, another qualified physician must supervise the medical care of the resident.

(3) The physician must:

(a) review the resident's total program of care, including medications and treatments, at each visit;

(b) write, sign, and date progress notes at each visit;

(c) indicate, in writing, direction and supervision of health care provided to residents by nurse practitioners or physician assistants; and

(d) sign all orders.

(4) Physician visits must conform to the following:

(a) The physician shall notify the facility of the name of the nurse practitioner or physician assistant who is providing care to the resident at the facility.

(b) Each resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least every 60 days thereafter.

(c) Physician visits must be completed within ten days of the date the visit is required.

(d) Except as required by R432-150-16(4)(e), all required physician visits must be made by the physician.

(e) At the option of the physician, required visits after

the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner.

(5) The facility must provide or arrange for the provision of physician services 24 hours a day in case of an emergency.

R432-150-17. Social Services.

Each nursing care facility must provide or arrange for medical social services sufficient to meet the needs of the residents. Social services must be under the direction of a therapist licensed in accordance with Title 58 Chapter 60 of the Mental Health Practice Act.

R432-150-18. Laboratory Services.

(1) The facility must provide laboratory services in accordance with the size and needs of the facility.

(2) Laboratory services must comply with the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). CLIA inspection reports shall be available for Department review.

R432-150-19. Pharmacy Services.

(1) The facility must provide or obtain by contract routine and emergency drugs, biologicals, and pharmaceutical services to meet resident needs.

(2) The facility must employ or obtain the services of a licensed pharmacist who:

(a) provides consultation on all aspects of pharmacy services in the facility;

(b) establishes a system of records of receipt and disposition of all controlled substances which documents an accurate reconciliation; and

(c) determines that drug records are in order and that an account of all controlled substances is maintained and reconciled monthly.

(3) The drug regimen of each resident must be reviewed at least once a month by a licensed pharmacist.

(a) The pharmacist must report any irregularities to the attending physician and the director of nursing or health services supervisor.

(b) The physician and the director of Nursing or health services supervisor must indicate acceptance or rejection of the report and document any action taken.

(4) Pharmacy personnel must ensure that labels on drugs and biologicals are in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, and the expiration date.

(5) The facility must store all drugs and biologicals in locked compartments under proper temperature controls according to R432-150-19 (5)(e), and permit only authorized personnel to have access to the keys.

(a) The facility must provide separately locked, permanently affixed compartments for storage of controlled substances listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1976 and other drugs subject to abuse, except when the facility uses single unit dose package drug distribution systems in which the quantity stored is minimal and a missing dose can be readily detected.

(b) Non-medication materials that are poisonous or caustic may not be stored with medications.

(c) Containers must be clearly labeled.

(d) Medication intended for internal use shall be stored separately from medication intended for external use.

(e) Medications stored at room temperature shall be maintained within 59 and 80 degrees F.

(f) Refrigerated medications shall be maintained within 36 and 46 degrees F.

(6) The facility must maintain an emergency drug

supply.

(a) Emergency drug containers shall be sealed to prevent unauthorized use.

(b) Contents of the emergency drug supply must be listed on the outside of the container and the use of contents shall be documented by the nursing staff.

(c) The emergency drug supply shall be stored and located for access by the nursing staff.

(d) The pharmacist must inventory the emergency drug supply monthly.

(e) Used or outdated items shall be replaced within 72 hours by the pharmacist.

(7) The pharmacy must dispense and the facility must ensure that necessary drugs and biologicals are provided on a timely basis.

(8) The facility must limit the duration of a drug order in the absence of the prescriber's specific instructions.

(9) Drug references must be available for all drugs used in the facility. References shall include generic and brand names, available strength and dosage forms, indications and side effects, and other pharmacological data.

(10) Drugs may be sent with the resident upon discharge if so ordered by the discharging physician provided that a record of the drugs sent with the resident is documented in the resident's health record.

(11) Disposal of controlled substances must be in accordance with the Pharmacy Practice Act.

R432-150-20. Recreation Therapy.

(1) The facility shall provide for an ongoing program of individual and group activities and therapeutic interventions designed to meet the interests, and attain or maintain the highest practicable physical, mental, and psycho-social well-being of each resident in accordance with the comprehensive assessment.

(a) Recreation therapy shall be provided in accordance with Title 58, Chapter 40, Recreational Therapy Practice Act.

(b) The recreation therapy staff must:

(i) develop monthly activity calendars for residents activities; and

(ii) post the calendar in a prominent location to be available to residents, staff, and visitors.

(2) Each facility must provide sufficient space and a variety of supplies and resource equipment to meet the recreational needs and interests of the residents.

(3) Storage must be provided for recreational equipment and supplies. Locked storage must be provided for potentially dangerous items such as scissors, knives, and toxic materials.

R432-150-21. Pet Policy.

(1) Each facility must develop a written policy regarding pets in accordance with local ordinances.

(2) The administrator or designee must determine which pets may be brought into the facility. Family members may bring resident's pets to visit provided they have approval from the administrator and offer assurance that the pets are clean, disease free, and vaccinated.

(3) Pets are not permitted in food preparation or storage areas. Pets are not permitted in any area where their presence would create a health or safety risk.

R432-150-22. Admission, Transfer, and Discharge.

(1) Each facility must develop written admission, transfer and discharge policies and make these policies available to the public upon request. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:

(a) The transfer or discharge is necessary for the

resident's welfare and the resident's needs cannot be met in the facility;

(b) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(c) The safety of individuals in the facility is endangered;

(d) The health of individuals in the facility is endangered;

(e) The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility; or

(f) The facility ceases to operate.

(2) The facility must document resident transfers or discharges under any of the circumstances specified in R432-150-22(1)(a) through (f), in the resident's medical record. The transfer or discharge documentation must be made by:

(a) the resident's physician if transfer or discharge is necessary under R432-150-22(1)(a) and (b);

(b) a physician if transfer or discharge is necessary under R432-150-22(1)(c) and (d).

(3) Prior to the transfer or discharge of a resident, the facility must:

(a) provide written notification of the transfer or discharge and the reasons for the transfer or discharge to the resident, in a language and manner the resident understands, and, if known, to a family member or legal representative of the resident;

(b) record the reasons in the resident's clinical record; and

(c) include in the notice the items described in R432-150-22(6).

(4) Except when specified in R432-150-22(4)(a), the notice of transfer or discharge required under R432-150-22(3), must be made by the facility at least 30 days before the resident is transferred or discharged.

(5) Notice may be made as soon as practicable before transfer or discharge if:

(a) the safety or health of individuals in the facility would be endangered if the resident is not transferred or discharged sooner;

(b) the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(c) an immediate transfer or discharge is required by the resident's urgent medical needs; or

(d) a resident has not resided in the facility for 30 days.

(6) The contents of the written transfer or discharge notice must include the following:

(a) the reason for transfer or discharge;

(b) the effective date of transfer or discharge;

(c) the location to which the resident is transferred or discharged; and

(d) the name, address, and telephone number of the State and local Long Term Care Ombudsman programs.

(e) For nursing facility residents with developmental disabilities, the notice must contain the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act.

(f) For nursing facility residents who are mentally ill, the notice must contain the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(7) The facility must provide discharge planning to prepare and orient a resident to ensure safe and orderly transfer or discharge from the facility.

(8) Notice of resident bed-hold policy, transfer and re-admission must be documented in the resident file.

(a) Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility must provide written notification and information to the resident and a family member or legal representative that specifies:

- (i) the facility's policies regarding bed-hold periods permitting a resident to return; and
- (ii) the duration of the bed-hold policy, if any, during which the resident is permitted to return and resume residence in the facility.

(b) At the time of transfer of a resident to a hospital or for therapeutic leave, the facility must provide written notice to the resident and a family member or legal representative, which specifies the duration of the bed-hold policy.

(c) If transfers necessitated by medical emergencies preclude notification at the time of transfer, notification shall take place as soon as possible after transfer.

(d) The facility must establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed-hold period is readmitted to the facility.

(9) The facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services for all individuals regardless of pay source.

(10) The facility must have in effect a written transfer agreement with one or more hospitals to ensure that:

- (a) residents are transferred from the facility to the hospital and ensured of timely admission to the hospital when transfer is medically necessary as determined by the attending physician;
- (b) medical and other information needed for care and treatment of residents is exchanged between facilities including documentation of reasons for a less expensive setting; and
- (c) security and accountability of personal property of the individual transferred is maintained.

R432-150-23. Ancillary Health Services.

(1) If the nursing care facility provides its own radiology services, these facility must comply with R432-100-22, Radiology Services, in the General Acute Hospital Rule.

(2) A facility that provides specialized rehabilitative services may offer these services either directly or through agreements with outside agencies or qualified therapists. If provided, these services must meet the needs of the residents.

(a) The facility must provide space and equipment for specialized rehabilitative services in accordance with the needs of the residents.

(b) Specialized rehabilitative services may only be provided by therapists licensed in accordance with Utah law.

(c) All therapy assistants must work under the direct supervision of the licensed therapist at all times.

(d) Speech pathologists must have a "Certificate of Clinical Compliance" from the American Speech and Hearing Association.

(e) Specialized rehabilitative services may be provided only if ordered by the attending physician.

(i) The plan of treatment must be initiated by an attending physician and developed by the therapist in consultation with the nursing staff.

(ii) An initial progress report must be submitted to the attending physician two weeks after treatment is begun or as specified by the physician.

(iii) The physician and therapist must review and evaluate the plan of treatment monthly unless the physician recommends an alternate schedule in writing.

(f) The facility must document the delivery of rehabilitative services in the resident record.

(3) The facility must provide or arrange for regular and

emergency dental care for residents.

- (a) Dental care provisions shall include:
 - (b) development of oral hygiene policies and procedures with input from dentists;
 - (c) presentation of oral hygiene in-service programs by knowledgeable persons;
 - (d) development of referral service for those residents who do not have a personal dentist; and
 - (e) arrangement for transportation to and from the dentist's office.

R432-150-24. Food Services.

(1) The facility must provide each resident with a safe, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

(2) There must be adequate staff employed by the facility to meet the dietary needs of the residents.

(a) The facility must employ a dietitian either full-time, part-time, or on a consultant basis.

(b) The dietitian must be certified in accordance with Title 58, Chapter 49, Dietitian Certification Act.

(c) If a dietitian is not employed full-time, the administrator must designate a full-time person to serve as the dietetic supervisor.

(d) If the dietetic supervisor is not a certified dietitian, the facility must document at least monthly consultation by a certified dietitian according to the needs of the residents.

(e) The dietetic supervisor shall be available when the consulting dietitian visits the facility.

(3) The facility must develop menus that meet the nutritional needs of residents to the extent medically possible.

(a) Menus shall be:

- (i) prepared in advance;
- (ii) followed;
- (iii) different each day;
- (iv) posted for each day of the week;
- (v) approved and signed by a certified dietitian and;
- (vi) cycled no less than every three weeks.

(b) The facility must retain documentation for at least three months of all served substitutions to the menu.

(4) The facility must make available for Department review all food sanitation inspection reports of State or local health department inspections.

(5) All therapeutic diets must be ordered in writing by the attending physician or by a qualified registered dietitian in consultation with the physician, if allowed by facility policy.

(6) There must be no more than a 14-hour interval between the evening meal and breakfast, unless a substantial snack is served in the evening.

(7) The facility must provide special eating equipment and assistive devices for residents who need them.

(8) The facility's food service must comply with the Utah Department of Health Food Service Sanitation Regulations R392-100.

(9) The facility must maintain a one-week supply of nonperishable staple foods and a three-day supply of perishable foods to complete the established menu for three meals per day, per resident.

(10) A nursing care facility may use trained dining assistants to aid residents in eating and drinking if:

(a) a licensed practical nurse-geriatric care manager, registered nurse, advance practice registered nurse, speech pathologist, occupational therapist, or dietitian has assessed that the resident does not have complicated feeding problems, such as recurrent lung aspirations, behaviors which interfere with eating, difficulty swallowing, or tube or parenteral feeding; and

(b) The service plan or plan of care documents that the resident needs assistance with eating and drinking and defines

who is qualified to offer the assistance.

(11) If the nursing care facility uses a dining assistant, the facility must assure that the dining assistant:

- (a) has completed a training course from a Department-approved training program;
- (b) has completed a background screening pursuant to R432-35; and
- (c) performs duties only for those residents who do not have complicated feeding problems.

(12) A long-term care facility, employee organization, person, governmental entity, or private organization must submit the following to the Department to become Department-approved training program:

(a) a copy of the curriculum to be implemented that meets the requirements of subsection (13); and

(b) the names and credentials of the trainers.

(13) The training course for the dining assistant shall provide eight hours of instruction and one hour of observation by the trainer to ensure competency. The course shall include the following topics:

- (a) feeding techniques;
- (b) assistance with eating and drinking;
- (c) communication and interpersonal skills;
- (d) safety and emergency procedures including the Heimlich maneuver;
- (e) infection control;
- (f) resident rights;
- (g) recognizing resident changes inconsistent with their normal behavior and the importance in reporting those changes to the supervisory nurse;
- (h) special diets;
- (i) documentation of type and amount of food and hydration intake;
- (j) appropriate response to resident behaviors, and
- (k) use of adaptive equipment.

(14) The training program shall issue a certificate of completion and maintain a list of the dining assistants. The certificate shall include the training program provider and provider's telephone number at which a long-term care facility may verify the training, and the dining assistant's name and address.

(15) To provide dining assistant training in a Department-approved program, a trainer must hold a current valid license to practice as:

- (a) a registered nurse, advanced practice registered nurse or licensed practical nurse-geriatric care manager pursuant to Title 58, Chapter 31b;
- (b) a registered dietitian, pursuant to Title 58, Chapter 49;
- (c) a speech-language pathologist, pursuant to Title 58, Chapter 41; or
- (d) an occupational therapist, pursuant to Title 58, Chapter 42a.

(16) The Department may suspend a training program if the program's courses do not meet the requirements of this rule.

(17) The Department may suspend a training program operated by a nursing care facility if:

- (a) a federal or state survey reveals failure to comply with federal regulations or state rules regarding feeding or dining assistant programs;
- (b) the facility fails to provide sufficient, competent staff to respond to emergencies;
- (c) the Department sanctions the facility for any reason; or
- (d) the Department determines that the facility is in continuous or chronic non-compliance under state rule or that the facility has provided sub-standard quality of care under federal regulation.

R432-150-25. Medical Records.

(1) The facility must implement a medical records system to ensure complete and accurate retrieval and compilation of information.

(2) The administrator must designate an employee to be responsible and accountable for the processing of medical records.

(a) The medical records department must be under the direction of a registered record administrator, RRA, or an accredited record technician, ART.

(b) If an RRA or ART is not employed at least part time, the facility must consult with an RRA or ART according to the needs of the facility, but not less than semi-annually.

(3) The resident medical record and its contents must be retained, stored and safeguarded from loss, defacement, tampering, and damage from fires and floods.

(a) Medical records must be protected against access by unauthorized individuals.

(b) Medical records must be retained for at least seven years. Medical records of minors must be kept until the age of eighteen plus four years, but in no case less than seven years.

(4) The facility must maintain an individual medical record for each resident. The medical record must contain written documentation of the following:

(a) records made by staff regarding daily care of the resident;

(b) informative progress notes by staff to record changes in the resident's condition and response to care and treatment in accordance with the care plan;

(c) a pre-admission screening;

(d) an admission record with demographic information and resident identification data;

(e) a history and physical examination up-to-date at the time of the resident's admission;

(f) written and signed informed consent;

(g) orders by clinical staff members;

(h) a record of assessments, including the comprehensive resident assessment, care plan, and services provided;

(i) nursing notes;

(j) monthly nursing summaries;

(k) quarterly resident assessments;

(l) a record of medications and treatments administered;

(m) laboratory and radiology reports;

(n) a discharge summary for the resident to include a note of condition, instructions given, and referral as appropriate;

(o) a service agreement if respite services are provided;

(p) physician treatment orders; and

(q) information pertaining to incidents, accidents and injuries.

(r) If a resident has an advanced directive, the resident's record must contain a copy of the advanced directive.

(5) All entries into the medical record must be authenticated including date, name or identifier initials, and title of the person making the entries.

(6) Resident respite records must be maintained within the facility.

R432-150-26. Housekeeping Services.

(1) The facility must provide a safe, clean, comfortable environment, allowing the resident to use personal belongings to create a homelike environment.

(a) Cleaning agents, bleaches, insecticides, poisonous, dangerous, or flammable materials must be stored in a locked area to prevent unauthorized access.

(b) The facility must provide adequate housekeeping services and sufficient personnel to maintain a clean and

sanitary environment.

(i) Personnel engaged in housekeeping or laundry services cannot be engaged concurrently in food service or resident care.

(ii) If housekeeping personnel also work in food services or direct patient care services, the facility must develop and implement employee hygiene and infection control measures to maintain a safe, sanitary environment.

R432-150-27. Laundry Services.

(1) The administrator must designate a person to direct the facility's laundry service. The designee must have experience, training, or knowledge of the following:

- (a) proper use of chemicals in the laundry;
- (b) proper laundry procedures;
- (c) proper use of laundry equipment;
- (d) facility policies and procedures; and
- (e) federal, state and local rules and regulations.

(2) The facility must provide clean linens, towels and wash cloths for resident use.

(3) If the facility contracts for laundry services, there must be a signed, dated agreement that details all services provided.

(4) The facility must inform the resident and family of facility laundry policy for personal clothing.

(5) The facility must ensure that each resident's personal laundry is marked for identification.

(6) There must be enough clean linen, towels and washcloths for at least three complete changes of the facility's licensed bed capacity.

(7) There must be a bed spread for each resident bed.

(8) Clean linen must be handled and stored in a manner to minimize contamination from surface contact or airborne deposition.

(9) Soiled linen must be handled, stored, and processed in a manner to prevent contamination and the spread of infections.

(10) Soiled linen must be sorted in a separate room by methods affording protection from contamination.

(11) The laundry area must be separate from any room where food is stored, prepared, or served.

R432-150-28. Maintenance Services.

(1) The facility must ensure that buildings, equipment and grounds are maintained in a clean and sanitary condition and in good repair at all times for the safety and well-being of residents, staff, and visitors.

(a) The administrator shall employ a person qualified by experience and training to be in charge of facility maintenance.

(b) If the facility contracts for maintenance services, there must be a signed, dated agreement that details all services provided. The maintenance service must meet all requirements of this section.

(c) The facility must develop and implement a written maintenance program (including preventive maintenance) to ensure the continued operation of the facility and sanitary practices throughout the facility.

(2) The facility must ensure that the premises is free from vermin and rodents.

(3) Entrances, exits, steps, ramps, and outside walkways must be maintained in a safe condition with regard to snow, ice and other hazards.

(4) Facilities which provide care for residents who cannot be relocated in an emergency must make provision for emergency lighting and heat to meet the needs of residents.

(5) Functional flashlights shall be available for emergency use by staff.

(6) All facility equipment must be tested, calibrated and

maintained in accordance with manufacturer specifications.

(a) Testing frequency and calibration documentation shall be available for Department review.

(b) Documentation of testing or calibration conducted by an outside agency must be available for Department review.

(7) All spaces within buildings which house people, machinery, equipment, approaches to buildings, and parking lots must have lighting.

(8) Heating, air conditioning, and ventilating systems must be maintained to provide comfortable temperatures.

(9) Back-flow prevention devices must be maintained in operating condition and tested according to manufacturer specifications.

(10) Hot water temperature controls must automatically regulate temperatures of hot water delivered to plumbing fixtures used by residents. Hot water must be delivered to public and resident care areas at temperatures between 105-115 degrees F.

(11) Disposable and single use items must be properly disposed of after use.

(12) Nursing equipment and supplies must be available as determined by facility policy in accordance with the needs of the residents.

(13) The facility must have at least one first aid kit and a first aid manual available at a specified location in the facility. The first aid manual must be a current edition of a basic first aid manual approved by the American Red Cross or the American Medical Association.

(14) The facility must have at least one OSHA-approved spill or clean-up kit for blood-borne pathogens.

(15) Vehicles used to transport residents must be:

(a) licensed with a current vehicle registration and safety inspection;

(b) equipped with individual, size-appropriate safety restraints such as seat belts which are defined in the federal motor vehicle safety standards contained in the Code of Federal Regulations, Title 49, Section 571.213, and are installed and used in accordance with manufacturer specifications;

(c) equipped with a first aid kit as specified in R432-150-28(13); and

(d) equipped with a spill or clean-up kit as specified in R432-150-28(14).

R432-150-29. Emergency Response and Preparedness Plan.

(1) The facility must ensure the safety and well-being of residents and make provisions for a safe environment in the event of an emergency or disaster. An emergency or disaster may include utility interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.

(2) The facility must develop an emergency and disaster plan that is approved by the governing board.

(a) The facility's emergency plan shall delineate:

(i) the person or persons with decision-making authority for fiscal, medical, and personnel management;

(ii) on-hand personnel, equipment, and supplies and how to acquire additional help, supplies, and equipment after an emergency or disaster;

(iii) assignment of personnel to specific tasks during an emergency;

(iv) methods of communicating with local emergency agencies, authorities, and other appropriate individuals;

(v) individuals who shall be notified in an emergency in order of priority; and

(vi) methods of transporting and evacuating residents and staff to other locations.

(b) The facility must have available at each nursing

station emergency telephone numbers including responsible staff persons in the order of priority.

(c) The facility must document resident emergencies and responses, emergency events and responses, and the location of residents and staff evacuated from the facility during an emergency.

(d) The facility must conduct and document simulated disaster drills semi-annually.

(3) The administrator must develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel.

(a) The evacuation plan must delineate evacuation routes, location of fire alarm boxes, fire extinguishers, and emergency telephone numbers of the local fire department.

(b) The facility must post the evacuation plan in prominent locations in exit access ways throughout the building.

(c) The written fire or emergency plan must include fire containment procedures and how to use the facility alarm systems and signals.

(d) Fire drills and fire drill documentation must be in accordance with the State of Utah Fire Prevention Board, R710-4.

R432-150-30. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in Section 26-21-11 and R432-3-7 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

KEY: health care facilities

May 16, 2017

Notice of Continuation February 13, 2017

26-21-5

26-21-16

R432. Health, Family Health and Preparedness, Licensing.**R432-700. Home Health Agency Rule.****R432-700-1. Authority.**

This rule is adopted pursuant to Title 26, Chapter 21.

R432-700-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation of home health agencies.

R432-700-3. Compliance.

All home health agencies shall comply with these rules and their own policies and procedures.

R432-700-4. Definitions.

(1) See common definitions rule R432-1-3.

(2) Special definitions:

(a) "Branch Office" means a location from which a home health agency provides services within a portion of the total geographic area served by the parent agency. The branch office is a part of the parent home health agency and shares administration and services.

(b) "Licensed health care professional" means a registered nurse, physician assistant, advanced practice registered nurse, or physician licensed by the Utah Department of Commerce who has education and experience to assess and evaluate the health care needs of the resident.

(c) "Parent Home Health Agency" means the agency that has administrative control of branch offices.

(d) "Service Agreement" means a written agreement for services between the client and the personal care provider which outlines how the services are to be provided according to the requirements of R432-700-24.

R432-700-5. Categories of Home Health Agencies.

Home health agencies include institutionally based home care programs, freestanding public and proprietary home health agencies, and any subdivision of an organization, public agency, hospital, or nursing home licensed to provide intermittent part-time services or full-time private duty services to patients in their place of residences.

R432-700-6. Services Provided by a Home Health Agency.

(1) A home health agency shall provide services to patients in their place of residence, or in special circumstances, the place of employment.

(2) Services shall be directed and supervised by a licensed practitioner. These services may help avoid premature or inappropriate institutionalization.

(3) Professional and supportive personnel shall be responsible to the agency for any of the following services which they may perform:

(a) Provision of skilled services authorized by a physician;

(b) Nursing services assessed, provided, or supervised by registered nurses;

(c) Other related health services approved by a licensed practitioner.

R432-700-7. Licensure Required.

(1) These provisions do not apply to a single individual providing professional services under the authority granted by his professional license or registration.

(2) See R432-2.

R432-700-8. Governing Body and Policies.

(1) The home health agency shall be organized under a

governing body that assumes full legal responsibility for the conduct of the agency.

(2) The administrative structure of the agency must be shown by an organization chart.

(3) The governing body shall assume responsibility to:

(a) Comply with all federal regulations, state rules, and local laws;

(b) Adopt policies and procedures which describe functions or services of the home health agency and protect patient rights;

(c) Adopt a statement that there is no discrimination because of race, color, sex, religion, ancestry, or national origin;

(d) Develop and implement bylaws which shall include at least:

(i) A statement of purpose;

(ii) A statement of qualifications for membership and methods to select members of the governing board;

(iii) A provision for the establishment, selection, and term of office for committee members and officers;

(iv) A description of functions and duties of the governing body, officers, and committees;

(v) A statement of the authority and responsibility delegated to the administrator;

(vi) A policy statement relating to conflict of interest of members of the governing body or employees who may influence agency decisions;

(vii) Meet as stated in bylaws, at least annually;

(viii) Appoint by name and in writing a qualified administrator who is responsible for the agency's overall functions.

(4) Review the written annual evaluation report from the administrator and make recommendations as necessary. Documentation of this review shall be available to the Department.

(5) Make provision for resources and equipment to provide a safe working environment for personnel.

(6) Establish a system of financial management and accountability.

R432-700-9. Administrator.

(1) The administrator designated by the governing body shall be responsible for the overall management of the agency.

(2) The administrator shall have at least one year of managerial or supervisory experience.

(3) The administrator shall designate in writing a qualified person who shall act in his absence. The designated person shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being.

(4) The administrator or designee shall be available during the agency's hours of operation.

(5) Responsibilities.

The administrator shall have the responsibility to:

(a) Complete, submit, and file all records and reports required by the Department;

(b) Review agency policies and procedures at least annually and revise as necessary and document the date of review;

(c) Implement agency policies and procedures;

(d) Organize and coordinate functions of the agency by delegating duties and establishing a formal means of staff accountability;

(e) Appoint a physician or registered nurse, or health care professional to provide general supervision, coordination, and direction for professional services of the agency;

(f) Appoint a registered nurse to be the director of nursing services;

(g) Appoint the members and their terms of membership in the interdisciplinary quality assurance committee;

(h) Appoint other committees as deemed necessary, describe committee functions and duties, and make provision for selection, term of office, and responsibilities of committee members;

(i) Designate a person responsible for maintaining a clinical record system on all patients;

(j) Maintain current written designations or letters of appointment in the agency;

(k) Employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority, and who have the appropriate license or certificate of completion;

(l) Develop job descriptions that delineate functional responsibilities and authority;

(m) Develop a staff communication system that coordinates implementation of plans of treatment, utilizes services or resources to meet patient needs, and promotes an orderly flow of information within the organization;

(n) Provide staff orientation as well as continuing education (staff development) in applicable policies, rules, regulations, and resource materials;

(o) Secure contracts for services not directly provided by the home health agency;

(p) Implement a program of budgeting and accounting;

(q) Establish a billing system which itemizes services provided and charges submitted to the payment source.

R432-700-10. Personnel.

(1) The administrator shall employ qualified personnel who are competent to perform their respective duties, services, and functions.

(2) The agency shall develop written policies and procedures that address at least the following:

(a) Job descriptions, qualifications, validation of licensure or certificates of completion for each position held;

(b) Orientation for direct and contract employees;

(c) Criteria for, and frequency of, performance evaluations;

(d) Work schedules; method and period of payment; fringe benefits such as sick leave, vacation, insurance, etc.;

(e) Frequency and documentation of in-service training;

(f) Contents of personnel files.

(3) Each employee shall be licensed, certified or registered as required by the Utah Department of Commerce, Division of Occupational and Professional Licensing.

(4) Failure to ensure that all staff are licensed, certified or registered may result in sanctions to the agency license.

(5) An annual in-service shall be documented that staff have been trained in the reporting requirements for suspected abuse, neglect and exploitation.

R432-700-11. Health Surveillance.

(1) The agency shall establish and implement a policy and procedure for health screening of all agency health care workers (persons with direct patient contact) to identify any situation which would prevent the employee from performing assigned duties in a satisfactory manner.

(2) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-702, Communicable Disease Rules.

(3) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for Control of Tuberculosis.

(a) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(i) initial hiring;

(ii) suspected exposure to a person with active tuberculosis; and

(iii) development of symptoms of tuberculosis.

(b) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(4) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-3.

R432-700-12. Orientation.

(1) There shall be documentation that all employees are oriented to the agency and the job for which they are hired.

(2) Orientation shall include but is not limited to:

(a) The functions of agency employees and the relationships between various positions or services;

(b) Job descriptions;

(c) Duties for which persons are trained, hold a registration, certificate, or are licensed;

(d) Ethics, confidentiality, and patients' rights;

(e) Information about other community agencies including emergency medical services;

(f) Opportunities for continuing education appropriate to the patient population served;

(g) Reporting requirements for suspected abuse, neglect or exploitation.

R432-700-13. Contracts.

(1) The administrator shall secure written contract or agreement from other providers, or independent contractors, who provide patient services through the home health agency and shall arrange for an orientation to ensure that the contractor is prepared to meet the job expectations.

(2) The contract shall be available for review by the Department.

(3) The contract shall include:

(a) The effective and expiration dates;

(b) A description of goods or services to be provided;

(c) A copy of the professional license must be available, upon Department request.

R432-700-14. Acceptance Criteria.

(1) The agency shall develop written acceptance criteria and shall make these policies available to the public upon request.

(2) Patients shall be accepted for treatment if the patient's needs can be met by the agency in the patient's place of residence. The agency shall base the acceptance determination on an assessment using the following criteria:

(a) The patient needs skilled nursing services, to determine whether a service is skilled, the following criteria shall apply:

(i) the complexity of prescribed services can be safely or effectively performed only by, or under the close supervision of, technical or professional personnel.

(ii) care is needed to prevent, to the extent possible, deterioration of the condition or to sustain current capacities of a patient, such as one with terminal cancer.

(iii) special medical complications necessitate service performance or close supervision by technical or professional persons, as in the care of a diabetic patient with impaired circulation, fragile skin, and a fractured leg in a cast.

(b) The patient needs therapy services or support services;

(c) The patient and family request care at home;

(d) The physical facilities in the patient's place of residence can be adapted to provide safe environment for care.

R432-700-15. Termination of Services Policies.

(1) The agency may discharge a patient under any of the following circumstances:

- (a) A licensed practitioner signs a discharge statement for termination of services;
 - (b) Treatment objectives are met;
 - (c) The patient's status changes, which makes treatment objectives unattainable, and new treatment objectives are not an alternative;
 - (d) The family situation changes and affects the delivery of services;
 - (e) The patient or family is uncooperative in efforts to attain treatment objectives;
 - (f) The patient moves from the geographic area served by the agency;
 - (g) The physician fails to renew orders as required by the rules for skilled nursing or therapy services, or, the patient changes physician's and the agency cannot obtain orders for continuation of services from the new physician;
 - (h) The patient's payment sources are exhausted and the agency is fiscally unable to provide free or part-cost care;
 - (i) The agency discontinues a particular service or terminates all services;
 - (j) The agency can no longer provide quality care in the place for residence;
 - (k) The patient or family requests agency services to be discontinued;
 - (l) The patient dies;
 - (m) the patient or family is unable or unwilling to provide an environment that ensures safety for the both the patient and provider of service; or
 - (n) The patient's payor excludes the agency from participating as a covered provider or refuses to authorize services the agency determines are medically necessary.
- (2) The person who is assigned to supervise and coordinate care for a particular patient must complete a discharge summary when services to the patient are terminated.

R432-700-16. Patients' Rights.

- (1) Written patients' rights shall be established and made available to the patient, guardian, next of kin, sponsoring agency, representative payee, and the public.
- (2) Agency policy may determine how patients' rights information is distributed.
- (3) The agency shall insure that each patient receiving care has the following rights:
 - (a) To be fully informed of these rights and all rules governing patient conduct, as evidenced by documentation in the clinical record;
 - (b) To be fully informed of services and related charges for which the patient or a private insurer may be responsible, and to be informed of all changes in charges;
 - (c) To be fully informed of the patient's health condition, unless medically contraindicated and documented in the clinical record;
 - (d) To be afforded the opportunity to participate in the planning of home health services, including referral to health care institutions or other agencies, and to refuse to participate in experimental research;
 - (e) To refuse treatment to the extent permitted by law and to be informed of the medical consequences if treatment is refused;
 - (f) To be assured confidential treatment of personal and medical records, and to approve or refuse their release to any individual outside the agency, except in the case of transfer to another agency or health facility, or as required by law or third-party payment contract;
 - (g) To be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in

treatment and in care for personal needs;

- (h) To be assured the patient and the family or significant others will be taught about required services, so the patient can develop or regain self-care skills and the family or others can understand and help the patient;
- (i) To be assured that personnel who provide care demonstrate competency through education and experience to carry out the services for which they are responsible;
- (j) To receive proper identification from the individual providing home health services;
- (k) To receive information concerning the procedures to follow to voice complaints about services being performed.

R432-700-17. Physician's Orders.

- (1) Physician's orders shall be incorporated into the plan of care when skilled care is being provided.
- (2) Physician's orders may include:
 - (a) Diet and nutritional requirements;
 - (b) Medications;
 - (c) Frequency and type of service;
 - (d) Treatments;
 - (e) Medical equipment and supplies;
 - (f) Prognosis.

R432-700-18. Patient Records.

- (1) The agency shall develop and implement record keeping policies and procedures that address use of patient records by authorized staff, content, confidentiality, retention, and storage.
- (2) Records shall be maintained in an organized format.
- (3) The agency shall maintain an identification system to facilitate location of each patient's current or closed record.
- (4) An accurate, up-to-date record must be maintained for every patient receiving service through the home health agency.
- (5) Each person who has patient contact or provides a service in the patient's place of residence must enter a clinical note of that contact or service in the patient's record.
- (6) All entries shall be dated and authenticated with the signature, or identifiable initials of the person making the entry.
- (7) Services provided by the agency and outcomes of these services must be documented in the individual patient record.
- (8) Each patient's record shall contain at least the following information:
 - (a) Identification data including patient's name, address, age, date of birth, name and address of nearest relative or responsible person, name and telephone number of physician with primary responsibility for patient care, and if applicable, the name and telephone number of the person or family member who, in addition to agency staff, provides care in the place of residence;
 - (b) A written plan of care;
 - (c) A signed and dated patient assessment which identifies pertinent information required to carry out the plan of care;
 - (d) Reasons for referral to home health agency;
 - (e) Statement of the suitability of the patient's place of residence for the provision of health care services;
 - (f) Documentation of telephone consultation or case conferences with other individuals providing services;
 - (g) Signed and dated clinical notes for each patient contact or home visit including services provided
 - (h) A written Termination of Services summary which describes:
 - (i) The care or services provided;
 - (ii) The course of care and services;
 - (iii) The reason for discharge;

(iv) The status of the patient at time of discharge;
 (v) The name of the agency or facility if the patient was referred or transferred.

(9) For those patients who receive skilled services the following items shall be included in the patient record in addition to R432-700-18(8):

- (a) Diagnosis;
- (b) Pertinent medical and surgical history;
- (c) A list of medications and treatments;
- (d) Allergies or reactions to drugs or other substances;
- (e) Clinical notes to include a description of the patient condition and significant changes such as:
 - (i) Objective signs of illness, disorders, body malfunction;
 - (ii) Subjective information from the patient and family;
 - (iii) General physical condition;
 - (iv) General emotional condition;
 - (v) Positive or negative physical and emotional responses to treatments and services;
 - (vi) General behavior; and
 - (vii) General appearance.
- (f) Clinical summaries or other documents obtained when necessary for promoting continuity of care, especially when a patient receives care elsewhere, such as a hospital, ambulatory surgical center, nursing home, physician or consultant's office or other home health agency.

R432-700-19. Confidentiality and Release of Information.

- (1) The agency must develop and implement policies and procedures to safeguard patient records against loss, destruction, or unauthorized use.
- (2) There shall be written procedures for the use and removal of medical records. The release of information, including photographs, shall require the written consent of the patient.
- (3) Patient records shall be confidential. Information may be disclosed only to authorized persons in accordance with federal regulations, state rules, and local laws.
- (4) Authorized representatives of the Department shall be allowed to review records to determine compliance with licensure rules and standards.
- (5) When a patient is referred to another agency or facility, the home health agency may release information only with the written consent of the patient.
- (6) Provision shall be made for filing, safe storage, and easy accessibility of medical records.

R432-700-20. Quality Assurance.

- (1) The quality, appropriateness, and scope of services rendered shall be reviewed and evaluated at least annually by the governing body to determine overall effectiveness in meeting agency objectives.
- (2) The administrator shall conduct an annual evaluation of the agency's overall program and submit a written report of the findings to the governing body.
- (3) The agency shall demonstrate concern for cost of care by evaluation of the following:
 - (a) Relevance of health care services;
 - (b) Appropriateness of treatment frequency;
 - (c) Use of less expensive, but still effective, resources whenever possible;
 - (d) Use of ancillary services consistent with patient needs.
- (4) An interdisciplinary quality assurance committee shall evaluate patient services on at least a quarterly basis. A written report of findings from each meeting shall be submitted to the administrator and shall be available in the agency.
 - (a) Each member of the quality assurance committee

shall be appointed by the administrator for a given term of membership.

(b) The quality assurance committee shall have a minimum of three members who represent at least three different licensed or certified health care professions.

(5) The methodology for evaluation shall include but is not limited to:

- (a) Review and evaluation of active and closed patient records to assure that established policies and procedures are being followed. Agency policy and procedure will determine the methods for selecting and reviewing a representative sample of records. Examples of methods of selection could either be a given percentage for both active and closed records, or a given number of records for each category of service provided during the review period;
- (b) Review and evaluation of coordination of services through documentation of written reports, telephone consultation, or case conferences;
- (c) Review and evaluation of plans of treatment for content, frequency of updates, and whether clinical notes correspond to goals written in the plan of care.

R432-700-21. Nursing Services.

- (1) Nursing services provided through a home health agency shall be under the supervision of a director of nursing services.
- (2) Nursing services shall be provided by or under the supervision of a registered nurse and according to the plan of care.
- (3) When an agency provides or contracts for services, the service shall be provided according to the plan of care and supervised by designated, qualified personnel.
- (4) Nursing staff shall observe, report, and record written clinical notes.
- (5) Nursing services should recognize and use opportunities to teach health concepts to the patient and family.
- (6) All registered nurses or licensed practical nurses employed by, or on contract with, the agency shall have a valid license from the Utah Department of Commerce, Title 58, Chapter 31b.
- (7) Licensed nurses shall have the following responsibilities:
 - (a) Administer prescribed medications and treatments according to law and as permitted within the scope of the individual's license;
 - (b) Perform nursing care according to the needs of the patient and as indicated in the written plan of care;
 - (c) Inform the physician and other personnel of changes in the patient's condition and needs;
 - (d) Write clinical notes in the individual patient record for each visit or contact;
 - (e) Teach self-care techniques to the patient or family, or both;
 - (f) Develop plans of care;
 - (g) Participate in in-service programs.
- (8) The director of nursing services shall be responsible for and shall be accountable for the following functions:
 - (a) Designate a registered nurse to act as director of nursing services during his absence;
 - (b) Assume responsibility for the quality of nursing services provided by the agency;
 - (c) Develop nursing service policies and procedures that must be reviewed annually and revised as necessary;
 - (d) Establish work schedules for nursing personnel according to patient needs;
 - (e) Assist in development of job descriptions for nursing personnel;
 - (f) Complete performance evaluations for nursing

personnel according to agency policy;

- (g) Direct in-service programs for all nursing personnel.
- (9) In addition to the general responsibilities, a registered nurse shall have the following responsibilities:
 - (a) Make the initial nursing evaluation visit;
 - (b) Re-evaluate nursing needs based on the patient's status and condition;
 - (c) Initiate the plan of care and make necessary revisions;
 - (d) Provide services which require specialized nursing skill;
 - (e) Initiate appropriate preventive and rehabilitative nursing procedures;
 - (f) Supervise staff assignments based on specific patient needs, family capabilities, staff training and experience, and degree of supervision needed;
 - (g) Assist in coordinating all services provided;
 - (h) Prepare termination of services statements;
 - (i) Supervise and consult with licensed practical nurses as necessary;
 - (j) Provide written instructions for certified nursing aide to ensure provision of required services written in the plan of care;
 - (k) Supervise certified nursing aide in the patient's home as necessary, and be readily available for consultation by telephone;
 - (l) Make supervisory visits with or without the certified nursing aide's presence as follows:
 - (i) Initial assessment;
 - (ii) Every two weeks to patients who receive skilled services;
 - (iii) Every three months to patients who require long-term maintenance services;
 - (iv) Any time there is a question of change in the patient's condition.
 - (10) The licensed practical nurse shall have the following responsibilities:
 - (a) Work under the supervision of a registered nurse;
 - (b) Observe, record, and report to the immediate supervisor the general physical or mental condition of the patient;
 - (c) Assist the registered nurse in performing specialized procedures;
 - (d) Assist in development of the plan of care.

R432-700-22. Certified Nursing Aide.

- (1) Certified nursing aides may have the following responsibilities:
 - (a) Provide only those services written in the plan of care and received as written instructions from the registered nurse supervisor. If the service is an extension of therapy, the instructions shall be written by the licensed therapist;
 - (b) Perform normal household services essential to health care at home;
 - (c) Make occupied or unoccupied beds;
 - (d) Supervise the patient's self-administration of medication by:
 - (i) Reminding the patient it is time to take medications;
 - (ii) Opening the bottle cap;
 - (iii) Reading the medication label to patients;
 - (iv) Checking the self-administered dosage against the label of the container;
 - (v) Reassuring the patient that the dose being taken is correct;
 - (vi) Observing the patient taking the medication.
 - (e) Observe, record and/or report basic patient status;
 - (f) Perform activities of daily living as written in plan of care;
 - (g) Give nail care as described in the plan of care;

- (h) Observe and record food and fluid intake when ordered;
- (i) Change dry dressings according to written instructions from the supervisor;
- (j) Administer emergency first aid;
- (k) Provide escort and transportation to doctor's appointments and elsewhere as part of patient-care services;
- (l) Provide social interaction and reassurance to the patient and family in accordance with the plan of care;
- (m) Write clinical notes in individual patient records.
- (2) Certified Nursing Aides shall be at least 18 years old.
- (3) Certified Nursing Aides shall have received a certificate of completion for the employment position within six months of the date of hire.
- (4) Certified Nursing Aides must be certified in cardiopulmonary resuscitation and emergency procedures.

R432-700-23. Personal Care Aides.

- (1) Personal care aides shall be at least 18 years of age and have the following responsibilities:
 - (a) Receive written instructions from the supervisor;
 - (b) Perform only the tasks and duties outlined in the service agreement;
 - (c) Have knowledge of agency policy and procedures;
 - (d) Be trained in first aid;
 - (e) Be oriented and trained in all aspects of care to be provided to clients;
 - (f) Be able to demonstrate competency in all areas of training for personal care; and
 - (g) Maintain a minimum of six hours of in-service per calendar year, prorated for the first year of employment;
- (2) Personal Care Aides may assist clients with the following activities:
 - (a) Self-administration of medications by:
 - (i) reminding the client to take medications, and
 - (ii) opening containers for the client;
 - (b) Housekeeping;
 - (c) Personal grooming and dressing;
 - (d) Eating and meal preparation;
 - (e) Oral hygiene and denture care;
 - (f) Toileting and toilet hygiene;
 - (g) Arranging for medical and dental care including transportation to and from the appointment;
 - (h) taking and recording oral temperatures;
 - (i) Administering emergency first aid;
 - (j) Providing or arranging for social interaction;
 - (k) Providing transportation.
- (3) Personal Care Aides shall document observations and services in the individual client record.

R432-700-24. Plan of Care.

- (1) A plan of care shall be established and documented in the patient's record to describe any direct or contract services, care, or treatment provided by the home health agency.
- (2) A plan of care shall be developed and signed by a licensed health care professional.
- (3) The plan of care shall be developed with consultation, as needed, from other agency staff or contract personnel.
- (4) Modifications or additions to the initial plan of care shall be made as necessary.
- (5) Each plan of care shall be reviewed and approved by the licensed health care professional as the patient's condition warrants, at intervals not to exceed 63 days.
- (6) For patients receiving skilled services, the written plan of care shall be approved by a physician at intervals not to exceed 63 days.

(7) The person who is assigned to supervise and coordinate care for a patient shall have the primary responsibility to notify the attending physician and other agency staff of any significant changes in the patient's status.

(8) All care plans and notifications shall be made part of the patient's record.

(9) The plan of care, usually developed in accordance with the referring physician's orders, shall include:

- (a) Name of the patient;
- (b) Diagnoses (required for patients receiving skilled services);
- (c) Treatment goals stated in measurable terms;
- (d) Services to be provided, at what intervals, and by whom;
- (e) Needed medical equipment and supplies;
- (f) Medications to be administered by designated, licensed agency personnel;
- (g) Supervision of self-administered medication;
- (h) Diet or nutritional requirements;
- (i) Necessary safety measures;
- (j) Instructions, if any, to patient and/or family;
- (k) Date plan was initiated and dates of subsequent review.

R432-700-25. Medication and Treatment.

(1) Skilled treatments shall be administered only by licensed personnel to comply with signed orders from a person lawfully authorized to give the order. This order may be remotely given but shall be subsequently signed by the person giving the order within 31 days.

(2) Medications shall be administered according to signed orders from a person lawfully authorized to give the order. This order may be remotely given but shall be subsequently signed by the person giving the order within 31 days.

(3) All orders remotely given shall be received and verified only by licensed personnel lawfully authorized to accept the order. Remotely given orders shall be recorded in the patient's record.

(4) If medications are administered by agency personnel, the orders and subsequent changes in orders, shall be signed by the physician and included in the patient's record.

(5) Unlicensed staff may administer medications only after delegation by a licensed health care professional under the professional scope of practice.

(i) If a licensed health care professional delegates the task of medication administration to unlicensed assistive personnel, the delegation shall be in accordance with the Nurse Practice Act and R156-31B-701;

(ii) The medications must be administered according to the prescribing order;

(iii) The delegating authority must provide and document supervision, evaluation, and training of unlicensed assistive personnel assisting with medication administration;

(iv) The delegating authority or another registered nurse shall be readily available either in person or by telecommunication; and

(v) Delegation to unlicensed staff shall not include delegating medication set up for subsequent medication administration.

(6) Orders for therapy services shall include the procedures to be used, the frequency of therapy, and the duration of therapy.

(7) Orders for skilled services shall be reviewed or renewed by the attending physician at intervals not to exceed 63 days. Physician's signature and date shall be evidence of this review or renewal.

(8) Physician orders may be transmitted by facsimile machine. The agency must be able to obtain the original

signature, upon request, if verification of the signature is requested.

R432-700-26. Therapy Services.

(1) Physical, occupational, speech, and nutrition therapy services offered by the agency, as either direct or contract services, shall be provided by, or under the supervision of, a licensed or certified therapist in accordance with the plan of care under Title 58.

(2) The qualified therapist shall have the following general responsibilities:

(a) Provide treatment as ordered and approved by the attending physician;

(b) Evaluate the home environment and make recommendations;

(c) Develop the plan of care for therapy;

(d) Observe and report findings about the patient's condition to the attending physician and other agency staff, and document information in the patient's record;

(e) Advise, consult, and instruct when necessary, other agency personnel and family about the patient's therapy program;

(f) Provide written instructions for the certified nursing aide to promote extension of therapy services;

(g) Supervise other agency personnel when appropriate;

(h) Participate in in-service programs.

(3) In addition to the general responsibilities, a physical, speech or occupational therapist may perform the following:

(a) Provide written instructions for personal care aides and certified nursing aides to ensure provision of required services written in the plan of care;

(b) Supervise aides in the patient's home as necessary, and be readily available for consultation by phone;

(c) Make supervisory visits with or without the aide's presence, as required.

R432-700-27. Medical Supplies and Equipment.

(1) The agency shall develop and follow written policies and procedures which describe:

(a) Agency provision of or use of durable medical equipment, and disposable and semi-disposable medical supplies;

(b) Categories of medical supplies and equipment available through the home health agency;

(c) Charges and reimbursement for medical supplies and equipment;

(d) Processes for billing medical supplies and equipment to the patient, insurance carrier, or other payment source.

R432-700-28. Emergency and After-Hours Care.

Emergency and after-hours care shall be described in written policies and procedures and made available to the patient and family.

R432-700-29. Social Services.

(1) When medical social services are provided, they shall be provided by a certified social worker (CSW) or by a social service worker (SSW) supervised by a certified social worker, in accordance with the plan of care.

(2) The social worker shall be responsible to:

(a) Assist team members in understanding significant social and emotional factors related to health problems;

(b) Participate in the development of the plan of care;

(c) Prepare clinical notes according to rules and agency policy;

(d) Utilize community resources;

(e) Participate in in-service programs.

R432-700-30. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-7 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health care facilities

May 15, 2017

26-21-5

Notice of Continuation September 15, 2016

26-21-2.1

R450. Heritage and Arts, Administration.**R450-2. Preservation Pro Fee.****R450-2-1. Purpose.**

The purpose of this rule is to establish the procedure regarding user fees for the Preservation Pro tool that is maintained online by the Division of State History within the Department of Heritage and Arts.

The department is committed to maintaining Preservation Pro in order to streamline the cultural resource management processes. Therefore, the fees collected will contribute, along with ongoing digitization funds, to the ongoing operation, maintenance, and improvement of the application.

R450-2-2. Authority.

The department may make, amend, or repeal rules for the conduct of its business in accordance with Subsection 63G-3-201(2), Utah Administrative Rulemaking Act.

R450-2-3. Definitions.

(1) "Preservation Pro" is an online tool intended to help stakeholders manage Utah's cultural resources data. It contains both public and protected information. Access to protected information will be governed according to 63G-2, Government Records Access and Management Act.

(2) "Department" is the Utah Department of Heritage and Arts.

(3) "Executive Director" is the director of the Department of Heritage and Arts.

(4) "Division" is the Utah Division of State History in the Department of Heritage and Arts.

(5) "Director" is the director of the Division of State History.

R450-2-4. Fee.

(1) The Preservation Pro fee will be established annually through the legislative appropriations process.

(2) Fees can be remitted to the Department of Heritage and Arts, Director of Finance, 300 S. Rio Grande, SLC, UT, 84101. Other payment options may be available. Contact the Director for details.

(3) Fees are assessed annually, and are due on the first day of July. Only entities that have paid their fee or received a fee waiver from the department will be allowed access to Preservation Pro.

(4) The annual fee will be prorated by month for entities who request access mid-year.

R450-2-5. Fee Waiver Process.

(1) Organizations that provide grants or data to maintain and improve the application and the database may receive full or partial waivers.

(2) Other requests for fee waivers may also be considered.

(a) A waiver request application is available from the division.

(b) Individuals or organizations seeking a fee waiver should submit their application to the Director, 300 S. Rio Grande, SLC, UT, 84101.

(c) Each request shall include justification for the waiver.

(d) The Director shall review and determine all fee waivers. In doing so, the Director shall convene a committee that consists of the department's Finance Director, as well as representatives from the division and the Department of Technology Services.

(i) This committee will review all waiver requests, and the Director will make the final determination.

(ii) The division will then notify the applicant of the

decision within 10 business days.

(iii) Appeals of decisions shall be made to the Department of Heritage and Arts, Executive Director, 300 S. Rio Grande, SLC, UT, 84101.

KEY: archaeology, preservation pro, user fee, cultural resources

August 31, 2012

9-1-201

Notice of Continuation May 31, 2017

R458. Heritage and Arts, Library.**R458-1. Adjudicative Procedures.****R458-1-1. Authority and Purpose.**

The State Library Division, Department of Heritage and Arts, State of Utah, hereby declares, in accordance with Utah Code Annotated Section 63G-4-202, that all programs, actions, or proceedings carried out under the authority of the State Library Division by State Library Division personnel which require adjudicative procedures in accordance with the provisions of the Utah Administrative Procedures Act, Utah Code Annotated Title 63G, Chapter 3, shall be conducted informally according to the provisions of rules adopted under Utah Code Annotated Title 63G, Chapter 4.

R458-1-2. Procedures.

The requirement that all adjudicative procedures be conducted informally shall apply to all current programs, actions, or proceedings for which adjudicative procedures are required and to all future programs, actions, or proceedings carried out under the authority of the State Library Division for which adjudicative procedures are required.

KEY: administrative procedures, adjudicative procedures, informal procedures

1988

Notice of Continuation May 31, 2017

63G-4-202

63G-4-202(2)

63G-4-203

R590. Insurance, Administration.**R590-238. Captive Insurance Companies.****R590-238-1. Authority.**

This rule is promulgated pursuant to the general rulemaking authority granted the insurance commissioner by Subsection 31A-2-201(3)(a) and the specific authority granted by Section 31A-37-106.

R590-238-2. Purpose and Scope.

The purpose of this rule is to set forth the financial, reporting, record-keeping, and other requirements which the commissioner deems necessary for the regulation of captive insurance companies, under the Captive Insurance Companies Act (the Act), Chapter 37, Title 31A. This rule applies to all captive insurance companies licensed under the Act.

R590-238-3. Definitions.

(1) The definitions in Sections 31A-1-301 and 31A-37-102 apply to this rule.

(2) "Company" means a captive insurance company as defined in Section 31A-1-301.

(3) "Work Papers" or "working papers" include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and the accountant's employees in the conduct of their audit of the company.

(4) "Captive Insurance Manager" means a person that:

(a) is on the Utah Approved Captive Management Firms list;

(b) pursuant to a written contract with a captive insurance company, provides and coordinates services including but not limited to:

- (i) accounting;
- (ii) statutory filings;
- (iii) signed annual statements; and
- (iv) coordination of related services;

(c) acts as an intermediary that facilitates and assists the captive in meeting its statutory requirements under Title 31A.

R590-238-4. Annual Reporting Requirements.

(1) A captive insurance company authorized in this state shall file an annual report of its financial condition with the commissioner as required by Section 31A-37-501. The report shall be verified by oath of one of its executive officers and the captive manager and shall be prepared using generally accepted accounting principles ("GAAP"). The annual report shall be filed electronically consistent with directions from the commissioner.

(2) A captive insurance company shall observe the requirements of Section 31A-4-113 when it files an annual report of its financial condition. In addition, an industrial insured group shall observe the requirements of Section 31A-4-113.5 when it files an annual report.

(3) All captive insurance companies are to use the "Captive Insurance Company Annual Statement Form" except Risk Retention Group (RRG) insurers and special purpose financial captives which shall use the NAIC's Annual and Quarterly Statements.

(4) The Captive Insurance Company Annual Statement shall include a statement of a qualified Actuary titled "Statement of Actuarial Opinion," setting forth his or her opinion relating to loss and loss adjustment expense reserves.

R590-238-5. Risk Limitation.

(1) The commissioner may limit the net amount of risk a captive insurance company retains for a single risk after considering the impact of the retention on the captive insurance company's capital and surplus.

(2) The commissioner may also prescribe and demand additional capital and surplus of any captive insurance company if he determines that the captive insurance company is not adequately capitalized for the type, volume and nature of the risk that is being covered by the captive insurance company.

R590-238-6. Annual Audit.

(1) All companies shall have an annual audit by an independent certified public accountant, approved by the commissioner, and shall file such audited financial report with the commissioner on or before June 30 for the preceding year. Financial statements furnished under this section shall be prepared in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants ("AICPA").

(2) The annual audit report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the commissioner.

(3) The annual audit shall consist of the following:

(a) Opinion of Independent Certified Public Accountant

(i) Financial statements furnished pursuant to this section shall be examined by independent certified public accountants in accordance with generally accepted auditing standards as determined by the AICPA.

(ii) The opinion of the independent certified public accountant shall cover all years presented.

(iii) The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance, shall bear original manual signatures and shall be dated.

(b) Report of Evaluation of Internal Controls

(i) This report shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to, controls as the system of authorization and approval and the separation of duties.

(ii) The review shall be conducted in accordance with generally accepted auditing standards and the report shall be filed with the commissioner.

(c) Accountant's Letter

The accountant shall furnish the company, for inclusion in the filing of the audited annual report, a letter stating:

(i) that he is independent with respect to the company and conforms to the standards of his profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and pronouncements of the Financial Accounting Standards Board;

(ii) the general background and experience of the staff engaged in the audit, including their experience in auditing captive or other insurance companies;

(iii) that the accountant understands that the audited annual report and his opinions thereon will be filed in compliance with this rule.

(iv) that the accountant consents to the requirements of R590-238-10;

(v) that the accountant consents and agrees to make the work papers as defined in R590-238-3(3) available for review by the commissioner, his designee or his appointed agent; and

(vi) that the accountant is properly licensed by an appropriate state licensing authority.

(d) Financial Statements

(i) The financial statements required shall be as follows:

- (A) balance sheet;
- (B) statement of gain or loss from operations;
- (C) statement of changes in financial position;
- (D) statement of cash flow;
- (E) statement of changes in capital paid up, gross paid

in and contributed surplus and unassigned funds (surplus); and

(F) notes to financial statements.

(ii) The notes to financial statements shall be those required by GAAP and shall include:

(A) a reconciliation of differences, if any, between the audited financial report and the statement or form filed with the commissioner;

(B) a summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive; and

(C) a narrative explanation of all material transactions with the company. For purposes of this provision, no transaction shall be deemed material unless it involves 3% or more of a company's admitted assets as of the December 31 next preceding.

(e) Certification of Loss Reserves and Loss Expense Reserves of the company's opining actuary

(i) The annual audit shall include an actuarial opinion as to the reasonableness of the company's loss reserves and loss expense reserves, unless waived by the commissioner.

(ii) The individual who certifies as to the reasonableness of reserves shall be approved by the Commissioner and shall be a Fellow or Associate of the Casualty Actuarial Society and a member in good standing of the American Academy of Actuaries, for property and casualty companies or a Fellow or Associate of the Society of Actuaries and a member in good standing of the American Academy of Actuaries for life and health companies.

(4) Certification under Subsection R590-238-6(3)(e) shall be in such form as the commissioner deems appropriate.

R590-238-7. Designation of Independent Certified Public Accountant.

(1) A certified public accountant that is retained to conduct the independent annual audit may only be appointed from the list of approved certified public accounting firms or individual certified public accountants maintained by the commissioner.

(2) A company that terminates the appointment of an independent certified public accountant retained to conduct the annual audit required in this rule shall report the name and address of the certified public accountant in writing to the commissioner within ninety days after the appointment is terminated and shall within the same period report the name and address of the certified public accountant that is subsequently retained.

R590-238-8. Notification of Adverse Financial Condition.

A company shall require its certified public accountant to immediately notify an officer and all members of the board of directors of the company in writing of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the commissioner. The company shall furnish such notification to the commissioner within five working days of receipt thereof.

R590-238-9. Additional Deposit Requirement.

(1) Whenever the commissioner deems that the financial condition of a company warrants additional security, the commissioner may require the company to deposit, in trust for the company, cash, securities approved by the commissioner, or an irrevocable letter of credit issued by a bank chartered by the State of Utah or a member bank of the Federal Reserve System with the commissioner.

(2) The commissioner shall return the deposit or letter of credit of a company if the company ceases to do any business only after being satisfied that all obligations of the company

have been discharged.

(3) A company may receive interest or dividends from the deposit or exchange the deposits for others of equal value with the approval of the commissioner.

R590-238-10. Availability and Maintenance of Working Papers of the Independent Certified Public Accountant.

(1) Each company shall require its independent certified public accountant to make all work papers prepared in the conduct of the audit of the company available for review by the commissioner or his appointed agent. The company shall require that the accountant retain the audit work papers for a period of not less than seven years after the period reported upon.

(2) The review by the commissioner shall be considered an official investigation by the commissioner and all working papers obtained during the course of such investigation shall be confidential business papers and shall be classified as business confidential protected records. The company shall require that the independent certified public accountant provide photocopies of any of the working papers that the department considers relevant. The department may retain any photocopies of working papers.

R590-238-11. Documentation Required to be Held in Utah by Licensed Captives.

(1) All companies licensed by the commissioner as a captive insurance company, shall maintain and make ready for inspection and examination by the commissioner, or the commissioner's agent, any and all documents pertaining to the formation, operation, management, finances, insurance, and reinsurance of each company.

(2) Original documents may be kept in the offices of the company's captive manager, the company's parent, or the company itself. Accurate and complete copies shall be held in an office located in Utah that is designated by the company and approved by the commissioner.

R590-238-12. Reinsurance.

(1) Any company authorized to do business in this state may take credit for reserves on risks ceded to a reinsurer subject to the following limitations:

(a) No credit shall be allowed for reinsurance where the reinsurance contract does not result in the transfer of the risk or liability to the reinsurer.

(b) No credit shall be allowed, as an asset or a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer.

(2) Reinsurance under this section shall be effected through a written agreement of reinsurance setting forth the terms, provisions and conditions governing such reinsurance.

(3) The commissioner, in his discretion, may require that complete copies of all reinsurance treaties and contracts be filed and approved by him.

R590-238-13. Service Providers.

No person shall act, in or from this state, as a captive insurance manager, broker, agent, or salesman, or reinsurance intermediary for captive business without the authorization of the commissioner. Application for such authorization must be on a form prescribed by the commissioner.

R590-238-14. Directors.

(1) Every company shall report any change in its executive officers or directors to the commissioner within thirty days after a change is made, including, in its report, a

biographical affidavit of any new executive officer or director.

(2) No director, officer, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company. Such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity.

(3) Any profit or gain received by or on behalf of any person in violation of this section shall inure to and be recoverable by the company.

R590-238-15. Conflict of Interest.

(1) Each company licensed in Utah is required to adopt a conflict of interest statement for officers, directors and key employees. The statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert him from his duty to further the interests of the company he represents but this shall not preclude a person from being a director or officer in more than one insurance company.

(2) Each officer, director, and key employee shall file a yearly disclosure with the board of directors.

R590-238-16. Acquisition of Control of or Merger with Domestic Company.

The acquisition of control of or merger of a domestic captive insurance company shall be regulated pursuant to Section 31A-16-103, notwithstanding the Commissioner may waive or modify the requirements for public notice and hearing when the Commissioner concludes the public hearing is not necessary due to limited public interest in the change of control.

R590-238-17. Suspension or Revocation.

(1) The commissioner may by order suspend or revoke the license of a company or place the same on probation on the following grounds:

- (a) the company has not commenced business according to its plan of operation within two years of being licensed;
- (b) the company has ceased to carry on insurance business in or from within Utah;
- (c) at the request of the company; or
- (d) any reason provided in Section 31A-37-505.

(2) Before the commissioner takes any action set forth under R590-238-17(1) the commissioner shall give the company notice in writing of the grounds on which the commissioner proposes to act, and shall afford the company a hearing as to such proposed action in accordance with Title 63G, Chapter 4, Utah Administrative Procedures Act.

R590-238-18. Change of Information in Initial Application.

(1) Any material change in a company's business plan that was filed with the commissioner at the time of initial application and any subsequent amendment of the plan requires prior approval of the commissioner.

(2) Any change in any other information filed with the initial application must be filed with the commissioner within sixty days after the change, but does not require prior approval.

(3) The company shall immediately notify the commissioner upon making changes in board members or officers of the company.

R590-238-19. Application and Forms.

(1) Any person that wants to form a captive insurance company shall make application to the commissioner for

authority to conduct a captive insurance company using the form, "Application to Form a Captive Insurance Company."

(2) One complete copy of the application including forms, attachments, exhibits and all other papers and documents filed as a part thereof, shall be filed electronically with the commissioner through the captive.utah.gov website. Accompanying payments may be filed by personal delivery or mail addressed to: Office of the Commissioner, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114-6901, Attention: Captive Insurance Administrator, or call and pay by credit card.

(3) The application shall be signed in the manner prescribed in the application. 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 application.

(4) A company must include with its application, a feasibility study demonstrating the feasibility of the business plan of the company. The department may test the feasibility of the study by examining the company's corporate records, including: charter; bylaws and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; and other factors as the commissioner deems necessary.

R590-238-20. Fee Schedule. Initial Application. Renewal.

(1) An applicant for a certificate of authority under the captive insurance code shall pay a nonrefundable fee established in the department's fee rule, R590-102-8 for examining, investigating, and processing its initial application for license to the commissioner at the time the application is filed.

(2) In addition, each company that is licensed by the commissioner shall pay a license fee, without proration, for the initial year of registration and a renewal fee for each succeeding year in the amount established in the department's fee rule, R590-102-8.

(3) Each company shall pay an annual nonrefundable e-commerce (internet technology services) fee each year in the amount established in the department's fee rule, R590-102-18(1)(b) to the commissioner.

(4) Each captive insurance company shall pay a nonrefundable fee in the amount established in the department's fee rule, R590-102 for photocopies of documents to the commissioner.

R590-238-21. Authorized Forms.

(1) The following forms are to be used for any applicant applying for a certificate of authority for a new captive insurance company and may be obtained from the department's captive administrator at (801)537-9174 or (801)537-9047:

- (a) "Application to Form A Captive Insurance Company;"
 - (b) "Biographical Affidavit For Captive Insurance Company;"
 - (c) "Utah Insurance Department Captive Insurance Company Reinsurance Exhibit;"
 - (e) "Utah Approved Irrevocable Letter of Credit;"
 - (f) "Statement if Economic Benefit to the State of Utah;"
- and
- (g) "Appointment Of The Insurance Commissioner For The State Of Utah As Attorney To Accept Service of Process."

(2) The following forms are to be used when applying to become an Approved captive insurance company provider and are available on the department's captive website:

- (a) "Application for Placement on Approved Captive

Insurer Management Firm List;"

(b) "Application To Certify Loss And Expense For Captive Insurance Companies Captive Actuary Application;" and

(c) "Application For Authorization As An Independent Certified Public Accountant for Captive Insurance Companies."

(3) All captive insurance companies, except those noted in R590-238-4(2), are to use the "Captive Insurance Company Annual Statement Form."

(4) A company shall file a "Statement of Economic Benefit to the State of Utah" form with its initial application and for each of the 12 months ending December 31, of each applicable year.

(5) The forms indicated in Sections (2), (3), and (4) are available on the department's captive website, www.captive.utah.gov/licensing.html.

R590-238-22. 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 and circumstances are not affected.

KEY: captive insurance

September 25, 2015

Notice of Continuation May 2, 2017

31A-2-201

31A-37-106

R600. Labor Commission, Administration.**R600-2. Operations.****R600-2-1. Business Hours.**

A. The offices of the Commission shall be open for receipt of official documents between the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday. The Labor Commission's St. George office shall be open for receipt of official documents between the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday. Commission offices shall not be open for business Saturday or Sunday and on state-recognized holidays.

B. Notwithstanding the 5:00 p.m. filing deadline provided above, official documents filed with the Labor Commission will be deemed timely if filed electronically (either by email or facsimile) before midnight on the day the document is due.

KEY: Labor Commission, hours of business

September 23, 2013

34A-1-104

Notice of Continuation May 5, 2017

R602. Labor Commission, Adjudication.**R602-1. General Provisions.****R602-1-1. Time.**

A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

B. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;
2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;
3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;
4. No additional time for mailing will be allowed.

R602-1-2. Witness Fees.

Each witness who shall appear before the Commission by its order shall receive from the Commission for his/her attendance fees and mileage as provided for witnesses by the Utah Rules of Civil Procedure. Otherwise, each party is required to subpoena witnesses at their own expense.

R602-1-3. Representatives at Adjudicative Proceedings.

1. Representatives who are not duly admitted and licensed to practice law in Utah shall not be allowed to appear on behalf of a party before the Adjudication Division.

2. Individuals who are parties to an adjudicative proceeding before the Adjudication Division may appear pro se.

3. Corporations who are parties to an adjudicative proceeding before the Adjudication Division shall be represented by legal counsel who is duly admitted to practice law in Utah.

4. All legal counsel who appear on behalf of a party before the Adjudication Division are required to file with the Division the electronic address to receive delivery of documents in adjudicative proceedings before the Division.

5. All legal counsel who deliver documents to the Adjudication Division on behalf of a party shall include the e-mail address of the party represented to receive delivery of documents in adjudicative proceedings before the Division. Failure to provide a party's electronic address gives the Adjudication Division consent to deliver that party's document(s) to their attorney of record.

R602-1-4. Filing of Documents.

1. Pursuant to Section 34A-1-304 and subject to the limitations and requirements of this rule, a document required or permitted by statute or rule may be delivered by electronic means. All documents filed with the administrative law judge shall be filed with all other parties to the adjudicative proceeding and shall provide verification of mailing, electronic transmittal, or service on all parties to whom copies of the documents are mailed or personally delivered.

2. Parties shall not file courtesy copies with the Division.

3. Delivery by electronic transmittal is limited to documents in PDF format delivered to sites specified by the Adjudication Division or the Commission. Documents delivered by electronic transmittal must include signatures. Electronic documents filed in non-PDF format are not considered delivered to the Division of Adjudication.

4. Each electronically transmitted document shall include a delivery certificate that lists the time and date on which the document was transmitted, the name of the person

who transmitted the document, and the name and email address of each person or entity to which the document was transmitted. If a party utilizes delivery by electronic transmittal, the document filed must include an electronic address where the party may receive documents. The Adjudication Division and all opposing parties may use electronic transmittal as the sole method of delivery to that party.

5. The Adjudication Division and parties may sign an order, letter, pleading or other document using any form of signature recognized by law as binding including an electronic signature.

A. An "electronic signature" means an electronic process, symbol or other data in digital form attached to an electronically transmitted document and executed or adopted by a person with the intent to sign the record.

B. If a rule requires an affidavit or a notarized, verified or acknowledged signature, the person may submit a declaration pursuant to Utah Code Section 78B-5-705. If a statute requires an affidavit or a notarized, verified or acknowledged signature and the party electronically files the paper, the signature shall be notarized pursuant to Utah Code Section 46-1-16.

6. The first document delivered to the Adjudication Division becomes the original document filed. Any copies of the document filed with the Adjudication Division will not be retained.

R602-1-5. Official Record.

As contemplated by Section 34A-1-302(3), the only official record of any formal or informal hearing conducted by the Division is the audio recording kept by the administrative law judge during the hearing. Any recording or record kept of a formal or informal hearing other than that kept by the administrative law judge shall not be used for any purpose requiring an official record of the proceedings as contemplate by Section 34A-1-302(3).

KEY: witness fees, time, administrative procedures, filing deadlines**October 9, 2015****Notice of Continuation May 8, 2017****34A-1-302****34A-1-304****63G-4-102 et seq.**

R602. Labor Commission, Adjudication.**R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.****R602-2-1. Pleadings and Discovery.****A. Definitions.**

1. "Commission" means the Labor Commission.
2. "Division" means the Division of Adjudication within the Labor Commission.
3. "Application for Hearing" means Adjudication Form 001 Application for Hearing Industrial Accident Claim, Adjudication Form 026 Application for Hearing Occupational Disease Claim, Adjudication Form 025 Application for Dependent's Benefits and/or Burial Benefits Industrial Accident, Adjudication Form 027 Application for Dependent's Benefits Occupational Disease, or other request for agency action complying with the Utah Administrative Procedures Act Utah Code Section 63G-4-102 et seq. filed by an employer of insurance carrier regarding a workers' compensation claim.
4. "Supporting medical documentation" means Adjudication Form 113 Summary of Medical Record or other medical report or treatment note completed by a physician that indicates the presence or absence of a medical causal connection between benefits sought and the alleged industrial injury or occupational disease.
5. "Authorization to Release Medical Records" is Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information authorizing the injured workers' medical providers to provide medical records and other medical information to the commission or a party.
6. "Supporting documents" means supporting medical documentation, Adjudication Form 307 Medical Treatment Provider List, Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information and, when applicable, Adjudication Form 152 Appointment of Counsel.
7. "Petitioner" means the person or entity who has filed an Application for Hearing.
8. "Respondent" means the person or entity against whom the Application for Hearing was filed.
9. "Discovery motion" includes a motion to compel or a motion for protective order.
10. "Designated agent" is the agent authorized to receive all notices and orders in workers' compensation adjudications pursuant to Utah Code Section 34A-2-113. All designated agents shall provide the Adjudication Division an electronic address to receive delivery of documents from the Adjudication Division.

B. Application for Hearing.

1. Whenever a claim for compensation benefits is denied by an employer or insurance carrier, the burden rests with the injured worker, authorized representative of a deceased worker's estate, dependent of a deceased worker or medical provider, to initiate agency action by filing an appropriate Application for Hearing with the Division. Applications for hearing shall include an original, Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information.
2. An employer, insurance carrier, or any other party with standing under the Workers' Compensation Act may obtain a hearing before the Adjudication Division by filing a request for agency action with the Division complying with the Utah Administrative Procedures Act Utah Code Section 63G-4-102 et seq.
3. All Applications for Hearing shall include supporting medical documentation of the claim where there is a dispute over medical issues. Applications for Hearing without supporting documentation and a properly completed Adjudication Form 308 Authorization to Disclose, Release

and Use Protected Health Information may not be mailed to the employer or insurance carrier for answer until the appropriate documents have been provided. In addition to respondent's answer, a respondent may file a motion to dismiss the Application for Hearing where there is no supporting medical documentation filed to demonstrate medical causation when such is at issue between the parties.

4. When an Application for Hearing with appropriate supporting documentation is filed with the Division, the Division shall mail to the respondents a copy of the Application for Hearing, supporting documents and Notice of Formal Adjudication and Order for Answer.

5. In cases where the injured worker is represented by an attorney, a completed and signed Adjudication Form 152 Appointment of Counsel form shall be filed with the Application for Hearing or upon retention of the attorney.

C. Answer.

1. The respondent(s) shall have 30 days from the date of mailing the Order for Answer to file a written answer to the Application for Hearing.

2. The answer shall admit or deny liability for the claim and shall state the reasons liability is denied. The answer shall state all affirmative defenses with sufficient accuracy and detail that the petitioner and the Division may be fully informed of the nature and substance of the defenses asserted.

3. All answers shall include a summary of benefits which have been paid to date on the claim, designating such payments by category, i.e. medical expenses, temporary total disability, permanent partial disability, etc.

4. When liability is denied based upon medical issues, copies of reasonably available, admissible medical reports sufficient to support the denial of liability shall be filed with the answer.

5. If the answer filed by the respondents fails to sufficiently explain the basis of the denial, fails to include medical reports or records to support the denial, or contains affirmative defenses without sufficient factual detail to support the affirmative defense, the Division may strike the answer filed and order the respondent to file within 20 days a new answer which conforms with the requirements of this rule.

6. All answers must state whether the respondent is willing to mediate the claim.

7. Petitioners are allowed to timely amend the Application for Hearing, and respondents are allowed to timely amend the answer, as newly discovered information becomes available that would warrant the amendment. The parties shall not amend their pleadings later than 45 days prior to the scheduled hearing without leave of the Administrative Law Judge.

8. Responses and answers to amended pleadings shall be filed within ten days of service of the amended pleading without further order of the Labor Commission.

D. Default.

1. If a respondent fails to file an answer as provided in Subsection C above, the Division may enter a default against the respondent.

2. If default is entered against a respondent, the Division may conduct any further proceedings necessary to take evidence and determine the issues raised by the Application for Hearing without the participation of the party in default pursuant to Section 63G-4-209(4), Utah Code.

3. A default of a respondent shall not be construed to deprive the Employer's Reinsurance Fund or Uninsured Employers' Fund of any appropriate defenses.

4. The defaulted party may file a motion to set aside the default under the procedures set forth in Section 63G-4-209(3), Utah Code. The Adjudication Division shall set aside defaults upon written and signed stipulation of all parties to

the action.

E. Waiver of Hearing.

1. The parties may, with the approval of the administrative law judge, waive their right to a hearing and enter into a stipulated set of facts, which may be submitted to the administrative law judge. The administrative law judge may use the stipulated facts, medical records and evidence in the record to make a final determination of liability or refer the matter to a Medical Panel for consideration of the medical issues pursuant to R602-2-2.

2. Stipulated facts shall include sufficient facts to address all the issues raised in the Application for Hearing and answer.

3. In cases where Medical Panel review is required, the administrative law judge may forward the evidence in the record, including but not limited to, medical records, fact stipulations, radiographs and deposition transcripts, to a medical panel for assistance in resolving the medical issues.

F. Discovery.

1. Upon filing the answer, the respondent and the petitioner may commence discovery. Discovery documents may be delivered by electronic transmittal. Discovery allowed under this rule may include interrogatories, requests for production of documents, depositions, and medical examinations. Discovery shall not include requests for admissions. Appropriate discovery under this rule shall focus on matters relevant to the claims and defenses at issue in the case. All discovery requests are deemed continuing and shall be promptly supplemented by the responding party as information comes available.

2. Without leave of the administrative law judge, or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 25 in number, including all discrete subparts, to be answered by the party served. The frequency or extent of use of interrogatories, requests for production of documents, medical examinations and/or depositions shall be limited by the administrative law judge if it is determined that:

a. The discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive;

b. The party seeking discovery has had ample opportunity by discovery in the action to obtain the discovery sought; or

c. The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the adjudication.

3. Upon reasonable notice, the respondent may require the petitioner to submit to a medical examination by a physician of the respondent's choice.

4. All parties may conduct depositions pursuant to the Utah Rules of Civil Procedure and Section 34A-1-308, Utah Code.

5. Requests for production of documents are allowed, but limited to matters relevant to the claims and defenses at issue in the case, and shall not include requests for documents provided with the petitioner's Application for Hearing, nor the respondents' answer.

6. Parties shall diligently pursue discovery so as not to delay the adjudication of the claim. If a hearing has been scheduled, discovery motions shall be filed no later than 45 days prior to the hearing unless leave of the administrative law judge is obtained.

7. Discovery motions shall contain copies of all relevant documents pertaining to the discovery at issue, such as mailing certificates and follow up requests for discovery. The responding party shall have 10 days from the date the discovery motion is mailed to file a response to the discovery

motion.

8. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

9. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah Rules of Civil Procedure.

10. Notwithstanding the disclosures required under Rule 602-2-1, parties shall remain obligated to respond timely and appropriately to discovery requests.

G. Subpoenas.

1. Commission subpoena forms shall be used in all discovery proceedings to compel the attendance of witnesses. All subpoenas shall be signed by the administrative law judge assigned to the case, or the duty judge where the assigned judge is not available. Subpoenas to compel the attendance of witnesses shall be served at least 14 days prior to the hearing consistent with Utah Rule of Civil Procedure 45. Witness fees and mileage shall be paid by the party which subpoenas the witness.

2. A subpoena to produce records shall be served on the holder of the record at least 14 days prior to the date specified in the subpoena as provided in Utah Rule of Civil Procedure 45. All fees associated with the production of documents shall be paid by the party which subpoenas the record.

H. Medical Records Exhibit.

1. The parties are expected to exchange medical records during the discovery period.

2. Petitioner shall submit all relevant medical records contained in his/her possession to the respondent for the preparation of a joint medical records exhibit at least twenty (20) working days prior to the scheduled hearing.

3. The respondent shall prepare a joint medical record exhibit containing all relevant medical records. The medical record exhibit shall include all relevant treatment records that tend to prove or disprove a fact in issue. Hospital nurses' notes, duplicate materials, and other non-relevant materials need not be included in the medical record exhibit.

4. The medical records shall be indexed, paginated, arranged by medical care provider in chronological order and bound. The medical records may not be filed via electronic transmittal.

5. The medical record exhibit prepared by the respondent shall be delivered to the Division and the petitioner or petitioner's counsel at least ten (10) working days prior to the hearing. Late-filed medical records may or may not be admitted at the discretion of the administrative law judge by stipulation or for good cause shown.

6. The administrative law judge may require the respondent to submit an additional copy of the joint medical record exhibit in cases referred to a medical panel.

7. The petitioner is responsible to obtain radiographs and diagnostic films for review by the medical panel. The administrative law judge shall issue subpoenas where necessary to obtain radiology films.

I. Hearing.

1. Notices of hearing shall be mailed to the addresses of record of the parties. The parties shall provide current addresses to the Division for receipt of notices or risk the entry of default and loss of the opportunity to participate at the hearing.

2. Judgment may be entered without a hearing after default is entered or upon stipulation and waiver of a hearing by the parties.

3. No later than 45 days prior to the scheduled hearing, all parties shall file a signed pretrial disclosure form that

identifies: (1) fact witnesses the parties actually intend to call at the hearing; (2) expert witnesses the parties actually intend to call at the hearing; (3) language translator the parties intend to use at the hearing; (4) exhibits, including reports, the parties intend to offer in evidence at the hearing; (5) the specific benefits or relief claimed by the petitioner; (6) the specific defenses that the respondent actually intends to litigate; (7) whether, or not, a party anticipates that the case will take more than two hours of hearing time; (8) the job categories or titles the respondents claim the petitioner is capable of performing if the claim is for permanent total disability, and; (9) any other issues that the parties intend to ask the administrative law judge to adjudicate. The administrative law judge may exclude witnesses, exhibits, evidence, claims, or defenses as appropriate of any party who fails to timely file a signed pre-trial disclosure form as set forth above. The parties shall supplement the pre-trial disclosure form with information that newly becomes available after filing the original form. The pre-trial disclosure form does not replace other discovery allowed under these rules.

4. If the petitioner requires the services of language translation during the hearing, the petitioner has the obligation of providing a person who can translate between the petitioner's native language and English during the hearing. If the respondents are dissatisfied with the proposed translator identified by the petitioner, the respondents may provide a qualified translator for the hearing at the respondent's expense.

5. The petitioner shall appear at the hearing prepared to outline the benefits sought, such as the periods for which compensation and medical benefits are sought, the amounts of unpaid medical bills, and a permanent partial disability rating, if applicable. If mileage reimbursement for travel to receive medical care is sought, the petitioner shall bring documentation of mileage, including the dates, the medical provider seen and the total mileage.

6. The respondent shall appear at the hearing prepared to address the merits of the petitioner's claim and provide evidence to support any defenses timely raised.

7. Parties are expected to be prepared to present their evidence on the date the hearing is scheduled. Requests for continuances may be granted or denied at the discretion of the administrative law judge for good cause shown. Lack of diligence in preparing for the hearing shall not constitute good cause for a continuance.

8. Subject to the continuing jurisdiction of the Labor Commission, the evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted without leave of the administrative law judge.

J. Motions-Time to Respond.

Responses to all motions shall be filed within 10 days from the date the motion was filed with the Division. Reply memoranda shall be filed within 5 days from the date a response was filed with the Division.

K. Motions - Length and Type

1. Without prior leave of the Administrative Law Judge, supporting memorandum shall not exceed a total of 10 pages, opposing memorandum shall not exceed 7 pages and reply memorandum shall not exceed 3 pages. All pleadings shall be double spaced.

a. The page limitations herein are inclusive of headings, table of contents, introduction and/or background, conclusion, statement of issues and facts, arguments, etc.

b. The text of motions and memoranda shall be typeset in 12-point.

c. The Administrative Law Judge shall not consider anything contained on pages which exceed the page limits.

d. If a memorandum is to exceed the page limitations set

forth in this rule, leave of the Administrative Law Judge must first be obtained. A motion for leave to file a lengthy memorandum must include a statement of the reasons why additional pages are needed and specify the number required. The Administrative Law Judge will approve such requests only for good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page limitations. Absent such a showing by the requesting party, such requests will not be approved. A lengthy memorandum must not be filed with the Division prior to an entry of an order authorizing its filing.

2. Other than one supporting and one opposing and one reply memoranda, no other memoranda shall be considered by the Administrative Law Judge.

L. Orders on Continuances.

The Administrative Law Judge may rule, ex parte, on requests for continuances.

M. Notices.

1. Orders and notices mailed by the Division to the last address of record provided by a party are deemed served on that party.

2. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

N. Form of Decisions.

Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63G-4-203 or 63G-4-208, Utah Code.

O. Motions for Review.

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an Administrative Law Judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Section 63G-4-301 and Section 34A-1-303, Utah Code. Unless a request for review is properly filed, the Administrative Law Judge's Order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 15 calendar days of the date the request for review was filed. If such a response is filed, the party filing the original request for review may reply within 5 calendar days of the date the response was filed. Thereafter the Administrative Law Judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;

b. Amend or modify the prior Order by a Supplemental Order; or

c. Refer the entire case for review under Section 34A-2-801, Utah Code.

2. Motions for Review shall not exceed a total of 15 pages. Response briefs shall not exceed a total of 12 pages. Reply briefs shall not exceed a total of 5 pages. All motions and briefs shall be double spaced.

a. The page limitations herein are inclusive of headings, table of contents, introduction and/or background, conclusion, statement of issues and facts, arguments, etc.

b. The text of motions and memoranda shall be typeset in 12-point font.

c. The Commission and the Appeals Board may disregard argument or other writing contained on pages which exceed the page limits.

3. If the Administrative Law Judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

P. Procedural Rules.

In formal adjudicative proceedings, the Division shall generally follow the Utah Rules of Civil Procedure regarding discovery and the issuance of subpoenas, except as the Utah Rules of Civil Procedure are modified by the express

provisions of Section 34A-2-802, Utah Code or as may be otherwise modified by these rules.

Q. Requests for Reconsideration and Petitions for Judicial Review.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63G-4-302, Utah Code. Any petition for judicial review of final agency action shall be governed by the provisions of Section 63G-4-401, Utah Code.

R602-2-2. Guidelines for Utilization of Medical Panel.

Pursuant to Section 34A-2-601, the Commission adopts the following guidelines in determining the necessity of submitting a case to a medical panel:

A. A panel will be utilized by the Administrative Law Judge where one or more significant medical issues may be involved. Generally a significant medical issue must be shown by conflicting medical reports. Significant medical issues are involved when there are:

1. Conflicting medical opinions related to causation of the injury or disease;
2. Conflicting medical opinion of permanent physical impairment which vary more than 5% of the whole person,
3. Conflicting medical opinions as to the temporary total cutoff date which vary more than 90 days;
4. Conflicting medical opinions related to a claim of permanent total disability, and/or
5. Medical expenses in controversy amounting to more than \$10,000.

B. Objections and Responses.

1. Time. A written Objection to a medical panel report shall be due within 20 days of the date the medical panel report is served on the parties. A Response to an Objection shall be filed within 10 days from the date the Objection was filed with the Division. A Reply to an Objection shall be filed within 5 days from the date the Response is filed with the Division.

2. Length. Without prior leave of the Administrative Law Judge, Objections shall not exceed 10 pages. Responses shall not exceed 7 pages, and Replies shall not exceed 3 pages. All pleadings shall be double spaced.

a. The page limitations herein are inclusive of headings, table of contents, introduction and/or background, conclusion, statement of issues and facts, arguments, etc.

b. The text of motions and memoranda shall be typeset in 12-point font.

c. The Administrative Law Judge shall not consider anything contained on pages which exceed the page limits.

d. If a memorandum is to exceed the page limitations set forth in this rule, leave of the Administrative Law Judge must first be obtained. A motion for leave to file a lengthy memorandum must include a statement of the reasons why additional pages are needed and specify the number required. The Administrative Law Judge will approve such requests only for good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page limitations. Absent such a showing by the requesting party, such requests will not be approved. A lengthy memorandum must not be filed with the Division prior to an entry of an order authorizing its filing.

3. Other than one Objection and one Response and one Reply, no other memoranda shall be considered without prior leave of the Administrative Law Judge.

4. A hearing on objections to the panel report may be scheduled if there is a proffer of conflicting medical testimony showing a need to clarify the medical panel report. Where there is a proffer of new written conflicting medical evidence, the Administrative Law Judge may, in lieu of a hearing, re-submit the new evidence to the panel for consideration and

clarification.

C. Any expenses of the study and report of a medical panel or medical consultant and of their appearance at a hearing, as well as any expenses for further medical examination or evaluation, as directed by the Administrative Law Judge, shall be paid from the Uninsured Employers' Fund, as directed by Section 34A-2-601.

R602-2-3. Compensation for Medical Panel Services.

Compensation for medical panel services, including records review, examination, report preparation and testimony, shall be \$125 per half hour for medical panel members and \$137.50 per half hour for the medical panel chair.

R602-2-5. Timeliness of Decisions.

A. Pursuant to Section 34A-2-801, the Commission adopts the following rule to ensure decisions on contested workers' compensation cases are issued in a timely and efficient manner.

1. This rule applies to all workers' compensation adjudication cases and motions for review filed on or after July 1, 2013.

B. Timeliness standards.

1. The Adjudication Division will issue all interim decisions and all final decisions within 60 days of the date on which the matter is ready for decision unless the parties agree to a longer period of time or issuing a decision within 60 days is impracticable. The Division will maintain a record of those cases in which a decision is not issued within 60 days.

2. The Commissioner or Appeals Board will issue all decisions on motions for review within 90 days of the date on which the motion for review is filed unless the parties agree to a longer period of time or issuing a decision within 90 days is impracticable. The Commission will maintain a record of those cases in which a decision is not issued within 90 days.

C. Yearly Report

1. The Commission shall annually provide to the Business and Labor Interim Committee a report that includes the following information:

a. The number of cases for which an application for hearing was filed during the previous calendar year;

b. The number of cases for which a Division decision was not issued within 60 days of the hearing;

c. The number of cases for which a decision on a motion for review was not issued within 90 days of the date on which the motion for review was filed;

d. The number of cases for which an application for hearing was filed during the previous year that resulted in a final Commission decision issued within 18 months of the filing date; and

e. The number of cases for which an application for hearing was filed during the previous year that did not result in a final Commission decision issued within 18 months of the filing date and the reason such a decision was not issued.

D. Commission decisions might not be issued within these timeframes if doing so is impracticable.

1. For purposes of this rule, "impracticable" may include but is not limited to:

a. Cases that are sent to a medical panel;

b. Cases in which the hearing record is left open at the request of one or more of the parties or by order of the ALJ;

c. Cases in which one or more parties file post-hearing motions or objections;

d. Cases in which the parties request mediation or an extension of time to pursue settlement negotiations;

e. Cases in which due process requires subsequent or additional adjudication;

f. Cases in which a claimant is required to amend the

application for hearing or in which a respondent is required to amend a response or answer; or

e. Cases in which an appellate decision related to the pending case or a similar case may have bearing on the pending case.

E. The Commission will receive the motion for review immediately after the motion is filed with the Adjudication Division.

1. Preliminary evaluation: motions for review.

a. Immediately upon transfer of a motion for review from the Adjudication Division to the Commission, staff will review the ALJ's decision and the motion for review. Responses will be reviewed as they are submitted. Based on that review, staff will prioritize cases for decision in the following order:

i. Cases with statutory mandates to issue quick decisions, such as requests to eliminate or reduce temporary disability compensation.

ii. Cases that require an immediate decision in order to allow the underlying adjudicative proceeding to proceed.

iii. Cases that can be resolved without research or extensive decision-writing.

iv. Cases that need to be decided in a timely manner by the Appeals Board in order to be completed within 90 days.

b. If none of these factors are present, cases will be completed in the order they are received, with the oldest cases receiving priority.

KEY: workers' compensation, administrative procedures, hearings, settlements
November 28, 2016 **34A-1-301 et seq.**
Notice of Continuation May 9, 2017 **63G-4-102 et seq.**

R655. Natural Resources, Water Rights.**R655-1. Wells Used for the Discovery and Production of Geothermal Energy in the State of Utah.****R655-1-1. General Provisions.**

1.1 Authority: In Section 73-22-5, the Division of Water Rights is given jurisdiction and authority to require that all wells for the discovery and production of water to be used for geothermal energy production of water in the State of Utah, be drilled, operated, maintained, and abandoned in a manner as to safeguard life, health, property, the public welfare, and to encourage maximum economic recovery.

1.2 Definitions:

(a) "Applicant" means any person submitting an application to the Division of Water Rights to appropriate water, brine or steam for geothermal purposes and for the construction and operation of any well or injection well.

(b) "BOPE" is an abbreviation for Blow-Out Prevention Equipment which is designed to be attached to the casing in a geothermal well in order to prevent a blow-out.

(c) "Completion." A well is considered to be completed thirty days after drilling operations have ceased unless a suspension of operation is approved by the Division, or thirty days after it has commenced producing a geothermal resource, whichever occurs first, unless drilling operations are resumed before the end of the thirty-day period or at the end of the suspension.

(d) "Correlative Rights" means the owners' or operators' just and equitable share in the geothermal resource.

(e) "Division" means the Division of Water Rights, Department of Natural Resources, State of Utah.

(f) "Drilling Logs" means the recorded description of the lithologic sequence encountered in drilling a well.

(g) "Drilling Operations" means the actual drilling, re-drilling, or recompletion of the well for production or injection including the running and cementing of casing and the installation of well head equipment. Drilling operations do not include perforating, logging, and related operations.

(h) "Exploratory Well" means a well drilled for the discovery or evaluation of geothermal resources either in an established geothermal field or in unexplored areas.

(i) "Geothermal Area" means the same general land area which in its subsurface is underlaid or reasonably appears to be underlaid by geothermal resources from or in a reservoir, pool, or other source or interrelated sources.

(j) "Geothermal Field" means an area designated by the Division which contains a well or wells capable of commercial production of geothermal resources.

(k) "Geothermal Resource" means the natural heat energy of the earth, the energy in whatever form which may be found in any position and at any depth below the surface of the earth, present in, resulting from, or created by, or which may be extracted from natural heat and all minerals in solution or other products obtained from the material medium of any geothermal resource.

(l) "Injection Well" means any special well, converted producing well, or reactivated or converted abandoned well employed for injecting material into a geothermal area or adjacent area to maintain pressures in a geothermal reservoir, pool, or other source, or to provide new material to serve as a material medium therein, or for reinjecting any material medium or the residue thereof, or any by-product of geothermal resource exploration or development into the earth.

(m) "Material Medium" means any substance including, but not limited to, naturally heated fluids, brines, associated gases and steam in whatever form, found at any depth and in any position below the surface of the earth, which contains or transmits the natural heat energy of the earth, but excluding petroleum, oil, hydrocarbon gas, or other hydrocarbon

substances.

(n) "Notice" means a statement to the Division that the applicant intends to do work.

(o) "Operator" means any person drilling, maintaining, operating, pumping, or in control of any well. The term operator also includes owner when any well is or has been or is about to be operated by or under the direction of the owner.

(p) "Owner" means the owner of the geothermal lease or well and includes operator when any well is operated or has been operated or is about to be operated by any person other than the owner.

(q) "Person" means any individual natural person, general or limited partnership, joint venture, association, cooperative organization, corporation, whether domestic or foreign, agency or subdivision of this or any other state or municipal or quasi-municipal entity whether or not it is incorporated.

(r) "Production Well" means any well which is commercially producing or is intended for commercial production of a geothermal resource.

(s) "State Engineer" is the Director of the Division of Water Rights, which is the agency having general administrative supervision over the waters of the State. The duties of this Division are primarily set forth in Title 73, Chapters 1 through 6.

(t) "Suspension of Operations" means the cessation of drilling, re-drilling, or alteration of casing before the well is officially abandoned or completed. All suspensions must be authorized by the Division.

(u) "Waste" means any physical waste including, but not limited to:

(1) Underground waste resulting from inefficient, excessive, or improper use, or dissipation of geothermal energy, or of any geothermal resource pool, reservoir, or other source; or the locating, spacing, constructing, equipping, operating, or producing of any well in a manner which results, or tends to result in reducing the quantity of geothermal energy to be recovered from any geothermal area in the State.

(2) The inefficient above-ground transporting and storage of geothermal energy; and the locating, spacing, equipping, operating, or producing of any well or injection well in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of geothermal energy; the escape into the open air from a well of steam or hot water in excess of what is reasonably necessary in the efficient development or production of a well.

(v) "Well" means any well drilled for the discovery or production of geothermal resources or any well on lands producing geothermal resources or reasonably presumed to contain geothermal resources, or any special well, converted producing well or reactivated or converted abandoned well employed for reinjecting geothermal resources or the residue thereof.

1.3 All administrative procedures involving applications, approvals, hearings, notices, revocations, orders and their judicial review, and all other administrative procedures required or allowed by these rules are governed by rules for administrative procedures adopted by the Division, including R655-6, Administrative Procedures for Informal Proceedings Before the Division of Water Rights of the State of Utah.

R655-1-2. Drilling.

2.1 Applications:

2.1.1 Application to drill for Geothermal Resources.

Any person, owner or operator, who proposes to drill a well for the production of geothermal resources or to drill an injection well shall first apply to the Division in accordance

with Title 73, Chapter 3. Applications to appropriate water for geothermal purposes will be processed and investigated by the Division, and if they meet the requirements of Section 73-3-8, they will be approved by the State Engineer on a well-to-well basis or as a group of wells which comprise an operating unit and have like characteristics.

Appropriation of water for geothermal purposes shall not be considered mutually interchangeable with water for any other purpose. Water, brine, steam or condensate produced during a geothermal operation may be subject to further appropriation if physical conditions permit.

2.1.2 Plan of Operations:

Before drilling an exploratory or production well, the applicant shall submit a plan of operations to the State Engineer for his approval. The plan shall include:

- (a) Location, elevation and layout.
- (b) Lease identification and Well Number.
- (c) Tools and equipment description including maximum capacity and depth rating.
- (d) Expected depth and geology.
- (e) Drilling, mud, cementing and casing program.
- (f) BOPE installation and test.
- (g) Logging, coring and testing program.
- (h) Methods for disposal of waste materials.
- (i) Environmental considerations.
- (j) Emergency procedures.
- (k) Other information as the State Engineer may require.

2.1.3 Application to deepen or modify an existing well.

If the owner or operator plans to deepen, redrill, plug, or perform any operation that will in any manner modify the well, an application shall be filed with the Division and written approval must be received prior to beginning work; however, in an emergency, the owner or operator may take action to prevent damage without receiving prior written approval from the Division, but in those cases the owner or operator shall report his action to the Division as soon as possible.

2.1.4 Application for permit to convert to injection.

If the owner or operator plans to convert an existing geothermal well into an injection well with no change of mechanical condition, written request shall be filed with the Division and written approval must be received prior to beginning injection.

2.1.5 Amendment of permit.

No changes in the point of diversion, place or nature of use shall be allowed until an amendment to the application is approved by the State Engineer in accordance with Section 73-3-3.

2.1.6 Notice to other agencies.

Notice of applications, permits, orders, or other actions received or issued by the Division may be given to any other agency or entity which may have information, comments, or interest in the activity involved.

2.2 Fees: Any application filed with the State Engineer shall be accompanied by a filing fee in accordance with Section 73-2-14.

2.3 Bonds:

2.3.1 Any operator having approval to drill, re-enter, test, alter or operate a well, prior to any construction or operation, shall file with the Division of Water Rights and obtain its approval of a surety bond, payable to the Division of Water Rights for not less than \$10,000 for each individual well or \$50,000 for all wells. The bond shall be on a form prescribed by the Division and shall be conditioned on faithful compliance with all statutes and these rules.

2.3.2 Bonds remain in force for the life of the well or wells and may not be released until the well or wells are properly abandoned or another valid bond is substituted.

2.3.3 Transfer of property does not release the bond. If

any property is transferred and the principal desires to be released from his bond, the operator shall:

a. Assign or transfer ownership in the manner prescribed in Sections 73-1-10 and 73-3-18, identifying the right by application number, well number or location and,

b. Provide the Division with a declaration in writing from the assignee or transferee that he accepts the assignment and tenders his own bond therewith or therein accepts responsibility under his blanket bond on file with the Division.

2.4 Well Spacing:

2.4.1 Any well drilled for the discovery or production of geothermal resources or as an injection well shall be located 100 feet or more from and within the outer boundary of the parcel of land on which the well is situated, or 100 feet or more from a public road, street, or highway dedicated prior to the commencement of drilling. This requirement may be modified or waived by the State Engineer upon written request if it can be demonstrated that public safety is preserved and that the integrity of the geothermal source is not jeopardized.

2.4.2 For several contiguous parcels of land in one or different ownerships that are operated as a single geothermal field, the term outer boundary line means the outer boundary line of the land included in the field. In determining the contiguity of parcels of land, no street, road, or alley lying within the lease or field shall be determined to interrupt such contiguity.

2.4.3 The State Engineer shall approve the proposed well spacing programs or prescribe modifications to the programs as he deems necessary for proper development giving consideration to factors as, but not limited to, topographic characteristics of the area, the number of wells that can be economically drilled to provide the necessary volume of geothermal resources for the intended use, protecting correlative rights, minimizing well interference, unreasonable interference with multiple use of lands, and protection of the environment.

2.4.4 Directional drilling.

Where the surface of the parcel of land is unavailable for drilling, the surface well location may be located upon property which may or may not be contiguous. Surface well locations shall not be less than 25 feet from the outer boundary of the parcel on which it is located, nor less than 25 feet from an existing street or road. The production or injection interval of the well shall not be less than 100 feet from the outer boundary of the parcel into which it is drilled. Directional surveys must be filed with the Division for all wells directionally drilled.

2.5 Identification: Each well being drilled or drilled and not abandoned shall be identified by a durable sign posted in a conspicuous place near the well. The lettering shall be large enough to be legible at 50 feet under normal conditions and shall show the name of the applicant, well number, location by 10-acre tract, and name of lease.

The well number shall be according to the modified Kettleman Well Numbering System adopted by the U.S. Geological Survey.

2.6 Unit Agreements: At the request of any interested party or on his own initiative, the State Engineer may establish a unit plan or agreement for a geothermal area to prevent waste, protect correlative rights and avoid drilling unnecessary wells. Proper notice to interested parties must be given and a hearing held before the State Engineer before the unit may be created.

2.7 Casing Requirements:

2.7.1 General.

All wells shall be cased in a manner to protect or minimize damage to the environment, usable ground waters

and surface waters, geothermal resources, life, health, and property. The permanent well head completion equipment shall be attached to the production casing or to the intermediate casing if production casing does not reach the surface.

Specifications for casing strings shall be determined or approved on a well-to-well basis. All casing strings reaching the surface shall provide adequate anchorage for blowout-prevention equipment, hole pressure control and protection for all natural resources. The casing requirements given are general but should be used as guidelines in submitting proposals to drill.

2.7.2 Conductor Casing.

A minimum of 40 feet of conductor casing shall be installed. The annular space is to be cemented solid to the surface. A 24-hour cure period for the grout must be allowed prior to drilling out the shoe unless additives approved by the State Engineer are used to obtain early strength. An annular blowout preventer shall be installed on all exploratory wells and on development wells when deemed necessary by the Division. For low-temperature geothermal wells less than 90 degrees C. this requirement may be reduced or waived by the State Engineer.

2.7.3 Surface Casing.

Except in the case of low-temperature geothermal wells, the surface casing hole shall be logged with an induction electrical log, or equivalent, before running casing or by gamma-neutron log. This requirement may vary from area to area, depending upon the amount of pre-existing subsurface geological data available. If sufficient subsurface geologic data is available, the State Engineer may not require additional logging of the surface casing hole. However, permission to omit this requirement must be granted by the Division prior to running surface casing.

Surface casing shall provide for control of formation fluids, for protection of shallow usable ground water and for adequate anchorage for blowout-prevention equipment. All surface casing shall be cemented solid to the surface. A 24-hour cure period shall be allowed prior to drilling out the shoe of the surface casing unless additives approved by the State Engineer are used to obtain early strength.

2.7.3.1 Length of Surface Casing.

(a) In areas where subsurface geological conditions are variable or unknown, surface casing in general shall be set at a depth of wells drilled in those areas. A minimum of surface casing shall be set through a sufficient series of low permeability, competent lithologic units to ensure a solid anchor for blowout-prevention equipment and to protect usable ground water and surface water from contamination. A second string or intermediate casing may be required if the first string has not been cemented through a sufficient series of low permeability, competent lithologic units and either a rapidly increasing geothermal gradient or rapidly increasing formation pressures are encountered.

(b) In areas of known high formation pressure, surface casing shall be set at a depth approved by the Division after a careful study of geological conditions.

(c) Within the confines of designated geothermal fields, the depth to which surface casing shall be set shall be approved by the Division on the basis of known field conditions.

(d) These requirements may be reduced or waived by the State Engineer for low-temperature geothermal wells.

2.7.3.2 Mud Return Temperatures.

The temperature of the return mud shall be monitored regularly during the drilling of the surface casing hole. Either a continuous temperature monitoring device shall be installed and maintained in working condition, or the temperature shall be read manually. In either case, return mud temperature

shall be logged after each joint of pipe has been drilled down 30 feet.

2.7.3.3 Blowout-Prevention Equipment.

BOPE capable of shutting-in the well during any operation shall be installed on the surface casing and maintained ready for use at all times. BOPE pressure tests shall be witnessed by Division personnel on all exploratory wells prior to drilling out the shoe of the surface casing. The decision to require and witness BOPE pressure tests on all other wells shall be made on a well-to-well basis. The Division must be contacted 24 hours in advance of a scheduled pressure test. The State Engineer may give verbal permission to proceed with the test upon request by the operator.

2.7.4 Intermediate Casing.

Intermediate casing shall be required for protection against unusual pressure zones, cave-ins, wash-outs, abnormal temperature zones, uncontrollable lost circulation zones or other drilling hazards. Intermediate casing strings shall be cemented solid to the surface or to the top of the liner hanger whenever the intermediate casing string is run as a liner. The liner lap shall be pressure tested prior to resumption of drilling.

2.7.5 Production Casing.

Production casing may be set above or through the producing or injection zone and cemented above the injection zones. Sufficient cement shall be used to exclude overlying formation fluids from the geothermal zone, to segregate zones and to prevent movement of fluids behind the casing into zones that contain usable ground water. Production casing shall either be cemented solid to the surface or lapped into intermediate casing, if run. If the production casing is lapped into an intermediate casing, the casing overlap shall be at least 100 feet, the lap shall be cemented solid, and it shall be pressure tested to ensure its integrity.

2.8 Electric Logging:

All wells, except observation wells for monitoring purposes only, shall be logged with an induction electrical log or equivalent or gamma-neutron log from the bottom of the hole to the bottom of the conductor pipe. This requirement may be modified or waived by the Division upon written request if such request demonstrates sufficient existing data of surrounding wells.

R655-1-3. Blowout Prevention.

3.1 General.

3.1.1 Blowout-Prevention Equipment (BOPE) installations shall include high temperature-rated packing units and ram rubbers, if available, and shall have a minimum working-pressure rating equal to or greater than the lesser of:

(a) A pressure equal to the product of the depth of the BOPE anchor string in feet times one psi per foot.

(b) A pressure equal to the rated burst pressure of the BOPE anchor string.

(c) A pressure equal to 2,000 psi.

Specific inspections and tests of the BOPE may be made by the Division. The requirements for tests will be included in the Division's answer to the notice of the intention to drill.

3.1.2 A Division employee may be present at the well at any time during the drilling.

3.1.3 A logging unit equipped to regularly record the following data shall be installed and operated continuously after drilling out the shoe of the conductor pipe and until the well has been drilled to the total depth.

(a) Drilling mud temperature.

(b) Drilling mud pit level.

(c) Drilling mud pump volume.

(d) Drilling mud weight.

(e) Drilling rate.

(f) Hydrogen sulfide gas volume.

The Division may waive the requirement for installation of a logging unit on evidence that the owner or operator has engaged a qualified mud engineer to monitor, log and record the data specified in the above subparagraphs a. through d. The drilling rate required in subparagraph e. shall be logged with standard industry recording devices, and hydrogen sulfide monitoring and safety equipment shall be provided whenever needed to satisfy the requirement of subparagraph f.

3.2 Requirements Using Mud as the Drilling Fluid.

The following requirements are for exploratory areas, unstable areas containing fumaroles, geysers, hot springs, mud pots, and for fields with a history of lost circulation, a blowout, or zone pressures less than 1000 psi. These requirements may be reduced by the State Engineer where the geothermal formations are known to be shallow and of low pressure and temperature.

(a) An annular BOPE and a spool, fitted with a low-pressure safety pop-off and blow-down line, installed on the conductor pipe may be required to ensure against possible gas blowouts during the drilling of the surface casing hole.

(b) Annular BOPE and pipe-ram/blind-ram BOPE with a minimum working pressure rating of 2,000 psi shall be installed on the surface casing so that the well can be shut-in at any time. The double-ram preventer shall have a mechanical locking device.

(c) A hydraulic actuating system utilizing an accumulator of sufficient capacity and a high pressure auxiliary back-up system. This total system shall be equipped with dual controls: one at the driller's station and one at least 50 feet away from the well head.

(d) Kelly cock and standpipe valve.

(e) A fill-up line installed above the BOPE.

(f) A kill line installed below the BOPE, leading directly to the mud pumps and fitted with a valve through which cement could be pumped if necessary.

(g) A blow-down line fitted with two valves installed below the BOPE. The blow-down line shall be directed in a manner to permit containment of produced fluids and to minimize any safety hazard to personnel.

(h) All lines and fittings shall be steel and have a minimum working-pressure rating of at least that required of the BOPE.

(i) The temperature of the return mud during the drilling of the surface casing hole shall be monitored regularly. Either a continuous temperature monitoring device shall be installed and maintained in working condition, or the temperature shall be read manually. In either case, return mud temperatures shall be logged after each joint of pipe is drilled down every 30 feet.

3.3 Requirements Using Air as the Drilling Fluid.

The following requirements are for areas where it is known that dry steam exists at depth or formation pressures are less than hydrostatic:

(a) A rotating-head installed at the top of the BOPE stack.

(b) A pipe-ram/blind-ram BOPE, with a minimum working-pressure rating of 1,000 psi, installed below the rotating-head so that the well can be shut-in at any time.

(c) A banjo-box or mud-cross steam diversion unit installed below the double-ram BOPE fitted with a muffler capable of lowering sound emissions to within State standards.

(d) A blind-ram BOPE, with a minimum working-pressure rating of 1,000 psi, installed below the banjo-box or mud-cross so that the well can be shut-in while removing the rotating-head during bit changes.

(e) A master gate valve, with a minimum working-pressure rating of 600 psi, installed below the blind-ram so

that the well can be shut-in after the well has been completed, prior to removal of the BOPE stack.

(f) All ram-type BOPE shall have a hydraulic actuating system utilizing an accumulator of sufficient capacity and a high-pressure backup system.

(g) Dual control stations for hydraulic backup system: one at the driller's station and the other at least 50 feet away from the well head.

(h) Float and standpipe valves.

(i) A kill line installed below the BOPE, leading directly to the mud pumps and fitted with a valve through which cement could be pumped if necessary.

(j) All lines and fittings must be steel and have a minimum working-pressure rating of 1,000 psi.

R655-1-4. Records.

4.1 General: The owner or operator of any well shall keep or cause to be kept a careful and accurate log, core record, and history of the drilling of the well. These records shall be kept in the nearest office of the owner or operator or at the well site and together with all other reports of the owner and operator regarding the well shall be subject to the inspection by the Division during business hours. All records, unless otherwise specified, must be filed with the Division within 90 days after completion of the well.

4.2 Records to be Filed with the Division:

4.2.1 Drilling Logs and Core Record -- the drilling log shall include the lithologic characteristics and depths of formations encountered, the depth and temperatures, chemical compositions and other chemical and physical characteristics of fluids encountered from time to time so far as ascertained. The core record shall show the depth, lithologic character, and fluid content of cores obtained so far as determined.

4.2.2 Well History -- the history shall describe in detail in chronological order on a daily basis all significant operations carried out and equipment used during all phases of drilling, testing, completion, and abandonment of any well.

4.2.3 Well Summary Report -- the well summary report shall accompany the core record and well history reports. It is designed to show data pertinent to the condition of a well at the time of completion of work done.

4.2.4 Production Records -- the owner or operator of any well producing geothermal resources shall file with the Division on or before the tenth day of each month for the preceding month, a statement of production utilized in a form as the Division may designate.

4.2.5 Injection Records -- the owner or operator of any well injecting geothermal fluids or waste water for any purpose shall file with the Division on or before the tenth day of each month for the preceding month a report of the injection as the Division may designate.

4.2.6 Electric Logs and Directional Surveys if Conducted -- electric logs and directional surveys shall be filed upon recompletion of any well. Like copies shall be filed upon recompletion of any well. Upon a showing of hardship, the Division may extend the time within which to comply for a period not to exceed one year.

4.3 Confidential Status: Any reports, logs, records, or histories filed with the Division shall not be available for public inspection and shall be kept confidential by the Division unless agreed to by the owner, provided, however, that the Division may use any reports, logs, records, or histories in any action in any court to enforce the provisions of Title 73, Chapter 22, or any order adopted hereunder. The following information may be made public by the Division:

(a) Owner or operator's name.

(b) Well designation or number.

(c) Elevation of derrick floor or ground elevation.

(d) Location of well.

(e) The application and all information pertaining to it, including its current status.

4.4 Inspection of Records: The records filed by an operator with the Division shall be open to inspection only to those authorized in writing by the operator and to designated Division personnel. The records of any operator filed for a completed or producing well that has been transferred by sale, lease, or otherwise shall be available to the new owner or lessee for his inspection or copying and shall be available for inspection or copying by others upon written authorization of new owner or lessee.

R655-1-5. Injection Wells.

5.1 Construction: The owner or operator of a proposed injection well or series of injection wells shall provide the Division with information it deems necessary for evaluation of the impact of injection on the geothermal reservoir and other natural resources. Information shall include existing reservoir conditions, method of injection, source of injection fluid, estimates of daily amount of material medium to be injected, zones or formations affected, and analysis of fluid to be injected and of the fluid from the intended zone of the injection, if available.

5.2 Surveillance:

5.2.1 When an operator or owner proposes to drill or modify an injection well or convert a well to an injection well, he shall be required to demonstrate to the Division by means of a test that the casing has complete integrity. This test shall be conducted in a method approved by the Division.

5.2.2 To establish the integrity of the annular cement above the shoe of the casing, the owner or operator shall make sufficient surveys within thirty days after injection is started into a well to prove that all the injected fluid is confined to the intended zone of injection. Thereafter, surveys shall be made at least every two years or more often if necessary. The Division shall be notified 48 hours in advance of surveys in order that a representative may be present if deemed necessary. If the operator can substantiate by existing data that these tests are not necessary, then, after review of the data, the State Engineer may grant a waiver exempting the operator from the tests.

5.2.3 After a well has been placed into injection, the injection well site will be visited periodically by Division personnel. The operator or owner will be notified of any necessary remedial work. Unless modified by the State Engineer, this work must be performed within ninety days of approval for the injection well, or approval for the injection well issued by the Division will be rescinded.

R655-1-6. Abandonment and Sealing.

6.1 Objectives: The objectives of abandonment are to block interzonal migration of fluids so as to:

- (a) Prevent contamination of fresh waters or other natural resources.
- (b) Prevent damage to geothermal reservoirs.
- (c) Prevent loss of reservoir energy.
- (d) Protect life, health, environment and property.

6.2 General Requirements: The following are general requirements which are subject to review and modification for individual wells or field conditions:

(a) A notice of intent to abandon geothermal resource wells is required to be filed with the Division five days prior to beginning abandonment procedures. A permit to abandon may be given orally by the State Engineer provided the operator submits a written request for abandonment within 24 hours of the oral request.

(b) A history of geothermal resource wells shall be filed within sixty days after completion of abandonment procedures.

(c) All wells abandoned shall be monumented and the description of the monument shall be included in the history of well report. Monument shall consist of a four-inch diameter pipe 10 feet in length of which four feet shall be above ground. The remainder shall be imbedded in concrete. The applicant's name, application number, and location of the well shall be shown on the monument. An abandoned well on tilled land shall be marked in a manner approved by the State Engineer.

(d) Good quality, heavy drilling fluid shall be used to replace any water in the hole and to fill all portions of the hole not plugged with grout.

(e) All grout plugs with a possible exception of the surface plug shall be pumped into the hole through drill pipe or tubing.

(f) All open annuli shall be filled solid with grout to the surface.

(g) A minimum of 100 feet of grout shall be emplaced straddling the interface or transition zone at the base of ground water aquifers.

(h) One hundred feet of grout shall straddle the placement of the shoe plug on all casings including conductor pipe.

(i) A surface plug of either neat cement or concrete mix shall be in place from the top of the casing to at least 50 feet below the top of the casing.

(j) All casing shall be cut off at least five feet below land surface.

(k) Grout plugs shall extend at least 50 feet over the top of any liner installed in the well.

(l) Injection wells are required to be abandoned in the same manner as other wells.

(m) Other abandonment procedures may be approved by the Division if the owner or operator can demonstrate that the geothermal resource, ground waters, and other natural resources will be protected. Approval must be given in writing prior to the beginning of any abandonment procedures.

(n) Within five days after the completion of the abandonment of any well or injection well, the owner or operator of the abandoned well or injection well shall report in writing to the Division on all work done with respect to the abandonment.

R655-1-7. Maintenance.

7.1 General: All well heads, separators, pumps, mufflers, manifolds, valves, pipelines, and other equipment used for the production of geothermal resources shall be maintained in good condition in order to prevent loss of or damage to life, health, property, and natural resources.

7.2 Corrosion: All surface well head equipment and pipelines and subsurface casing and tubing will be subject to periodic corrosion surveillance in order to safeguard health, life, property, and natural resources.

7.3 Tests: The Division may require tests or remedial work as in its judgment are necessary to prevent damage to life, health, property, and natural resources, to protect geothermal reservoirs from damage or to prevent the infiltration of detrimental substances into underground or surface water suitable for irrigation or other beneficial uses to the best interest of the neighboring property owners and the public. Tests may include, but are not limited to, casing tests, cementing tests, and equipment tests.

R655-1-8. Temperature Gradient Wells.

8.1 General: Wells may be drilled upon approval of the State Engineer for measurement of subsurface temperatures and conductive heat flow.

8.2 Information: Request for a temperature gradient

well program shall include the following information:

- (a) Well number.
- (b) Well location, elevation and expected depth.
- (c) Geologic interpretation of area under investigation, including any known or inferred temperature data.
- (d) Proposed drilling program, including method and casing schedule.
- (e) Proposed method of abandonment.
- (f) The State Engineer may require other data and impose restrictions or supervision by the Division as his studies may indicate.

8.3 Conditions: The following general conditions shall apply to temperature gradient wells:

- (a) The depth of the hole shall not exceed 500 feet unless otherwise authorized by the State Engineer.
- (b) The wells are to be cased and sealed against the water in the formations to be drilled.
- (c) Return mud or air temperatures shall be monitored at, at least 30 foot intervals and should the temperature reach 125 degrees F. the drilling shall cease and the casing installed or the hole abandoned. Plastic casing may be used at temperatures under 125 degrees F.; otherwise, steel casing shall be used.
- (d) Upon completion of the testing program, the casings are to be capped, or the casings are to be pulled and the holes cemented from bottom to top.
- (e) The driller must be bonded and have a current well driller's permit from the State Engineer. Before starting, he must give this Division notice of the day he will begin drilling.
- (f) Temperature data and logs of each hole surveyed are to be submitted to the State Engineer. These will be held in confidential status until released by the owner.
- (g) The driller shall exercise due caution in all drilling operations to prevent blowouts, explosions or fires.

R655-1-9. Environment.

9.1 General: The owner shall conduct exploration and development operations in a manner that provides maximum protection of the environment; rehabilitate disturbed lands; take all necessary precautions to protect the public health and safety; and conduct operations in accordance with the spirit and objectives of all applicable environmental legislation, and executive orders.

Adverse environmental impacts from geothermal-related activity shall be prevented or mitigated through enforcement of applicable Federal, State, and local standards, and the application of existing technology. Inability to meet these environmental standards or continued violation of environmental standards due to operations of the lessee, after notification, may be construed as grounds for the State Engineer to order a suspension of operations.

R655-1-10. Penalties.

As stated in Section 73-22-10, any willful violation of or failure to comply with any provision of these rules shall be a misdemeanor and each day that the violation continues shall constitute a separate offense.

KEY: geothermal resources

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73-22

R655. Natural Resources, Water Rights.**R655-6. Administrative Procedures for Informal Proceedings Before the Division of Water Rights.****R655-6-1. Authority and Effective Date.**

A. These rules establish and govern the administrative procedures for informal adjudicative proceedings before the Division of Water Rights as required by Section 63G-4-203.

B. These rules govern all informal adjudicative proceedings commenced on or after January 1, 1988. Adjudicative proceedings commenced prior to January 1, 1988, are governed by R655-2.

R655-6-2. Designation of Informal Proceedings.

All adjudicative proceedings of the Division of Water Rights are hereby designated as informal proceedings and include, but are not limited to, all requests for agency action and notices of agency action concerning applications to appropriate water, change applications, exchange applications, applications to segregate; requests for reinstatement and extension of time; proofs of appropriation and change; applications for extension of time within which to resume use of water and proofs of resumption of use; applications to renovate or replace existing wells; permits and authorizations for dam construction, repair and use; applications and other procedures for utilization of geothermal resources; licenses and other permits for water well drillers; applications for stream alteration; and other adjudicative proceedings involving water right administration.

R655-6-3. Definitions.

A. "Adjudicative Proceeding" means a Division action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all Division actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend the authority, right, or license; and judicial review of all such actions. Those matters not governed by Title 63G, Chapter 4 shall not be included within this definition.

B. "Division" means the Division of Water Rights.

C. "State Engineer" is the Director of the Division of Water Rights, which is the agency having general administrative supervision over the waters of the State. The duties of this Division are primarily set forth in Title 73, Chapters 1 through 6.

D. "Staff" means the Division of Water Rights staff.

E. "Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or other agency.

F. "Party" means the Division or other person commencing an adjudicative proceeding, all respondents, all protestants, all persons permitted by the Presiding Officer to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

G. "Presiding Officer" means the State Engineer, or an individual or body of individuals designated by the State Engineer, designated by the agency's rules, or designated by statute to conduct a particular adjudicative proceeding.

H. "Respondent" means any person against whom an adjudicative proceeding is initiated, whether by the Division or any other person.

I. "Application" means any application which has been filed pursuant to Title 73, Chapters 1, 2, 3, 5 and 6, and shall include, but not be limited to, applications enumerated in R655-6-5.B.3. An application is also a request for agency action. The substantive rules governing the filing and perfecting of these documents are specified in the above

Chapters and in other Division rules, and R655-6 governs only the administrative procedures for those applications which have been properly filed.

J. "Applicant" is a person applying for an application.

K. "Protestant" means a person who timely protests an application before the State Engineer pursuant to Section 73-3-7 or who files a protest pursuant to Section 73-3-13.

R655-6-4. Construction.

A. These rules shall be construed in accordance with Title 63G, Chapter 4, and these rules supersede any conflicting provision of procedural rules promulgated by the Division.

B. These rules shall be liberally construed to secure a just, speedy and economical determination of all issues presented to the Division.

C. 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 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, or State holiday.

D. Any pleading or other document required to be filed with the Division shall be considered to be filed on the date the signed original is actually deposited with the Division and not on the date of postmark.

R655-6-5. Commencement of Proceedings.

A. Proceedings Commenced by the Division.

1. All informal adjudicative proceedings commenced by the Division shall be initiated by a notice of agency action as provided by applicable statute, Division policies, and Subsection 63G-4-201(2).

2. The Presiding Officer may require the person against whom the agency action is commenced to file a response within 30 days of the mailing or publication date of the notice of agency action.

B. Proceedings Commenced by Persons Other Than the Division.

1. All informal adjudicative proceedings commenced by persons other than the Division shall be commenced by either completing and submitting prepared forms requesting agency action which are available at the Division or, if no forms are required to initiate a particular proceeding, by submitting in writing a request for agency action which shall include at least the following:

- a. the names and addresses of all persons to whom a copy of the request for agency action is being sent;
- b. the Division's file number or other reference number, if known;
- c. the date that the request for agency action was mailed;
- d. a statement of the legal authority and jurisdiction under which agency action is requested;
- e. a statement of the relief or action sought from the Division;
- f. a statement of the facts and reasons forming the basis for relief or agency action;
- g. the name, address and telephone number of the person requesting agency action;
- h. the signature of the person requesting agency action; and
- i. any filing fees required by statute.

2. For purposes of requests for agency action filed pursuant to Title 73, the adjudicative proceeding commences on the date the request is received by the Division and not on the date of postmark.

3. Forms Requesting Agency Action

The following forms requesting agency action shall be

used by persons requesting a particular agency action and are available from the Division:

- a. Application to Appropriate Water
 - b. Temporary Application to Appropriate Water
 - c. Application for Permanent Change of Water
 - d. Application for Temporary Change of Water
 - e. Application to Segregate a Water Right
 - f. Request for Reinstatement and Extension of Time
 - (i) Before Fourteen Years
 - (ii) After Fourteen Years
 - g. Proof of Appropriation of Water
 - h. Proof of Permanent Change of Water
 - i. Application for Exchange of Water
 - j. Application for Extension of Time Within Which to Resume Use of Water
 - k. Proof of Resumption of Use of Water
 - l. Application to Renovate or Replace an Existing Well
 - m. Application to Construct a Dam Impounding Less Than 20 Acre-Feet
 - n. Application for Well Driller's License
 - o. Permit Application to Alter a Natural Channel
4. Upon receipt of a request for agency action, the Presiding Officer shall promptly review the request and shall act in accordance with Subsections 63G-4-201(3)(d) and (e).
5. Protests filed pursuant to Title 73, Chapters 1, 2, 3, 5 and 6 shall be filed in accordance with the governing statutes and these rules.
- a. Protests should be filed on letter-sized paper, typewritten and double-spaced, but may be submitted in legible handwritten form. Protests should identify the water right by water right number, state the complete mailing address of the protestant, and should contain a clear, concise statement of the matter relied upon as the basis for the protest, together with an appropriate request for relief. If the name or address of the protestant is not legible, the Division shall not be obligated to give the protestant notice of any further proceedings.
 - b. Protests signed by more than one person shall be accepted. However, persons filing a multiple-person protest are encouraged to designate a representative for the group of protestants who shall receive all notices on behalf of all who signed the protest. If no representative is designated, each person signing the protest shall be considered a protestant, and shall receive notice of any further proceedings, if their name, mailing address and phone number are clearly legible.
 - c. Upon the filing of a protest the Presiding Officer shall mail a copy of the protest to the applicant. The applicant may file with the Division an answer to the protest within the time designated by the Presiding Officer. The Presiding Officer shall mail copies of any answer to the protestant, or attorney or authorized representative, if any. The protestant may file a response to the answer with the Division within the time designated by the Presiding Officer. The Presiding Officer shall mail a copy of the response to the applicant.
 - d. Protests filed after the protest period has expired shall be placed on file and become part of the record. Any person filing a late protest is not a party and may receive notice of any further proceeding, hearing or order.

R655-6-6. Pleadings.

A. Pleadings before the Presiding Officer for administrative hearings may consist of a notice of agency action, a request for agency action, responses, protests, answers to protests, responses to answers, motions together with affidavits, briefs, memoranda of law and fact in support thereof, requests for reconsideration, and other pleadings as allowed by Title 63G, Chapter 4.

B. Motions may be submitted for the Presiding Officer's decision on either written or oral argument, and the filing of

affidavits in support or contravention thereof may be permitted. Any written motion may be accompanied by a supporting memorandum of fact and law.

C. Amendments to Pleadings.

The Presiding Officer may allow pleadings to be amended or corrected, and defects which do not affect substantial rights of the parties may be disregarded; provided, however, that applications and other similar documents which are governed by specific statutory provisions shall be amended only as provided by statute.

D. Service of Pleadings.

Except as otherwise specified in R655-6-5.B.5.c., all persons filing pleadings after the request for agency action or the notice of agency action have been filed shall serve copies of the pleadings by regular mail to all parties or their attorney of record or authorized representative on the date of filing the pleadings with the Division. Service upon any attorney or authorized representative constitutes service on the represented party. Service shall be deemed complete on the date of mailing.

E. Post-Hearing Pleadings.

Before or after a hearing is concluded, any party may seek permission from, or may be asked by, the Presiding Officer to file a memorandum or other information. All other parties shall have 20 days, unless shortened or lengthened by the Presiding Officer, from the date of service within which to file responsive pleadings. The filing of any further post-hearing pleadings shall be by permission of the Presiding Officer.

R655-6-7. Hearings.

A. The Division shall hold a hearing if a hearing is required by statute or rule.

B. The Division shall hold a hearing if a hearing is permitted by rule and is requested by a party in writing within 10 days of when the adjudicative proceeding commences, or within the time prescribed in the notice of agency action or by the Presiding Officer.

C. The Division may hold a hearing if a hearing is requested in a timely filed protest.

D. The Division may at its discretion hold a hearing on any adjudicative proceeding to determine matters within its authority.

E. Notice of the hearing will be served on all parties by regular mail at least ten days prior to the hearing.

F. Hearings shall be held for most adjudicative proceedings in the county where the water source is located or the county where the majority of the parties reside. Hearings may be held outside the county at the discretion of the state engineer.

G. If no hearing is held for a particular adjudicative proceeding, the Division shall within a reasonable time issue a decision pursuant to R655-6-16.

R655-6-8. Intervention.

Intervention is prohibited except where a federal statute or rule requires that a state permit intervention.

R655-6-9. Pre-Hearing Procedure.

The Presiding Officer may, upon written notice to all parties of record, hold a pre-hearing conference for the purposes of identifying and 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.

R655-6-10. 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.

R655-6-11. Parties to a Hearing.

A. All hearings shall be open to all parties and all parties shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and fully participate in the proceeding.

B. Any person not a party to the adjudicative proceeding may participate at a hearing as a witness for a party or, upon the consent of the Presiding Officer, may participate as part of the Division's investigative and fact finding powers. Such a person is not a party to the adjudicative proceeding and may not seek judicial review.

R655-6-12. Appearances and Representation.

A. Taking Appearances.

Parties shall enter their appearances at the beginning of a hearing or at a time 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 his or its interest in the proceeding.

2. Any party may be represented by an attorney at law.

R655-6-13. Failure to Appear--Default.

When a party or his authorized representative to a proceeding fails to appear at a hearing after due notice has been given, the Presiding Officer at his discretion may continue the matter, or may enter an order of default as provided by Section 63G-4-209, or may proceed to hear the matter in the absence of the defaulting party.

R655-6-14. Discovery, Testimony, Evidence and Argument.

A. Discovery is prohibited but the Division may issue subpoenas or other orders to compel production of necessary evidence.

B. All parties shall have access to non-confidential and non-privileged information contained in the Division's files of public record, and to all materials and information gathered in any investigation, to the extent permitted by law.

C. Testimony.

At the hearing, the Presiding Officer shall accept oral or written testimony from any party or witness. Further, the Presiding Officer shall have the right to question and examine any party or witnesses called to present testimony at a hearing. The testimony and statements received at hearings may be under oath.

D. Order of Presentation of Evidence.

Unless otherwise directed by the Presiding Officer at a hearing, the evidence shall be presented first by the party commencing the adjudicative proceeding. Each party may offer rebuttal evidence.

E. 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 may 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 men in the conduct of their affairs. Hearsay evidence may not be excluded solely because it is hearsay.

F. Documentary Evidence.

Documentary evidence may be received in the form of copies or excerpts. However, upon request, parties shall be given an opportunity to compare the copy with the original.

G. Official Notice.

The Presiding Officer may take official notice of the following matters which shall be considered as facts presented at the hearing:

1. Rules, regulations, official and unofficial reports, surveys, maps, investigations, all Division files, decisions and orders of the State Engineer and any other regulatory agency, state or federal;

2. Official documents introduced into the record by proper reference; provided, however, documents shall be made available so that the parties to the hearing may examine the documents and present rebuttal testimony if they so desire;

3. Matters of common knowledge and generally recognized technical or scientific facts within the Division's specialized knowledge, and any factual information which the Division may have gathered from a field inspection of the water sources or area involved in the proceeding.

H. Oral Argument and Memoranda.

Upon the conclusion of the taking of evidence, the Presiding Officer may, in his discretion, permit the parties to make oral arguments setting forth their positions and also to submit written memoranda within the time specified by the Presiding Officer.

R655-6-15. Record of Hearing.

A. A record of any hearing may be recorded at the Division's expense. When a record is made by the Division, it shall be done by means of an automatic recording device. Any party, at his own expense, may have a reporter approved by the Division prepare a transcript from the record of the hearing.

B. If a party desires that the testimony be recorded by means of a court reporter, that party may employ a court reporter at his own expense and shall furnish a transcript of the testimony to the Division free of charge. This transcript shall be available at the Division office to any party to the hearing.

R655-6-16. Orders.

A. 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 reconsideration or judicial review, as appropriate, and notice of the time limits for filing a request for reconsideration or a court appeal. The order shall be based on the facts appearing in any of the Division's files or records and on the facts presented in evidence at any hearings.

B. The signed order described in this section or an order issued in response to a timely-filed request for reconsideration shall constitute the final agency action.

C. A copy of the Presiding Officer's order shall be promptly mailed by regular mail to each of the parties.

R655-6-17. Requests for Reconsideration.

A. Who may file.

Any aggrieved party may file a Request for Reconsideration by following the procedures of Section 63G-4-302. A Request for Reconsideration is not a prerequisite for judicial review.

B. Action on the Request.

Upon the filing of a Request for Reconsideration, the Division shall review the Request and may within 20 days do any or all of the following:

1. issue any preliminary order;

2. summarily deny the Request in whole or in part;
 3. summarily grant the relief requested in whole or in part; or

4. set a time for a re-hearing.

C. If the Division does not issue an order within 20 days, the Request shall be considered to be denied.

D. Re-Hearings Limited.

If an order is made granting a rehearing, it shall be limited to the matter specified in the order. Upon rehearing, the Presiding Officer may affirm his former decision or may abrogate it, or may change or modify the same in any particular. That decision shall have the same force and effect as the original decision, but shall not affect any right or the enforcement of any right arising out of or by virtue of the original decision unless so ordered by the Presiding Officer.

R655-6-18. Judicial Review.

A. Any party aggrieved by an order of the State Engineer may obtain judicial review by following the procedures and requirements of Sections 63G-4-401 and -402 and 73-3-14 and -15.

B. The Division may grant a stay of its order or other temporary remedy during the pendency of judicial review on its own motion, or upon petition of a party pursuant to the provisions of Section 63G-4-405.

R655-6-19. Declaratory Orders.

Any interested person may file a request for agency action requesting that the State Engineer issue a declaratory order determining the applicability of any statute, rule, or order within the primary jurisdiction of the Division pursuant to Section 63G-4-503. A request for a declaratory order shall be filed in accordance with Subsection 63G-4-201(3) which request commences an informal adjudicative proceeding. A request shall set forth in detail the specific statute, rule, or order which is in question, the specific facts for which the order is requested, the manner in which the person making the request claims the statute, rule, or order may affect him, and the specific questions for which a declaratory order is requested. Persons may intervene in declaratory proceedings upon filing a timely petition to intervene in accordance with the provision of Section 63G-4-207.

The State Engineer may at his discretion decline to issue declaratory orders if the request concerns matters in issue before a pending adjudicative proceeding, or where he deems the facts presented to be conjectural, or where the public interest would best be served by not issuing an order.

R655-6-20. Emergency Orders.

Except as otherwise provided for by statute, the Division 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.

KEY: administrative procedures, water rights

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73-1

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73-6

73-22

R655. Natural Resources, Water Rights.**R655-15. Administrative Procedures for Distribution Systems and Water Commissioners.****R655-15-1. Authority.**

(1) This rule is promulgated pursuant to Subsections 73-2-1(5)(a) and 73-2-1(5)(b) which authorize the State Engineer to make rules governing water distribution systems, water commissioners, water measurement and reporting that are consistent with Chapter 73-5, "Administration and Distribution."

R655-15-2. Purpose.

(1) Pursuant to authority delegated to the State Engineer by Section 73-5-1, this rule establishes procedures governing the creation, organization, and operation of water Distribution Systems administered by the State Engineer, including the appointment, responsibilities, and authority of Water Commissioners to assist in the administration of Distribution Systems.

(2) The purpose of this rule is to provide guidance and mechanisms enabling the State Engineer to fulfill the duties delegated by Section 73-5-3.

R655-15-3. Application of Rule.

(1) This rule is applicable statewide to the regulation, distribution, diversion, and use of the waters of the state.

(2) This rule shall be liberally construed to permit the Division of Water Rights to effectuate the intent and purposes of applicable Utah law.

(3) The State Engineer may make exceptions to the provisions of this rule as necessary to ensure adequate and appropriate regulation, distribution, and measurement of water for Distribution Systems involving interstate streams.

R655-15-4. Definitions.

(1) Terms used in this rule are defined as follows:

(a) "Assessment" means monies paid by water users to the State Engineer specifically to defray the costs of a Distribution System as described in Subsection 73-5-1(3). Assessments are deposited into and appropriate payments made from the "Water Commissioner Fund" established by Section 73-5-1.5.

(b) "Control Structure" means any structure or device including but not limited to diversion dams, head gates, check dams, valves, or other installation that the State Engineer determines to be necessary for the proper regulation and distribution of water.

(c) "Deputy Water Commissioner" (Deputy Commissioner) means a person appointed by the State Engineer in accordance with Subsection 73-5-1(1). A Deputy Water Commissioner is an official and, in the performance of official duties, is a duly authorized assistant of the Water Commissioner.

(d) "Distribution Account" means the accounting unit established by the Division of Water Rights ("Division") for calculation of assessments and for tracking the assessments made to and payments collected from each water user.

(e) "Distribution Order" means an Order of the State Engineer interpreting the water rights included within a Distribution System, confirming priorities of water rights, giving instruction or direction regarding the regulation, distribution, and/or measurement of water based on those water rights, and may order the installation or repair of measuring devices, head gates, and control structures as authorized by Chapter 73-5. Distribution Orders are enforceable under the provisions of Sections 73-2-25 and 73-2-26.

(f) "Distribution Season" means that period of the year during which the regulation of water distribution and/or the

measurement of water by a Water Commissioner is necessary as determined by the State Engineer.

(g) "Distribution System" means an organization of the owners of water rights within a river system or hydrologic unit, or a portion of a river system or hydrologic unit, that have been designated by the State Engineer for regulation by one or more Water Commissioners in accordance with Subsections 73-5-1(1)(b), 73-5-1(1)(c), and 73-5-1(2).

(h) "Distribution System Committee" (Committee) means the subgroup of water users properly designated to represent all water users within a Distribution System.

(i) "Division" means the Division of Water Rights of the State of Utah. The terms "Division" and "State Engineer" may be used interchangeably unless indicated otherwise by the context of the usage.

(j) "Enforcement Tag" means any orange tag attached by a water commissioner to or near a control structure or water measuring device in situations where the water user is ordered to comply with the water commissioner's regulation and distribution of water. An enforcement tag constitutes a distribution order and is enforceable in the same manner.

(k) "Measuring Device" means any structure or device approved by the State Engineer but not limited to flumes, weirs, meters, or similar devices that can be used to adequately determine the instantaneous flow of water or the volume of water measured over a period of time with an accuracy commensurate with industry standards.

(l) "Regulation Tag" means a white tag used by a water commissioner to inform and instruct the water users regarding the regulation and distribution of water at the location where the tag is placed.

(m) "State Engineer" means the Director of the Division of Water Rights appointed in accordance with Section 73-2-1 or other person acting in a legally delegated capacity as an agent, assistant, employee or representative of the Director. The terms "State Engineer" and "Division" may be used interchangeably unless indicated otherwise by the context of the usage.

(n) "Voluntary Agreement" means an agreement entered into by a group of water right owners whereby the owners stipulate to have the Water Commissioner regulate and distribute the water rights described in the agreement to the group of owners as if the group were a single entity such as a water company.

(o) "Voting Block" means a group of water users, designated as such by the State Engineer, who share a common interest within a Distribution System because of the nature of their water rights, the geographic location of their water use, or any other element of their water rights or water usage.

(p) "Water Commissioner" (Commissioner) means a person appointed by the State Engineer in accordance with Subsection 73-5-1(1)(a). A Water Commissioner is an official and, in the performance of official duties, is a duly authorized assistant of the State Engineer as contemplated at Section 73-5-3.

(q) "Water Company" means a water user organization that owns water rights, to which water is distributed by a Commissioner and which, in turn, delivers and distributes water to its members on the basis of proportional ownership of shares or other interest. A water company must be formally incorporated under applicable State of Utah statutes and may be either a for-profit entity or a mutual, non-profit entity.

(r) "Water User" means an individual person, a group acting cooperatively under a voluntary agreement, a water company, a municipality, a special district, a state or federal agency, or any other legal entity that meets the following criteria:

(i) Owns a water right included within a Distribution System;

(ii) Is subject to payment of an assessment;

(iii) Has an identifiably separate and distinct interest in the use of water in the distribution system.

The members of a group acting under a voluntary agreement; a water company's members, shareholders or officers; and those persons served by a municipality, special district, or other governmental entity are not considered water users under this definition, but are represented at Annual Meetings or other meetings of the Distribution System by one duly appointed representative of the group or entity. A group of co-owners, including a husband and wife, who jointly own a water right with an undivided interest are not considered separate water users under this definition, but are also represented at Annual Meetings or other meetings of the Distribution System by one duly appointed representative of the group. This definition applies only to Rule R655-15.

R655-15-5. Distribution Systems.

(1) To achieve the purposes set forth in Section 73-5-3, the State Engineer:

(a) Shall create a Distribution System when ordered by the district court: or

(b) May create a Distribution System when the State Engineer determines that a Distribution System is necessary as a result of:

(i) Investigations initiated by the Division; or

(ii) A request submitted by water users with sufficient supporting information.

(2) As authorized in Section 73-5-1, the State Engineer shall:

(a) Designate by geographical or political boundary, or other suitable criteria, the water rights that shall be included in the Distribution System; and

(b) Determine whether one or more Commissioners are required to regulate and distribute water according to the water rights included in the Distribution System.

(3) To establish a new Distribution System, the State Engineer shall consult with the water users who would potentially be included within the system in accordance with Section 73-5-1. The State Engineer shall:

(a) Provide timely notice to water users shown on the records of the Division as owning water rights within the proposed Distribution System.

(b) Hold a public meeting to:

(i) Inform the water users of the justifications for the Distribution System, the boundaries or the Proposed Distribution System, the water rights that would be regulated within the Distribution System, and the estimated costs of operating a Distribution System;

(ii) Explain the State Engineer's purposes, policies, and procedures regarding Distribution Systems; and

(iii) Receive comments from the water users regarding the justifications for a Distribution System and the other information presented at the meeting. The State Engineer may allow comments to be received after the meeting. The period of time for submitting comments will be set at the meeting.

(c) Hold an organizational meeting or meetings to:

(i) Establish a Committee or select a Distribution System Chair;

(ii) Prepare an operational budget for the Distribution System;

(iii) Establish a method of calculating assessments; and

(iv) Receive a recommendation(s) regarding the appointment of a Commissioner(s) and, if necessary, one or more Deputy Commissioners.

(d) Issue an Order of the State Engineer establishing the

Distribution System. The Order shall be issued to all water users within the Distribution System and shall set forth:

(i) The organization of the Distribution System;

(ii) The method of calculating assessments; and

(iii) Any other information required for the effective operation of the Distribution System.

(e) Appoint one or more Commissioners and/or Deputy Commissioners;

(f) Establish and maintain a system of distribution accounts that shall be the basis for making assessments to the water users in the Distribution System.

(4) To modify the extent, organizational structure, or any other aspect of a Distribution System the State Engineer shall:

(a) Provide timely notice to each water user shown on the Division's records as being responsible for a Distribution Account included in the Distribution System; and

(b) In accord with said notice, schedule and hold a Distribution System meeting to:

(i) Explain the State Engineer's findings and conclusions regarding the proposed modifications;

(ii) Receive comments regarding the proposed modifications to the Distribution System. The State Engineer may allow comments to be received after the meeting. The period of time for submitting comments will be set at the meeting.

(c) Issue an Order of the State Engineer modifying the Distribution System. The Order shall be delivered to all water users within the modified Distribution System and shall describe the modifications made to the Distribution System.

(5) The State Engineer may determine, based on an investigation or other pertinent information, that an established Distribution System is no longer necessary to achieve the purposes set forth in Section 73-5-3. To dissolve a Distribution System, the State Engineer shall:

(a) Provide timely notice to the water users included in the Distribution System;

(b) In accord with said notice, schedule and hold a Distribution System meeting to:

(i) Explain the State Engineer's findings and conclusions regarding the dissolution of the Distribution System;

(ii) Receive comments regarding the dissolution of the Distribution System. The State Engineer may allow comments to be received after the meeting. The period of time for submitting comments will be set at the meeting.

(c) Relieve the Commissioner of responsibilities and authority regarding the regulation and distribution of water;

(d) Retire any outstanding financial obligations of the Distribution System and return any funds pertaining to the Distribution System remaining in the Water Commissioner Fund to the water users on a pro-rata basis according to the assessments paid over the previous five years;

(e) Take custody of all records maintained by the Distribution System; and

(f) Take custody of all equipment, vehicles and other physical assets accumulated in the operation of the Distribution System, said assets to be disposed in a manner consistent with pertinent statute or other regulation.

(g) Issue to all water users within the Distribution System an Order of the State Engineer dissolving the Distribution System.

(6) A Distribution System consists of the following parties:

(a) The State Engineer;

(b) One or more Commissioners and any appointed Deputy Commissioners;

(c) A Committee or Distribution System Chair; and

(d) The water users.

(7) The composition, authority, duties and responsibilities of the parties identified immediately above are described in the following sections.

R655-15-6. State Engineer.

(1) May, as authorized in Subsection 73-2-1(5), make administrative rules regarding Water Commissioners and Distribution Systems.

(2) May, as authorized in Section 73-5-1, establish a Committee or Distribution System Chair to represent water users.

(3) Shall consult with the water users, directly or through the Committee, regarding the qualifications, duties, compensation and appointment of the Commissioner(s);

(4) Shall appoint the Water Commissioner(s);

(5) May appoint one or more Deputy Commissioners;

(6) Shall retain authority and responsibility for supervision of the Commissioner and Deputy Commissioner(s) to assure that water is measured, divided, regulated, and distributed in a manner consistent with the rights of the water users.

(7) Shall provide fiduciary supervision, accounting and operation of the Water Commissioner Fund, including the calculation of assessments, mailing of assessment notices, collection of assessments, issuance of payments for the expenses of the Distribution System, and an annual reporting to the Committee and/or the water users of the status of finances of the Distribution System.

(8) Shall hold an Annual Meeting with the Committee and/or the water users as described in this rule.

(9) Shall, in consultation with the Committee Chair or the Distribution System Chair, designate a date, time and place of an Annual Meeting of the water users and provide a timely notice of the Annual Meeting and the proposed agenda to all necessary parties.

(10) May issue Distribution Orders.

R655-15-7. Water Commissioners.

(1) An applicant for the position of Water Commissioner ("Commissioner") shall, at a minimum:

(a) Be a high school graduate;

(b) Demonstrate a level of education and experience commensurate with the level of complexity and difficulty involved in regulating the Distribution System;

(c) Have demonstrated knowledge of:

(i) Irrigation practices and technologies;

(ii) The local area and the water users involved in the Distribution System;

(iii) The use and maintenance of water control and measurement equipment and devices;

(iv) Water measurement units, calculations and conversions; and

(v) Maps, standard land description terminology, units of measure and conversions,

(d) Have a demonstrated knowledge of or the ability and willingness to learn;

(i) Principles and terminology of Utah water rights law; and

(ii) Technology necessary for the effective regulation, distribution, measurement and reporting of water use in the Distribution System.

(e) Have a demonstrated ability to communicate effectively verbally and in writing;

(f) Have a demonstrated ability to work cooperatively with persons with conflicting interests to find appropriate solutions to challenges and/or resolve disputes;

(g) Be available at all times necessary throughout the distribution season to fulfill the duties of Water Commissioner set forth herein;

(h) Hold a valid Utah Drivers License

(i) Be able to walk over rough and uneven terrain for distances up to a half mile.

(j) Be less than 75 years of age. A person who is 75 years of age or older will not be appointed as Commissioner by the State Engineer.

(k) The applicant must disclose to the State Engineer and the interview panel any conflict of interest related to exercising the duties of the Commissioner. The State Engineer will determine whether a disclosed conflict of interest would prevent objective regulation and distribution of water on the Distribution System in accordance with the water rights and the instructions and Distribution Orders from the State Engineer. If such a conflict of interest exists, the applicant will be deemed ineligible for appointment. If such a conflict develops or is found to exist subsequent to an appointment, the Commissioner will be removed as described in this rule.

(2) Selection Process

(a) Public notice of the intent to fill a Commissioner position shall be advertised in a newspaper of local circulation in the area where the distribution system is located. The notice shall:

(i) Include a general description of the qualifications, duties, and compensation related to the position;

(ii) include the method of making application for the position; and

(iii) Be published in a manner and for a duration determined by the State Engineer as reasonable and sufficient.

(b) Application for the Water Commissioner position shall be made in writing to the Committee Chair or the Distribution System Chair as directed in the public notice. The application shall include a summary of the applicant's qualifications and experience. The Chair, in consultation with the State Engineer, shall determine, based on the relative qualifications of the applicants, those applicants to be invited for an interview.

(c) Interviews for the position of Water Commissioner shall be conducted by an interview panel. The interview panel shall consist of the Committee and the State Engineer. At the discretion of the Committee and with the consent of the State Engineer, the Committee may include additional water users on the interview panel to assure all interests are adequately represented. If a Committee has not been established on the Distribution System, the panel shall include the Distribution System Chair, a representative group of water users selected by the Distribution System Chair, and the State Engineer.

(d) The recommendation to the State Engineer concerning the appointment of the Commissioner shall be based on the results of the applicant interviews as determined by a majority vote of:

(i) The water users of the Distribution System if:

(A) The interview panel consisted of selected water users; or

(B) The interview panel consisted of a Committee that prepares recommendations for the water users' ratification.

(ii) The Committee if the Committee is established to act without ratification by the water users.

(e) If a majority of the water users, as determined by a vote of the water users or by a vote of the Committee as described above, agrees on a qualified applicant to recommend to the State Engineer, the State Engineer shall appoint the recommended applicant as Commissioner based on the recommendation. If the water users cannot agree as evidenced by a majority vote, the State Engineer shall select a person from among the qualified applicants for appointment as Commissioner.

(3) If the person selected and appointed as

Commissioner as a result of the process outlined in (2) above is an employee of one of the water users on the distribution system (such as a water company or water conservancy district) and, if the Commissioner's duties will be performed during the hours of employment by the water user, the State Engineer shall enter into an agreement with the Commissioner's employer. The agreement shall cover, at minimum, the following issues:

(a) The duties to be performed by the Commissioner during the hours of employment;

(b) Supervision by the State Engineer and accountability of the Commissioner to the State Engineer in the performance of all official duties; and

(c) The compensation that will be paid by the Distribution System to the employer for the time spent by the Commissioner in the performance of his/her official duties.

(4) The Commissioner shall be appointed for a term of four years in accordance with Subsection 73-5-1(1)(a).

(a) A new four-year term shall commence with each appointment.

(b) The four-year term shall commence at the Annual Meeting or other Distribution System meeting or Committee meeting wherein the Commissioner appointment recommendation was made to the State Engineer.

(c) The four-year term shall run until the Annual Meeting or Committee Meeting held during the fourth year following the Commissioner's appointment.

(d) Regardless of the number of years remaining in a term, a Commissioner's term of appointment will terminate at the Annual Meeting prior to the Commissioner's 75th birthday.

(e) In exceptional situations, the State Engineer may extend a person's appointment as water commissioner to one additional term beyond the person's 75th birthday or until age 79 (whichever comes first). The decision to extend the person's appointment for one additional term must be based on consideration of a written request signed by at least five or a majority (whichever is less) of the water users of the water distribution system. The request must include the following:

(i) An attestation that the person currently demonstrates that he/she is physically and mentally capable of adequately performing the water commissioner duties;

(ii) An explanation why the replacement of the water commissioner would pose a burden and a hardship on the water distribution system; and

(iii) The steps that will be taken by the water users to resolve the concerns described in (ii) above by the end of the extended appointment.

(f) If a person is appointed as water commissioner to an extended term beyond his/her 75th birthday, that appointment will be reviewed with the water users on a year-by-year basis at the annual distribution meeting. If, as a result of that review, the State Engineer determines that the person is no longer physically or mentally capable of adequately performing the water commissioner duties, the person's appointment as water commissioner will be ended.

(5) If a Commissioner retires, resigns, or is otherwise removed prior to completing the full four-year term of appointment, the uncompleted term shall not be filled. The process described in these rules for selecting a Commissioner shall be followed in making a new appointment.

(6) A vacant Commissioner position shall be filled as soon as possible after the vacancy occurs. However, sufficient time will be taken as required to adequately complete the selection process as described in these rules.

(7) Should a Commissioner vacancy occur during the distribution season, Division staff shall act in the stead of the Commissioner to regulate and distribute water in the Distribution System until such time as a new Commissioner is

appointed.

(8) A person may be appointed to serve successive terms as Commissioner without limit.

(9) Authority

(a) The Commissioner is an assistant to the State Engineer and is authorized to act as described in Sections 73-5-3 and 73-5-4 to assure that water is properly measured, divided and distributed to the water users in accord with their respective water rights.

(b) As described in Section 73-5-3, the Commissioner is authorized to enter upon private property whenever necessary to carry out the provisions of statute and these rules.

(c) In all official duties and responsibilities of the position, the Commissioner is authorized to act as directed by the State Engineer.

(10) A person may serve concurrently as Commissioner for more than one Distribution System.

(11) Duties

(a) The Commissioner shall consult with the State Engineer to exchange information and receive direction. The Commissioner may also consult with the Committee or Distribution System Chair to exchange information.

(b) The Commissioner shall regulate the diversion and distribution of water:

(i) In accordance with properly established water rights on the records of the Division; and

(ii) In accordance with State Engineer Distribution Orders.

(c) The Commissioner shall measure and make records of the measurements of:

(i) The water delivered to each Distribution Account;

(ii) Any flows or volumes of water and reservoir water levels necessary for the proper regulation of water distribution in the Distribution System; and

(iii) Any other flows or volumes of water and reservoir water levels as directed by the State Engineer.

(d) The Commissioner shall regularly inspect Distribution System facilities, including water measuring devices, head gates, and other water control structures, to ensure they are operating properly and adequately maintained to meet the purposes of the Distribution System.

(i) The Commissioner shall perform or arrange for the performance of such facilities maintenance work as is included within the scope of the duties assigned and consistent with the appointment.

(ii) If inadequacies related to the regulation, distribution, and measurement of water are identified in the Distribution System facilities, said inadequacies being outside the scope of the Commissioner's designated duties, the Commissioner shall notify the responsible water user(s), the Distribution Committee Chair or Distribution System Chair, and the State Engineer.

(e) The Commissioner shall assist the State Engineer as requested to improve water measurement and accounting practices and procedures in the Distribution System.

(f) As new technologies are implemented to improve the efficiency of water delivery and distribution, the Commissioner shall become proficient in the use and application of the technology. Should a Commissioner prove unable or unwilling to acquire such proficiency in a reasonable time, this condition shall constitute grounds for termination of the Commissioner's appointment.

(g) The Commissioner shall maintain records and make reports including:

(i) Complete, accurate, current, and legible records sufficient to demonstrate faithful performance of the duties designated.

(A) All records shall be available to the State Engineer upon request.

(B) All records shall be submitted to the State Engineer upon termination of the Commissioner's service.

(ii) A written Annual Report of the Distribution System including all information determined necessary by the State Engineer in consultation with the Committee or Distribution System Chair.

(A) The report shall include water use data based on actual water measurements, a record of regulation and distribution issues and decisions made during the distribution season, and any other information required by the State Engineer.

(B) The report shall be prepared in a format approved by the State Engineer.

(C) The report shall be delivered to the State Engineer and the Committee and/or water users each year at the Annual Meeting unless another reporting deadline has been approved by the State Engineer.

(h) The Commissioner shall assist, as requested, in acquiring current ownership, mailing address, and other information required to update Distribution Accounts.

(i) The Commissioner shall provide to the State Engineer, in a timely manner, an accounting of the water delivered to each water user as required for the calculation of Distribution Assessments.

(j) When necessary to effect the proper distribution of water, the Commissioner may adjust or close and lock a head gate and/or control structure to prevent changes in the control settings.

(i) Such adjustments and locks shall remain as set by the Commissioner until a change in regulation or distribution is required.

(ii) In such cases, the Commissioner may attach a State Engineer Water Regulation Tag at or near the head gate or control structure.

(k) As necessary in effecting a State Engineer Distribution Order or in a Division enforcement proceeding, the Commissioner may close and lock a head gate and/or control structure to cease delivery of water to the affected water user.

(i) Such closure and locking of a head gate and/or control structure shall remain in place until the conditions of the Distribution Order or enforcement proceeding have been met.

(ii) In such cases, the Commissioner shall attach a State Engineer Water Enforcement Tag at or near the head gate or control structure.

(l) The Commissioner shall assist the State Engineer as necessary in any Division enforcement proceeding related to the Distribution System.

(m) The Commissioner shall perform all other duties specific to the Distribution System as determined by the water users or the Committee and approved by the State Engineer.

(n) The Commissioner shall accurately complete and submit to the State Engineer all necessary forms provided by the State Engineer and supporting documentation of the expenses of the Distribution System.

(o) The Commissioner shall supervise and be responsible for the efforts of any Deputy Commissioner(s) appointed to assist in the regulation, distribution, and measurement of water on the Distribution System.

(p) The Commissioner shall devote the time necessary for the completion of the duties outlined in these rules and shall be generally available for contact at any reasonable time during the period of the distribution season.

(12) Compensation and Benefits:

(a) The salary or wage for a Commissioner shall be set within the guidelines established by the State Engineer.

(i) The salary or wage shall be paid through the State of Utah payroll system and shall be subject to all federal and

state taxes and other required withholdings.

(ii) A Commissioner who retires, resigns or is otherwise removed during a distribution season will be compensated for only the portion of the distribution season completed prior to the termination of the Commissioner's service.

(b) A Commissioner shall be provided with a means of transportation for all travel related to fulfillment of official duties related to the Distribution System. The transportation may be provided by either of the following means:

(i) The Distribution System may provide a suitable vehicle to be used by the Commissioner solely in the performance of the Commissioner duties, with all vehicle expenses paid through the Distribution System; or

(ii) The Distribution System may compensate the Commissioner for the use of a personal vehicle in the performance of the Commissioner's official duties. Compensation shall include the total costs of operating and maintaining the vehicle for that portion of the vehicle use dedicated to the Commissioner's official duties. Compensation may be made:

(A) For actual vehicle operation and maintenance costs as reported and documented by the Commissioner; or

(B) At a per-mile rate determined from industry standards for operation and maintenance of similar vehicles in similar conditions; or

(C) Based on a flat monthly or yearly amount agreed upon by the water users' representatives and the Commissioner and approved by the State Engineer. The agreed amount must reasonably represent the actual costs of operating the vehicle.

(c) A Commissioner shall be provided with communication and computer equipment necessary for the effective performance of the Commissioner duties. The cost of purchasing, operating, and maintaining such equipment shall be borne by the Distribution System. If a Commissioner chooses to use personally owned equipment, compensation shall be made on the basis of documentation showing the costs of acquisition, maintenance and operation of said equipment and the proportion of said costs directly attributable to the performance of the Commissioner's official duties. Cost documentation must be acceptable to the Committee or Distribution System Chair and approved by the State Engineer.

(d) A Commissioner shall be provided with adequate office space and clerical assistance to enable regulation and distribution of water on the Distribution System. The need for office space will be determined in consultation among the State Engineer, the Commissioner, and the Committee or Distribution System Chair.

(e) A Commissioner shall be provided, at the expense of the Distribution System, such other equipment as is needed to effectively measure, distribute, and regulate water on the Distribution System.

(f) At the discretion of the Committee and with the consent of the water users and the State Engineer, the Commissioner may be provided with health insurance with premiums paid all or in-part by the Distribution System.

(g) A Commissioner shall be provided with Workers Compensation Insurance at the expense of the Distribution System in accordance with pertinent regulations governing the same.

(h) The Distribution System shall pay the cost of the retirement benefit for any Commissioner whose salary meets or exceeds the minimum salary level set by the Utah State Retirement Office to qualify for retirement benefits.

(i) The Commissioner shall be reimbursed according to the Distribution System budget for expenses incurred in the performance of the Commissioner's duties. The Commissioner must request reimbursement by properly

completing and submitting reimbursement forms and documentation as directed by the State Engineer. Unless prior arrangements have been made with the Committee or the Distribution Chair and approved by the State Engineer, reimbursement forms and supporting documentation must be submitted to the State Engineer no later than December 15th of the calendar year in which the expense was incurred. Unless prior arrangements have been made, reimbursement will not be made on reimbursement forms submitted after December 15th of the year in which the expense was incurred.

(j) If the Commissioner is an employee of a regulated water user as described in (3) above, the Commissioner's salary, health insurance, worker's compensation insurance, retirement, and related payroll costs will be as provided by the employer. The Distribution System will compensate the employer for that portion of these costs that pertain directly to the performance of Commissioner's duties. Any other Commissioner expenses required for the operation of the Distribution System will be paid by the Distribution System as outlined above.

(13) Removal

(a) A Commissioner may be removed by the State Engineer for cause.

(i) The process to remove a Commissioner may be instigated by the State Engineer or as a result of a petition to the State Engineer from the water users or Committee.

(ii) The process for removing a Commissioner shall be governed by the provisions of the Utah Administrative Procedures Act.

(b) Water users may petition the District Court for the removal of a Commissioner.

R655-15-8. Deputy Water Commissioner.

(1) One or more Deputy Water Commissioners ("Deputy Commissioner") may be appointed by the State Engineer to assist the Commissioner.

(2) The need for a Deputy Commissioner shall be determined by the Commissioner and the Committee or Distribution System Chair and approved by the State Engineer.

(3) An applicant for the position of Deputy Commissioner shall, at a minimum:

(a) Be a high school graduate;

(b) Demonstrate a level of education and experience commensurate with the level of complexity and difficulty involved in assisting the Commissioner.

(c) Be less than 75 years of age. A person who is 75 years of age or older will not be appointed as Deputy Commissioner by the State Engineer.

(d) Hold a valid Utah Drivers License

(e) Be able to walk over rough and uneven terrain for distances up to a half mile.

(4) Selection Process

(a) Application for the position of Deputy Commissioner shall be made to the current Commissioner.

(b) The current Commissioner shall interview applicants as necessary and present a recommendation to the Committee or Distribution System Chair for consideration.

(c) If the current Commissioner and the Committee or Distribution System Chair are in unanimous agreement on a qualified applicant to recommend to the State Engineer, the State Engineer shall appoint the applicant as Deputy Commissioner based on that recommendation. If there is no unanimity, the State Engineer shall select a person from among the qualified applicants to appoint as Deputy Commissioner.

(5) A Deputy Commissioner shall be appointed to a term corresponding to the term of the current Commissioner.

(a) If a Deputy Commissioner is appointed part way

through the term of a currently serving Commissioner, the Deputy Commissioner's first term shall be equal to the remaining term of the current Commissioner.

(b) When a Commissioner retires, resigns, or is otherwise removed from appointment, the appointments of all Deputy Commissioners shall be concurrently terminated. However, should the Commissioner position become vacant during a distribution season, the appointment of any Deputy Commissioner may be extended until the end of the distribution season.

(c) Regardless of the number of years remaining in a term, a Deputy Commissioner's term of appointment will terminate at the last Annual Meeting prior to the Deputy's 75th birthday.

(6) A person may be appointed to serve successive terms as Deputy Commissioner without limit.

(7) When acting under specific direction of the Commissioner, a Deputy Commissioner shall have the same authority as delegated to the Commissioner as an agent of the State Engineer.

(8) A person may serve concurrently as Deputy Commissioner for more than one Distribution System.

(9) The duties of the Deputy Commissioner(s) shall be to assist the Commissioner, as assigned, in the performance of the Commissioner's duties to fulfill the purposes of the Distribution System.

(10) Compensation and Benefits:

(a) The salary or wage for a Deputy Commissioner shall be set within the guidelines established by the State Engineer.

(i) The salary or wage shall be paid through the State of Utah payroll system and shall be subject to all federal and state taxes and other required withholdings.

(ii) The total amount of salary or wage budgeted each year shall be paid to the Deputy Commissioner within the calendar year upon successful completion of the duties and responsibilities of the position.

(b) A Deputy Commissioner may be provided with a means of transportation for all travel related to regulation of the Distribution System. The transportation may be provided by any of the means described in the above Section entitled "Water Commissioner".

(c) A Deputy Commissioner shall be provided, at the expense of the Distribution System, such equipment and supplies as are needed to effectively assist the Commissioner in the assigned duties on the Distribution System. Compensation shall be in a manner equivalent to that adopted for compensation of the Commissioner for similar expenses.

(d) At the discretion of the Committee and with the consent of the water users and the State Engineer, the Deputy Commissioner may be provided with health insurance with premiums paid all or in-part by the Distribution System.

(e) A Deputy Commissioner shall be provided with Workers Compensation Insurance at the expense of the Distribution System and in accordance with pertinent regulations governing same.

(f) The Distribution System shall pay the cost of the retirement benefit for any Deputy Commissioner whose salary meets or exceeds the minimum salary level set by the Utah State Retirement Office to qualify for retirement benefits.

(11) Removal

(a) A Deputy Commissioner may be removed by the State Engineer for cause.

(i) The process to remove a Deputy Commissioner may be instigated by the State Engineer or as a result of a petition to the State Engineer from the Commissioner, Committee, or the water users.

(ii) The process for removing a Deputy Commissioner shall be governed by the provisions of the Utah Administrative Procedures Act.

(b) Water users may petition the District Court for the removal of a Deputy Commissioner.

R655-15-9. Distribution System Committee.

(1) The Distribution System Committee ("Committee") shall be established in a manner that will provide equitable representation of the interests of all water users in the Distribution System.

(2) A Committee may be established by the State Engineer in a manner such that either:

(a) The Committee prepares recommendations for ratification by the water users of the Distribution System; or

(b) The decisions and recommendations of the Committee need no ratification by the water users of the Distribution System.

(3) The Committee shall be composed of no less than five and no more than 15 representatives of the water users. The number of Committee members and the terms of office shall be determined by majority vote of the water users present at an Annual Meeting or specially called organizational meeting, subject to the approval of the State Engineer.

(4) Members of the Committee are to equitably represent the water users of the Distribution System and may be:

(a) Elected from among the water users for a specified term of office; or

(b) Duly appointed representatives of water user groups such as water companies, voluntary agreement groups, municipalities, or special districts who serve at the pleasure of the organization represented; or

(c) A combination of the foregoing under (a) and (b);

(d) Re-elected or reappointed without term limits unless barred by other policy or rule duly adopted.

(5) Representation on the Committee shall be limited to one Committee member from each: group acting cooperatively according to a voluntary agreement; water company; municipality; special district; state or federal agency; voting block; or other grouping of water users according to geography or type of water right.

(6) Committee members representing a group or other legal entity shall be elected from among the group or legal entity to be represented on the committee unless the governing documents of said group or legal entity mandate another method of selection.

(7) A quorum of the Committee must be present in order for the Committee to act on any issue regarding the Distribution System. A quorum shall consist of no less than one-half of the Committee members. The business of the Committee shall be conducted by a simple majority vote of the Committee members present at the meeting. Each member of the Committee shall have one vote. In the event of a tie vote, the business at hand may be deferred. If the business is sufficiently urgent that deferment is not practical, the matter shall be decided by the State Engineer in accordance with Subsection 73-5-1(2)(c).

(8) Changes in the composition, number of members, terms of office, etc., of the Committee may be made upon majority vote of the water users present at a properly scheduled Annual Meeting, subject to the approval of the State Engineer;

(9) The Committee shall elect from among its members:

(a) A Chair who shall have responsibility to:

(i) Conduct all Annual Meetings of the water users;

(ii) Conduct all special meetings of the Committee; and

(iii) Act as agent of the Committee in communications with the State Engineer, the water users and other entities.

(b) A Vice-Chair who shall assist in all duties of the Chair and assume the duties of the Chair when the Chair is

absent or otherwise unable to fulfill those duties.

(10) The Committee shall select and retain the services of a qualified Secretary who shall:

(a) Keep accurate and complete minutes of all Annual Meetings of the water users and all meetings of the Committee in a format approved by the State Engineer, the minutes shall be prepared and submitted to the Chair and to the Division of Water Rights within 30 days after the Annual Meeting;

(b) Prepare copies of the minutes of each Annual Meeting of the water users for distribution, review and approval by the water users present at the next subsequent Annual Meeting;

(c) Prepare copies of the minutes of each special meeting of the Committee for distribution, review and approval by the Committee at the next subsequent special meeting;

(d) Maintain a permanent record of all minutes of the meetings of the water users and the Committee;

(e) Maintain a complete and current record of the names, contact information, representation, and terms of office of all members of the Committee;

(f) Maintain a permanent record of all materials, reports, agendas, budgets, etc., presented or considered in Annual Meetings of the water users or special meetings of the Committee;

(g) Submit to the Chair for approval by the Committee an annual (or more frequent, as needed) itemized billing for services rendered and a statement of associated expenses for payment from the funds of the Distribution System;

(h) Submit all records of the Distribution System thus maintained:

(i) To the Chair of the Committee upon termination of service as Secretary; or

(ii) To the State Engineer upon dissolution of the Distribution System.

(11) A Committee whose actions are ratified by the water users shall prepare recommendations for the water users regarding:

(a) The recommendation to the State Engineer concerning the appointment of a Commissioner;

(b) The recommendation to the State Engineer concerning the appointment of a Deputy Commissioner need not be ratified by the water users;

(c) The duties of the Commissioner or Deputy Commissioner specific to the Distribution System;

(d) The operating budget for the Distribution System including compensation for the Commissioner and Deputy Commissioner(s);

(e) The total of the assessments to be levied to meet the operating expenses of the Distribution System; and

(f) Any other business necessary for the proper operation of the Distribution System.

(12) A Committee whose actions need not be ratified by the water users shall make all decisions and recommendations on behalf of the water users regarding the items listed above.

(13) The Committee may recognize and authorize the seating of a substitute member of the Committee to act in the place of any member absent or otherwise unable to attend to those duties. The substitute member shall be selected from among the same group represented by the absent member.

R655-15-10. Distribution System Chair and Vice-Chair.

(1) If a Committee is not established, the water users shall elect a Distribution System Chair and Vice-Chair ("Chair and Vice-Chair") by majority vote of the water users present at an Annual Meeting or specially called organizational meeting.

(2) A Chair shall have responsibility to:

(a) Conduct all Annual Meetings of the water users; and
 (b) Act as agent of the water users in communications with a Commissioner, a Deputy Commissioner, the State Engineer, the water users and other entities.

(3) The Vice-Chair shall assist in all duties of the Chair and assume the duties of the Chair when the Chair is absent or otherwise unable to fulfill those duties.

(4) The Chair shall select and retain the services of a qualified Secretary who shall:

(a) Keep accurate and complete minutes of all Annual Meetings of the water users, the minutes shall be prepared and submitted to the Chair and to the Division of Water Rights within 30 days after the Annual Meeting;

(b) Prepare copies of the minutes of each Annual Meeting of the water users for distribution, review and approval by the water users present at the next subsequent Annual Meeting;

(c) Maintain a permanent record of all minutes of the Annual Meetings of the water users;

(d) Maintain a permanent record of all materials, reports, agendas, budgets, etc., presented or considered in Annual Meetings of the water users;

(e) Submit to the Chair an annual (or more frequent, as needed) itemized billing for services rendered and a statement of associated expenses for payment from the funds of the Distribution System;

(f) Submit all records of the Distribution System thus maintained:

(i) To the Chair upon termination of service as Secretary; or

(ii) To the State Engineer upon dissolution of the Distribution System.

R655-15-11. Water Users.

(1) Water users shall pay distribution assessments within the deadlines established in this rule.

(2) Water users may participate in organizational or Annual Meetings to:

(a) Select representatives to serve as members of the Committee or to elect a Distribution System Chair and Vice-Chair;

(b) Exchange information with the State Engineer, Commissioner and Committee or Distribution System Chair pertinent to the fulfillment of the purposes of the Distribution System.

(c) Vote on Distribution System business as described in this rule.

(3) A water user who is unable to attend an Annual Meeting or other meeting of the Distribution System may designate a person by proxy to act in the water user's stead in the conduct of official business of the Distribution System. The proxy shall:

(a) Be in writing;

(b) Name the person who is giving the proxy and who is recognized as a water user on the Distribution System;

(c) Name the person who is designated to act in the place of the absent water user;

(d) State the meeting and the date of the meeting at which the proxy is to be used;

(e) State any limitations on the authority of the proxy to act in the place of the absent water user;

(f) Be signed by the water user giving the proxy;

(g) Be submitted to the Committee or the Distribution System Chair at the meeting where the proxy is to be used prior to any attempt to act as proxy; and

(h) Be retained by the officers of the Distribution System as part of the records of the meeting.

(4) Except as provided below for a voting block, each water user shall have one vote in the conduct of official

business of the Distribution System.

(5) To assure equitable representation of the interests of all water users in conducting the business of the Distribution System, the State Engineer may organize water users into voting blocks.

(a) A simple majority of the water users in a voting block shall determine the vote to be cast by the voting block.

(b) Each voting block in a Distribution System so organized shall have one vote in the conduct of the official business of the Distribution System.

(6) All water users shall assist the Commissioner in fulfilling the duties of that appointment as they pertain to the rights of the water user.

(7) Each water user shall abide by the regulation and distribution directions issued or set by a Commissioner and any appointed Deputy Commissioner, including but not limited to head gate and/or control structure settings. A water user who fails to abide by the direction of a Commissioner or Deputy in the performance of official duties is subject to enforcement proceedings and resulting administrative penalties as established by statute.

(8) Each water user shall maintain in workable and accessible condition all head gates, control structures, measuring devices and other equipment determined necessary by the State Engineer for the Commissioner's control, measurement and delivery of water.

(a) Measuring devices, head gates, and control structures shall be installed by and at the expense of the water user at each location determined necessary by the State Engineer.

(b) Measuring devices, head gates, and control structures shall be of a design approved by the State Engineer.

(c) Safe and reasonable access shall be provided to all head gates, control structures, measuring devices and other installations required for the Commissioner's control, measurement, and delivery of water.

(9) Water users shall provide reports on water use as required by the State Engineer pursuant to Section 73-5-8.

R655-15-12. Annual Meetings.

(1) The State Engineer shall hold an Annual Meeting of the water users and/or the Committee prior to the start of each distribution season.

(2) The purpose of the Annual Meeting shall be to address the following matters:

(a) Review, amend as necessary, and approve the minutes of the next previous Annual Meeting;

(b) Review the finances of the Distribution System including:

(i) Current account balance of Distribution System funds;

(ii) Budgeted amounts and expenditures of the previous fiscal period;

(iii) Status of assessment collections including delinquent accounts;

(c) Set a budget for the current or prospective fiscal period. The budget shall provide for the following expenses:

(i) Compensation of the Commissioner(s), Deputy Commissioner(s), and Secretary;

(ii) Office and clerical expenses as are necessary for the effective distribution and regulation of water on the Distribution System;

(iii) Equipment expenses as are necessary for the effective distribution and regulation of water on the Distribution System;

(iv) Other expenses necessary for the effective distribution and regulation of water and operation of the Distribution System including those determined necessary by the State Engineer such as the State Engineer's Assessment

for disbursement of funds, accounting, and assessment collection.

(d) Set a total assessment to be collected from the water users to defray the expenses of the adopted budget.

(e) Hear, review, and approve the Commissioner's Annual Report; if the report is unacceptable, motions may be adopted to amend the report;

(f) Review and amend, subject to approval of the State Engineer, the duties of the Commissioner;

(g) Review the performance of the Commissioner and any Deputy Commissioners and hear any commendations, comments, or complaints relative to the previous year.

(h) Recommend the appointment of a Commissioner, as may be necessary;

(i) Elect members of the Committee, as may be necessary

(j) Receive a report or other information from the State Engineer concerning matters pertinent to the operation of the Distribution System;

(k) Conduct any other business as may be necessary to fulfill the purposes of the Distribution System.

R655-15-13. Distribution System Committee Meetings.

(1) Meetings of the Distribution System Committee ("Committee") shall be held as necessary to fulfill the purposes of the Distribution System.

(2) Committee meetings may be held in lieu of or in addition to the Annual Meeting with the water users as determined by the State Engineer.

(3) The Committee Chair and Vice-Chair shall be elected at a Committee Meeting.

(4) If the Committee meeting is held in lieu of the Annual Meeting with the water users, the purpose of the meeting shall be to address the matters described in Section entitled "Annual Meetings" herein.

(5) If the Committee meeting is held in addition to the Annual Meeting with the water users, the purpose of the meeting shall be to review information and develop recommendations on the matters described in the Section entitled "Annual Meetings," herein, for presentation to the water users.

R655-15-14. Assessments.

(1) A Distribution Account shall be established by the State Engineer for each water right or group of water rights within the Distribution System that shall include:

(a) An account number;

(b) The name, full mailing address, and other pertinent contact information for the person responsible for payment of the assessment associated with the account;

(c) The water right or rights associated with the account;

(d) Any other information that may be pertinent and useful in enabling identification of the water sources, beneficial use of water and place of use of the water rights associated with the account.

(2) Assessments to each Distribution Account shall be calculated so as to collect from each water user a pro rata share of the monies necessary to defray the expenses of the budget adopted at the Annual Meeting of the water users or at the Committee meeting.

(3) The method of calculating assessments shall be determined by the State Engineer, in consultation with the water users, Committee or Chair, to best meet the needs of the Distribution System and assure an equitable distribution of costs among the water users. The assessment calculation method for a Distribution System may be based upon:

(a) The proportion of the total annual assessment amount which the allowed irrigated acreage under the Distribution Account bears to the total allowed irrigated

acreage within the Distribution System; or

(b) The proportion of the total annual assessment amount which the allowed water flow in cubic feet per second (cfs) or allowed annual diversion in acre-feet (AF) under the water right(s) in the Distribution Account bears to the total allowed flow or diversion allowance for all water rights within the Distribution System; or

(c) The proportion of the total annual assessment amount which the quantity (AF) of water actually taken by or delivered under the water right(s) in the Distribution Account (as reported by the Commissioner for the year prior) bears to the total quantity of water actually taken or delivered within the Distribution System; or

(d) Any other method of calculation which shall be acceptable to the water users and approved by the State Engineer and which results in an equitable and proportional sharing of system costs among the water users.

(4) Water users who place disproportionate demands on the Commissioner, as based on the relative amount of their assessment and as determined by the State Engineer, may receive an increased assessment. The amount of the increase will be determined by the State Engineer to compensate for the increased time required of the Commissioner to satisfy or properly distribute water to the water user.

(5) Assessment notices shall be mailed to the responsible party for each Distribution Account no later than April 1 of each year unless unusual circumstances require a delay.

(6) Assessment payments shall be made payable to the Utah State Engineer.

(7) As set forth in Section 73-5-1(3), assessments for Distribution Systems shall be due on or before May 1 of the year in which they are levied.

(8) A delinquency charge shall be levied against Distribution Account balances that remain unpaid as of June 1 of each year.

(a) The amount of the delinquency charge shall be 10% of the unpaid Distribution Account balance unless otherwise determined by the State Engineer in consultation with the water users, Committee or Chair.

(b) The delinquency charges collected shall be deposited in the Water Commissioner Fund dedicated to the Distribution System.

(9) Actions taken for collection of delinquent accounts shall be at the discretion of the State Engineer as provided in Subsection 73-5-1(3)(c). Costs incurred by the Division in collection of delinquent accounts shall be included in the administrative costs budgeted as the State Engineer's Assessment for disbursement of funds, accounting, and assessment collection.

**KEY: water distribution, water commissioner, distribution system
October 5, 2007
Notice of Continuation May 5, 2017**

73-2-1(5)(a)

R657. Natural Resources, Wildlife Resources.**R657-2. Adjudicative Proceedings.****R657-2-1. Purpose and Authority.**

(1) This rule sets forth the standards and procedures governing all adjudicative proceedings before the Wildlife Board and the division, except as provided in subsection (2), and specifically governs the following adjudicative proceedings:

- (a) requests for agency action;
- (b) declaratory orders brought pursuant to Section 63G-4-503;
- (c) requests for species reclassification under Section R657-3;
- (d) requests for a variance under Section R657-3;
- (e) post-issuance requests for a variance or amendment to a license, permit, tag or certificate of registration;
- (f) request for review of a division action taken to deny a certificate of registration under Section R657-3;
- (g) requests for agency action brought to contest the division's determination of eligibility for issuance or renewal of a license, permit, tag, or certificate of registration;
- (h) appeals of divisions actions taken pursuant to Section 23-16-4; and
- (i) a petition brought requesting the making, amendment, or repeal of a rule brought pursuant to Section 63G-3-601.

(2)(a) Unless otherwise specifically provided, this rule does not govern actions taken under Sections 23-19-9 and R657-26 to suspend a wildlife license, permit, tag, or certificate of registration.

(b) The hearing officer or Wildlife Board hearing an appeal of a hearing officer's decision to revoke a person's license, permit, tag, or certificate of registration, or to suspend receipt of privileges granted thereunder, may use any of the provisions established in this rule in conducting an adjudicative proceeding to the extent such provisions do not conflict with any of the procedural provisions of Section 23-19-9 or R657-26 and where conducting the proceeding according to this rule would promote fairness and equity to the parties.

(3) All rights, powers, and authorities provided in Chapter 4, Title 63G are hereby reserved to the division and Wildlife Board in conducting adjudicative proceedings under this rule and to the extent this rule does not address a specific procedural matter, the provisions of Chapter 4, Title 63G shall govern.

R657-2-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and 63G-4-103.

(2) In addition:

- (a)(i) "Adjudicative proceeding" means:
 - (A) a division or Wildlife Board action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all division or Wildlife Board actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and
 - (B) judicial review of any action provided in Subsection (A).
- (ii) "Adjudicative proceeding" does not mean any matter not governed by Title 63G, Chapter 4, Utah Administrative Procedures Act.
- (b) "Assistant director" means the assistant director of the division.
- (c) "Director" means the director of the division.
- (d) "Division" means the Utah Division of Wildlife Resources.
- (e) "Petitioner" means a person or entity who files a

request for agency action initiating an adjudicative proceeding.

(f) "Presiding Officer" means the director, chairman of the Wildlife Board, or an individual or body of individuals designated by the director, the chairman of the Wildlife Board, or by statute or division rule to conduct an adjudicative proceeding.

(g) "Regional advisory council" means the entities created by Section 23-14-2.6.

(h) "Respondent" means any person or entity against whom a proceeding is initiated or whose property interest may be affected by a proceeding initiated by the division, the Wildlife Board or any other person.

R657-2-3. Construction - Deviation From Rule.

(1) This rule shall be construed in accordance with Title 63G, Chapter 4.

(2) This rule shall be liberally construed to secure a just, speedy, and economic determination of issues.

(3)(a) The presiding officer may, for good cause, deviate from the provisions of this rule if:

- (i) the presiding officer finds that strict compliance with this rule is impractical or unnecessary; or
- (ii) a deviation from the rule promotes the furtherance of justice or the statutory purposes for which the action is brought.

(b) All parties shall be notified by the presiding officer of any deviation from this rule.

R657-2-4. Computation of Time.

The time within which any act shall be done, as provided in this rule, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or State holiday, in which case it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, or State holiday.

R657-2-5. Commencement of Adjudicative Proceedings.

(1) An adjudicative proceeding may be commenced by either:

- (a) a notice of agency action, if the proceeding is commenced by the division or the Wildlife Board; or
- (b) a request for agency action, if the proceeding is commenced by a person other than the division or Wildlife Board.

(2) A notice of agency action shall be filed and served according to the requirements of Section 63G-4-201(2).

(3) A request for agency action brought by a person other than the division or Wildlife Board shall be filed and served in accordance with the requirements of Section 63G-4-201(3) and R657-2-6.

R657-2-6. Request for Agency Action.

(1) A request for agency action must be filed with the presiding officer of the entity that has authority to provide relief to the petitioner. The presiding officer may refuse acceptance of any request for agency action if there is reason to believe:

- (a) the request is frivolous or brought in bad faith;
- (b) the matter has already been acted upon and further consideration is unnecessary;
- (c) the relief sought is beyond the agency's jurisdiction; or
- (d) the request fails to comply with the procedural requirements of this rule.

(2) At the time the request for agency action is filed, the petitioner shall also file any motions, affidavits, briefs, or memoranda in support of the request for agency action.

(3) The presiding officer shall review the request for

agency action.

(a) If the request for agency action is made to the division, the person designated as the presiding officer shall take action upon the request within a reasonable time.

(b)(i) If the request for agency action is made to the Wildlife Board, and the request concerns a matter over which the Wildlife Board has authority, the presiding officer may:

(A) have the request for agency action placed on the Wildlife Board's agenda for action;

(B) submit the request for agency action to the appropriate regional advisory council or councils, requesting the council or councils to hold public hearings, take input, and make recommendations to the Wildlife Board as provided in Section 23-14-2.6; or

(C) deny the request and notify the requesting party in writing of the denial and that the party may request a hearing before the Wildlife Board to challenge the denial.

(ii) In determining when to schedule the matter for hearing before the Wildlife Board, the presiding officer may consider the following:

(A) If the matter is general in nature, and the Wildlife Board's agenda allows, the matter may be brought at the next regularly-scheduled Wildlife Board meeting;

(B) If the matter involves a serious or irreparable harm to a person or entity that may be resolved by holding a hearing before the next regularly-scheduled meeting, the Wildlife Board may hold an emergency meeting; or

(C) If the matter involves an issue that is part of an annual decision making process, the matter may be scheduled at the next annual meeting where such decisions are made, but no later than one year after the date the request is received.

(4)(a) The presiding officer may schedule the request for agency action on the Wildlife Board agenda for action without regional advisory council input if:

(i) the presiding officer determines that the public interest in deciding the matter without seeking input from the regional advisory councils outweighs the benefit of considering recommendations of the regional advisory councils;

(ii) the request for agency action seeks a remedy that affects only one person or a small number of persons, thus making broad public input unnecessary; or

(iii) the delay associated with seeking regional advisory council input will result in serious or irreparable harm to the petitioner or the respondent, provided the petitioner or respondent has not been negligent in filing the request for agency action in a timely fashion.

(b) Upon a majority vote of the Wildlife Board, any request for agency action submitted to it by the presiding officer that has not been considered by the regional advisory councils may be referred to the regional advisory councils for the purpose of gathering input prior to the Wildlife Board taking further action.

(5) The petitioner shall provide a copy of the request for agency action to any person known by the petitioner to have a direct interest in the proceeding or who will be directly affected by its outcome.

R657-2-7. Designation of Adjudicative Proceedings.

(1) Except as otherwise provided in this rule or at the discretion of the presiding officer, all adjudicative proceedings before the division and the Wildlife Board are designated as informal.

(2) Any time before a final order is issued in any adjudicative proceeding, the presiding officer may convert an informal adjudicative proceeding to a formal adjudicative proceeding or a formal adjudicative proceeding to an informal adjudicative proceeding if:

(a) conversion of the proceeding is in the public interest;

and

(b) conversion of the proceeding does not unfairly prejudice the rights of any party.

(3) Any party to an adjudicative proceeding, including the division, may by motion request a formal hearing.

R657-2-8. Pleadings.

(1) Pleadings shall consist of a notice of agency action, a request for agency action, responses, motions and affidavits, briefs, and memoranda of law and fact in support thereof.

(2) A notice of agency action, request for agency action, and any pleadings relative thereto must be double-spaced, typewritten or legibly handwritten, and presented on standard 8 1/2 by 11 inch paper. Pleadings filed relative to a notice of agency action or request for agency action shall contain a clear and concise statement of the matter that is the basis of the pleading, with an appropriate description of the relief sought.

(3) The presiding officer may allow pleadings to be amended at any time. Initiatory pleadings may be amended without leave of the presiding officer at any time before a responsive pleading has been filed. Defects in pleadings which do not affect substantial rights of the parties shall be disregarded.

(4) Motions may be submitted by written motion or oral argument and the filing of affidavits in support or contravention thereof may be permitted. A written motion must be accompanied by a supporting memorandum of fact and law.

(5) Pleadings shall be signed by the party or the party's representative and shall show the signer's address. The signature shall be deemed to certify that the signer has read the pleading and that, to the best of the signer's knowledge and belief, there is good ground to support it.

(6) Exhibits must be clearly marked to show the party proffering the exhibit, and the exhibit number.

(7) All pleadings shall be submitted to the presiding officer at least 20 days prior to the date upon which the matter that is the subject of the pleadings will be decided.

(8) An original of all pleadings, affidavits, briefs, memoranda, and exhibits will be filed with the division. The presiding officer may direct any party to provide additional copies as needed.

(9)(a) Upon the issuance of a notice of agency action or after receipt of a request for agency action, the presiding officer shall provide notice to all parties of the pending adjudicative proceeding.

(b) Any response to a notice of agency action or request for agency action must be submitted within 30 days of the mailing date of the notice of agency action or the notice required under Subsection 63G-4-201(3)(d), which shall include:

(i) the docket number or other reference number;

(ii) the name of the adjudicative proceeding;

(iii) a statement of the relief that the respondent seeks;

(iv) a statement of the facts; and

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

(10) The presiding officer may extend the response time for good cause.

R657-2-9. Parties.

(1) Parties to an adjudicative proceeding shall be persons who have a statutory right to be parties and persons who have a legally-protected interest or right in the subject matter which may be affected by the proceeding.

(2) The division will be considered a party to all adjudicative proceedings conducted by the Wildlife Board.

R657-2-10. Appearances and Representation.

(1) Parties shall enter their appearances at the beginning of the hearing or at such time as may be designated by the presiding officer by stating:

- (a) the party's full name and address; and
- (b) the party's position or interest in the proceeding.

(2) Any individual or an agent designated by an individual, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency, may represent his, her, or its interest in the proceeding.

(3) Any party may be represented by an attorney or legal representative as authorized and permitted by the Utah State Bar and state law.

(4) Subject to the limitations imposed by the presiding officer to ensure the adjudicative proceeding is conducted in an orderly and efficient manner, each party to an adjudicative proceeding may participate in the hearing and may introduce evidence, examine and cross-examine each witness, make arguments, and participate generally in the proceeding.

R657-2-11. Notice and Service.

(1) Timely notice of all proceedings shall be given to all parties and any other person who, in the opinion of the presiding officer, has a direct interest in the proceeding.

(2) When a party is represented by an attorney or other authorized representative, service upon the attorney or representative shall constitute service upon the party.

(3) Any person desiring notification by mail from the Wildlife Board or division of specific matters may request to be notified by filing the name, address, telephone number, and specific matters for which the person seeks notification.

R657-2-12. Discovery.

(1)(a) Discovery for informal hearings is prohibited and the division or Wildlife Board may not issue subpoenas or other discovery orders.

(b) Upon motion by a party to a formal hearing, and for good cause shown, the presiding officer may authorize discovery against another party to a formal hearing, including the division, as provided in the Utah Rules of Civil Procedure.

(2) All parties may have access, upon request, to information contained in division files and all materials and information gathered in any investigation pertinent to the adjudicative proceeding, to the extent permitted under Title 63G, Chapter 2 - Governmental Records Access and Management Act and under Title 63G, Chapter 4 - Administrative Procedures Act.

(3) Subpoenas and other orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the presiding officer when requested by any party, or may be issued by the presiding officer at the presiding officer's discretion in the interest of just, fair, and economic decision making.

R657-2-13. Prehearing Procedure.

The presiding officer may, upon written notice to all parties of record, hold a prehearing conference to:

- (1) formulate or simplify the issues;
- (2) obtain admission of fact and documents that will avoid unnecessary introduction of evidence or other efforts of establishing proof of a matter asserted;
- (3) arrange for the exchange of proposed exhibits; and
- (4) agree to matters that may expedite the orderly conduct of the proceedings or its settlement.

R657-2-14. Continuance.

(1) Any party may, by filing a motion, request the presiding officer to continue an adjudicative proceeding, provided the motion is filed within a reasonable time prior to the date of the hearing and proper notice is given to the other parties to the proceeding. The presiding officer may grant such a request and continue the proceeding until the next regularly scheduled meeting, or another more convenient time, unless in the presiding officer's judgement, it would be contrary to the just and fair resolution of the proceeding.

(2) The Wildlife Board, on its own motion, or on the motion of the division, may order the continuance of any proceeding until the next regularly scheduled meeting of the Wildlife Board in order to allow adequate time for division staff to evaluate any evidence presented during a hearing.

R657-2-15. Intervention.

(1) A person may not intervene in an informal adjudicative proceeding, unless allowed by the presiding officer for good cause.

(2) A person may file a petition for an order granting leave to intervene in a formal adjudicative proceeding as provided in Section 63G-4-207 and in accordance with the following:

(a) Any petition to intervene or materials filed after the date a response is due may be considered at the next regularly scheduled meeting only upon separate motion of the intervenor made at or before the hearing for good cause shown.

(b) Any party to a formal adjudicative proceeding in which intervention is sought may make an oral or written response to the petition for intervention. The response shall:

- (i) state the basis for opposition to intervention and may suggest limitations to be placed upon the participation of the intervenor if intervention is granted; and
- (ii) be presented or filed at or before the hearing.

(3) The presiding officer will consider the petition for an order granting leave to intervene and any response in determining whether to allow a party to intervene.

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

(5) Where two or more intervenors have substantially the same interests and positions in the proceeding the presiding officer may at any time during the proceeding limit the number of intervenors who will be permitted to testify, cross-examine witnesses, or make and argue motions and objections.

R657-2-16. Hearings, Evidence, and Argument.

(1)(a) After the commencement of an adjudicative proceeding, the presiding officer may hold a hearing if:

- (i) a hearing is required by statute or rule; or
- (ii) a hearing is requested by a party within 30 days after the commencement of the adjudicative proceeding.

(b) The presiding officer may, at the presiding officer's discretion, initiate a hearing to determine matters within the presiding officer's authority.

(2) Notice of the hearing shall be served on all parties by regular mail at least 10 days prior to the hearing.

(3) If the hearing is informal, it shall be conducted in accordance with the provisions of Section 63G-4-203. If the hearing is formal it shall be conducted in accordance with the provisions of Section 63G-4-206.

(4)(a) An informal hearing may be conducted without adherence to the rules of evidence required in judicial proceedings. The Utah Rules of Evidence shall be used as a guide for evidentiary matters in formal hearings.

(b) The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence from the hearing.

(c) The weight given to evidence shall be determined by the presiding officer.

(5) Hearsay evidence is admissible in informal and formal hearings consistent with Utah law governing the admissibility of such in administrative adjudicative proceedings.

(6) Documentary evidence may be received in the form of copies or excerpts and, upon request, parties shall be given an opportunity to compare the copy with the original.

(7) Upon the conclusion of taking evidence, the presiding officer may, in the presiding officer's discretion, permit the parties to make closing oral arguments.

R657-2-17. Burden of Proof.

The petitioner shall have the burden of proof by preponderance of the evidence in all adjudicative proceedings.

R657-2-18. Record of Hearing.

(1) The division or Wildlife Board may record any informal hearing. The division or Wildlife Board shall record formal hearings.

(2)(a) Any party, at the party's own expense, may have a reporter, approved by the division or Wildlife Board, prepare a transcript from the record of the hearing and shall furnish a transcript of the testimony to the division or Wildlife Board free of charge.

(b) This transcript shall be available at the Salt Lake division office to any party to the hearing.

R657-2-19. Failure to Appear - Default.

(1) When a party or the party's authorized representative to a proceeding fails to appear at a hearing after due notice has been given, the presiding officer may:

(a) continue the matter;

(b) enter an order of default as provided by Section 63G-4-209; or

(c) hear the matter in the absence of the defaulting party.

R657-2-20. Decisions and Orders.

(1) After the presiding officer has reached a final decision upon the adjudicative proceeding, the presiding officer shall issue a signed order in writing:

(a) in accordance with Section 63G-4-203(1)(c) for orders issued at the conclusion of an informal hearing; and

(b) in accordance with Section 63G-4-208 for orders issued at the conclusion of a formal hearing.

R657-2-21. Agency Review.

(1)(a) When a division action is taken by a division employee, other than the director acting as the presiding officer, any aggrieved party may seek review of the order.

(b) The request for review shall be made to the director in accordance with Section 63G-4-301(1).

(c) Except as provided in Section 63G-4-401(2), review by the director is a prerequisite for judicial review.

(2) Requests for review of an action within the statutory or regulatory purview of the division shall:

(a) be filed with the director within 30 days after the issuance of the order; and

(b) be sent to each party.

(3) The request for review shall be reviewed by the director or the assistant director, when designated by the director.

(4)(a) Unless otherwise provided by law, all reviews shall be based on the record before the presiding officer.

(b) In order to assist in review, parties, upon request,

may be allowed to file briefs or other documents explaining their position.

(5) Parties are not entitled to a hearing on review unless:

(a) specifically allowed by statute; or

(b) the director grants a hearing to assist the review.

(6) Notice of any hearing shall be mailed to all parties within 10 days of the hearing.

(7)(a) Within a reasonable time after the filing of any response, other filings, or after any hearing, the director shall issue a written order on review and mail a copy of the order on review to each party.

(b) The order on review shall contain the items, findings, conclusions, and notices set forth in Subsection 63G-4-301(6)(c).

R657-2-22. Judicial Review.

(1) Any party aggrieved by final division or Wildlife Board action may obtain judicial review of such action pursuant to Sections 63G-4-401, 63G-4-402, and 63G-4-403, except where judicial review is expressly prohibited by statute.

(2) A petition for judicial review shall be filed within 30 days after the date the order constituting final agency action is issued.

(3) A party may seek judicial review of an action taken by the division or Wildlife Board only after exhausting all administrative remedies available, including those available through the Wildlife Board and the regional advisory councils, as required herein, unless a court of competent jurisdiction makes a finding that requiring exhaustion:

(a) would result in irreparable injury; or

(b) would serve no useful purpose.

R657-2-23. Declaratory Orders.

(1) Pursuant to Section 63G-4-503, any person may file a request for agency action requesting that the division or Wildlife Board issue a declaratory order determining the applicability of any statute, rule, or order within the primary jurisdiction of the division or Wildlife Board.

(2) A request for a declaratory order shall set forth:

(a) the specific statute, rule, or order which is in question;

(b) the specific facts for which the order is requested;

(c) the manner in which the person making the request claims the statute, rule, or order may affect him or her; and

(d) the specific questions for which a declaratory order is requested.

(3) The division or Wildlife Board may, in their discretion, decline to issue declaratory orders where they deem the facts presented to be conjectural, or where the public interest would best be served by not issuing such an order.

R657-2-24. Emergency Orders.

The division or Wildlife Board may issue an order on an emergency basis without complying with this rule under the circumstances and procedures set forth in Section 63G-4-502.

KEY: wildlife, administrative procedures

July 3, 2002

Notice of Continuation May 3, 2017

63G-4-203

23-14-2.1

R657. Natural Resources, Wildlife Resources.**R657-4. Possession of Live Game Birds.****R657-4-1. Purpose and Authority.**

(1) Under authority of Sections 23-13-4, 23-14-18, and 23-14-19, the Wildlife Board has established this rule for the possession, importation, purchase, propagation, sale, barter, trade, or disposal of live game birds.

(2) The provisions of Rule R657-3 do not apply to activities conducted by holders of a valid certificate of registration for aviculture to the extent those activities are covered by this rule.

R657-4-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aviculture installation" means an enclosed place such as a pen or aviary where privately owned game birds are propagated or kept, and restricts the game birds from escaping into the wild.

(b) "Commercial use" means, for purposes of this rule, the sales of any game birds authorized by the certificate of registration in excess of \$5,000 annually.

(c) "Game bird" means;

(i) crane;

(ii) Blue, Ruffed, Sage, Sharp-tailed, and Spruce grouse;

(iii) Chukar, Red-legged, and Hungarian partridge;

(iv) pheasant;

(v) Band-tailed Pigeon;

(vi) Bobwhite, California, Gambel's, Harlequin, Mountain, and Scaled quail;

(vii) waterfowl;

(viii) Common Ground, Inca, Mourning, and White-winged dove;

(ix) wild or pen-reared wild turkey of the following subspecies:

(A) Eastern;

(B) Florida or Osceola;

(C) Gould's;

(D) Merriam's;

(E) Ocellated; and

(F) Rio Grande; and

(x) ptarmigan.

(d) "Pen-reared wild turkey" means any turkey or turkey egg held under human control that:

(i) is imprinted on other poultry or humans; and

(ii) has morphological characteristics of wild turkeys.

(e) "Wild turkey" means recognized subspecies and hybrids of free-ranging turkeys hatched in the wild. Recognized subspecies and hybrids between subspecies include Eastern, Florida or Osceola, Gould's, Merriam's, Ocellated, and Rio Grande.

R657-4-3. Certificates of Registration.

(1) Except as provided in Subsections R657-4-3(5) and R657-4-7(2), a person may not possess, import, purchase, propagate, sell, barter, trade, or dispose of any live game bird, or the eggs of any game bird, without first obtaining a certificate of registration for aviculture from the division.

(2) Any person who has obtained a certificate of registration for aviculture may possess, import, purchase, propagate, sell, barter, trade, or dispose of only those species of game birds designated on that person's certificate of registration.

(3) Certificates of registration for aviculture:

(a) are not transferable; and

(b) are valid for five years from the date of issuance.

(4)(a) Any person who has applied for and obtained a certificate of registration for aviculture must comply with all

state, federal, city, and other municipality laws, rules, and regulations pertaining to the possession of live game birds.

(b) A person shall not operate a hatchery or offer any chicks, poults, or hatching eggs for sale in Utah without first obtaining a hatchery license from the Department of Agriculture and Food as provided in Section 4-29-4.

(5) A person who acquires live game birds is not required to obtain a certificate of registration:

(a) if the game birds are used for training dogs as provided in Rule R657-46;

(b) if the game birds are used for the sport of falconry and:

(i) each game bird held in possession is banded with a metal leg band purchased from the division;

(ii) the game birds are not held in possession longer than 60 days;

(iii) a bill of sale establishing proof of purchase from a legal source is in possession; and

(iv) a valid entry permit number and a certificate of veterinary inspection has been obtained from the Department of Agriculture and Food as provided in Rule R58-1 if the game birds are imported into Utah; or

(c) for holding game birds in temporary storage while the game birds are in transit through Utah provided the birds are identified as to their source and destination and are not removed from the shipping containers.

R657-4-4. Application for a Certificate of Registration.

(1) A person may obtain a certificate of registration for aviculture by submitting a completed application and the appropriate fee to the regional division office in the area in which the aviculture installation is to be located.

(2) If the applicant is under the age of 18, a parent or guardian must co-sign the application and is responsible for compliance with this rule and all other associated laws.

(3) A person may apply to renew a certificate of registration on or three months before the date on which the certificate of registration expires.

R657-4-5. Exhibit of Certificate of Registration, Game Birds, and Equipment.

A conservation officer or any other peace officer may request any person engaged in activities covered under this rule to exhibit:

(1) the person's certificate of registration, permit, health certificate, bill of sale, or proof of ownership;

(2) any game birds held in possession; or

(3) any device, apparatus, or facility used for activities covered under this rule.

R657-4-6. Unlawful Possession -- Release of Game Birds.

(1) A person may not:

(a) take any live game bird or the egg of any game bird from the wild, except as provided in Rules R657-3 and R657-6 and the proclamation of the Wildlife Board for taking upland game;

(b) release or abandon any live game bird without first obtaining written authorization from the division director or appropriate regional supervisor as provided in Subsection (2), except that game birds may be released for training dogs or raptors as provided in Rule R657-46; or

(c) release any wild turkey or pen-reared wild turkey from captivity.

(2) A person must submit a letter requesting permission to release game birds and must include the operator's:

(a) name, address and telephone number;

(b) certificate of registration number;

(c) area and date of intended release;

(d) species to be released;

(e) number and sex of each species to be released; and
 (f) a statement from a veterinarian that the birds have been tested for *Salmonella pullorum* or come from a source flock that participates in the National Poultry Improvement Plan (NPIP).

(3) In determining whether to allow the release of a game bird as allowed under Subsection (1)(b), the division shall consider:

(a) the potential release site and its relative impact on wildlife and wildlife habitat;

(b) the species or subspecies of game birds to be released; and

(c) the activity for which the game birds are to be released.

(4)(a) Any game bird that escapes from captivity becomes the property of the state of Utah.

(b) The director may authorize the destruction of any escaped game birds that may impact wildlife.

(5) The division may dispose of game birds or their eggs held in possession in violation of this rule.

(6) Game birds or their eggs held in captivity must be confined to the registered aviculture installation, except when in transit or being displayed.

R657-4-7. Importation of Live Game Birds and Eggs of Game Birds.

(1) Except as provided in Subsection (2) and Section R657-4-3(5), a person importing live game birds or the eggs of game birds into Utah must first obtain:

(a) a valid entry permit number and a certificate of veterinary inspection from the Department of Agriculture and Food as provided in Rule R58-1 and in accordance with Section 4-29-2; and

(b) a certificate of registration from the division.

(2) A nonresident importing live game birds into Utah is not required to obtain a certificate of registration for aviculture unless the game birds remain in Utah longer than 72 hours.

R657-4-8. Sale or Purchase of Live Game Birds.

(1)(a) Any person who sells, barter, trades, or disposes of a live game bird or the egg of a game bird to another person must provide a bill of sale.

(b) The transferer's certificate of registration number must be written on the bill of sale.

(2)(a) Any person who possesses, imports, purchases, propagates, sells, barter, trades, or disposes of live game birds must keep a record of each transaction that includes:

(i) the species;

(ii) the number and sex of the game birds;

(iii) the name and address of each party to the transaction; and

(iv) the date of the transaction.

(b) The records required under Subsection (a) must be maintained for five years.

R657-4-9. Penalty for Violation.

A violation of any provision of this rule is punishable as provided in Section 23-13-11.

KEY: wildlife, birds, game laws, aviculture

August 5, 2002

Notice of Continuation May 3, 2017

23-14-18

23-14-19

23-13-4

R657. Natural Resources, Wildlife Resources.**R657-22. Commercial Hunting Areas.****R657-22-1. Purpose and Authority.**

Under authority of Section 23-17-6, this rule provides the procedures and requirements for establishing, maintaining, and operating a CHA.

R657-22-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "CHA" means Commercial Hunting Area.

(b) "Commercial hunting area" means a parcel of land where pen-raised or propagated game birds are released for the purpose of allowing hunters to take them for a fee.

(c) "Game bird" means, for the purpose of this rule only, all species of partridge, pheasant, and quail authorized for release on a CHA.

(d) "Operator" means a person, group, or business entity, including their agents, employees and contractors, that manages, owns, administers, or oversees the activities and operations of a CHA. Operator further includes any person, group or business entity that employs or contracts another to serve or act as an operator.

R657-22-3. Application for a Certificate of Registration.

(1)(a) A certificate of registration is required before any person may operate a CHA.

(b) An application for a CHA certificate of registration must be completed and returned to the regional office where the proposed CHA is located by May 1.

(2)(a) Any application that does not clearly and legibly verify ownership or lease by the applicant as required in Subsection (3), of all property for which the application applies shall be returned to the applicant.

(b) Discovery of property after issuance of the CHA certificate of registration, which is not approved by its owner or lessee to be included in the CHA, shall immediately void the CHA certificate of registration.

(3)(a) The application must be accompanied by:

(i) County Recorder Plat maps, or equivalent maps, dated by receipt of purchase within 30 days of submitting the CHA application, depicting boundaries and ownership of all property within the CHA; and

(ii) U.S. Geological Survey topographical maps, no smaller scale than 7 1/2 minutes, with the proposed boundaries clearly marked;

(iii) evidence of ownership of the property, such as a copy of a title, deed, or tax notice that provides evidence the applicant is the owner of the property described; or

(iv) a lease agreement for the period of the CHA certificate of registration, listing the name, address and telephone number of the lessor, that provides evidence the applicant is the lessee of the hunting or shooting rights of the property described;

(v) the address of any propagation or game bird holding facility not located on the CHA property; and

(vi) the annual CHA certificate of registration fee for the first year of operation.

(4) The division may return any application that is incomplete, completed incorrectly, or that is not accompanied by the information required in Subsection (3).

(5)(a) Review and processing of the application may require up to 45 days.

(b) More time may be required to process an application if the applicant requests authorization from the Wildlife Board for a variance to this rule.

(6) Applications are not accepted for a CHA that is within 1/4 mile of any existing state wildlife or waterfowl

management area without requesting a variance from the Wildlife Board.

(7) The division may deny any application or impose provisions on the CHA certificate of registration that are more restrictive than this rule in the interest of wildlife or wildlife habitat.

(8) Commercial Hunting Area certificates of registration are effective from the date issued through June 30 of the third consecutive year.

(9) The annual CHA certificate of registration fee for the second and third years of operation must be submitted when invoiced.

(10) Rights granted by a CHA certificate of registration are not transferable or assignable.

R657-22-4. Renewal of Certificate of Registration.

(1) A certificate of registration may be renewed by completing a renewal application and paying a CHA certificate of registration renewal fee.

(2)(a) Renewal applications must be completed and submitted to the division regional office in which the CHA is located by May 1 immediately prior to the June 30 expiration date identified on the current CHA certificate of registration.

(b) Any application that does not clearly and legibly verify ownership or lease by the applicant as required in Subsection (3), of all property for which the application applies shall be returned to the applicant.

(c) Discovery of property during the CHA certificate of registration period, which is not approved by its owner or lessee to be included in the CHA, shall immediately void the CHA certificate of registration.

(3)(a) The renewal application must be accompanied by:

(i) a lease agreement extending through the period of the CHA certificate of registration being applied for listing the name, address and telephone number of the lessor, that provides evidence the applicant is the lessee of the hunting or shooting rights of the property described;

(ii) an annual report as provided in Subsection R657-22-6(2); and

(iii) any change in property ownership differing from ownership identified in the CHA certificate of registration immediately preceding the current application, including updated maps as provided in Subsection R657-22-3(3)(a) if the CHA boundaries change.

R657-22-5. Conditions for Approval Initial and Renewal Applications.

(1) Initial and renewal applications may be denied by the division if the applicant or operator, or any of its agents or employees:

(a) violated any provision of this rule, the Wildlife Resources Code, a CHA certificate of registration, or the CHA application;

(b) obtained or attempted to obtain a CHA certificate of registration by fraud, deceit, falsification, or misrepresentation;

(c) is employed, contracted through writing or verbal agreement, assigned, or requested to apply and act as the operator by a person, group, or business entity that will directly or indirectly benefit from the CHA, but would otherwise be ineligible under this rule or by virtue of suspension under Section 23-19-9 to operate a CHA if they applied directly as the operator; or

(d) engaged in conduct that results in the conviction of, a plea of no contest to, a plea held in abeyance, or a diversion agreement to a crime of moral turpitude, or any other crime that when considered with the functions and responsibilities of a CHA operator bears a reasonable relationship to the operator's or applicant's ability to safely and responsibly

operate a CHA.

(2) If an application is denied, the division shall state the reasons in writing within 30 days of denial.

R657-22-6. Records and Reports -- Annual Report.

(1) The operator of a CHA shall maintain complete and accurate records of:

(a) the number, species, and source of any game birds purchased or propagated;

(b) health certificates for all game birds purchased from outside the state of Utah;

(c) the number, species and date the game birds are released; and

(d) the number, species and date of game birds taken within the CHA boundary, including wild game birds; and

(e) copies of the bill of sale issued to hunters and any other person who purchases game birds.

(2) Each operator must submit an annual report on a form provided by the division within 30 days of the close of the season or at the time of renewal, including:

(a) the number of game birds by species that were released and the total number of game birds taken by hunters or sold;

(b) the date, source, and number of the game birds purchased; and

(c) the number of game birds by species held in possession on April 15.

(3) All records must be maintained on the hunting premises or the principal place of business for three years and must be available for inspection by the division.

(4) Falsifying or fabricating any record or report is prohibited and may result in forfeiture of CHA opportunities.

R657-22-7. Boundary Marking.

(1) The CHA area must be posted:

(a) at least every 300 feet along the outer boundary of all hunted areas; and

(b) on all corners, streams, rivers, drainage divides, roads, gates, trails, rights-of-way, dikes, canals, and ditches crossing the boundary lines.

(2) Each sign used to post the property must be at least 8-1/2 by 11 inches and must clearly state:

(a) the name of the CHA as designated on the CHA certificate of registration;

(b) the words "No Trespassing"; and

(c) wording indicating the sign is located on the CHA boundary.

(3)(a) If the CHA operator fails to renew a CHA certificate of registration or a renewal application is denied, all signs shall be immediately removed.

(b) The division may remove and dispose of any signs that are not removed within 30 days after the termination of the CHA certificate of registration.

(4) Commercial hunting area activities may only be conducted on property properly posted and specifically authorized in the CHA certificate of registration.

(5) Commercial hunting area operators may not post or otherwise restrict public access on public roads, right-of-ways, or easements within the CHA.

R657-22-8. Acreage Requirements.

(1)(a) The minimum acreage accepted for a CHA is 160 acres in a single, connected tract.

(b) The maximum acreage accepted for a CHA is 1,920 acres in a single, connected tract.

(2) A CHA may not be established closer than 1/4 mile of a wildlife management area, or waterfowl management area, unless otherwise allowed by a variance of the Wildlife Board.

(3) The Wildlife Board may allow a variance to the acreage requirements provided in Subsection (1) if no more than 1,920 acres are to be used for hunting at any one time.

R657-22-9. Bill of Sale Required.

(1) The operator of a CHA shall issue a bill of sale to each person who has taken a game bird from the CHA.

(2) The bill of sale shall be issued prior to the transportation of any bird from the CHA.

(3) The bill of sale must include:

(a) the person's name;

(b) the date the game birds were taken or purchased;

(c) the species, number of game birds, and sex of the game birds; and

(d) the name of the CHA where the game birds were taken or purchased.

R657-22-10. Importation.

(1) A CHA certificate of registration allows the importation of live game birds provided the operator first obtains a valid certificate of veterinary inspection covering each imported game bird, and further receives an import permit from the Utah Department of Agriculture and Food consistent with the requirements of Rule R58-1.

(2) The health certificate must contain an entry permit number from the Department of Agriculture as provided in Section R58-1-4.

R657-22-11. Disease Protocol.

(1) The division may:

(a) investigate any reported disease and take any necessary action to control a contagious or infectious disease affecting domestic animals, wildlife, or public health; or

(b) order a veterinarian or certified pathologist's report of a suspected disease at the operator's expense, and may order quarantine, immunization, testing, or other sanitary measures.

(2)(a) The division may order the destruction and disposal of any game bird found to have an untreatable disease which poses a potential threat or health risk to domestic poultry, humans, or wildlife, as determined by the division, the Department of Agriculture, or the Department of Health.

(b) Actions taken pursuant to Subsection (a) shall be:

(i) at the operator's expense; and

(ii) accomplished by following procedures acceptable to the division that ensure the disease is not transmitted to wildlife, domestic animals, or humans.

(3)(a) Commercial hunting area operators must take reasonable precautions to prevent and control the spread of infectious diseases among pen-raised game birds under their control including the requirements as provided in Subsection (b) and Section R657-22-10.

(b) Commercial hunting area operators must obtain a statement from a veterinarian that the birds have been tested for Salmonella pullorum or come from a source flock that participates in the National Poultry Improvement Plan (NPIP).

(c) Commercial hunting area operators who have a current CHA certificate of registration must comply with the requirement in Subsection (b) within six months from the effective date of this rule.

R657-22-12. Authorized Species.

The only game birds that may be released or propagated under the authority of a CHA certificate of registration are species of partridge, pheasant, or quail, including any subspecies.

R657-22-13. Inspection of Game Birds, Premises, and Records.

(1)(a) Certificates of registration are issued upon the express condition that the operator agrees to permit the division and public health and safety officials to enter and inspect the premises, facilities, and all required records and health certificates to ensure the CHA is in compliance with this rule and other applicable laws.

(b) Commercial hunting area operators must allow the division and public health and safety officials reasonable access to conduct the inspections authorized in Subsection (1)(a).

(2) Inspections shall be made during reasonable hours.

R657-22-14. Restrictions on Release and Harvest.

(1)(a) Except as provided in Subsection R657-22-16(2)(e), game birds raised or held in possession under this rule may be released only on the CHA property.

(b) Each game bird released must be healthy, capable of flight, and free of disease.

(c) A person may not retard or restrict a game bird's ability to fly or run by clipping, brailling, blinding, pinioning, harnessing, or drugging.

(2) At least 100 game birds of each authorized species, or as approved by the Wildlife Board, or otherwise stated on the CHA certificate of registration, shall be released on the CHA during the current operating year.

(3)(a) Operators may not allow the harvest of more than 85% of each species released, except as provided in Subsection (b).

(b) There is no limit to the percentage of game birds that may be harvested that are not, in the opinion of the division, established as a wild population in the vicinity of the CHA. Any variance to Subsection (a) shall be indicated on the CHA certificate of registration.

(4) Only those game birds obtained from the following sources may be released or held in possession on a CHA:

(a) an aviculturist, certified as provided in Rule R657-4;

(b) a CHA, certified under this rule; or

(c) a source located outside of Utah provided the game birds are imported as provided in Rule R58-1.

(5) Protected wildlife not authorized for release on the CHA may be hunted only during their respective seasons as provided in the rules and proclamations of the Wildlife Board.

R657-22-15. Recapture.

(1)(a) Trapping game birds alive or retrapping game birds that have been released is permitted only:

(i) within the CHA area boundaries;

(ii) from September 1 through April 2; and

(iii) for wild species listed on the CHA certificate of registration as not established in the area.

(b) Any game bird that escapes from the CHA becomes the property of the state of Utah and may not be recaptured.

(2) Any game bird trapped alive may not be recounted or added to the total number of birds released when computing the number which may be taken as provided in Subsection R657-22-14(3).

R657-22-16. Propagation.

(1) The CHA certificate of registration allows the propagation of those species of game birds held in possession as indicated on the CHA certificate of registration.

(2) Any game birds held in possession under this rule must be released on the CHA or may be sold:

(a) to a private wildlife farm, certified as provided in Rule R657-4;

(b) a CHA, certified under this rule;

(c) to a person located outside of Utah;

(d) to a person for consumption; or

(e) for use in training dogs or the sport of falconry as provided in Rule R657-46.

(3)(a) If a CHA game bird is held in possession at any location other than that listed on the application or transferred alive to any other location, prior authorization must be obtained from the division or must be authorized on the CHA certificate of registration.

(b) Authorization for the possession of live game birds for any primary purpose other than being released to allow hunters to take them for a fee may be obtained under the provisions of Rule R657-4 or Rule R657-46.

R657-22-17. Season Dates.

(1)(a) Hunting on CHA areas is permitted from September 1 through March 31.

(b) The Wildlife Board may authorize a variance to the dates provided in Subsection (a) if:

(i) wild game birds do not nest within the location of the CHA or surrounding areas; and

(ii) there are no detrimental effects to other species of wildlife.

(2) If September 1 falls on a Sunday, the season will open on August 31.

(3) The director may extend the season up to fifteen days, provided wild nesting game birds are not adversely affected.

R657-22-18. Hunting Hours and Hunter Requirements.

(1) Game birds may be taken on a CHA only one-half hour before sunrise through one-half hour after sunset, except on a CHA located adjacent to a state wildlife or waterfowl management area, game birds may be taken one-half hour before sunrise through sunset.

(2) Any person hunting within the state on any CHA must meet hunter education requirements as provided in Section 23-17-6.

R657-22-19. Suspension.

The division may suspend a CHA certificate of registration for a CHA as authorized under Section 23-19-9 and Rule R657-26.

**KEY: game birds, wildlife, wildlife law
May 8, 2007**

Notice of Continuation May 3, 2017

**63G-4-203
23-17-6**

R657. Natural Resources, Wildlife Resources.**R657-30. Fishing License for the Terminally Ill.****R657-30-1. Purpose and Authority.**

Under Section 23-19-36, this rule provides the procedures for a terminally ill person to obtain a free fishing license.

R657-30-2. Procedures for Obtaining a Free Fishing License.

(1) A resident may receive a fishing license free of charge upon providing the following information to a division office:

(a) Verification signed by a physician stating the applicant:

(i) is terminally ill; and

(ii) has less than five years to live; and

(b) One of the following documents stating the person is receiving assistance under a low income public assistance program administered by the Department of Human Services:

(i) A Medicaid identification card for the current month;

(ii) A food stamp identification card for the current year;

or

(iii) A document stating the person is receiving Supplemental Security Income.

(2) If a person is not a recipient of a public assistance program administered by the Department of Human Services or is unable to produce one of the documents required under Subsection (b), the person must provide the division with an affidavit signed by the Office of Family Support stating that he qualifies for a low income public assistance program.

KEY: wildlife, licensing, terminally ill*, fishing, rules and procedures

1992

23-19-36

Notice of Continuation May 3, 2017

R657. Natural Resources, Wildlife Resources.**R657-44. Big Game Depredation.****R657-44-1. Purpose and Authority.**

Under authority of Section 23-16-2, 23-16-3, 23-16-3.1, 23-16-3.2 and 23-16-4, this rule provides:

- (1) the procedures, standards, requirements, and limits for assessing big game depredation; and
- (2) mitigation procedures for big game depredation.

R657-44-2. Definitions.

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-16-1.1.

(2) In addition:

(a) "Alternate drawing list" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

(b) "Cleared and planted land" means private land or privately leased state or federal land used to produce a cultivated crop for commercial gain and the cultivated crop is routinely irrigated or routinely mechanically or manually harvested, or is crop residue that has forage value for livestock.

(c) "Commercial gain" means intent to profit from cultivated crops through an enterprise in support of the crop owner's livelihood.

(d) "Damage incident period" means 90 days, or some longer period as approved in writing by the division, during which the division shall take action to prevent further depredation and during which compensation for damage will be calculated.

(e) "Irrigated" means the controlled application of water for agricultural purposes through man-made systems to supply water not satisfied by rainfall.

(f) "Livestock Forage" means any forage, excluding cultivated crops and crop residues, meant for consumption by livestock, not routinely irrigated or routinely mechanically or manually harvested.

(g) "Mitigation permit" means a nontransferable hunting permit issued directly to a landowner or lessee, authorizing the landowner or lessee to take specified big game animals for personal use within a designated area.

(h) "Mitigation permit voucher" means a document issued to a landowner or lessee, allowing the landowner or lessee to designate who may obtain a big game mitigation permit.

(i) "Nuisance" describes a situation where big game animals are found to have moved off formally approved management units onto adjacent units or other areas not approved for that species.

(j) "Once-in-a-lifetime species" for the purposes of this section, includes bull moose and bison, bighorn sheep, and mountain goat regardless of sex.

(k) "Private land" means land in private fee ownership and in agricultural use as provided in Section 59-2-502 and eligible for agricultural use valuation as provided in Section 59-2-503 and 59-2-504. Private land does not include tribal trust lands.

R657-44-3. Damage to Cultivated Crops, Fences, or Irrigation Equipment by Big Game Animals.

(1) If big game animals are damaging cultivated crops on cleared and planted land, or fences or irrigation equipment on private land, the landowner or lessee shall immediately, upon discovery of big game damage, request that the division take action by notifying a division representative in the appropriate regional office pursuant to Section 23-16-3(1).

(2) Notification may be made:

- (a) orally to expedite a field investigation; or
- (b) in writing to a division representative in the

appropriate division regional office.

(3)(a) The regional supervisor or division representative shall contact the landowner or lessee within 72 hours after receiving notification to determine the nature of the damage and take appropriate action for the extent of the damage experienced or expected during the damage incident period.

(b) The division shall consider the big game population management objectives as established in the wildlife unit management plan approved by the Wildlife Board.

(c) Division action shall include:

(i) removing the big game animals causing depredation; or

(ii) implementing a depredation mitigation plan pursuant to Sections 23-16-3(2)(b) through 23-16-3(2)(f) and approved in writing by the landowner or lessee.

(4)(a) The division mitigation plan may incorporate any of the following measures:

(i) sending a division representative onto the premises to control or remove the big game animals, including:

(A) herding;

(B) capture and relocation;

(C) temporary or permanent fencing; or

(D) removal, as authorized by the division director or the division director's designee;

(ii) recommending to the Wildlife Board an antlerless big game hunt in the next big game season framework;

(iii) scheduling a depredation hunter pool hunt in accordance with Sections R657-44-7, R657-44-8, or R657-44-9;

(iv) issuing mitigation permits to the landowner or lessee for the harvest of big game animals causing depredation during a general or special season hunt authorized by the Wildlife Board, of which:

(A) the hunting area for big game animals may include a buffer zone established by the division that surrounds, or is adjacent to, the lands where depredation is occurring;

(B) the landowner or lessee may retain no more than five antlerless deer, five doe pronghorn, and two antlerless elk;

(C) each qualified recipient of a mitigation permit will receive from the division a Mitigation Permit Hunting License that satisfies the hunting license requirements in R657-44-11(c) to obtain the mitigation permit.

(D) the Mitigation Permit Hunting License does not authorize the holder to hunt small game; nor does it qualify the holder to apply for or obtain a cougar, bear, turkey, or other big game permit.

(v) issuing big game mitigation permit vouchers for use on the landowner's or lessee's private land during a general or special hunt authorized by the Wildlife Board of which:

(A) mitigation permit vouchers for antlerless deer may authorize the take of one or two deer as determined by the division;

(B) the division may not issue mitigation permit vouchers for moose, bison, bighorn sheep, or mountain goat; and

(C) the hunting area for big game animals may include a buffer zone established by the division that surrounds, or is adjacent to, the landowner's or lessee's private lands where depredation is occurring.

(b) The mitigation plan may describe how the division will assess and compensate for damage pursuant to Section 23-16-4.

(c) The landowner or lessee and the division may agree upon a combination of mitigation measures to be used pursuant to Subsections (4)(a)(i) through (4)(a)(v), and a payment of damage pursuant to Section 23-16-4.

(d) The agreement pursuant to Subsection (4)(c) must be made before a claim for damage is filed and the mitigation

measures are taken.

(5) Vouchers may be issued in accordance with Subsection (4)(a)(v) to:

- (a) the landowner or lessee; or
- (b) a landowner association that:
 - (i) applies in writing to the division;
 - (ii) provides a map of the association lands;
 - (iii) provides signatures of the landowners in the association; and
 - (iv) designates an association representative to act as liaison with the division.

(6) In determining appropriate mitigation, the division shall consider the landowner's or lessee's revenue pursuant to Subsections 23-16-3(2)(f) and 23-16-4(3)(b).

(7) Mitigation permits or vouchers may be withheld from persons who have violated this rule, any other wildlife rule, the Wildlife Resources Code, or are otherwise ineligible to receive a permit.

(8)(a) The options provided in Subsections (4)(a)(i) through (4)(a)(v) are for antlerless animals only.

(b) Deer and pronghorn hunts may be August 1 through December 31, and elk hunts may be August 1 through January 31.

(9)(a) The division director may approve mitigation permits or mitigation permit vouchers issued for antlered animals.

(b) A mitigation permit may be issued to the landowner or lessee to take big game for personal use, provided the division and the landowner or lessee desires the animals to be permanently removed.

(c) A mitigation permit voucher may be issued to the landowner or lessee, provided:

(i)(A) the division determines that the big game animals in the geographic area significantly contribute to the wildlife management units;

(B) the landowner or lessee agrees to perpetuate the animals on their land; and

(C) the damage, or expected damage, to the landowner's or lessee's cleared and planted land equals or exceeds the expected value of the mitigation permit voucher on that private land within the wildlife unit; or

(ii)(A) the big game damage occurs on the landowner's or lessee's cleared and planted land;

(B) the division and the affected landowner or lessee desire the animals to be permanently removed; and

(C) the damage, or expected damage, to the cleared and planted land equals or exceeds the expected value of the mitigation permit voucher on that private land within the wildlife unit.

(d) The hunting area for a mitigation permit or permit voucher issued under this subsection includes the landowner's or lessee's cleared and planted land where the depredation occurs and may include a buffer zone established by the division that surrounds, or is adjacent to, that land.

(10)(a) If the landowner or lessee and the division are unable to agree on the assessed damage, they shall designate a third party pursuant to Subsection 23-16-4(3)(d).

(b) Additional compensation may be paid above the value of any mitigation permits or vouchers granted to the landowner or lessee if the damage exceeds the value of the mitigation permits or vouchers.

(11)(a) The landowner or lessee may revoke approval of the mitigation plan agreed to pursuant to Subsection (4)(c).

(b) If the landowner or lessee revokes the mitigation plan, the landowner or lessee must request that the division take action pursuant to Section 23-16-3(1)(a).

(c) Any subsequent request for action shall start a new 72-hour time limit as specified in Section 23-16-3(2)(a).

(12) The expiration of the damage incident period does

not preclude the landowner or lessee from making future claims.

(13) The division may enter into a conservation lease with the landowner or lessee of private land pursuant to Section 23-16-3(5).

R657-44-4. Landowner or Lessee Authorized to Kill Big Game Animals.

(1) The landowner or lessee is authorized to kill big game animals damaging cultivated crops on cleared and planted land pursuant to Section 23-16-3.1.

(2) The expiration of the damage incident period does not preclude the landowner or lessee from making future claims.

R657-44-5. Compensation for Damage to Crops, Fences, or Irrigation Equipment on Private Land.

(1) The division may provide compensation to landowners or lessees for damage to cultivated crops on cleared and planted land, or fences or irrigation equipment on private land caused by big game animals pursuant to Sections 23-13-3 and 23-16-4.

(2) For purposes of compensation, all depredation incidents end on June 30 annually, but may be reinstated July 1.

R657-44-6. Damage to Livestock Forage on Private Land.

(1)(a) If big game animals are damaging livestock forage on private land, the landowner or lessee shall immediately, upon discovery of big game damage, request that the division take action to alleviate the depredation problem pursuant to Section 23-16-3, and as provided in Subsections R657-44-3(1) through R657-44-3(4)(a)(v), and R657-44-3(5) and R657-44-3(8)(a).

(b) In determining appropriate mitigation, the division shall consider the landowner's or lessee's revenue pursuant to Subsections 23-16-3(2)(f) and 23-16-4(3)(b).

(c) Damage to livestock forage is not eligible for monetary compensation from the division.

(2)(a) Antlerless deer and doe pronghorn hunts may occur August 1 through December 31, and antlerless elk hunts may occur August 1 through January 31.

(b) Antlerless permits shall not exceed ten percent of the animals on the private land, with a maximum of twenty permits per landowner or lessee, except where the estimated population for the management unit is significantly over objective.

(c) Mitigation permits or vouchers may be withheld from persons who have violated this rule, any other wildlife rule, the Wildlife Resources Code, or are otherwise ineligible to receive a permit.

(3) The division may enter into a conservation lease with the landowner or lessee of private land pursuant to Subsection 23-16-3(5).

(4) Permits and vouchers for antlered animals using livestock forage on private land are issued only through the provisions provided in Rule R657-43.

R657-44-7. Depredation and Nuisance Hunts for Buck Deer, Bull Elk or Buck Pronghorn or Once-in-a-Lifetime Species.

(1)(a) Buck deer, bull elk, buck pronghorn or once-in-a-lifetime species depredation and nuisance hunts that are not published in the guidebook of the Wildlife Board for taking big game may be held.

(b) Buck deer, bull elk, buck pronghorn or once-in-a-lifetime species depredation and nuisance hunts may be held when the buck deer, bull elk, buck pronghorn or once-in-a-lifetime species are:

(i) causing damage to cultivated crops on cleared and planted land, or fences or irrigation equipment on private land;

(ii) a significant public safety hazard; or

(iii) determined to be nuisance.

(2) The depredation or nuisance hunts may occur on short notice, involve small areas, and be limited to only a few hunters.

(3) Pre-season depredation hunters shall be selected using:

(a) hunters possessing an unfilled limited entry buck deer, bull elk, buck pronghorn or once-in-a-lifetime species permit for that limited entry or once-in-a-lifetime unit;

(b) hunters from the alternate drawing list for that limited entry or once-in-a-lifetime unit; or

(c) general permittees for that unit through the depredation hunter pool pursuant to Section R657-44-9, provided the animals being hunted are determined by the appropriate regional division representative, to not come from a limited entry or once-in-a-lifetime unit.

(4) Post-season depredation or nuisance animal hunters shall be selected using:

(a) hunters from the alternate drawing list for that limited entry or once-in-a-lifetime unit;

(b) hunters from the alternate drawing list from the nearest adjacent limited entry or once-in-a-lifetime unit; or

(c) general permittees for that unit through the depredation hunter pool pursuant to Section R657-44-9, provided the animals being hunted are determined by the appropriate regional division representative, to not come from a limited entry or once-in-a-lifetime unit.

(5) A person may participate in the depredation hunter pool, for depredation or nuisance hunts pursuant to Subsections (3)(c) and (4)(c), as provided in Section R657-44-9.

(6)(a) Hunters who are selected for a limited entry buck deer, bull elk, buck pronghorn or once-in-a-lifetime species depredation or nuisance hunt must possess an unfilled, valid, limited entry buck deer, bull elk, buck pronghorn or once-in-a-lifetime species permit for the species to be hunted, or must purchase the appropriate permit before participating in the depredation or nuisance hunt.

(b) Hunters who are selected for a general buck deer or bull elk depredation hunt must possess an unfilled, valid, general buck deer or bull elk permit, respectively.

(7) The buck deer, bull elk, buck pronghorn or once-in-a-lifetime species harvested during a depredation or nuisance hunt must be checked with the division within 72 hours of the harvest.

(8) If a hunter is selected from the alternate drawing list for a depredation or nuisance hunt in a limited entry or once-in-a-lifetime unit and harvests a trophy animal or a once-in-a-lifetime species, that person shall lose their bonus points and incur the appropriate waiting period as provided in Rule R657-5.

(9)(a) Hunters with depredation or nuisance hunt permits for buck deer, bull elk, buck pronghorn or once-in-a-lifetime species may not possess any other permit for those species, except as provided in the guidebook of the Wildlife Board for taking big game and Rule R657-5.

(b) A person may not take more than one buck deer, bull elk, buck pronghorn or once-in-a-lifetime species in one calendar year.

R657-44-8. Depredation and Nuisance Hunts for Antlerless Deer, Elk, Moose or Doe Pronghorn.

(1) When deer, elk, pronghorn or moose are causing damage to cultivated crops on cleared and planted land, or livestock forage, fences or irrigation equipment on private

land, or are determined to be nuisance, antlerless or doe hunts not listed in the guidebook of the Wildlife Board for taking big game may be held. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) Depredation or nuisance animal hunters shall be selected using:

(a) hunters possessing an antlerless deer, elk, moose or doe pronghorn permit for that unit;

(b) hunters from the alternate drawing list for that unit; or

(c) the depredation hunter pool pursuant to Section R657-44-9.

(3) The division may contact hunters to participate in a depredation or nuisance hunt prior to the general or limited entry hunt for a given species of big game. Hunters who do not possess an antlerless deer, elk, moose or doe pronghorn permit shall purchase an appropriate permit.

(4) Hunters with depredation or nuisance hunt permits for antlerless deer, elk, moose or doe pronghorn may not possess any other permit for those species, except as provided in the guidebook of the Wildlife Board for taking big game and Rule R657-5.

R657-44-9. Depredation Hunter Pool.

(1) When deer, elk, pronghorn, or once-in-a-lifetime species are causing damage or are determined to be nuisance, hunts not listed in the guidebooks of the Wildlife Board for taking big game may be held. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) Hunters shall be selected pursuant to Subsections R657-44-7(3), R657-44-7(4), and R657-44-8(2).

(3) A hunter pool application does not affect eligibility to apply for any other big game permit. However, hunters who participate in any deer, elk, pronghorn or once-in-a-lifetime species depredation or nuisance hunt may not possess an additional permit for that species during the same year, except as provided in Rule R657-5 and the guidebooks of the Wildlife Board for taking big game.

(4) A person who has obtained a once-in-a-lifetime species depredation or nuisance hunt permit and has successfully harvested an animal may not obtain any other once-in-a-lifetime permit or hunt during any other once-in-a-lifetime hunt for that species as provided in R657-5, except for

(5) The division shall develop a process by which hunters can apply to the depredation hunter pool and post that process on the division website.

(6) Hunters who have not obtained the appropriate deer, elk, pronghorn or once-in-a-lifetime species permit shall purchase an appropriate permit.

R657-44-10. Appeal Procedures.

(1) Upon the petition of an aggrieved party to a final division action relative to big game depredation and this rule, a qualified hearing examiner shall take evidence and make recommendations to the Wildlife Board, who shall resolve the grievance in accordance with Rule R657-2.

R657-44-11. Hunting or Combination License Required.

(1) A person must possess or obtain a Utah hunting or combination license to receive a big game mitigation permit or depredation permit pursuant to this rule.

(a) a hunting or combination license must be possessed or purchased by the person redeeming a mitigation permit voucher for the corresponding permit.

(b) under circumstances where the division issues a depredation permit, the designated recipient must possess or purchase a Utah hunting or combination license to receive the

permit.

KEY: wildlife, big game, depredation

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Notice of Continuation May 18, 2017

23-16-2

23-16-3

23-16-3.5

R710. Public Safety, Fire Marshal.**R710-1. Concerns Servicing Portable Fire Extinguishers.****R710-1-1. Purpose.**

The purpose of this rule is to establish licensing requirements for business concerns servicing portable fire extinguishers and to establish the requirements for certificates of registration of persons servicing portable fire extinguishers, to establish service tag requirements, to outline adjudicative proceedings and to establish a fee schedule.

R710-1-2. Authority.

This rule is authorized by Section 53-7-204.

R710-1-3. Definitions.

- (1) "Annual" means a period of one year or 365 calendar days.
- (2) "Board" means Utah Fire Prevention Board.
- (3) "Branch Office" means any location, other than the primary business location, where business license, telephone, advertising and servicing equipment is utilized.
- (4) "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.
- (5) "Concern" means a person, firm, corporation, partnership, or association, licensed by the SFM.
- (6) "Employee" means those persons who work for a licensed concern, and may include, but shall not be limited to, those persons who work on a contractual basis.
- (7) "License" means a written document issued by the SFM authorizing a concern to engage in the business of servicing portable fire extinguishers.
- (8) "NFPA" means National Fire Protection Association.
- (9) "Repair" means any work performed on, or to, any portable fire extinguisher, and not defined as charging, recharging, or hydrostatic testing.
- (10) "USDOT" means the United States Department of Transportation.

R710-1-4. Licensing.**(1) License Required.**

No person or concern shall engage in the servicing of portable fire extinguishers without a license issued by the SFM, pursuant to these rules, expressly authorizing such concern to perform such acts.

(2) Application.

(a) Application for a license to engage in the business of, or perform the servicing of portable fire extinguishers, shall be made in writing to the SFM on forms provided by the SFM. A separate application for license shall be made for each separate place or business location of the applicant (branch office).

(b) The application for a license to engage in the business of, or perform the servicing of portable fire extinguishers, shall be accompanied with proof of public liability insurance. The public liability insurance shall be issued by a public liability insurance carrier showing coverage of at least \$100,000 for each incident, and \$300,000 in total coverage. The licensee shall notify the SFM within thirty days after the public liability insurance coverage required is no longer in effect for any reason.

(3) Signature of Application.

The application shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association other than a partnership, it shall be signed by a principal officer.

(4) Equipment Inspection.

The applicant or licensee shall allow the SFM, and any

of his properly authorized deputies to enter, examine, and inspect any premise, building, room, establishment, or vehicle, used by the applicant in servicing portable fire extinguishers to determine compliance with the provisions of these rules. The inspection will be conducted during normal business hours, and the owner or manager will be given a minimum of 24 hour notice before the appointed inspection. The equipment inspection may be conducted on an annual basis, and consent to inspect will be obtained. The applicant, license holder or certified employee of the license holder, may be asked during the inspection by the SFM or any of his deputies, to demonstrate skills or knowledge used in servicing of portable fire extinguishers.

(5) Issuance.

Following receipt of the properly completed application, and compliance with the provision of the statute and these rules, the SFM shall issue a license.

(6) Original License and Inspection.

Original licenses shall be valid for one year from the date of application. Thereafter, each license shall be renewed annually and renewals shall be valid for one year from issuance. No original license shall be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM.

(7) Renewal License and Inspection.

Application for renewal shall be made as directed by the SFM. The failure to renew the license will cause the license to become invalid. No renewal license will be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM. Renewal dates for licensed concerns will be based upon the expiration date. Licenses are valid for a one year period of time.

(8) Change of Address.

Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of his address or location.

(9) Under Another Name.

No licensee shall conduct his licensed business under a name other than the name or names which appears on his license.

(10) Inspection.

The holder of any license shall submit such license for inspection upon request of the SFM, or any of his properly authorized deputies, or any local fire official.

(11) SFM Notification and Certification of Registration.

Every licensed concern shall, within thirty (30) days of employment, and within thirty (30) days of termination of any employee, report to the SFM in writing, the name, address, and certificate of registration number, of every person performing any act of servicing portable fire extinguishers for such licensed concern.

(12) Type.

(a) Every license shall be identified by type. The type of license issued shall be determined on the basis of the act or acts performed by the licensee or by any of the employees. Every licensed concern shall be staffed by qualified personnel, and shall be properly equipped to perform the act or acts for the type of license issued.

(b) Licenses shall authorize any one, or any combination of the following types of activities:

(i) Type 1 - Conducting of all activities, as per (2), (3), and (4) below, or

(ii) Type 2 - Conducting hydrostatic tests of fire extinguisher cylinders using the water jacket or ultrasonic test methods after receiving a Retesters Identification Number (RIN) issued by the United States Department of Transportation (USDOT), or

(iii) Type 3 - Conducting hydrostatic tests of fire extinguisher cylinders using the proof pressure test method after receiving a Retesters Identification Number (RIN) issued

by the United States Department of Transportation (USDOT), or

(iv) Type 4 - Servicing, inspecting, and maintaining all types of extinguishers, excluding hydrostatic testing.

(c) No licensed concern shall be prohibited from taking orders for the performance of any act or acts for which the concern has not been licensed to perform. Such orders shall be consigned to another licensed concern that is authorized to perform such act or acts.

(13) Examination.

Every person who performs any act or acts within the scope of the license shall pass an examination in accordance with the provisions of section 4 of these rules.

(14) Duplicate License.

A duplicate license may be issued by the SFM to replace any previously issued license, which has been lost or destroyed, upon the submission of a written statement from the licensee to the SFM. Such statement shall attest to the fact that the license has been lost or destroyed.

(15) Employer Responsibility.

Every concern shall be responsible for the acts of its employees insofar as such acts apply to the marketing, sale, distribution, and servicing of any portable fire extinguisher.

(16) Minimum Age.

No license shall be issued to any person as licensee who is under eighteen (18) years of age.

(17) Restrictive Use.

(a) No license shall constitute authorization for any licensee, or any of their employees, to enter upon, or into, any property or building other than by consent of the owner or manager.

(b) No license shall constitute authorization for any licensee, or any of their employees, to enforce any provision, or provisions, of this rule, or the International Fire Code.

(18) Non-Transferable.

No license issued pursuant to this section shall be transferred from one concern to another.

(19) Registration Number.

(a) Every license shall be identified by a number, delineated as E-(number). Such number may be transferred from one concern to another only when approved by the SFM.

(20) Minimum Materials and Equipment Required.

At each business location or vehicle of the applicant where servicing work is performed the following minimum material and equipment requirements shall be maintained:

(a) Type 4 license:

(i) Nitrogen tank.

(ii) Nitrogen regulator and hose assembly.

(iii) Minimum of twelve (12) recharge adapters.

(iv) Valve cleaning brush.

(v) Scoop.

(vi) Funnel for A:B:C.

(vii) Funnel for B:C.

(viii) A closed receptacle for dry chemical.

(ix) Fifty pound scale.

(x) A scale for cartridges.

(xi) 'O' Ring lubricant.

(xii) Tag hole Punch.

(xiii) Approved seals maximum 14 pound break strength.

(xiv) A copy of NFPA Standard 10 2010 Edition, statute, and these rules.

(xv) Minimum parts:

(A) A supply of O rings needed for standard service.

(B) A supply of valve stems for standard service.

(C) A supply of nozzles and hoses for standard extinguishers.

(D) Pressure gauges for extinguisher types: 100, 150, 175, 195, 240 lbs.

(E) Carry handles and replacement handles for extinguishers.

(F) Rivets or steel roll pins for handles and levers.

(G) Dry chemical cartridges as required by manufacture specifications, to include 4 lb., 10 lb., 20 lb. and 30 lb.

(H) Inspection light for cylinders.

(J) A variety of pull pins to secure handle.

(K) Carbon Dioxide continuity tester for hoses.

(L) Halon closed recovery system.

(b) Type 3 License:

(i) Approved testing pump with a current calibration certificate for the attached gauges.

(ii) Test cage or suitable safety barrier.

(iii) Approved hydro test labels.

(iv) Hydrostatic test adapters or approved equal.

(v) Heater which produces a heated air or dry air for drying cylinders, or other approved dryer not to exceed 150 degrees Far. (66 degrees C).

(c) Type 2 License:

Current registration number from the United States Department of Transportation (USDOT), verifying the concern as a qualified cylinder requalification facility under the provisions of the Code of Federal Regulations, 49 CFR, Section 173.34, shall be maintained for all concerns holding a type 1 or 2 license. A copy of the certification letter must be submitted to the SFM. All equipment required to perform the functions allowed as a qualified cylinder requalification facility, shall be maintained in good working order and available for inspection by the SFM.

(d) Type 1 License:

All of the equipment, provisions, and numbers as required in License types 2, 3, and 4 shall be required for a Type 1 License.

(21) Records.

Accurate records shall be maintained for five (5) years by the licensee of all service work performed. These records shall include the name and address of all servicing locations, and the date and name of the person performing the work. These records shall be made available to the SFM, or authorized deputies, upon request.

R710-1-5. Certificates of Registration.

(1) Required Certificates of Registration.

No person shall service any portable fire extinguisher without a certificate of registration issued by the SFM pursuant to these rules expressly authorizing such person to perform such acts. The provisions of this section apply to the state, universities, a county, city, district, public authority, and any other political subdivision or public corporation in this State.

(2) Exemptions.

The provisions of this section shall not apply to any person servicing any portable fire extinguisher owned by such person, when the portable fire extinguisher is not required by any statute, rule, or ordinance, to be provided or installed.

(3) Application.

Application for a certificate of registration to service portable fire extinguishers shall be made in writing to the SFM on forms provided by him. The application shall be signed by the applicant.

(4) Examination.

The SFM shall require all applicants for a certificate of registration to take and pass a written examination, which may be supplemented by practical tests, when deemed necessary, to determine the applicant's knowledge of servicing portable fire extinguishers. Picture identification of the applicant for a certificate of registration may be requested by the SFM or his deputies. Examinations will be given according to the following schedule and requirements:

(a) On the first and third Tuesdays of each month. When holidays conflict with these days, the day immediately following will be used. An appointment shall be made to take an examination at least 24 hours in advance of the examination date.

(b) Examinations may be given at various field locations, or on line, as deemed necessary by the SFM. Appointments for field examinations are required.

(c) All certification examinations given are open book examinations. The applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination. Any other materials to include cellular telephones, I-Pads, tablets, etc. are prohibited in the examination room unless specifically approved by the SFM.

(d) Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.

(e) Each certification examination taken has a time limit of two hours to completion. To successfully pass the written examination, the applicant must obtain a minimum grade of seventy percent (70%). Leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant.

(f) If there are different levels of proficiency in the subject matter, the lower proficiency level will be fully completed before the next higher proficiency will be administered.

(5) Issuance.

Following receipt of the properly completed application, compliance with the provisions of these rules, and the successful completion of the required examination, the SFM shall issue a certificate of registration.

(6) Original and Renewal Valid Date.

Original certificates of registration shall be valid for one year from the date of application. Thereafter, each certificate of registration shall be renewed annually and renewals shall be valid for one year from issuance. The holder of an invalid certificate of registration shall not perform any work on portable fire extinguishers.

(7) Renewal Date.

Application for renewal shall be made as directed by the SFM. The failure to renew will cause the certificate of registration to become invalid. Renewal dates for certification of registration will be based upon the concern license renewal date and be valid for one year. Renewal certificate of registrations shall be prorated monthly, and monthly fees already paid in that time period shall be credited towards the renewal fee.

(8) Re-examination.

Every holder of a valid certificate of registration shall take a re-examination every five years, from date of original certificate, to comply with the provisions of Section 4.4 of these rules as follows:

(a) The re-examination to comply with the provisions of Section 4.4 of these rules shall consist of one open book examination, to be administered by the SFM at least 60 days before the renewal date.

(b) The re-examination will consist of questions that focus on changes in the last five years to NFPA 10, the statute, or the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or the SFM.

(c) The certificate holder is responsible to complete the re-examination in sufficient time to renew.

(d) The certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

(9) Refusal to Renew.

The SFM may refuse to renew any certificate of registration in the same manner and for any reason that he is authorized, pursuant to Section 10, to deny an original certificate of registration. The applicant shall, upon such refusal, have the same rights as are granted by Section 10 of these rules to an applicant for an original certificate of registration which has been denied by the SFM.

(10) Inspection.

The holder of a certificate of registration shall submit such certificate for inspection, upon request of the SFM, any of his properly authorized deputies, or any local fire official.

(11) Type.

(a) Every certificate of registration shall indicate the type of act or acts to be performed and for which the applicant has qualified.

(b) No person holding a valid certificate of registration shall be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

(12) Change of Address.

Any change in home address of any holder of a valid certificate of registration shall be reported in writing, by the registered person to the SFM within thirty (30) days of such change. Such change shall also be made on the reverse side of the certificate of registration by the holder.

(13) Duplicate.

A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the SFM from the certified person. Such statement shall attest to the certificate having been lost or destroyed.

(14) Minimum Age.

No certificate of registration shall be issued to any person who is under 18 years of age.

(15) Restrictive Use.

(a) A certificate of registration may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

(b) Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a certificate of registration has qualified shall be permissible by such applicant.

(16) Right to Contest.

(a) Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination.

(b) Every contention as to the validity of individual questions of an examination shall be made in writing within 48 hours after taking said examination. Contentions shall state the reason for the objection.

(c) The decision as to the action to be taken on the submitted contention shall be by the SFM, and such decision shall be final.

(d) The decision made by the SFM, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

(17) Non-Transferable.

Certificates of Registration shall not be transferable. Individual certificates of registration shall be carried by the person to whom issued.

(18) New Employees.

New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid certificate of registration for a period not to exceed forty-five (45) days from the initial date of employment. By the end of such period, new employees shall have taken and passed the required examination.

(19) Certificate Identification.

Every certificate shall be identified by a number, delineated as EE-(number). Such number shall not be transferred from one person to another.

R710-1-6. Seal of Registration.

(1) Description.

The official seal of registration of the SFM shall consist of the following:

(a) The image of the State of Utah shall be in the center with an outer ring stating, "Utah State Fire Marshal".

(i) The top portion of the outer ring shall have the wording "Utah State".

(ii) The Bottom portion of the outer ring shall have the wording "Fire Marshal".

(b) Appending above the top portion and in a centered position, shall be a box provided for displaying the type of license.

(c) Appending below the bottom portion and in a centered position, shall be a box provided for the displaying of the license number assigned to the concern.

(2) Use of Seal.

No person or concern shall produce, reproduce, or use this seal in any manner or for any purpose except as herein provided.

(3) Permissive Use.

Licensed concerns shall use the Seal of Registration on every service tag conforming to section 10.

(4) Cease Use Order.

No person or concern shall continue the use of the Seal of Registration in any manner or for any purpose after receipt of a notice in writing from the SFM to that effect, or upon the suspension or revocation of the concern's license.

(5) Legibility.

Every reproduction of the Seal of Registration and every letter and number placed thereon, shall be of sufficient size to render such seal, letter, and number distinct and clearly legible.

R710-1-7. Service Tags.

(1) Size and Color.

Tags shall be not more than five and one-half inches in height, nor less than four and one-half inches in height, and not more than three inches in width, nor less than two and one-half inches in width.

(2) Attaching Tag.

One service tag shall be attached to each portable fire extinguisher in such a position as to be conveniently inspected.

(3) Tag Information.

(a) Service tags shall bear the following information:

(i) Provisions of Section 6.7.

(ii) Type of license.

(iii) Approved Seal of Registration of the SFM.

(iv) License registration "E" number.

(v) Certificate of registration "EE" number of individual who performed or supervised the service or services performed.

(vi) Signature of individual whose certificate of registration number appears on the tag.

(vii) Concern's name.

(viii) Concern's address.

(ix) Type of service performed.

(x) Type of extinguisher serviced.

(xi) Date service is performed.

(b) The above information shall appear on one side of the service tag. All other desired printing or information shall be placed on the reverse side of the tag.

(4) Legibility.

(a) The certificate of registration number required in

Section 7.3(5), and the signature required in Section 7.3(6), shall be printed or written distinctly.

(b) All information pertaining to date, type of servicing, and type of extinguisher serviced shall be indicated on the card by perforations in the appropriate space provided. Each perforation shall clearly indicate the desired information.

(5) Format.

Subject to the use requirements of Section 6.4, the following format shall be used for all service tags:

EXAMPLE OF SERVICE TAG

Exception: Service tags may be printed or otherwise established for any number of years not in excess of five years.

ILLUSTRATION ON FILE IN STATE FIRE MARSHAL'S OFFICE

(6) New Tag.

A new service tag shall be attached to the extinguisher each time a service is performed.

(7) Tag Wording.

The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

(8) Removal.

No person or persons shall remove a service tag, hydrostatic test tag or label, 6 year maintenance service tag or label, or verification of service collar, except when further service is performed. At that time the expired tag, label or collar shall be removed and a new tag, label or collar shall replace the expired one. No person or persons shall deface, modify, or alter any service tag, hydrostatic test tag or label, 6 year maintenance service tag or label, or verification of service collar that is required to be attached to any portable fire extinguisher.

(9) Restrictive Use.

(a) Portable fire extinguishers which do not conform with the minimum rules, shall be permanently removed from service, and shall not be tagged.

(b) Any extinguisher which fails a hydrostatic test shall be condemned, and so stamped or etched into the cylinder or shell.

(c) Extinguishers, other than one which has failed a hydrostatic test, may be provided with a tag stating the extinguisher is "Condemned" or "Rejected". Such tags shall be red in color, and shall be not less, in size, than that of an approved service tag.

(d) Service tags shall only be placed on portable fire extinguishers and wheeled units as allowed in these rules.

R710-1-8. Portable Fire Extinguisher Rated Classification Labels.

(1) Use of Label.

Any label bearing the rated classification and listing shall not be placed upon any extinguisher unless specifically authorized by the manufacturer. Any extinguisher, other than carbon dioxide, without this manufacturer's label shall not be serviced.

(2) Labels Prohibited.

Company labels or advertisement stickers other than those required herein shall not be affixed to fire extinguishers.

R710-1-9. Amendments and Additions.

(1) Restricted Service.

Any extinguisher requiring a hydrostatic test as required, shall not be serviced until such extinguisher has been subjected to, and passed the required hydrostatic test.

(2) Service.

At the time of installation, and at each annual inspection, all servicing shall be done in accordance with the manufacturer's instructions, adopted statutes, and these rules.

Extinguishers shall be placed in an operable condition, free from defects which may cause malfunctions. Nozzles and hoses shall be free of obstructions or substances which may cause an obstruction.

(3) Seals or Tamper Indicator.

Seals or tamper indicators shall be constructed of approved plastic or non-ferrous wire which can be easily broken, and so arranged that removal cannot be accomplished without breakage. Such seals or tamper indicators shall be used to retain the locking pin in a locked position. Seals or tamper indicators shall be removed annually to ensure that the pull pin is free.

(4) New Extinguishers

A new extinguisher that has the date of manufacture printed on the label by the manufacturer, or date of manufacture stamped on the extinguisher by the manufacturer, does not require a service tag attached to the extinguisher until one year after the date of manufacture.

(5) Those existing sodium or potassium bicarbonate dry-chemical portable fire extinguishers, having a minimum rating of 40-B, and specifically placed for protection of commercial food heat-processing equipment, may remain in the kitchen to be used for other applications, except the protection of commercial food heat-processing equipment using vegetable or animal oils or fat cooking media.

R710-1-10. Adjudicative Proceedings.

(1) All adjudicative proceedings performed by the agency shall proceed informally as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

(2) The issuance, renewal, or continued validity of a license or certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant, person employed for, or the person having authority and management of a concern servicing portable fire extinguishers commits any of the following violations:

(a) The person or applicant is not the real person in interest.

(b) The person or applicant provides material misrepresentation or false statement on the application.

(c) The person or applicant refuses to allow inspection by the SFM, or his duly authorized deputies.

(d) The person or applicant for a license or certificate of registration does not have the proper facilities and equipment to conduct the operations for which application is made.

(e) The person or applicant for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application is made, as evidenced by failure to pass the examination and/or practical tests pursuant to Section 4.15 of these rules.

(f) The person or applicant fails to place a verification of service collar when required on the valve assembly of any fire extinguisher when the following occurs:

(i) re-charge;

(ii) required maintenance.

(g) The person or applicant refuses to take the examination required by Section 5.3 and Section 4.14 of these rules.

(h) The person or applicant has been convicted of one or more federal, state or local laws.

(j) The person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

(k) Any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a license or certificate of registration.

(l) There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the

applicant or person to safely and competently engage in the practice of servicing portable fire extinguishers.

(3) A person whose license or certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the Board if requested by that person within 20 days after receiving notice.

(4) All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

(5) The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

(6) The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

(7) Reconsideration of the Board decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

(8) After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose license or certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

(9) Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63G-4-402.

R710-1-11. Fees.

(1) Payment of Fees.

The required fee shall accompany the application for license or certificate of registration. License or certificate of registration fees will be refunded if the application is denied.

(2) Late Renewal Fees.

(a) Any license or certificate of registration not renewed before the license or certificate of registration expiration date will be subject to an additional fee equal to 10% of the fee.

(b) When a certificate of registration has expired for more than one year, an application shall be made for an original certificate as if the application was being made for the first time. Examinations will be re-taken with initial examination fees.

KEY: fire prevention, extinguishers

August 15, 2016

Notice of Continuation May 2, 2017

53-7-204

R710. Public Safety, Fire Marshal.**R710-2. Rules Pursuant to the Utah Fireworks Act.****R710-2-1. Purpose.**

The purpose of this rule is to establish the minimum safety standards for retail storage, handling, and sale of class C common state approved explosives indoor or outdoor; and requirements for licensing of importer, wholesaler, display operator, special effects operator, flame effects operator, and flame effect performing artist.

R710-2-2. Authority.

This rule is authorized by Section 53-7-204.

R710-2-3. Definitions.

(1) "AHJ" means authority having jurisdiction, and includes such county and municipal officers who are charged with the enforcement of state and municipal laws; consisting of all fire enforcement officials including designated staff from the Utah State Department of Public Safety.

(2) "Aerial device" means a cake that is a collection of mine/shell tubes that has a single covered fuse which is used to light several tubes in sequence. A cake may also be defined as an aerial repeater or multi-shot aerial and does not exceed more than 500 grams of pyrotechnic composition.

(3) "Bin" means a container or enclosed space for storing or displaying aerial fireworks that would reasonably limit the effect of the pyrotechnic material if ignited, and would not allow rapid spread of the fire to areas away from the immediate area of ignition.

(4) "Constant Visual Supervision" means that visual supervision is continually occurring or regularly recurring.

(5) "Covered fuse" means a fuse or designed point of ignition that is protected against accidental ignition by contact with a spark, smoldering item or small open flame.

(6) "Designated Store Employee" means a specific employee assigned that title or the employee who works at the work station where the measurement was taken to the aerial fireworks display.

(7) "Direct Line of Sight" means there is a clear unobstructed view to the aerial fireworks display.

(8) "Flame Effects" means Flame Effects Operator or Flame Effects Performing Artist.

(9) "Flame Effects Performing Artist" means a fire spinner, fire dancer or fire performer who is paid to perform professionally in a public location.

(10) "ICC" means International Code Council, Inc.

(11) "IFC" means International Fire Code, 2015 edition.

(12) "Licensed Operator" means any person who discharges, ignites, supervises, manages, oversees or directs the discharge of display fireworks, special effects fireworks, flame effects or flame effects performing artist.

(13) "NAFAA" means the North American Fire Arts Association.

(14) "NFPA" means National Fire Protection Association.

(15) "Permanent structure" means a non-movable building, securely attached to a foundation, housing a business.

(16) "Person" means an individual, company, partnership or corporation.

(17) "Pre-packaged" means that the product is wrapped in a clear plastic wrap or other equivalent material to prevent the fuse of the class C common state approved explosive from being accessible to the customer.

(18) "Resale" means the act of reselling class B or C explosives to a new party.

(19) "SFM" means the State Fire Marshal.

(20) "Tent" means a temporary structure, enclosure or shelter constructed of fabric or pliable material supported by

any manner except by air or the contents it protects.

(21) "Temporary Stands and Trailers" means a non-permanent structure used exclusively for the sale of fireworks.

R710-2-4. General Requirements.

(1) No person shall engage in any type of retail storage or sale of class C common state approved explosives, without first having obtained a license to sell fireworks from the authority having jurisdiction, if required.

(2) If a municipality or county in which fireworks are offered for sale, requires a seller to obtain a license, it shall be available at the store or stand for presentation upon request to authorized public safety officials.

(3) All fireworks retail sales locations shall be under the direct supervision of a responsible person who is 18 years of age or older.

(4) Those selling fireworks at retail sales locations shall be at least 16 years of age or older.

(5) A salesperson shall remain at the sales location at all times unless suitable locking devices or secured metal storage containers are provided to prevent the unauthorized access to the merchandise by others.

(6) Class C common state approved explosives shall not be sold to any person under the age of 16 years, unless accompanied by an adult.

(7) All retail sales locations shall be kept clear of dry grass or other combustible material for a distance of at least 25 feet in all directions.

(8) Storage of class C common state approved explosives shall not be located in residences to include attached garages.

(9) "No Smoking" signs shall be conspicuously posted at all sales and storage locations.

(10) A sign, clearly visible to the general public, shall be posted at all fireworks sales locations, indicating the legal dates for discharge of fireworks.

(11) All retail sales locations shall be equipped with an approved, portable fire extinguisher having a minimum 2A rating.

(12) Class C common state approved explosives shall only be stored, handled, displayed, and sold as packaged units with covered fuses.

R710-2-5. Indoor Sales.

(1) Display of class C common state approved explosives inside of buildings shall be so located to ensure constant visual supervision.

(2) In all retail sales locations in permanent structures, the area where class C common state approved explosives are displayed or stored shall be at least 50 feet from any flammable liquid or gas, or other highly combustible material.

(3) In permanent structures, retail sales displays of Class C common state approved explosives shall not be placed in locations that would impede egress from the building.

(4) Display of Class C common state approved explosives inside of buildings protected throughout with an automatic fire sprinkler system shall not exceed 25 percent of the area of the retail sales floor or exceed 600 square feet, whichever is less.

(5) Display of Class C common state approved explosives inside of buildings not protected with an automatic fire sprinkler system shall not exceed 125 pounds of pyrotechnic composition. Where the actual weight of the pyrotechnic composition is not known, 25 percent of the gross weight of the consumer fireworks, including packaging, shall be permitted to be used to determine the weight of the pyrotechnic composition.

(6) Display of Class C common state approved explosives inside of buildings shall not exceed a height

greater than six feet above the floor surface.

(7) Rack storage of Class C common state approved explosives inside of buildings is prohibited.

R710-2-6. Temporary Stands, Trailers and Tents.

(1) Temporary stands, trailers and tents less than 200 square feet used for the retail sales of class C common state approved explosives shall be constructed in compliance with local rules, or if none, in accordance with nationally recognized practice. Tents having an area in excess of 200 square feet shall comply with IFC, Chapter 31.

(2) The general public shall not be allowed to enter a temporary stand or trailer.

(3) Each stand, trailer or tent less than 200 square feet shall have a minimum three foot wide unobstructed aisle, running the length of the stand, trailer or tent.

(4) All tents where customers enter inside shall have a minimum three foot wide unobstructed aisle and two separate exits located a reasonable distance apart and so located that if one is blocked the other will be available.

(5) The area used for sales of class C common state approved explosives in stands, trailers or tents shall be arranged to permit the customer to only touch or handle pre-packaged class C common state approved explosives. All non pre-packaged class C common state approved explosives shall be displayed in a manner which prevents the fireworks from being handled by the customer without the direct intervention of the retailer who shall be able to maintain visual contact with the customer.

(6) Temporary stands, trailers or tents for the sale of class C common state approved explosives shall be located at least 50 feet from other stands, trailers, tents, LPG, flammable liquid or gas storage and dispensing units.

(7) If the stand or trailer is used for the overnight storage of class C common state approved explosives, it shall be equipped with suitable locking devices to prevent unauthorized entry.

(a) Tents shall not be used for overnight storage of class C common state approved explosives unless on site security is provided.

(8) No person shall be allowed to sleep in any temporary stand, trailer or tent in which class C common state approved explosives are stored or sold.

(9) Stands, trailers or tents shall not be illuminated or heated by any device requiring an open flame or exposed heating elements.

(a) All heaters shall be approved by the AHJ.

(10) All illumination shall be installed in accordance with the temporary wiring section of the National Electric Code and approved by the AHJ.

R710-2-7. Display, Sale, and Signage of Aerial Devices.

(1) In addition to those requirements in Sections R710-2-4 through R710-2-6, all aerial devices shall be packaged and displayed for sale in a manner that would provide public safety by completing one of the following:

(a) provide constant visual supervision by direct line of sight by a designated store employee where the aerial display is not more than 25 feet from the designated employee's work station;

(b) provide constant visual supervision by direct line of sight by a store employee when all of the following requirements are met:

(i) the aerial display shall not be more than 40 feet from the designated employee's work station.

(ii) the aerial devices are restrained by using at least one of the following methods:

(A) the aerial devices are placed in a bin or bins that meets the definition stated in Section R710-2-3; or

(B) the aerial device shall have an additional layer of packaging requiring that the additional layer of packaging be punctured or torn to gain access to the fuse cover; or

(c) place the aerial devices in an area that is physically separated from the public so that the customer cannot handle the aerial devices without the assistance of an employee.

(2) Where aerial devices are sold in permanent structures, the aerial device display shall be placed in a location that gives the customer access to the aerial devices just before the customer checks out and exits the store.

(3) Wherever aerial devices are sold, there shall be signage with a minimum font of one inch, to warn and inform the customer of the dangers of aerial devices and the signage shall state the following:

(a) aerial fireworks are designed to travel up to 150 feet into the air and then explode;

(b) aerial fireworks shall be placed on a hard level surface outdoors, in a clear and open area prior to ignition;

(c) anyone under the age of 16 shall not handle or operate aerial fireworks;

(d) ignition of aerial fireworks shall be a minimum of 30 feet from any structure or vertical obstruction;

(e) aerial fireworks shall not be ignited within 150 feet of the point of sale; and

(f) please read and obey all safe handling instructions before using aerial fireworks.

R710-2-8. Display Operator, Special Effects Operator, Flame Effects Operator, or Flame Effects Performing Artist Licenses.

(1) Application for a display operator, special effects operator, flame effects operator, or flame effects performing artist license shall be made in writing on forms provided by the SFM.

(2) Application for a license shall be signed by the applicant.

(3) Original licenses shall be valid from the date of issuance through December 31st of the year in which issued.

(a) Original licenses issued on or after October 1st, will be valid through December 31st of the following year.

(4) Application for renewal of license shall be made before January 1st of each year.

(a) Application for renewal shall be made in writing on forms provided by the SFM.

(5) The SFM may refuse to renew any license pursuant to Section R710-2-10.

(a) The applicant, upon such refusal, shall also have those rights as are granted by Section R710-2-10.

(6) Every licensee shall notify the SFM, in writing, within 30 days of any change of his address or location.

(7) No licensee shall conduct his licensed business under a name other than the name which appears on his license.

(8) No license shall be issued to any person as licensee who is under 21 years of age.

(9) The holder of any license shall submit such license for inspection upon request of the SFM, his duly authorized deputies, or any authorized enforcement official.

(10) The applicant shall indicate on the application which license the applicant wishes to apply for:

(a) Display Operator;

(b) Special Effects Operator;

(c) Flame Effects Operator; or

(d) Flame Effects Performing Artist.

(11) Every person who wishes to secure a display licensed operator, special effects licensed operator, or flame effects licensed operator original license shall demonstrate proof of competence by:

(a) successfully passing an open book written

examination and obtaining a minimum grade of 70%;

(i) the applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination;

(b) submit written verification with the application of having completed a display operators safety class, a special effects operators safety class, a flame effects operator safety class or demonstrate previous experience acceptable to the SFM; and

(c) submit written verification with the application that the applicant has worked with a licensed display operator, special effects operator, or a flame effects operator for at least three shows or demonstrate previous experience acceptable to the SFM.

(12) Every person who wishes to secure an original flame effects performing artist operator license shall demonstrate proof of competence by:

(a) Successfully passing an open book written examination and obtaining a minimum grade of 70%.

(b) The applicant is allowed to use the statute, the administrative rule, NFPA 160, and the Artisan and Performer Safety Standards prepared by the SFM.

(c) Submit written verification with the application of having received a flame effects performing artist safety class or demonstrate previous experience acceptable to the SFM.

(d) Submit written verification with the application that the applicant has worked with a licensed flame effects performing artist for at least five training meetings or practice sessions or demonstrate previous experience acceptable to the SFM.

(13) Every holder of a valid license identified in Subsections R710-02-7(11) and R710-02-07(12) shall take a re-examination every five years, from date of original issuance.

(14) Applicants seeking an original license as stated in Subsection R710-2-8(11), may perform the various acts while under the direct supervision of a person holding a valid license for a period not to exceed 45 days.

(a) By the end of the 45-day period, the applicant shall have taken and passed the required examination and completed all other licensing requirements.

(15) At the end of the five-year period the licensed display operator, special effects operator, flame effects operator, or flame effects performing artist shall take a re-examination.

(a) The re-examination shall be open book and sent to the license holder at least 60 days before the renewal date.

(b) The re-examination shall focus on the changes in the last 5 years to the adopted standards.

(c) The license holder is responsible to complete the re-examination and return it to the division in time to renew and also comply with the requirements listed in Subsection R710-2-8(16).

(16) After the issuance of the original license, and each year thereafter, the display operator, special effects operator, flame effects operator, or flame effects performing artist shall complete a minimum of one of the following:

(a) complete one show or performance annually;

(b) attend an operator safety class or flame effects performing artist meeting annually; and

(c) work with another licensed display operator, special effects operator, flame effects operator, or flame effects performing artist with a show annually to demonstrate proof of competence.

(17) When the license has expired for more than one year, an application shall be made for an original license and the initial requirements shall be completed as required in Subsections R710-2-8(11) and R710-2-8(12).

(18) Every person who wishes to secure a display

operator, special effects operator, flame effects operator, or flame effects performing artist license shall be at least 21 years of age.

(19) Every licensed display operator, special effects operator, flame effects operator, or flame effects performing artist shall complete an After Action Report within ten working days after the conclusion of any show and send it to the State Fire Marshal.

(a) If there are more than one licensed operator involved in the show, only one After Action Report needs to be sent to the State Fire Marshal for that show.

R710-2-9. Importer or Wholesaler License.

(1) Application for an importer or wholesaler license shall be made in writing on forms provided by the SFM.

(2) Application for a license shall be signed by the applicant.

(a) If the application is made by a partnership, it shall be signed by all partners.

(b) If the application is made by a corporation or association, it shall be signed by a principal officer.

(3) Original licenses shall be valid from the date of issuance through December 31st of the year in which issued.

(a) Original licenses issued on or after October 1st, will be valid through December 31st of the following year.

(4) The SFM may refuse to renew any license pursuant to Section R710-2-10.

(a) The applicant, upon such refusal, shall also have those rights as are granted by Section R710-2-10.

(5) Every licensee shall notify the SFM within 30 days of any change of address or location.

(6) No licensee shall conduct his licensed business under a name other than the name which appears on his license.

(7) No license shall be issued to any person as licensee who is under 21 years of age.

(8) The holder of any license shall submit such license for inspection upon request of the SFM, his duly authorized deputies, or any authorized enforcement official.

R710-2-10. Adjudicative Proceedings.

(1) All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by Sections 63G-4-202 and 63G-4-203.

(2) The issuance, renewal, or continued validity of a license may be denied, suspended or revoked, if the SFM, or his authorized deputies finds that the applicant, licensee, person employed for, the person having authority and management of a concern commits any of the following violations:

(a) the person or applicant is not the real person in interest;

(b) the person of applicant provides material misrepresentation or false statement on the application;

(c) the person or applicant refuses to allow inspection by the AHJ;

(d) the person or applicant for a license does not possess the qualifications of skill or competence to conduct operations for which application is made, as evidenced by failure to pass the written examination, demonstrate practical skills or complete the safety class;

(e) the person or applicant has been convicted of one or more federal, state or local laws;

(f) failure to accurately complete the After Action Report;

(g) the person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules;

(h) any offense or finding of unlawful conduct, or there

is or may be, a threat to the public's health or safety if the applicant or person were granted a license or certificate of registration; or

(i) there are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of being an importer, wholesaler, display operator, special effects operator, flame effects operator or flame effects performing artist.

(3) A person may request a hearing on a decision made by the AHJ, by filing an appeal to the board within 20 days after receiving final notice from the AHJ.

(4) All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with Section 63G-4-201.

(5) The board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

(6) The board shall direct the SFM to issue a signed order to the parties involved giving the decision of the board within a reasonable time of the hearing pursuant to Section 63G-4-203.

(7) Reconsideration of the board's decision may be requested in writing within 20 days of the date of the decision pursuant to Section 63G-4-302.

(8) After a period of three years from the date of revocation, the board shall review the submitted written application of a person whose license or certificate of registration has been revoked.

(a) After timely notice to all parties involved, the board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the board.

(b) After the hearing, the board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

(9) Judicial review of all final board actions resulting from informal adjudicative proceedings shall be conducted pursuant to Section 63G-4-402.

R710-2-11. Amendments and Additions.

(1) The following are amendments and additions to the codes and standards adopted to regulate class C common state approved explosives, placement and discharge of display fireworks, and importer, wholesaler, display or special effects operator licenses,

(2) IFC, Chapter 56, Sections 5601.2.1 and 5601.2.2 are deleted, and rewritten to read as follows:

(a) For the following periods of time: June 1 through July 31; December 1 through January 5; and 30 days before and up to 5 days after the Chinese New Year; class C common state approved explosives may be stored for retail sale as follows:

(i) the retail seller shall notify the local fire authority to where the class C common state approved explosives are to be stored;

(ii) class C common state approved explosives shall not be stored in residences to include attached garages; and

(iii) The local fire authority shall approve the storage site of the class C common state approved explosives and may use the following guidelines for acceptable places of storage:

(A) in self storage units where the owner allows it;

(B) in a temporary stand or trailer used for the retail sales of Class C common state approved explosives, which must be locked or secured when not open for business;

(C) in a locked or secured truck, trailer, or other vehicle at an approved location;

(D) in a locked or secured container, garage, shed, barn,

or other building, which is detached from an inhabited building;

(E) a wholesalers warehouse;

(F) an approved Group M occupancy;

(G) in a locked or secured metal container adjacent to the temporary stand, trailer or tent that is acceptable to the authority having jurisdiction; or

(H) any other structure or location approved by the authority having jurisdiction.

(b) During all other periods of time, except those stated in Subsection R710-2-11(2)(a), the storage, use, and handling of fireworks are prohibited, except as follows:

(i) the storage and handling of fireworks are allowed as required in IFC, Chapter 56 and these rules; and

(ii) the use of fireworks for display is allowed as set forth in IFC, Chapter 56 and these rules.

R710-2-12. Fire Department Displays.

(1) As required in Subsection 53-7-223(1) and as allowed for fire departments in Subsection 53-7-202(9)(b), the fire department's involvement in the discharge of display fireworks is allowed only for the discharge of display fireworks in that fire departments community or communities it has a contract to protect.

(2) Within 10 working days after the conclusion of a fireworks display, the fire chief or an assigned fire department member shall complete an After Action Report and send it to the State Fire Marshal.

(3) Any fire department member that will be involved in the discharge site as defined in NFPA 1123, shall complete a fireworks display safety class and examination on-line yearly to be allowed in the discharge area during the display.

(a) A copy of the completed certificate shall be sent to the SFM yearly to be placed in the fire department file.

(4) Any fireworks purchased by a community or fire department outside of the State of Utah shall require the securing of an annual importers license as required in Section 53-7-224.

**KEY: fireworks
September 13, 2016
Notice of Continuation May 2, 2017**

53-7-204

R710. Public Safety, Fire Marshal.**R710-3. Assisted Living Facilities.****R710-3-1. Purpose.**

The purpose of this rule is to establish the minimum standards for prevention of fire and for the protection of life and property against fire and panic in assisted living facilities.

R710-3-2. Authority.

This rule is authorized by Section 53- 7- 204.

R710-3-3. Definitions.

(1) Ambulatory means a person who is capable of achieving mobility sufficient to exit without the physical assistance of another person. An equivalency to Ambulatory may be approved under the conditions stated in Subsections R710-3-4(2)(h), R710-3-4(3)(f), or R710-3-4(4)(j).

(2) Assisted Living Facility means:

(a) a Type 1 Assisted Living Facility, which is a residential facility subject to licensure by the Utah Department of Health, that provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the physical assistance of another person;

(b) a Type 2 Assisted Living Facility, which is a residential facility subject to licensure by the Utah Department of Health, that provides an array of coordinated supportive personal and health care services to residents who meet the definition of semi-independent; or

(c) a Residential Treatment/Support Assisted Living Facility, which creates a group living environment for four or more residents contracted by the Division of Services to People with Disabilities and subject to licensure by the Utah Department of Human Services, and provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the physical assistance of another person.

(d) Assisted Living Facilities shall be classified by size as follows:

(i) Type 1, 2, and Residential Treatment/Support Limited Capacity Facility means an assisted living facility accommodating five or less residents, excluding staff.

(ii) Type 1, 2, and Residential Treatment/Support Small Facility means an assisted living facility accommodating at least six and not more than 16 residents, excluding staff.

(iii) Type 1, 2, and Residential Treatment/Support Large Facility means an assisted living facility accommodating more than sixteen residents, excluding staff.

(3) Authority Having Jurisdiction (AHJ) means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

(4) Board means Utah Fire Prevention Board.

(5) Compromised Ambulatory Capacity means physical or mental incapacitations that inhibit a persons ability to exit a facility unassisted.

(6) IBC means International Building Code.

(7) ICC means International Code Council, Inc.

(8) IFC means International Fire Code.

(9) Licensing Authority means the Utah Department of Health or the Utah Department of Human Services.

(10) Semi-independent means a person who is:

(a) physically disabled but able to direct his or her own care; or

(b) cognitively impaired or physically disabled but able to evacuate from the facility with the physical assistance of one person.

(11) SFM means State Fire Marshal.

R710-3-4. Amendments and Additions.

(1) General Requirements

(a) All facilities shall be inspected annually and obtain a certificate of fire clearance signed by the AHJ.

(b) All facility administrators shall develop emergency plans and preparedness as required in IFC, Chapter 4.

(c) An approved automatic fire detection system shall be installed in accordance with the provisions of this code and NFPA 72. Devices, combinations of devices, appliances, and equipment shall be approved. The automatic fire detectors shall be smoke detectors, except an approved alternative type of detector shall be installed in spaces such as boiler rooms where, during normal operation, products of combustion are present in sufficient quantity to actuate a smoke detector.

(2) Type I Assisted Living Facilities

(a) Type I Limited Capacity Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-3, and maintained in accordance with the IBC and IFC.

(b) Type I Limited Capacity Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

(c) Residents in Type I Limited Capacity Assisted Living Facilities shall be housed on the first story only, unless an approved outside exit leading to the ground level is provided from any upper or lower level. Split entry/split level type homes in which stairs to the lower and upper level are equal or nearly equal, may have residents housed on both levels when approved by the AHJ.

(d) In Type I Limited Capacity Assisted Living Facilities, resident rooms on the ground level, shall have emergency escape or rescue opening as required in IFC, Chapter 10, Section 1030.

(e) In Type I Limited Capacity Assisted Living Facilities an approved independent smoke detector shall be installed and maintained by location as required in IFC, Chapter 9, Section 907.2.11.2.

(f) Type I Small Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the IBC and IFC.

(g) Type I Small Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

(h) In a Type I Assisted Living Facility, non-ambulatory persons are permitted after receiving approval for a variance from the Utah Department of Health as allowed in Utah Administrative Code, R432-2-18.

(3) Type II Assisted Living Facilities

(a) Type II Limited Capacity Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the IBC and IFC.

(b) Type II Limited Capacity Assisted Living Facilities shall have an approved automatic fire extinguishing system installed in compliance with the IBC and IFC, or provide a staff to a resident ratio of one to one on a 24 hour basis.

(c) Type II Small Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-1, and maintained in accordance with the IBC and IFC.

(d) Type II Small Assisted Living Facilities shall have a minimum corridor width of six feet.

(i) Type II Small Assisted Living Facilities licensed before November 16, 2004, shall have a minimum corridor width of six feet or a path of egress that is acceptable to the AHJ.

(e) Type II Large Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-2,

and maintained in accordance with the IBC and IFC.

(i) An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

(f) In a Type II Assisted Living Facility, non-ambulatory persons are permitted after receiving approval for a variance from the Utah Department of Health as allowed in Utah Administrative Code, R432-2-18.

(4) Residential Treatment/Support Assisted Living Facilities

(a) Residential Treatment/Support Limited Capacity Assisted Living Facility shall be constructed in accordance with IBC, Residential Group R-3, and maintained in accordance with the IBC and IFC.

(b) Residential Treatment/Support Limited Capacity Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

(c) Residents in Residential Treatment/Support Limited Capacity Assisted Living Facilities shall be housed on the first story only, unless an approved outside exit leading to the ground level is provided from any upper or lower level. Split entry/split level type homes in which stairs to the lower and upper level are equal or nearly equal, may have residents housed on both levels when approved by the AHJ.

(d) In Residential Treatment/Support Limited Capacity Assisted Living Facilities, resident rooms on the ground level, shall have emergency escape or rescue windows as required in IFC, Chapter 10, Section 1029.

(e) In Residential Treatment/Support Limited Capacity Assisted Living Facilities an approved independent smoke detector shall be installed and maintained by location as required in IFC, Chapter 9, Section 907.2.11.2.

(f) Residential Treatment/Support Small Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the IBC and IFC.

(i) IFC, Chapter 9, Section 903.2.8 is amended to add the following: Exception: Residential Treatment/Support Assisted Living Facility classified as Group R-4, not more than 4500 gross square feet, and not containing more than 16 ambulatory, non-restrained residents, is allowed provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring.

(g) Residential Treatment/Support Small Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

(h) Residential Treatment/Support Large Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-1, and maintained in accordance with the IBC and IFC.

(i) An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

(j) In a Residential Treatment/Support Assisted Living Facility, residents with compromised ambulatory capacity that can demonstrate the ability to exit the facility unassisted in two minutes or less, and meet the requirements listed in Utah Administrative Code, R501-2-11, Emergency Plans, may receive approval from the Office of Licensing, Utah Department of Human Services, to remain in the facility as a

resident.

(i) In those facilities where the Office of Licensing, Department of Human Services, determines that the resident cannot exit the facility unassisted in two minutes or less, the facility management shall complete one of the following:

(A) make accommodations, changes or enact an emergency plan that guarantees the exiting of the resident in two minutes or less;

(B) provide a staff to resident ratio of one to one on a 24 hour basis;

(C) install an approved automatic fire sprinkler system;

or
(D) move the resident from the facility.

R710-3-5. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-3-6. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or the codes adopted, be declared invalid, it is the intent of the Board that it would have passed all other portions of this action, independent of the elimination of any portions as may be declared invalid.

R710-3-7. Conflicts.

In the event where separate requirements pertain to the same situation in the adopted codes, the more restrictive requirement shall govern, as determined by the AHJ.

R710-3-8. Adjudicative Proceedings.

(1) All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

(2) A person may request a hearing on a decision made by the AHJ by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

(3) All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

(4) The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

(5) The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

(6) Reconsideration of the Boards decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

(7) Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

KEY: assisted living facilities

August 15, 2016

Notice of Continuation May 3, 2017

53-7-204

R710. Public Safety, Fire Marshal.**R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board.****R710-4-1. Purpose.**

The Purpose of this rule is to establish minimum rules for the prevention of fire and for the protection of life and property against fire and panic in any publicly owned building, including all public and private schools, colleges, and university buildings, and in any building or structure used or intended for use, as an asylum, hospital, mental hospital, sanitarium, home for the aged, assisted living facility, children's home or day care center, or any similar institutional type occupancy of any capacity; and in any place of assemblage where 50 or more persons may gather together in a building, structure, tent, or room, for the purpose of amusement, entertainment, instruction, or education.

R710-4-2. Authority.

This rule is authorized by Section 53-7- 204.

R710-4-3. Adoption.

The following chapters from NFPA, Standard 101 are the only chapters adopted: Chapter 18 - New Health Care Occupancies; Chapter 19 - Existing Health Care Occupancies; Chapter 20 - New Ambulatory Health Care Occupancies; Chapter 21 - Existing Ambulatory Health Care Occupancies; Chapter 22 - New Detention and Correctional Occupancies; Chapter 23 - Existing Detention and Correctional Occupancies; and other sections referenced within and pertaining to these chapters only. Wherever there is a section, figure or table in NFPA 101 that references "NFPA 5000 - Building Construction and Safety Code", that reference shall be replaced with the similar reference in the state adopted building code.

R710-4-4. Definitions.

(1) "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

(2) "Board" means Utah Fire Prevention Board.

(3) "Bureau of Fire Prevention or Fire Prevention Bureau" means the AHJ.

(4) "Fire Chief or Chief of the Department" means the AHJ.

(5) "Fire Department" means the AHJ.

(6) "Fire Marshal" means the AHJ.

(7) "Fire Officer" means the State Fire Marshal, the state fire marshal's deputies, the fire chief or fire marshal of any county, city, or town fire department, the fire officer of any fire district or special service district organized for fire protection purposes is the AHJ.

(8) "IBC" means International Building Code.

(9) "ICC" means International Code Council, Inc.

(10) "IFC" means International Fire Code.

(11) "IFGC" means International Fuel Gas Code.

(12) "IMC" means International Mechanical Code.

(13) "IPC" means International Plumbing Code.

(14) "LSC" means Life Safety Code.

(15) "NEC" means National Electric Code.

(16) "NFPA" means National Fire Protection Association.

(17) "SFM" means State Fire Marshal.

R710-4-5. Amendments and Additions.

(1) Water Supply Analysis

(a) For proposed construction in both sprinklered and nonsprinklered occupancies, the architect or engineer shall provide a water supply analysis as required in NFPA, Standard 13, Chapter 22.

(b) The architect or engineer shall provide the water supply analysis during the preliminary design phase of the proposed construction. The AHJ shall not approve the plan review without the water supply analysis being provided or previously submitted water supply information within the last 12 months that is approved by the AHJ.

(c) The water analysis shall be representative of the supply that may be available at the time of a fire as required in NFPA, Standard 13, 23.2.1.1 and A23.2.1.1.

(2) Fire Alarm Systems

(a) Required Installations

(i) All state-owned buildings, college and university buildings, other than institutional, with an occupant load of 300 or more, all schools with an occupant load of 50 or more, shall have an approved fire alarm system with the following features:

(A) Automatic detection devices that detect smoke shall be installed throughout all corridors and spaces open to the corridor at the maximum prescribed spacing of thirty feet on center and no more than fifteen feet from the walls or smoke detectors shall be installed as required in NFPA, Standard 72, Section 17.7.

(B) Where structures are not protected or partially protected with an automatic fire sprinkler system, approved automatic detectors shall be installed in accordance with the complete coverage requirements of NFPA, Standard 72.

(C) Manual fire alarm boxes shall be provided as required. In public and private elementary and secondary schools, manual fire alarm boxes shall be provided in the boiler room, kitchen, and main administrative office of each building, and any other areas as determined by the AHJ.

(b) Main Panel

(i) An approved key plan drawing and operating instructions shall be posted at the main fire alarm panel which displays the location of all alarm zones and if applicable, device addresses.

(ii) The main panel shall be located in a normally attended area such as the main office or lobby. Location of the Main Panel other than as stated above, shall require the review and authorization of the SFM. Where location as required above is not possible, an electronically supervised remote annunciator from the main panel shall be located in a supervised area of the building. The remote annunciator shall visually indicate system power status, alarms for each zone, and give both a visual and audible indication of trouble conditions in the system. All indicators on both the main panel and remote annunciator shall be adequately labeled.

(c) System Wiring Class

(i) Fire alarm system wiring shall be designated and installed as follows:

(A) The initiating device circuits shall be designated and installed Class A as defined in NFPA, Standard 72.

(B) The notification appliance circuits shall be designated and installed Class A as defined in NFPA, Standard 72.

(C) Signaling line circuits shall be designated and installed Class A loop as defined in NFPA, Standard 72.

(d) Fan Shut Down

(A) Fan shut down shall be as required in IMC, Chapter 6, Section 606.

(B) Duct detectors required by the IMC, shall be interconnected, and compatible with the fire alarm system.

(3) Time Out and Seclusion Rooms

(a) Time Out and Seclusion Rooms are allowed in occupancies protected by an automatic fire alarm system.

(b) A vision panel shall be provided in the room door for observation purposes.

(c) Time Out and Seclusion Room doors may not be fitted with a lock unless it is a self-releasing latch that releases

automatically if not physically held in the locked position by an individual on the outside of the door.

(d) Time Out and Seclusion Rooms shall be located where a responsible adult can maintain visual monitoring of the person and room.

R710-4-6. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-4-7. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared, for any reason, to be invalid, it is the intent of the Board that it would have passed all other portions of this Board action, independent of the elimination here from of any such portion as may be declared invalid.

R710-4-8. Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ, or his authorized representative.

R710-4-9. Adjudicative Proceedings.

(1) All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

(2) A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

(3) All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

(4) The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

(5) The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

(6) Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

(7) Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

KEY: fire prevention, public buildings
August 15, 2016
Notice of Continuation May 3, 2017

53-7-204

R710. Public Safety, Fire Marshal.**R710-7. Concerns Servicing Automatic Fire Suppression Systems.****R710-7-1. Purpose.**

The purpose of this rule is to establish regulations governing those concerns that service Automatic Fire Suppression Systems. These rules apply to systems regulated by the state adopted editions of National Fire Protection Association, Standard 12, Standard on Carbon Dioxide Extinguishing Systems; N.F.P.A., Standard 12A, Halon 1301 Fire Extinguishing Systems, 2009 edition; N.F.P.A., Standard 12B, Halon 1211 Fire Extinguishing Systems, 1990 edition; N.F.P.A., Standard 17, Standard for Dry Chemical Extinguishing Systems; N.F.P.A., Standard 17A, Standard for Wet Chemical Extinguishing Systems; N.F.P.A., Standard 96, Ventilation Control and Fire Protection of Commercial Cooking Operations; N.F.P.A., Standard 2001, Clean Agent Fire Extinguishing Systems.

R710-7-2. Authority.

This rule is authorized by Section 53-7-204.

R710-7-3. Definitions.

- (1) "Annual" means a period of one year or 365 days.
- (2) "Board" means Utah Fire Prevention Board.
- (3) "Branch Office" means any location, other than the primary business location, where business license, telephone, advertising and servicing equipment is utilized.
- (4) "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.
- (5) "Concern" means a person, firm, corporation, partnership, or association, licensed by the SFM.
- (6) "Employee" means those persons who work for a licensed concern which may include but are not limited to assigned agents and others who work on a contractual basis with a licensee using service tags of the licensed concern.
- (7) "Hydrostatic Test" means subjecting any cylinders requiring periodic pressure testing procedures specified in these rules.
- (8) "Inspection Authority" means the local fire authority, or the SFM, and their authorized representatives.
- (9) "License" means a written document issued by the SFM authorizing a concern to engage in the business of servicing automatic fire suppression systems.
- (10) "N.F.P.A." means National Fire Protection Association.
- (11) "Recognized Testing Laboratory" means a State Fire Marshal list of acceptable labs.
- (12) "Service" means a complete inspection of an automatic fire suppression system to include maintenance, repair, modification, testing, or cleaning, as set forth in the adopted N.F.P.A. standards.
- (13) "System" means an Automatic Fire Suppression System.
- (14) "SFM" means Utah State Fire Marshal or authorized deputy.

R710-7-4. Adoption of Codes.

- (1) The following standards are adopted as code:
 - (a) the National Fire Protection Association, N.F.P.A., Standard 12A, Halon 1301 Fire Extinguishing Systems, 2009 edition; N.F.P.A., Standard 12B, Halon 1211 Fire Extinguishing Systems, 1990 edition;
 - (b) all existing wet chemical automatic fire suppression systems not UL300 listed shall be removed, replaced or upgraded to a UL300 listed system; and
 - (c) no person shall market, distribute, sell, install or

service any automatic fire suppression system in this state, unless it meets the following:

- (A) it complies with these rules; and
- (B) it has been tested by, and bears the label of a testing laboratory which is accepted by the SFM as qualified to test automatic fire suppression systems.

R710-7-5. Licensing.

(1) No person or concern shall engage in the business of selling, installing, servicing, repairing, testing or modifying any automatic fire suppression system without obtaining a license from the SFM, pursuant to these rules, expressly authorizing such concern to perform such acts.

(2) Every license shall be identified by type. The type of license shall be determined on the basis of the act or acts performed by the licensee or any of the employees. Every licensed concern shall be staffed by qualified personnel and shall be properly equipped to perform the act or acts for the type of license issued.

(3) Licenses shall be any one, or combination of the following:

(a) Class H1 - A licensed concern which is engaged in the installation, modification, service, or maintenance of engineered and/or pre-engineered automatic fire suppression systems.

(b) Class H2 - A licensed concern which is engaged in service and maintenance only of automatic fire suppression systems to include hydrostatic testing.

(4) Application for a license to conduct business as an automatic fire suppression system concern shall be made in writing to the SFM on forms provided by the SFM.

(a) A separate application for license shall be made for each branch office, or separate place or business location of the applicant.

(b) The application for a license to conduct business as an automatic fire suppression system concern, shall be accompanied with proof of public liability insurance.

(i) The public liability insurance shall be issued by a public liability insurance carrier showing coverage of at least \$100,000 for each incident, and \$300,000 in total coverage.

(ii) The licensee shall notify the SFM within thirty days after the public liability insurance coverage required is no longer in effect for any reason.

(c) The application shall be signed by the applicant.

(i) If the application is made by a partnership, it shall be signed by all partners.

(ii) If the application is made by a corporation or association other than a partnership, it shall be signed by a principal officer.

(5) The applicant or licensee shall allow the SFM and any of his authorized deputies to enter, examine, and inspect any premises, building, room or vehicle used by the applicant in the service of automatic fire suppression systems to determine compliance with the provisions of these rules.

(a) The inspection will be conducted during normal business hours, and the owner or manager shall be given a minimum of 24-hours notice before the appointed inspection.

(b) The equipment inspection may be conducted on an annual basis, and consent to inspect will be obtained.

(c) The applicant, license holder or certified employee of the license holder, may be asked during the inspection by the SFM or any of his deputies, to demonstrate skills or knowledge used in servicing of automatic fire suppression systems.

(6) Following receipt of the properly completed application, and compliance with the provisions of the statute and these rules, the SFM shall issue a license.

(a) Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the

premises of the licensed concern.

(7) Original licenses shall be valid for one year from the date of issuance.

(a) Thereafter, each license shall be renewed annually and renewals shall be valid for one year from the previous date of expiration.

(b) No original license will be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM.

(c) In the event that a license is not renewed prior to the expiration date, the applicant shall be required to apply for an original license with a new license number.

(8) Application for renewal shall be made as directed by the SFM.

(a) The failure to renew the license will cause the license and license number to become invalid.

(b) No renewal license will be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM.

(c) A renewed license shall be valid for one year from the previous date of expiration.

(9) A duplicate license may be issued by the SFM to replace any previously issued license, which has been lost or destroyed, upon request.

(10) SFM may refuse to renew any license that is authorized, pursuant to Section 8 of these rules. The applicant will, upon such refusal, have the same rights as are granted by Section 8 of these rules to an applicant for an original license which has been denied by the SFM.

(11) Every licensee shall notify the SFM, in writing, within 30 days, of any change of address or location of business.

(12) No licensee shall conduct the licensed business under a name other than the name or names which appear on the license.

(13) Every licensed concern shall, within 30 days of employment or termination of an employee or contracted agent, notify the SFM of the name, address, and certification number of that person.

(14) No license shall be issued to any person as licensee who is under 18 years of age.

(15) Every concern is responsible for the acts of its employees or assigned agents relating to installation and servicing of automatic fire suppression systems.

(16) No license shall constitute authorization for any licensee, or any of the employees or contracted agents, to enter upon, or into, any property, building, or machinery without the consent of the owner or manager.

(a) No license shall grant authorization to enforce the International Fire Code or these rules.

(17) No license issued pursuant to this section shall be transferred from one concern to another.

(18) Every license shall be identified by a number, delineated as H-number.

(a) Such number may only be transferred from one concern to another when approved by the SFM.

(19) The following minimum material and equipment requirements shall be maintained at each business location or vehicle of the applicant where servicing work is performed:

- (a) calibrated scales with ability to:
 - (i) weigh gas cartridges to within 1/4 ounce of manufacturers specifications; and
 - (ii) weigh cylinders accurately for systems being serviced;
- (b) manufacturers specifications for each system serviced;
- (c) nitrogen pressure filling equipment;
 - (i) nitrogen supply;
 - (ii) pressure regulator - 750 p.s.i. minimum; and

- (iii) filling adapters;

- (d) wet and dry chemical systems;

- (i) extinguishing agents, compatible with systems serviced;

- (ii) fusible links;

- (iii) safety pins;

- (iv) an assortment of gaskets and o-rings compatible with systems serviced;

- (v) gas cartridges as required according to manufacture's specifications;

- (vi) current reference manuals, to include manufacture's service manuals; and

- (vii) cocking or lockout tool;

- (e) clean agent, halon and CO2 systems

- (i) have access to, or meet the requirements for a U.L. approved filling station;

- (ii) have available in inventory, or have immediate access to, detectors compatible with systems serviced;

- (iii) calibration equipment such as electrical testers and detector testers;

- (iv) control panel components;

- (v) release valves; and

- (vi) current reference manuals.

- (f) This list does not, however, include all items that may be necessary in order to conduct a complete system installation, modification or service.

(20) Accurate records shall be maintained for five years by the licensee, of all service work performed.

(a) These records shall be made available to the SFM, or authorized deputies, upon request.

(b) These records shall include the following:

- (a) the name and address of all serviced locations;

- (b) type of service performed; and

- (c) date and name of person performing the work.

R710-7-6. Certificates of Registration.

(1) No person shall service any automatic fire suppression system without a certificate of registration issued by the SFM pursuant to these rules expressly authorizing such person to perform such acts.

(2) Application for a certificate of registration to work on automatic fire suppression systems shall be made in writing to the SFM on forms provided by the SFM.

(a) The application shall be signed by the applicant.

(b) The concern license shall certify in writing to the SFM that the applicant has been trained and is qualified to perform all work authorized by the certificate of registration.

(3) The SFM shall require all applicants for a certificate of registration to take and pass a written examination, which may be supplemented by practical tests to determine the applicant's knowledge to work on automatic fire suppression systems.

(a) Pictured identification of the applicant for a certificate of registration may be requested by the SFM or his deputies.

(b) Examinations will be given according to the following schedule:

- (i) on the first and third Tuesdays of each month; or

- (ii) when holidays conflict with these days, the day immediately following will be used.

(c) An appointment will be made to take an examination at least 24 hours in advance of the examination date.

(d) Examinations may be given at various field locations as deemed necessary by the SFM. Appointments for field examinations are required.

(e) All certification examinations given are open book examinations.

(i) The applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the

certification examination.

(ii) Any other materials to include cellular telephones, lap tops, iPads, iPods, note books or any other memory storage device are prohibited in the examination room.

(f) Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.

(g) Each certification examination taken has a time limit of two hours to completion.

(i) Leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant.

(h) If there are different levels of proficiency in the subject matter, the lower proficiency level will be fully completed before the next higher proficiency will be administered.

(4) To successfully pass the written examination, the applicant must obtain a minimum grade of 70% in each portion of the examination taken.

(5) The examination required shall include a written test of the applicant's knowledge of the work to be performed, the provisions of these rules, and may include an actual demonstration of his ability to perform the acts indicated on the application.

(6) Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination.

(a) Every contention as to the validity of individual questions of the examination shall be made in writing within 48 hours after taking said examination.

(b) The decision of the SFM shall be final.

(7) Following receipt of the completed application, compliance with the provisions of these rules, and the successful completion of the required examination, the SFM shall issue a certificate of registration.

(8) Original certificates of registration will be valid for one year from the date of application.

(a) Thereafter, each certificate of registration will be renewed annually and renewals will be valid for one year from the previous date of expiration.

(b) In the event that a certificate of registration is not renewed prior to the expiration date, the applicant shall be required to apply for an original certificate of registration with a new license number.

(c) The failure to renew a certificate of registration will cause the certificate of registration and the certificate of registration number to become invalid.

(d) The holder of an invalid certificate of registration shall not perform any work on automatic fire suppression systems.

(9) Renewal is the responsibility of the holder of the Certificate of Registration.

(a) Application for renewal will be made as directed by the SFM.

(b) A renewed certificate of registration shall be valid for one year from the previous date of expiration.

(10) Every holder of a valid certificate of registration will take a re-examination every five years, from the date of original certificate, as follows:

(a) the re-examination shall consist of one open book examination to be administered by the SFM at least 60 days before the renewal date;

(b) the re-examination will consist of questions that focus on changes in the last five years to the NFPA standards, the statute, and adopted practices of concerns noted by the board or SFM;

(c) the certificate holder is responsible to complete the re-examination prior to expiration and in sufficient time to renew; and

(d) the certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

(11) The SFM may refuse to renew any certificate of registration for the reasons that are authorized pursuant to Section R710-7-9.

(a) The applicant will, upon such refusal, have the same rights as are granted by Section R710-7-9 to an applicant for an original certificate of registration which has been denied by the SFM.

(12) The holder of a certificate of registration will submit such certificate for inspection, upon request of the SFM, any authorized deputies, or any local fire official.

(13) Any change of address of any holder of a certificate of registration will be reported by the registered person to the SFM within 30 days of such change.

(a) Such change will also be made by the holder of the certificate of registration on the reverse side of the certificate of registration card.

(14) A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate which has been lost or destroyed.

(15) No certificate of registration shall be issued to any person who is under 18 years of age.

(16) Restrictive Use

(a) No certificate of registration will constitute authorization for any person to enter upon or into any property or building without expressed permission from an authorized individual.

(b) No certificate of registration will constitute authorization for any person to enforce any provisions of these rules or the International Fire Code.

(c) Regardless of the acts authorized to be performed by the licensed concern, only those acts for which the applicant for a certificate of registration has qualified will be permissible by such applicant.

(17) Certificates of registration will not be transferable.

(a) Individual certificates of registration will be carried by the person to whom issued.

(18) No certificate of registration will be issued to any person unless that person is a licensee or an employee of a licensed concern.

(19) New employees of a licensed concern may perform the various acts while under the direct supervision of a person holding a valid certificate of registration for a period not to exceed 45 days from the initial date of employment.

(20) Every certificate will be identified by a number, delineated as HE-number.

R710-7-7. Service Tags and Labels.

(1) Tags shall be not more than five and one-half inches in height, nor less than four and one-half inches in height, and not more than three inches in width, nor less than two and one-half inches in width. Tags may be any color except red.

(2) One service tag will be attached to each automatic fire suppression system in such a position as to be conveniently inspected.

(3) The signature and certificate of registration number of the person performing the work shall be signed legibly on the service tag.

(a) All information pertaining to complete date, type of servicing, and type of system will be indicated on the tag by perforations in the appropriate space provided.

(4) A new service tag will be attached to a properly functioning system each time service is performed.

(a) A system not in compliance shall not receive a service tag, but shall receive a non-compliance tag as required in Section R710-7-7(9).

(5) The following wording shall be placed at the top or

reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

(6) No person shall deface, modify, alter or remove any active service label or tag attached to or required to be attached to any automatic fire suppression system.

(7) All service tags shall be designed as required by the SFM.

(8) Six year maintenance and hydrostatic test labels will be affixed by a heatless process; and

(a) the labels will be:

(i) applied only when the system is recharged or undergoes six year maintenance servicing or hydrostatic testing;

(ii) durable to withstand the effects of weather and adverse conditions; and

(iii) designed as directed by the SFM.

(9) Non-compliance tags:

(a) will be affixed in a conspicuous location to any system failing to:

(i) meet service specifications; or

(ii) fully comply with manufacturers specifications or these rules;

(b) shall be red in color;

(c) will be designed as required by the SFM; and

(d) shall remain in place until corrections are complete.

(e) After placing the non-compliance tag on the system, the service person shall notify the local fire chief or his authorized representative.

(i) The service person shall also furnish a copy of the service report to the authority having jurisdiction.

R710-7-8. Requirements For All Approved Systems.

(1) Maintenance will be conducted on extinguishing systems at least every six months or immediately after use or activation.

(a) When fusible links are a required portion of the system, fusible links will be replaced semiannually or as required by the manufacturer of the system.

(b) Fusible links will show the date when installed by year only.

(c) Fusible links will not be used after February 1 of the next year showing a previous years date.

(2) Interchanging of parts from different manufactured systems is prohibited.

(a) Parts shall be specifically listed and compatible for use with the designed system.

(3) All replaced parts to the system serviced will be returned to the system owner or manager after completion of the service.

(a) Parts that are required to be returned to the manufacturer due to warranty are exempt.

(4) Any system requiring a hydrostatic test, will not be serviced until such system has been subjected to, and passed, the required test.

(a) A non-compliance tag will not be accepted to meet the requirements of this section.

(5) At the time of installation, and during any service, all servicing will be done in accordance with the manufacturers instructions, adopted statutes, and these rules.

(a) Systems will be placed and remain in an operable condition, free from defects which may cause malfunctions.

(b) Discharge nozzles and piping will be free of obstructions or substances.

R710-7-9. Adjudicative Proceedings.

(1) All adjudicative proceedings performed by the agency shall proceed informally as authorized by Sections 63G-4-202 and 63G-4-203.

(2) The issuance, renewal, or continued validity of a

license or certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant, person employed for, or the person having authority and management of a concern servicing automatic fire suppression systems commits any of the following violations:

(a) the person or applicant is not the real person in interest;

(b) the person or applicant provides material misrepresentation or false statement on the application;

(c) the person or applicant refuses to allow inspection by the SFM, his duly authorized deputies;

(d) the person or applicant for a license or certificate of registration does not have the proper facilities and equipment, to conduct the operations for which application is made;

(e) the person or applicant for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application was made, as evidenced by failure to pass the examination and practical tests pursuant to Section R710-7-6;

(f) the person or applicant has been convicted of one or more federal, state or local laws;

(g) the person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules;

(h) any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a license or certificate of registration; or

(i) there are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of servicing fire suppression systems.

(3) A person whose license or certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the board if requested by that person within 20 days after receiving notice.

(4) All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with Section 63G-4-201.

(5) The board shall act as the hearing authority, and shall convene after timely notice to all parties involved.

(a) The board shall be the final authority on the suspension or revocation of a license or certificate of registration.

(6) The board shall direct the SFM to issue a signed order to the parties involved giving the decision of the board within a reasonable time of the hearing pursuant to Section 63G-4-203.

(7) Reconsideration of the board decision may be requested in writing within 20 days of the date of the decision pursuant to Section 63G-4-302.

(8) After a period of three years from the date of revocation, the board shall review the submitted written application of a person whose license or certificate of registration has been revoked.

(a) After timely notice to all parties involved, the board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the board.

(b) After the hearing, the board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

(9) Judicial review of all final board actions resulting from informal adjudicative proceedings is available pursuant to Section 63G-4-402.

R710-7-10. Validity.

If any section, subsection, sentence, clause, or phrase of

these rules is for any reason held to be unconstitutional, contrary to statute, or exceeding the authority of the SFM, such decision shall not affect the validity of the remaining portion of these rules.

R710-7-11. Fees.

(1) The required fee will accompany the application for license or certificate of registration.

(a) License or certificate of registration fees will be refunded if the application is denied.

(2) When a certificate of registration has expired for more than one year, an application will be made for an original certificate as if the application was being made for the first time.

(a) Examinations will be re-taken with initial fees.

KEY: fire prevention, systems
September 13, 2016
Notice of Continuation May 4, 2017

53-7-204

R710. Public Safety, Fire Marshal.**R710-9. Rules Pursuant to the Utah Fire Prevention and Safety Act.****R710-9-1. Purpose.**

The purpose of this rule is to provide minimum rules for safeguarding life and property from the hazards of fire and explosion, for board meeting conduct, deputizing Special Deputy State Fire Marshals, procedures to amend incorporated references, establishing board subcommittees, enforcement of the rules of the State Fire Marshal, requirements for the firefighter support restricted account, regulation of novelty lighters, procedures for the issuance of blasting permits, and amendments and additions.

R710-9-2. Authority.

This rule is authorized by Section 53-7-204.

R710-9-3. Definitions.

(1) "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

(2) "Board" means Utah Fire Prevention Board.

(3) "Committee" means the Firefighter Support Restricted Account Advisory Committee.

(4) "Division" means State Fire Marshal.

(5) "Dwelling Unit" means one or more rooms arranged for the use of one or more individuals living together, as in a single housekeeping unit normally having cooking, living, sanitary, and sleeping facilities. For purposes of this standard, dwelling unit includes hotel rooms, dormitory rooms, apartments, condominiums, sleeping rooms in nursing homes, and similar living units.

(6) "IFC" means International Fire Code.

(7) "LFA" means Local Fire Authority.

(8) "Premixed" means the mixing of antifreeze with water that is prepared by the manufacturer with a quality control procedure that ensures that the antifreeze and water solution does not separate.

(9) "Restricted Account" means Firefighter Support Restricted Account.

(10) "SFM" means State Fire Marshal or authorized deputy.

(11) "Subcommittee" means Fire Prevention Board Budget Subcommittee or Amendment Subcommittee.

R710-9-4. Conduct of Board Members and Board Meetings.

(1) Board meetings shall be presided over and conducted by the chair and in the chair's absence, by the vice chair or the chair's designee.

(2) A quorum shall be required to approve any action of the board.

(3) The chair of the board and board members shall be entitled to vote on all issues considered by the board. A board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.

(4) Meetings of the board shall be conducted in accordance with an agenda, which shall be submitted to the members by the division, not less than 14 days before the regularly scheduled board meetings.

(5) Public notice of board meetings shall be made by the division as prescribed in Section 52-4-6.

(6) The division shall provide the board with a secretary who shall prepare minutes and shall perform all secretarial duties necessary for the board to fulfill its responsibility. The minutes of board meetings shall be completed and sent to board members at least 14 days prior to the scheduled board meeting.

(7) A board member's standing on the board shall come under review after two unexcused absences in one year from regularly scheduled board meetings.

(a) The board member's name shall be submitted to the governor's office for status review.

R710-9-5. Deputizing Persons to Act as Special Deputy State Fire Marshals.

(1) Special deputy state fire marshals may be appointed by the SFM to positions of expertise within the regular scope of the Fire Marshal's Office.

(2) Pursuant to Section 53-7-101, special deputy state fire marshals may also be appointed to assist the Fire Marshal's Office in establishing and maintaining minimum fire prevention standards in those occupancy classifications listed in the International Fire Code.

(3) Special deputy state fire marshals shall be appointed after review by the State Fire Marshal in regard to their qualifications and the overall benefit to the Office of the State Fire Marshal.

(4) Special deputy state fire marshals shall be appointed by completing an oath and shall be appointed for a specific period of time.

(5) Special deputy state fire marshals shall have a picture identification card and shall carry that card when performing their assigned duties.

R710-9-6. Procedures to Amend the International Fire Code.

(1) All requests for amendments to the IFC shall be submitted to the division on forms created by the division, for presentation to the board at the next regularly scheduled board meeting.

(2) Requests for amendments received by the division less than 21 days prior to any regularly scheduled meeting of the board may be delayed in presentation until the next regularly scheduled board meeting.

(3) Upon presentation of a proposed amendment, the board shall do one of the following:

(a) accept the proposed amendment as submitted or as modified by the board;

(b) reject the proposed amendment;

(c) submit the proposed amendment to the Board Amendment Subcommittee for further study; or

(d) return the proposed amendment to the requesting person or agency, accompanied by board comments, allowing the requesting person or agency to resubmit the proposed amendment with modifications.

(4) The Board Amendment Subcommittee shall report its recommendation to the board at the next regularly scheduled board meeting.

(5) The board shall make a final decision on the proposed amendment at the next board meeting following the original submission.

(6) The board may reconsider any request for amendment, reverse or modify any previous action by majority vote.

(7) When approved by the board, the requesting agency shall provide to the division within 45 days, the completed ordinance.

(8) The division shall maintain a list of amendments to the IFC that have been granted by the board.

(9) The division shall make available to any person or agency copies of the approved amendments upon request, and may charge a reasonable fee for multiple copies in accordance with the provisions of Section 63-2-203.

R710-9-7. Fire Advisory and Code Analysis Committee.

(1) There is created by the board a Fire Advisory and

Code Analysis Committee whose duties are to provide direction to the board in the matters of fire prevention and building codes.

(2) The committee shall serve in an advisory position to the board, members shall be appointed by the board, shall serve for a term of three years, and shall consist of the following members:

- (a) a representative from the State Fire Marshal's Office;
- (b) the Code Committee Chairman of the Fire Marshal's Association of Utah;
- (c) a fire marshal or fire inspector from a local fire department or fire district;
- (d) a representative from the Department of Health;
- (e) the Chief Elevator Inspector from the Utah Labor Commission;
- (f) a representative from the Department of Human Services; and
- (g) a representative from Forestry, Fire and State Lands.

(3) This committee shall join together with the Uniform Building Code Commission Fire Protection Advisory Committee to form the Unified Code Analysis Council.

(4) The Council shall meet as directed by the board or as directed by the Building Codes Commission or as needed to review fire prevention and building code issues that require definitive and specific analysis.

(5) The Council shall select one of its members to act in the position of chair and another to act as vice chair. The chair and vice chair shall serve for one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

(6) The chair or vice chair of the council shall report to the board or Building Codes Commission recommendations of the Council with regard to the review of fire and building codes.

R710-9-8. Enforcement of the Rules of the State Fire Marshal.

(1) Fire and life safety plan reviews of new construction, additions, and remodels of state owned facilities shall be conducted by the SFM, or his authorized deputies. State owned facilities shall be inspected by the SFM, or his authorized deputies.

(2) Fire and life safety plan reviews of new construction, additions, and remodels of public and private schools shall be completed by the SFM, or his authorized deputies, and the LFA.

(3) Fire and life safety plan reviews of new construction, additions, and remodels of publicly owned buildings, privately owned colleges and universities, and institutional occupancies, with the exception of state owned buildings, shall be completed by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall complete the plan review.

(4) The following listed occupancies shall be inspected by the LFA, the SFM, or his authorized deputies:

- (a) publicly owned buildings other than state owned buildings;
- (b) public and private schools;
- (c) privately owned colleges and universities;
- (d) institutional occupancies; and
- (e) places of assembly.

(5) The board shall require prior to approval of a grant the following:

- (a) that the applying fire agency be actively participating in the statewide fire statistics reporting program; and
- (b) that the applying fire agency be actively working towards structural or wildland firefighter certification through the Utah Fire Service Certification System.

R710-9-9. Fire Prevention Board Budget and Amendment Subcommittees.

(1) There are created two Fire Prevention Board subcommittees known as the Budget Subcommittee, and the Amendment Subcommittee. Each subcommittee's membership shall be appointed from members of the board.

(2) Subcommittee membership shall be by appointment of the board chair or as volunteered by board members. Subcommittee membership shall be limited to four board members.

(3) Each subcommittee shall meet as necessary and shall vote and appoint a chair to represent the subcommittee at regularly scheduled board meetings.

R710-9-10. Firefighter Support Restricted Account.

(1) There is created by the board a Firefighter Support Restricted Account Advisory Committee whose duties are to provide direction to the division in the distribution of funds in the restricted account.

(2) The Committee shall be appointed by the division, approved by the board, and shall consist of the following members:

- (a) two representatives from the Utah State Firemen's Association;
- (b) two representatives from the Utah State Fire Chiefs Association;
- (c) two representatives from the Professional Firefighters of Utah; and
- (d) one representative from the general public.

(3) The committee members shall serve for a term of three years, shall meet as directed by the division, and a majority of members shall be present to constitute a quorum.

(4) The committee shall select one of its members to act in the position of chair. The chair shall serve for a term of one year, and shall be a voting member only in the event of a tie vote.

(5) The committee shall assist the division in preparing application forms to be used to apply for distributions from the restricted account.

(6) The Division shall set a specific time period each year for the receiving of applications, the review of applications by the committee, and the distribution of the restricted account funds.

(7) The division shall distribute the restricted account funding to charitable organizations meeting the requirements listed in Subsection 53-7-109(4), and to be expended for only the purposes allowed in accordance with Subsection 53-7-109(5)(b).

(8) In the event of a conflict in the distribution of the restricted account funds, an appeal for resolution shall be made to the board. The board shall be the final authority in the resolution of the conflict.

R710-9-11. Regulation of Novelty Lighters.

All novelty lighters that have been identified as toy-like lighters by the Novelty and Toy-Like Lighter Assessment Committee, and placed by picture and description on the Utah Department of Public Safety, State Fire Marshal Website, Toy and Novelty Lighter Initiative, Toy-like Lighters Disavowed List, <http://publicsafety.utah.gov/firemarshal>, shall not be sold or offered for sale in the State of Utah.

R710-9-12. Amendments and Additions.

There are currently no amendments and additions adopted by the Board for application statewide.

R710-9-13. Repeal of Conflicting Board Actions.

All former board actions, or parts thereof, conflicting or inconsistent with the provisions of this board action or of the

codes hereby adopted, are hereby repealed.

R710-9-14. Validity.

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-9-15. Adjudicative Proceedings.

(1) All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by Sections 63G-4-202 and 63G-4-203.

(2) If a city, county, or fire protection district refuses to establish a method of appeal regarding a portion of the IFC, the appealing party may petition the board to act as the board of appeals.

(3) A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the board within 20 days after receiving final decision.

(4) All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with Section 63G-4-201.

(5) The board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

(6) The board shall direct the SFM to issue a signed order to the parties involved giving the decision of the board within a reasonable time of the hearing pursuant to Section 63G-4-203.

(7) Reconsideration of the board's decision may be requested in writing within 20 days of the date of the decision pursuant to Section 63G-4-302.

(8) Judicial review of all final board actions resulting from informal adjudicative proceedings is available pursuant to Section 63G-4-402.

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August 23, 2016
Notice of Continuation May 3, 2017**

53-7-204

R746. Public Service Commission, Administration.**R746-200. Residential Utility Service Rules for Electric, Gas, Water, and Sewer Utilities.****R746-200-1. General Provisions.**

A. Title -- These rules shall be known and may be cited as the Residential Utility Service Rules.

B. Purpose -- The purpose of these Rules is to establish and enforce uniform residential utility service practices and procedures governing eligibility, deposits, account billing, termination, and deferred payment agreements.

C. Policy --

1. The policy of these rules is to assure the adequate provision of residential utility service, to restrict unreasonable termination of or refusal to provide residential utility service, to provide functional alternatives to termination or refusal to provide residential utility service, and to establish and enforce fair and equitable procedures governing eligibility, deposits, account billing, termination, and deferred payment agreements.

2. Nondiscrimination -- Residential utility service shall be provided to qualified persons without regard to employment, occupation, race, handicap, creed, sex, national origin, marital status, or number of dependents.

D. Requirement of Good Faith -- Each agreement or obligation within these rules imposes an obligation of good faith, honesty, and fair dealings in its performance and enforcement.

E. Customer Information -- When residential service is extended to an account holder, a public utility shall provide the consumer with a consumer information pamphlet approved by the Commission which clearly describes and summarizes the substance of these rules. The utility shall mail or deliver a copy of this pamphlet, or a summarized version approved by the Commission, to its residential customers annually in September or October. Copies of this pamphlet shall be prominently displayed in the business offices maintained by the utility and furnished to consumers upon request. The utility has a continuing obligation to inform its consumers of significant amendments to these rules. Each utility with over 10,000 customers receiving service shall print and make available upon request a Spanish edition of a consumer information pamphlet. The English edition of the pamphlet shall contain a prominent notice, written in Spanish and English, that the utility has a Spanish edition of its pamphlet and whether or not it has qualified personnel available to help Spanish-speaking customers. In this section, utilities with fewer than 10,000 users may use the pamphlets printed by the Division of Public Utilities for the distribution and availability requirements.

F. Scope --

1. These rules shall apply to gas, water, sewer, and electric utilities that are subject to the regulatory authority of the Commission. Except as provided in R746-200-7(G)(4), Notice of Proposed Termination, these rules do not apply to master metered apartment dwellings. Commercial, industrial, government accounts and special contracts are also excluded from the requirements of these rules.

2. Upon a showing that specified portions of these rules impose an undue hardship and provide limited benefit to its customers, a utility may petition the Commission for an exemption from specified portions of these rules.

G. Customer's Statement of Rights and Responsibilities -- When utility service is extended to an account holder, annually, and upon first notice of an impending service disconnection, a public utility shall provide a copy of the "Customer's Statement of Rights and Responsibilities" as approved by the Commission. The Statement of Rights and Responsibilities shall be a single page document. It shall be prominently displayed in each customer service center.

R746-200-2. General Definitions.

A. "Account Holder" -- A person, corporation, partnership, or other entity which has agreed with a public utility to pay for receipt of residential utility service and to which the utility provides service.

B. "Applicant" -- As used in these rules means a person, corporation, partnership, or other entity which applies to a public utility for residential utility service.

C. "Budget Billing" -- Monthly residential payment plan under which the customer's estimated annual billing is divided into 12 monthly payments.

D. "Deferred Payment Agreement" -- As used in these rules means an agreement to receive, or to continue to receive, residential utility service pursuant to Section R746-200-5 and to pay an outstanding debt or delinquent account owed to a public utility.

E. "Residential Utility Service" -- Means gas, water, sewer, and electric service provided by a public utility to a residence.

F. "Termination of Service" -- The terms "termination," "disconnection," and "shutoff" as used in these rules are synonymous and mean the stopping of service for whatever cause.

G. "Load Limiter" -- Device which automatically interrupts electric service at a residence when the preset kW demand is exceeded. Service is restored when the customer decreases usage and then presses the reset button on the device.

R746-200-3. Deposits, Eligibility for Service, and Shared Meter or Appliance.

A. Deposits and Guarantees --

1. Each utility shall submit security deposit policies and procedures to the Commission for its approval before the implementation and use of those policies and procedures. Each utility shall submit third-party guarantor policies and procedures to the Commission.

2. Each utility collecting security deposits shall pay interest thereon at a rate as established by the Commission. For electric cooperatives and electric service districts, interest rates shall be determined by the governing board of directors of the cooperative or district and filed with the Commission and shall be deemed approved by the Commission unless ten percent or more of the customers file a request for agency action requesting an investigation and hearing. The deposit paid, plus accrued interest, is eligible for return to the customer after the customer has paid the bill on time for 12 consecutive months.

3. A residential customer shall have the right to pay a security deposit in at least three equal monthly installments if the first installment is paid when the deposit is required.

B. Eligibility for Service --

1. Residential utility service is to be conditioned upon payment of deposits, where required, and of any outstanding debts for past utility service which are owed by the applicant to that public utility, subject to Subsections R746-200-3(B)(2), and R746-200-7(C)(2), Reasons for Termination. Service may be denied when unsafe conditions exist, when the applicant has furnished false information to get utility service, or when the customer has tampered with utility-owned equipment, such as meters and lines. An applicant is ineligible for service if at the time of application, the applicant is cohabiting with a delinquent account holder, whose utility service was previously disconnected for non-payment, and the applicant and delinquent account holder also cohabited while the delinquent account holder received the utility's service, whether the service was received at the applicants present address or another address.

2. When an applicant cannot pay an outstanding debt in

full, residential utility service shall be provided upon execution of a written, deferred payment agreement as set forth in Section R746-200-5.

C. Shared Meter or Appliance - In rental property where one meter provides service to more than one unit or where appliances provide service to more than one unit or to other occupants at the premises, and this situation is known to the utility, the utility will recommend that service be in the property owner's name and the property owner be responsible for the service. However, a qualifying applicant will be allowed to put service in their own name provided the applicant acknowledges that the request for services is entered into willingly and he has knowledge of the account responsibility.

R746-200-4. Account Billing.

A. Billing Cycle -- Each gas, electric, sewer and water utility shall use a billing cycle that has an interval between regular periodic billing statements of not greater than two months. This section applies to permanent continuous service customers, not to seasonal customers.

B. Estimated Billing --

1. A gas, electric, sewer or water public utility using an estimated billing procedure shall try to make an actual meter reading at least once in a two-month period and give a bill for the appropriate charge determined from that reading. When weather conditions prevent regular meter readings, or when customers are served on a seasonal tariff, the utility will make arrangements with the customer to get meter reads at acceptable intervals.

2. If a meter reader cannot gain access to a meter to make an actual reading, the public utility shall take appropriate additional measures in an effort to get an actual meter reading. These measures shall include, but are not limited to, scheduling of a meter reading at other than normal business hours, making an appointment for meter reading, or providing a prepaid postal card with a notice of instruction upon which an account holder may record a meter reading. If after two regular route visits, access has not been achieved, the utility will notify the customer that he must make arrangements to have the meter read as a condition of continuing service.

3. If, after compliance with Subsection R746-200-4(B)(2), a public utility cannot make an actual meter reading it may give an estimated bill for the current billing cycle in accordance with Subsection R746-200-7(C)(1)(f), Reasons for Termination.

C. Periodic Billing Statement -- Except when a residential utility service account is considered uncollectible or when collection or termination procedures have been started, a public utility shall mail or deliver an accurate bill to the account holder for each billing cycle at the end of which there is an outstanding debit balance for current service, a statement which the account holder may keep, setting forth each of the following disclosures to the extent applicable:

1. the outstanding balance in the account at the beginning of the current billing cycle using a term such as "previous balance";

2. the amount of charges debited to the account during the current billing cycle using a term such as "current service";

3. the amount of payments made to the account during the current billing cycle using a term such as "payments";

4. the amount of credits other than payments to the account during the current billing cycle using a term such as "credits";

5. the amount of late payment charges debited to the account during the current billing cycle using a term such as "late charge";

6. the closing date of the current billing cycle and the outstanding balance in the account on that date using a term such as "amount due";

7. a listing of the statement due date by which payment of the new balance must be made to avoid assessment of a late charge;

8. a statement that a late charge, expressed as an annual percentage rate and a periodic rate, may be assessed against the account for late payment;

9. the following notice: "If you have any questions about this bill, please call the Company."

D. Late Charge --

1. Commencing not sooner than the end of the first billing cycle after the statement due date, a late charge of a periodic rate as established by the Commission may be assessed against an unpaid balance in excess of new charges debited to the account during the current billing cycle. The Commission may change the rate of interest.

2. No other charge, whether described as a finance charge, service charge, discount, net or gross charge may be applied to an account for failure to pay an outstanding bill by the statement due date. This section does not apply to reconnection charges or return check service charges.

E. Statement Due Date -- An account holder shall have not less than 20 days from the date the current bill was prepared to pay the new balance, which date shall be the statement due date.

F. Disputed Bill --

1. In disputing a periodic billing statement, an account holder shall first try to resolve the issue by discussion with the public utility's collections personnel.

2. When an account holder has proceeded pursuant to Subsection R746-200-4(F)(1), the public utility's collections personnel shall investigate the disputed issue and shall try to resolve that issue by negotiation.

3. If the negotiation does not resolve the dispute, the account holder may obtain informal and formal review of the dispute as set forth in Section R746-200-8, Informal Review, and R746-200-9, Formal Review.

4. While an account holder is proceeding with either informal or formal review of a dispute, no termination of service shall be permitted if amounts not disputed are paid when due.

G. Unpaid Bills - Utilities transferring unpaid bills from inactive or past accounts to active or current accounts shall follow these limitations:

1. A utility company may only transfer bills between similar classes of service, such as residential to residential, not commercial to residential.

2. Unpaid amounts for billing cycles older than four years before the time of transfer cannot be transferred to an active or current account.

3. The customer shall be provided with an explanation of the transferred amounts from earlier billing cycles and informed of the customer's ability to dispute the transferred amount.

4. The customer may dispute the transferred amount pursuant to R746-200-4(F).

R746-200-5. Deferred Payment Agreement.

A. Deferred Payment Agreement --

1. An applicant or account holder who cannot pay a delinquent account balance on demand shall have the right to receive residential utility service under a deferred payment agreement subject to R746-200-5(B) unless the delinquent account balance is the result of unauthorized usage of, or diversion of, residential utility service. If the delinquent account balance is the result of unauthorized usage of, or diversion of, residential utility service, the use of a deferred

payment agreement is at the utility's discretion.

2. An applicant or account holder shall have the right to a deferred payment agreement, consisting of 12 months of equal monthly payments, if the full amount of the delinquent balance plus interest shall be paid within the 12 months and if the applicant or account holder agrees to pay the initial monthly installment. The account holder shall have the right to pre-pay a monthly installment, pre-pay a portion of, or the total amount of the outstanding balance due under a deferred payment agreement at any time during the term of the agreement. The account holder also has the option, when negotiating a deferred payment agreement, to include the amount of the current month's bill plus the reconnection charges in the total amount to be paid over the term of the deferred payment agreement.

3. Payment Options

a. If a utility has a budget billing or equal payment plan available, it shall offer the account holder the option of:

- i. agreeing to pay monthly bills for future residential utility service as they become due, plus the monthly deferred payment installment, or
- ii. agreeing to pay a budget billing or equal payment plan amount set by the utility for future residential utility service plus the monthly deferred payment installment.

b. When negotiating a deferred payment agreement with a utility that does not offer a budget billing or equal payment plan, the account holder shall agree to pay the monthly bills for future residential utility service plus the monthly deferred payment installment necessary to liquidate the delinquent bill.

4. The terms of the deferred payment agreement shall be set forth in a written agreement, a copy of which shall be provided to the customer.

5. A deferred payment agreement may include a finance charge as approved by the Commission. If a finance charge is assessed, the deferred payment agreement shall contain notice of the charge.

B. Breach -- If an applicant or account holder breaches a condition or term of a deferred payment agreement, the public utility may treat that breach as a delinquent account and shall have the right to disconnect service pursuant to these rules, subject to the right of the customer to seek review of the alleged breach by the Commission, and the account holder shall not have the right to a renewal of the deferred payment agreement. Renewal of deferred payment agreements after the breach shall be at the utility's discretion.

R746-200-6. Reconnection of Discontinued Service.

A. Public utilities shall have personnel available 24 hours each day to reconnect utility service. Service shall be reconnected as soon as possible, but no later than the next generally recognized business day after the customer has requested reconnection and complied with all necessary conditions for reconnection of service; which may include payment of reconnection charges and compliance with deferred payment agreement terms.

B. If a customer requests reconnection or other services outside of the utility's normal business days or hours of operation, the utility shall inform the customer of any additional charges or terms, as specified in the utility's tariff provisions, applicable to the customer's request.

R746-200-7. Termination of Service.

A. Definitions. As used in this section (R746-200-7):

1. "Licensed medical provider" means a medical provider:

- a. who holds a current and active medical license under Utah Code Title 58; and
- b. whose scope of practice authorizes the medical provider to diagnose the condition described by the medical

provider under this rule.

2. "Life-supporting equipment" means life-supporting medical equipment:

- a. with normal operation that requires continuation of public utility service; and
- b. used by an individual who would require immediate assistance from medical personnel to sustain life if the life supporting equipment ceased normal operations.

3. "Life-supporting equipment statement" means a written statement:

- a. signed by the licensed medical provider for the account holder or resident who utilizes life-supporting equipment; and
- b. including:
 - i. a description of the medical need of the account holder or resident who utilizes life-supporting equipment;
 - ii. the account holder's name and address;
 - iii. name of resident using life-supporting equipment and relationship to account holder, if different than account holder;
 - iv. the health infirmity and expected duration;
 - v. identification of the life-support equipment that requires the utility's service;
 - vi. a determination by the licensed medical provider that immediate assistance from medical personnel to sustain life would be required if the life supporting equipment ceased normal operations; and
 - vii. the name and contact information of the licensed medical provider for the resident who utilizes life-supporting equipment.

4. "Serious illness or infirmity statement" means a written statement:

- a. signed by a licensed medical provider;
- b. written on:
 - i. a form obtained from the public utility; or
 - ii. the licensed medical provider's letterhead stationary;
- c. legibly describing:
 - i. a diagnosed medical condition under which termination of utility service will injure the person's health or aggravate the person's illness; and
 - ii. the anticipated duration of the diagnosed medical condition.

B. Delinquent Account --

1. A residential utility service bill that has remained unpaid beyond the statement due date is a delinquent account.

2. When an account is a delinquent account, a public utility, before termination of service, shall issue a written late notice to inform the account holder of the delinquent status. A late notice or reminder notice must include the following information:

- a. A statement that the account is a delinquent account and should be paid promptly;
- b. A statement that the account holder should communicate with the public utility's collection department, by calling the company, if the account holder has a question concerning the account;
- c. A statement of the delinquent account balance, using a term such as "delinquent account balance."

3. When the account holder responds to a late notice or reminder notice the public utility's collections personnel shall investigate disputed issues and shall try to resolve the issues by negotiation. During this investigation and negotiation no other action shall be taken to disconnect the residential utility service if the account holder pays the undisputed portion of the account subject to the utility's right to terminate utility service pursuant to R746-200-7(F), Termination of Service Without Notice.

4. A copy of the "Statement of Customer Rights and Responsibilities" referred to in Subsection R746-200-1(G) of

these rules shall be issued to the account holder with the first notice of impending service disconnection.

C. Reasons for Termination of Service --

1. Residential utility service may be terminated for the following reasons:

- a. Nonpayment of a delinquent account;
- b. Nonpayment of a deposit when required;
- c. Failure to comply with the terms of a deferred payment agreement or Commission order;
- d. Unauthorized use of, or diversion of, residential utility service or tampering with wires, pipes, meters, or other equipment;
- e. Subterfuge or deliberately furnishing false information; or
- f. Failure to provide access to meter during the regular route visit to the premises following proper notification and opportunity to make arrangements in accordance with R746-200-4(B), Estimated Billing, Subsection (2).

2. The following shall be insufficient grounds for termination of service:

- a. A delinquent account, accrued before a divorce or separate maintenance action in the courts, in the name of a former spouse, cannot be the basis for termination of the current account holder's service;
- b. Cohabitation of a current account holder with a delinquent account holder whose utility service was previously terminated for non-payment, unless the current and delinquent account holders also cohabited while the delinquent account holder received the utility's service, whether the service was received at the current account holder's present address or another address;
- c. When the delinquent account balance is less than \$25.00, unless no payment has been made for two months;
- d. Failure to pay an amount in bona fide dispute before the Commission;
- e. Payment delinquency for third party services billed by the regulated utility company, unless prior approval is obtained from the Commission.

D. Restrictions upon Termination of Service -- Medical Reasons --

1. Serious Illness or Infirmity. If a public utility receives a serious illness or infirmity statement:

- a. the public utility shall continue or restore residential utility service for the period set forth in the statement or one month, whichever is less;
- b. the public utility is not required to provide the continuation or restoration described in R746-200-7.D.1.a. more than two times to an individual customer or residence during the same calendar year; and
- c. the account holder is liable for the cost of residential utility service during the period of continued or restored service.

2. Life-Supporting Equipment.

- a. After receiving a life-supporting equipment statement, the public utility:
 - i. shall mark and identify applicable meter boxes where the life-supporting equipment is used;
 - ii. may not terminate service to the residence unless the public utility has complied with this Subsection (R746-200-7.D.2); and
 - iii. may request annual verification from the licensed medical provider of the life-supporting equipment.
- b. A public utility may terminate service on an account where the public utility has received a life-supporting equipment statement and the related medical provider verification, if:
 - i. the account is in default;
 - ii. the public utility has:
 - AA. followed R746-200-5 on offering a deferred

payment agreement; or

BB. if R746-200-5 does not apply, allowed the customer one month to enter into a deferred payment agreement that may last up to 12 months;

iii. after complying with R746-200-7.D.2.b.ii, the public utility has provided to the customer a written notice of proposed termination of service that:

AA. clearly and plainly informs the customer of the customer's rights under R746-200-7.D.2 and of the customer's right to an expedited complaint hearing under R746-200-8.E.; and

BB. complies with R746-200-7.G.1;

iv. the public utility has provided to the customer a 48 hour notice of termination of utility service that complies with R746-200-7.G.2; and

v. the public utility has complied with all other applicable provisions of R746-200-7.

c. The account holder is liable for the cost of residential utility service during the period of service, including throughout all proceedings related to life-supporting equipment.

E. Payments from the Home Energy Assistance Target (HEAT) Program -- Suppliers may not discontinue utility service to a low-income household for at least 30 days after receiving utility payment or verification of utility payment from the HEAT Program on behalf of the low-income household.

F. Termination of Service Without Notice -- Any provision contained in these rules notwithstanding, a public utility may terminate residential utility service without notice when, in its judgment, a clear emergency or serious health or safety hazard exists for so long as the conditions exist, or when there is unauthorized use or diversion of residential utility service or tampering with wires, pipes, meters, or other equipment owned by the utility. The utility shall immediately try to notify the customer of the termination of service and the reasons therefor.

G. Notice of Proposed Termination of Service --

1. At least 10 calendar days before a proposed termination of residential utility service, or at least 30 calendar days before a proposed termination if the residential utility service customer has provided to the public utility a life-supporting equipment statement, a public utility shall give written notice of disconnection for nonpayment to the account holder. The 10-day or 30-day time period is computed from the date the notice is postmarked or the date it is electronically sent to customers eligible for electronic delivery. The notice shall be given by first class mail or delivery to the premises unless the customer has voluntarily enrolled in a paperless electronic billing program in which case the notice may be sent by electronic mail. The notice shall contain a summary of the following information:

- a. a Statement of Customer Rights and Responsibilities under existing state law and Commission rules;
- b. the Commission-approved policy on termination of service for that utility;
- c. the availability of deferred payment agreements and sources of possible financial assistance including but not limited to state and federal energy assistance programs;
- d. informal and formal procedures to dispute bills and to appeal adverse decisions, including the Commission's address, website, and telephone number;
- e. specific steps, printed in a conspicuous fashion, that may be taken by the consumer to avoid termination of service;
- f. the date on which payment arrangements must be made to avoid termination of service; and
- g. subject to the provision of Subsection R746-200-1(E), Customer Information, a conspicuous statement, in Spanish, that the notice is a termination of service notice and

that the utility has a Spanish edition of its customer information pamphlet and whether it has personnel available during regular business hours to communicate with Spanish-speaking customers.

2. At least 48 hours before termination of service is scheduled, the utility shall make good faith efforts to notify the account holder or an adult member of the household, by mail, by telephone or by a personal visit to the residence. If personal notification has not been made either directly by the utility or by the customer in response to a mailed notice, the utility shall leave a written termination of service notice at the residence. Personal notification, such as a visit to the residence or telephone conversation with the customer, is required only during the winter months, October 1 through March 31. Other months of the year, the mailed 48-hour notice can be the final notice before the termination of service.

If termination of service is not accomplished within 15 business days following the 48-hour notice, the utility company will follow the same procedures for another 48-hour notice.

3.a.i. A public utility that issues a 30-day notice of termination of service to a customer who has provided the public utility with a life-supporting equipment statement shall provide to the Division an electronic copy of the notice at or before the time the public utility issues the notice to the customer.

ii. Within two business days after receiving the electronic notice described in this Subsection (G)(3)(a)(i), the Division shall provide a letter to the account holder by regular mail:

AA. informing the account holder that the public utility has issued a notice of termination;

BB. noting the method and deadline by which the account holder may request an expedited hearing from the Commission; and

CC. directing the account holder to contact the public utility for additional information.

b. A public utility shall send duplicate copies of 10-day or 30-day termination of service notices to a third party designated by the account holder and shall make reasonable efforts to personally contact the third party designated by the account holder before termination of service occurs, if the third party resides within its service area. A utility shall inform its account holders of the third-party notification procedure at the time of application for service and at least once each year.

4. In rental property situations where the tenant is not the account holder and that fact is known to the utility, the utility shall post a notice of proposed termination of service on the premises in a conspicuous place and shall make reasonable efforts to give actual notice to the occupants by personal visits or other appropriate means at least five calendar days before the proposed termination of service. The posted notice shall contain the information listed in Subsection R746-200-7(G)(1). This notice provision applies to residential premises when the account holder has requested termination of service or the account holder has a delinquent bill. If nonpayment is the basis for the termination of service, the utility shall also advise the tenants that they may continue to receive utility service for an additional 30 days by paying the charges due for the 30-day period just past.

H. Termination of Service -- Upon expiration of the notice of proposed termination of service, the public utility may terminate residential utility service. Except for service diversion or for safety considerations, utility service shall not be disconnected between Thursday at 4:00 p.m. and Monday at 9:00 a.m. or on legal holidays recognized by Utah, or other times the utility's business offices are not open for business.

Service may be disconnected only between the hours of 9:00 a.m. and 4:00 p.m.

I. Customer-Requested Termination of Service --

1. A customer shall advise a public utility at least three days in advance of the day on which the customer wants service disconnected to the customer's residence. The public utility shall disconnect the service within four working days of the requested disconnect date. The customer shall not be liable for the services rendered to or at the address or location after the four days, unless access to the meter has been delayed by the customer.

2. A customer who is not an occupant at the residence for which termination of service is requested shall advise the public utility at least 10 days in advance of the day on which the customer wants service disconnected and sign an affidavit that the customer is not requesting termination of service as a means of evicting the customer's tenants. Alternatively, the customer may sign an affidavit that there are no occupants at the residence for which termination of service is requested and thereupon the disconnection may occur within four days of the requested disconnection date.

J. Restrictions Upon Termination of Service Practices -- A public utility shall not use termination of service practices other than those set forth in these rules. A utility shall have the right to use or pursue legal methods to ensure collections of obligations due it.

K. Policy Statement Regarding Elderly and Disabled -- The state recognizes that the elderly and disabled may be seriously affected by termination of utility service. In addition, the risk of inappropriate termination of service may be greater for the elderly and disabled due to communication barriers that may exist by reason of age or infirmity. Therefore, this section is specifically intended to prevent inappropriate terminations of service which may be hazardous to these individuals. In particular, Subsection R746-200-7(G), requiring adequate notice of impending terminations of service, including notification to third parties upon the request of the account holder, Subsection R746-200-7(D)(1), restricting termination of service when the termination of service will cause or aggravate a serious illness or infirmity of a person living in the residence, and Subsection R746-200-7(D)(2), restricting terminations of service to residences when life-supporting equipment is in use, are intended to meet the special needs of elderly and disabled persons, as well as those of the public in general.

L. Load Limiter as a Substitute for Termination of Service, Electric Utilities --

1. An electric utility may, but only with the customer's consent, install a load limiter as an alternative to terminating electric service for non-payment of a delinquent account or for failure to comply with the terms of a deferred payment agreement or Commission order. Conditions precedent to the termination of electric service must be met before the installation of a load limiter.

2. Disputes about the level of load limitation are subject to the informal review procedure of Subsection R746-200-8.

3. Electric utilities shall submit load limiter policies and procedures to the Commission for their review before the implementation and use of those policies.

R746-200-8. Informal Review.

A. A person who is unable to resolve a dispute with the utility concerning a matter subject to Public Service Commission jurisdiction may obtain informal review of the dispute by a designated employee within the Division of Public Utilities. This employee shall investigate the dispute, try to resolve it, and inform both the utility and the consumer of his findings within five business days from receipt of the informal review request. Upon receipt of a request for

informal review, the Division employee shall, within one business day, notify the utility that an informal complaint has been filed. Absent unusual circumstances, the utility shall attempt to resolve the complaint within five business days. In no circumstances shall the utility fail to respond to the informal complaint within five business days. The response shall advise the complainant and the Division employee regarding the results of the utility's investigation and a proposed solution to the dispute or provide a timetable to complete any investigation and propose a solution. The utility shall make reasonable efforts to complete any investigation and resolve the dispute within 30 calendar days. A proposed solution may be that the utility request that the informal complaint be dismissed if, in good faith, it believes the complaint is without merit. The utility shall inform the Division employee of the utility's response to the complaint, the proposed solution and the complainant's acceptance or rejection of the proposed solution and shall keep the Division employee informed as to the progress made with respect to the resolution and final disposition of the informal complaint. If, after 30 calendar days from the receipt of a request for informal review, the Division employee has received no information that the complainant has accepted a proposed solution or otherwise completely resolved the complaint with the utility, the complaint shall be presumed to be unresolved.

B. Mediation -- If the utility or the complainant determines that they cannot resolve the dispute by themselves, either of them may request that the Division attempt to mediate the dispute. When a mediation request is made, the Division employee shall inform the other party within five business days of the mediation request. The other party shall either accept or reject the mediation request within ten business days after the date of the mediation request, and so advise the mediation-requesting party and the Division employee. If mediation is accepted by both parties or the complaint continues to be unresolved 30 calendar days after receipt, the Division employee shall further investigate and evaluate the dispute, considering both the customer's complaint and the utility's response, their past efforts to resolve the dispute, and try to mediate a resolution between the complainant and the utility. Mediation efforts may continue for 30 days or until the Division employee informs the parties that the Division has determined that mediation is not likely to result in a mutually acceptable resolution, whichever is shorter.

C. Division Access to Information During Informal Review or Mediation -- The utility and the complainant shall provide documents, data or other information requested by the Division, to evaluate the complaint, within five business days of the Division's request, if reasonably possible or as expeditiously as possible, if they cannot be provided within five business days.

D. Commission Review -- If the utility has proposed that the complaint be dismissed from informal review for lack of merit and the Division concurs in the disposition, if either party has rejected mediation or if mediation efforts are unsuccessful and the Division has not been able to assist the parties in reaching a mutually accepted resolution of the informal dispute, or the dispute is otherwise unresolved between the parties, the Division in all cases shall inform the complainant of the right to petition the Commission for a review of the dispute, and shall make available to the complainant a standardized complaint form with instructions approved by the Commission. The Division itself may petition the Commission for review of a dispute in any case which the Division determines appropriate. While a complainant is proceeding with an informal or a formal review or mediation by the Division or a Commission review of a dispute, no termination of service shall be permitted, if

any amounts not disputed are paid when due, subject to the utility's right to terminate service pursuant to R746-200-7(F), Termination of Service Without Notice.

E. Notwithstanding any other provision of this rule (R746-200-8), a customer who has provided to a public utility a life-supporting equipment statement and who has received the 30-day written notice of proposed termination of service described in R746-200-7.D.2 may bypass informal review and receive an expedited hearing before the Commission if the Commission receives a written complaint and request for a hearing from the customer within 10 calendar days after the date the notice is postmarked.

R746-200-9. Formal Agency Proceedings Based Upon Complaint Review.

The Commission, upon its own motion or upon the petition of any person, may initiate formal or investigative proceedings upon matters arising out of informal complaints.

R746-200-10. Penalties.

A. A residential account holder who claims that a regulated utility has violated a provision of these customer service rules, other Commission rules, company tariff, or other approved company practices may use the informal and formal grievance procedures. If considered appropriate, the Commission may assess a penalty pursuant to Section 54-7-25.

B. Fines collected shall be used to assist low income Utahns to meet their basic energy needs.

**KEY: public utilities, rules, utility service shutoff
May 15, 2017**

Notice of Continuation November 28, 2012

54-4-1

54-4-7

54-7-9

54-7-25

R746. Public Service Commission, Administration.**R746-320. Uniform Rules Governing Natural Gas Service.****R746-320-1. General Provisions.**

A. Scope and Applicability -- This rule applies to the methods and conditions of service used by utilities furnishing natural gas service in Utah. These rules supersede any conflicting provisions contained in tariffs of natural gas utilities subject to Commission jurisdiction. A utility may petition the Commission for an exemption from specified portions of these rules in accordance with R746-100-15, Deviation from Rules.

B. Definitions --

1. "British Thermal Unit" or "BTU" means the quantity of heat needed to raise the temperature of one pound of water one degree Fahrenheit.

2. "CFR" means the Code of Federal Regulations, April 1, 1994 edition.

3. "Commission" means the Public Service Commission of Utah.

4. "Cubic Foot" means:

a. when gas is supplied and metered to customers at the standard delivery pressure, as defined in Subsection R746-320-2(G), the volume of gas which, at the temperature and pressure existing in the meter, occupies one cubic foot;

b. when gas is supplied to customers through positive displacement meters at other than standard delivery pressure, the volume of gas which occupies one cubic foot after applying a suitable correction factor to simulate delivery and metering at standard delivery pressure; the correction factor shall include allowance for gas temperature when it is reasonably practical to determine that factor;

c. when gas is supplied through other meters, the volume of gas which occupies one cubic foot at a temperature of 60 degrees Fahrenheit and at absolute pressure as provided in utility tariff rates or regulations approved by this Commission.

5. "Customer" means a person, firm, partnership, company, corporation, organization, or governmental agency supplied with gas by a gas utility subject to Commission jurisdiction.

6. "Customer Meter" means the device used to measure the volume of gas transferred from a gas utility to a customer.

7. "Main" means a distribution line that is designed to serve as a common source of supply for more than one service line. The term does not include service lines.

8. "Service Line" means a distribution line that transports gas from a common source of supply to:

a. a customer meter or the connection to a customer's piping, whichever is farther downstream, or

b. the connection to a customer's piping if there is no customer meter.

9. "Therm" means a unit of heating value equalling 100,000 BTU.

10. "Utility" means a gas corporation as defined in Section 54-2-1.

R746-320-2. Quality Control Equipment, Standards, Records and Reports.

A. Testing Equipment and Facilities --

1. Utilities shall own and maintain or have access to the testing equipment necessary to make Commission-required tests of the gas sold by the utilities. The Commission may approve arrangements for individual utilities to have their testing done by another utility or competent party.

2. Utilities shall properly maintain testing equipment which shall be subject to Commission inspection. The Commission may inspect the testing equipment at reasonable times.

3. Utilities shall locate and use testing equipment so as

to ensure that gas samples taken are fairly representative of the gas being distributed in the portion of the system being tested.

B. Heating Value --

1. Utilities shall file with the Commission, as part of their tariffs, the range within which the average heating value per unit of gas to be sold will fall.

2. Utilities shall maintain the heating value established in their tariffs and in so doing shall regulate the chemical composition and specific gravity of the gas so as to maintain satisfactory combustion in customers' appliances without repeated adjustment of the burners.

3. When utilities distribute supplemental or substitute gas, they shall ensure that it performs satisfactorily regardless of heating value.

C. Heating Value Tests, Records, and Reports --

1. Utilities shall make sufficient tests, or have access to tests made by their suppliers, to accurately determine the heating value of the gas sold.

2. Tests shall be made at a location, or locations, which will ensure the samples taken fairly represent the gas being furnished to the utilities and their customers. Test reports shall be available for review when requested by the Commission.

D. BTU Measurement Equipment --

1. Utilities shall maintain or have access to an approved type calorimeter in an adequate testing station as specified in Subsection R746-320-2(C)(1). Utilities may use an approved recording calorimeter which shall be checked at least once each month with an approved standard calorimeter or against a standard gas.

2. Both calorimeter and method of testing shall be subject to Commission inspection.

3. Utilities may use BTU measuring equipment other than calorimeters upon petition to and approval by the Commission.

E. Gas Odor -- Gas supplied to customers shall be odorized in accordance with 49 CFR 192.625, which is incorporated by this reference.

F. Purity of Gas -- Gas supplied to customers shall contain no more than 75 to 80 parts per million of total sulfur. Gas shall be free of water and hydrocarbons in liquid form at the temperature and pressure at which the gas is delivered.

G. Standard Delivery Pressure -- Standard Delivery Pressure shall be four ounces above local atmospheric pressure. Maximum and minimum low pressure delivery pressures shall conform to 49 CFR 192.623, which is incorporated by reference.

H. Pressure Testing and Maintenance of Standards --

1. Utilities shall make every reasonable effort to maintain adequate gas pressure. Utilities shall make determinations and keep records of pressures adequate to enable the utilities at all times to have accurate current knowledge of the pressure existing in their distribution systems. Pressure records shall be properly identified, dated, and filed in the utilities' records.

2. Utilities shall periodically test and maintain the accuracy of any recording pressure gauges.

3. Pressure limiting and regulator stations shall comply with 49 CFR 192.741, which is incorporated by this reference.

R746-320-3. Use, Location, and Accuracy Tests of Meters.

A. Use of Meters -- Gas sold by utilities shall be metered through approved meters except in case of emergency, or when otherwise authorized by the Commission as provided in R746-100-15, Deviation from Rules. Meters shall bear an identifying number and shall be plainly marked to show the units of the meter index. When gas is delivered

at higher than standard pressure, the contract, rate schedule, or gas bill shall specify the method to be used to correct the gas volume to standard pressure.

B. Meter Location -- Meters may be located either inside or outside of buildings. The locations selected by utilities and provided by customers shall be convenient for inspection and reading of the meters and shall comply with 49 CFR 192.353, 192.355, 192.357, incorporated by reference.

C. Meter Accuracy at Installation -- New meters and reinstalled meters shall be no more than one percent fast or two percent slow.

D. Initial Tests of Meters -- Meters shall be tested and meet the foregoing accuracy limits before installation. When meters are placed into service, the meter index reading shall be recorded.

E. Periodic Tests of Meters --

1. Utilities shall adopt schedules for periodic tests and repairs of positive displacement meters. Utilities shall keep records of accuracy of meters periodically tested and shall analyze the records to determine meter service life for purposes of adjusting the periods for testing and servicing meters.

2. Unless a time extension or a statistical sampling method is approved by the Commission, meter test intervals for displacement meters of the following rated capacities shall not exceed the following:

| TABLE | | |
|-------|--|--------|
| a. | To 300 cu. ft./hr | 10 yrs |
| b. | 300 to 600 cu. ft./hr | 5 yrs |
| c. | 600 to 1,500 cu. ft./hr | 3 yrs |
| d. | Over 1,500 cu. ft./hr | 2 yrs |
| e. | Orifice Meters, inspected and checked for accuracy | 1 yr |

F. Meter Tests by Request --

1. Upon written request, utilities shall test a customer's meter promptly. If a meter has been tested within 12 months preceding the date of the request, the utility concerned may require the customer to make a deposit to defray the costs of the test. If the meter is found to be more than three percent inaccurate, either over or under, the deposit shall be refunded; otherwise the deposit may be processed by the utility as a service charge. The deposit shall not exceed the estimated cost of performing the test.

2. The customer shall be entitled to observe the test and the utility shall forward a copy of the written report of the test to the customer.

G. Referee Meter Tests -- If there is a dispute over a test, the customer concerned may request a referee test in writing. The Commission may require the deposit of a testing fee in connection with a referee test to defray costs of the test. Upon filing of the request and receipt of the deposit, if needed, the Commission shall notify the utility and the utility shall not remove the meter until the Commission so instructs. The meter shall be tested in the presence of the Commission's representative, and if the meter is found to be more than three percent inaccurate, the customer's deposit may be refunded; otherwise it may be kept.

H. Billing Adjustments for Meter Variance --

1. If a meter tested pursuant to Subsections R746-320-3(E) and (F) is more than three percent fast, there shall be refunded to the customer the amount billed in error for one-half the period since the last test. The one-half period shall not exceed six months unless it can be shown that the error was due to some cause, the date of which can be fixed. In this instance, the overcharge shall be computed back to, but not beyond, that date.

2. If a meter tested pursuant to Subsections R746-320-3(E) and (F) is more than three percent slow, the utility may bill the customer in an amount equal to the unbilled error for

one-half the period since the last test, that one-half period shall not exceed six months.

3. When there is a nonregistering meter, the customer may be billed on an estimate based on previous bills for similar usage. The estimated period shall not exceed three months.

4. When there is unauthorized use, the customer may be billed on a reasonable estimate of the gas consumed.

I. Standard Meter Test Methods -- Meter tests shall be made by trained personnel using approved methods and testing equipment. The methods and apparatus recommended in the Gas Displacement Standard, Second Edition 1985, published by the American Gas Association and incorporated by this reference, may be used to satisfy this rule.

J. Meter Testing Equipment -- Utilities shall own and maintain, or have access to, at least one five-cubic-foot prover of an approved type, as well as other equipment necessary to test meters. Meter testing equipment shall be installed in a meter testing station designed for that purpose.

K. Records of Meter Tests -- Utilities shall record the original data of meter tests on standard forms and preserve the data until the next time meters are tested.

L. Meter Records -- Utilities shall keep permanent records of their meters. Utilities shall start a record for each meter when purchased and include the date of purchase, identification number, manufacturer's name, type, and rating. Utilities shall keep records of any tests, adjustments, and repairs. Utilities shall keep records of meter readings when the meters are installed or removed from service together with the addresses of customers served. The meter records shall be systematically kept and filed until the meters are retired.

R746-320-5. Design, Construction, and Operation of Plant.

A. Generally --

1. Facilities owned or operated by utilities and used in furnishing gas shall be designed, constructed, maintained and operated so as to provide adequate and continuous service. Utilities shall, at all times, use every reasonable effort to protect the public from danger and shall exercise due care to reduce the hazards to which employees, customers, and others may be subjected from their equipment and facilities.

2. Utilities shall use accepted good practice of the gas industry, but in no event shall those practices be construed to require less than required by this rule, R746-409, Pipeline Safety in Utah, Chapter 13 of Title 54, and the federal Natural Gas Pipeline Safety Act, 49 U.S.C. Section 1671 et seq.

B. Regulators -- If the gas pressure maintained in a customer's service line exceeds the standard delivery pressure, the utility concerned shall install an approved service regulator on the service line on the customer's premises. The regulator shall be set to deliver gas within the established delivery pressure range and shall have a vent piped to the outdoors if the regulator is located within a building. If pressure in the service line exceeds 100 p.s.i.g., a primary regulator, in addition, shall be installed on the service line outside the building. Regulators shall not be required for service of industrial or commercial customers served through high pressure meters.

C. Main Extensions -- Utilities shall adopt, with Commission approval, uniform rules and regulations governing main extensions.

D. Installation and Maintenance of Service Lines and Meters --

1. Utilities shall furnish, install and maintain, free of charge, a gas service line from the gas main adjacent to customers' premises to the customers' property lines or curbs, except that utilities shall not be required to install the piping on the outlet side of meters.

2. Customers may be required by utilities to install or pay in full or in part for gas service lines from property lines to customers' buildings in accordance with approved tariffs.

3. Service lines and meters shall be owned and maintained by utilities.

E. Service Lines for Temporary Service --

1. Utilities may provide temporary service to customers and may require the customers to bear any costs, in excess of any salvage value realized, of installing and removing service lines.

2. Temporary service shall be considered service provided for emergency or short-term use, as specified in approved tariffs, or service for speculative operations or those of questionable permanency.

F. Gas Service Line Valves --

1. New gas service lines, entering customers' buildings, which are operating at a pressure greater than 10 p.s.i.g., and other service lines two inches or larger, I.P.S., shall be equipped with a gas service line valve located on the service line outside buildings served. If a service line valve is underground, it shall be located in a durable curb box at an easily-accessible location. The top of the curb box shall be at ground level and shall be kept visible by the customer.

2. Service lines shall be equipped with a gas service line valve near the meter. If a service line is not equipped with an outside shut-off, the inside shut-off shall be a type which can be sealed in the off position.

R746-320-6. Records.

A. Maps and Records --

1. Utilities shall keep suitable maps or records to show size, location, character, and date of installation of major plant items.

2. Upon Commission request, and in form specified by or satisfactory to the Commission, utilities shall file adequate descriptions or maps showing the location of facilities.

B. Operating Records --

1. Utilities shall keep appropriate operating records for use in statistical and analytical studies for regulatory purposes.

2. Operating records shall be subject to Commission inspection at reasonable times.

C. Availability of Records -- Utilities shall keep any records made mandatory by these rules at the utilities' offices in Utah. Commission representatives may inspect mandatory records at reasonable times and in a reasonable manner during normal operating hours.

D. Reports to the Commission -- Utilities shall furnish to the Commission, at times and in form designated by the Commission, the results of required tests and summaries of mandatory records. At Commission request, utilities shall also furnish the Commission with information concerning facilities or operations.

E. Preservation of Records -- The Commission adopts the standards of 18 CFR 225, incorporated by reference, to govern the preservation of records of natural gas utilities subject to the jurisdiction of the Commission.

R746-320-7. Accounting.

A. Uniform System of Accounts -- The Commission adopts 18 CFR 201, incorporated by this reference, as the uniform system of accounts for gas utilities subject to Commission jurisdiction. Utilities shall use this system.

B. Uniform List of Retirement Units of Property -- The Commission adopts 18 CFR 216, incorporated by this reference, as the schedule to be used in conjunction with the uniform system of accounts in accounting for additions to and retirements of gas plant. Utilities subject to Commission jurisdiction shall use this schedule.

R746-320-8. Billing Adjustments.

A. Definitions --

1. A "backbill" is that portion of a bill, other than a leveled bill, which represents charges not previously billed for service that was actually delivered to the customer before the current billing cycle.

2. A "catch-up bill" is a bill based on an actual reading provided after one or more bills based on estimated or customer readings. A catch-up bill which exceeds by 50 percent or more the bill that would have been provided under a utility's standard estimation program is presumed to be a backbill.

B. Notice -- The account holder may be notified by mail, by phone, or by a personal visit, of the reason for the backbill. This notification shall be followed by, or include, a written explanation of the reason for the backbill that shall be received by the customer before the due date and be sufficiently detailed to apprise the customer of the circumstances, error or condition that caused the underbilling, and, if the backbill covers more than a 24-month period, a statement setting forth the reasons the utility did not limit the backbill under Subsection R746-320-8(D).

C. Limitations on Providing a Backbill -- A utility shall not provide a backbill more than three months after the utility actually became aware of the circumstance, error, or condition that caused the underbilling and the correct calculation to be used in the backbill has been determined. This limitation does not apply to fraud, theft of service, and denial of access to meter situations.

D. Limitations of the Period for Backbilling --

1. A utility shall not bill a customer for service provided more than 24 months before the utility actually became aware of the circumstance, error, or condition that caused the underbilling or that the original billing was incorrect.

2. When there is customer fraud, theft of service, or denial of access to the meter, the utility shall estimate a bill for the period over which the fraud or theft was perpetrated or that denial of access occurred. The time limitations of Subsection R746-320-8(D)(1) do not apply to customer fraud or theft situations.

3. In the case of a backbill for Utah sales taxes not previously billed, the period covered by the backbill shall not exceed the period for which the utility is assessed a sales tax deficiency.

E. Payment Period and Interest -- A utility shall permit the customer to make arrangements to pay a backbill without interest over a time period at least equal in length to the time period over which the backbill was assessed. However, interest will be assessed at the rate applied to past due accounts on amounts not timely paid in accordance with the established arrangements. If the utility has demonstrated that the customer knew or reasonably should have known that the original billing was incorrect or in the case where there has been fraud or theft, interest will be assessed from the time the original payment was due.

R746-320-9. Overbilling.

A. Standards and Criteria for Overbilling -- Billing under the following conditions constitutes overbilling:

1. a meter registering more than three percent fast, or a defective meter;

2. use of an incorrect heat value multiplier;

3. incorrect service classification, if the information supplied by the customer was not erroneous or deficient;

4. billing based on a crossed meter condition where the customer is billed on the incorrect meter;

5. meter turnover, or billing for a complete revolution of a meter which did not occur;

6. a delay in refunding payment to a customer pursuant

to rules providing for refunds for line extensions;

7. incorrect meter reading or recording by the utility;
and

8. incorrect estimated demand billings by the utility.

B. Interest Rate --

1. A utility shall provide interest on customer payments for overbilling. The interest rate shall be the greater of the interest rate paid by a utility on customer deposits, or the interest rate charged by a utility for late payments.

2. Interest shall be paid from the date when the customer overpayment is made, until the date when the overpayment is refunded. Interest shall be compounded during the overpayment period.

C. Limitations --

1. A utility shall not be required to pay interest on overpayments if offsetting billing adjustments are made during the next full billing cycle after the receipt of the overpayment.

2. The utility shall be required to offer refunds, in lieu of credit, only when the amount of the overpayment exceeds \$50 or the sum of two average month's bills, whichever is less. However, the utility shall not be required to offer a refund to a customer having a balance owing to the utility, unless the refund would result in a credit balance in favor of the customer.

3. If a customer is given a credit for an overpayment, interest will accrue only up to the time at which the first credit is made, when credits are applied over two or more bills.

4. A utility shall not be required to make a refund of, or give a credit for, overpayments which occurred more than 24 months before the customer submitted a complaint to the utility or the Commission, or the utility actually became aware of an incorrect billing which resulted in an overpayment. For all overbilling conditions specified in 746-320-9.A, except for crossed meter conditions specified in 746-320-9.A.4 not caused by the utility, an exception to the 24 month limitation period applies when the overbilling can be shown to be due to some cause, the date of which can be fixed. In this instance the overcharge shall be computed back to that date and the entire overcharge shall be refunded.

5. When a utility can demonstrate before the Commission that a customer knew or reasonably should have known about an overpayment, a utility shall not be required to pay interest on the overpayment.

6. Utilities shall not be required to pay interest on overpayment credits or refunds which were made before the effective date of this rule provision.

7. Disputes regarding the level or terms of the refund or credit are subject to the informal and formal review procedures of the Utah Public Service Commission.

KEY: rules and procedures, public utilities, utility service shutoff

January 7, 2013

54-2-1

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54-4-7

54-4-18

54-4-23

R850. School and Institutional Trust Lands, Administration.**R850-1. Definition of Terms.****R850-1-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X, XVII and XX of the Utah Constitution, and Section 53C-1-302(1)(a)(ii) which authorize the Director of the School and Institutional Trust Lands Administration to provide definitions which apply to all rules promulgated by the director and agency unless otherwise provided.

R850-1-200. Definitions.

1. Animal unit (AU): is equal to one cow and calf or their equivalent.

2. Assignment: the transfer or sale of a lease, permit, contract, certificate, easement, or any other interest or privilege in trust land or its resources by the holder of such interest, including lessees, permittees, and grantees. The transfer of any interest in a grazing association, either between shareholders or with an outside party, is deemed to be an assignment.

3. Beneficiary as to school and institutional trust lands: the public school system and other institutions granted properties by the United States under the Enabling Act to the state of Utah in trust.

4. Board: School and Institutional Trust Lands Board of Trustees.

5. Board policy: actions taken by the School and Institutional Trust Lands Board of Trustees which comply with the definition of Policies found in Section 53C-1-103(5).

6. Carrying capacity: the maximum stocking rate possible which is consistent with maintaining or improving vegetation or related resources.

7. Commercial gain: compensation, in money, in services, or other valuable consideration rendered for products provided.

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 School and Institutional Trust Lands Administration.

11. Agency: School and Institutional Trust Lands Administration.

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 agency to a qualified applicant including but not limited to transmission lines, canals and ditches, pipelines, tunnels, fences, roads and trails.

13. General Management Plans: plans prepared for school and institutional trust lands which guide the implementation of the school and institutional trust land management objectives.

14. High Value Grazing Lands: Trust lands used for grazing which are not located within the boundaries of a federal allotment and which are not managed by a federal agency, or trust lands which are located such that they can be managed independent of the influence of a federal agency, or trust lands for which management agreements with a federal agency are in place, or any other trust lands which the director has designated as High Value Grazing Land.

15. In-kind use: occupancy or use by a beneficiary of its institutional trust land for authorized purposes as a direct economic benefit to the institution.

16. Management Plans: General Management Plans, Resource Plans and Site-Specific Plans.

17. Multiple-use: the management of various surface and sub-surface resources so that they are utilized in the combination that will best meet the present and future needs of the beneficiaries.

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. Planning Unit: the geographical basis of a general 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.

22. 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.

23. 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.

24. Private Exchange: An exchange of trust lands, for land or other assets of equal or greater value, with a political subdivision of the state or agency of the federal government. Lands involved in a private exchange are not required to be advertised as open for competing exchange, lease, and sale applications.

25. Range condition: the relation between current and potential condition of the range site.

26. Record of Decision: a written finding describing an agency action, relevant facts, and the basis upon which the decision for action was made.

27. Resource Plans: a plan prepared for a specific resource, such as mining, timber, grazing or real estate.

28. Rights-of-Entry: a right to a specific, non-depleting land use granted by the agency 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 trust lands, and other temporary types of land uses.

29. School and institutional trust lands: those properties granted by the United States in the Utah Enabling Act to the state of Utah in trust, or other properties transferred to the trust, to be managed for the benefit of the public school system and the various institutions of the state in whose behalf the lands were granted.

30. Significant site: any site which is designated by the Division of State History as scientifically worthy of specific management.

31. 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.

32. Site Specific Plans: plans prepared for trust lands which provide direction for specific actions. Site-specific plans shall include, but not be limited to:

(a) Records of Decision in either narrative or summary form.

(b) Board action that designates specific parcels of land for specific uses(s) or disposition.

33. Specimen: includes all man-made relics, artifacts, remains of a prehistorical, archaeological, or anthropological nature found on or below the surface of the earth, and any remains of prehistoric life.

34. Sublease: a situation where a permittee or lessee has granted or allowed the use of part or all of the permitted or leased premises to another person, but with the original permittee or lessee retaining some right or interest under the original permit or lease.

35. Trust lands: school and institutional trust lands and all other lands administered under the authority of the School and Institutional Trust Lands Board of Trustees.

36. Survey Report: report of the various site files and field surveys or inspections.

37. Sustained-yield: the achievement and maintenance of maximum non-depleting level of annual or periodic production of the various renewable resources of land without impairment of the productivity of the land.

38. Trust land use(s): any use of school and institutional trust lands based on multiple-use, sustained-yield principles or practices designed to maximize support of the beneficiaries.

KEY: administrative procedure, definitions
January 21, 2016 53C-1-302(1)(a)(ii)
Notice of Continuation May 23, 2017

R850. School and Institutional Trust Lands, Administration.**R850-2. Trust Land Management Objectives.****R850-2-100. 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-1-204(1) and 53C-1-302 which authorize the Director of the School and Institutional Trust Lands Administration and the Board of Trustees to prescribe the general land management objectives for school and institutional trust lands.

R850-2-200. School and Institutional Trust Land Management Objectives.

The general land management objective for school and institutional trust lands is to optimize and maximize trust land uses for support of the beneficiaries over time. The agency shall:

1. maximize the commercial gain from trust land uses for school and institutional trust lands consistent with long-term support of beneficiaries.
2. manage school and institutional trust lands for their highest and best trust land use.
3. ensure that no less than fair-market value be received for the use, sale or exchange of school and institutional trust lands.
4. reduce risk of loss by reasonable trust land use diversification of school and institutional trust lands.
5. upgrade school and institutional trust land assets where prudent by exchange.
6. permit other land uses or activities not prohibited by law which do not constitute a loss of trust assets or loss of economic opportunity.

KEY: rules and procedures

1991

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53C-1-204(1)

53C-1-302

R850. School and Institutional Trust Lands, Administration.**R850-3. Applicant Qualifications, Application Forms, and Application Processing.****R850-3-100. 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-2-404 which authorize the Director of the School and Institutional Trust Lands Administration (Trust Lands Administration) to prescribe the applicant requirements and the form of application.

R850-3-200. Applicant Qualifications.

Any person qualified to do business in the state of Utah, and not in default under the laws of the state of Utah relative to qualification to do business within the state, or not in default on any previous obligation with the Trust Lands Administration, shall be a qualified applicant for sale, exchange, lease or permit.

R850-3-300. Application Forms.

Application for the purchase, exchange, or use of trust lands or resources shall be on forms provided by the Trust Lands Administration, exact copies of its forms, forms retrieved from electronic sources, or forms submitted electronically.

R850-3-400. Application Processing.

1. Within 15 days from receipt of an application for a Special Use Lease, Easement, Sale, Exchange, Modified Grazing Permit, or Materials Permit, the Trust Lands Administration shall conduct an initial evaluation of the application. Trust Lands Administration may refuse the application if it determines, in its sole discretion, that:

- (a) activities with higher priorities would be adversely impacted by processing the application;
- (b) an existing or planned application or activity on the parcel would be adversely impacted by processing the application;
- (c) an agency-initiated activity would be adversely impacted by processing the application; or
- (d) proceeding with the proposal would not be in the best interests of the trust land beneficiaries.

2. No fees shall be collected from the applicant prior to the above-referenced evaluation. If the Trust Lands Administration chooses to refuse the application, it shall notify the applicant in writing. If the Trust Lands Administration chooses to accept the application, it shall inform the applicant of any further information, material, deposits and fees which may be required in order to accept the application and commence processing. Failure to provide the requested items by the deadline established by the Trust Lands Administration may result in the application being rejected. A determination refusing an application shall not be subject to administrative review.

R850-3-500. No Interest Conveyed by Submitting Application.

1. Until an executed instrument of conveyance, lease, permit or right is delivered or mailed to the successful applicant, applications for the purchase, exchange, or use of trust lands or resources shall not convey or vest the applicant with any rights or interests.

2. The Trust Lands Administration may reject any application prior to execution if it determines that rejection is in the best interest of the trust.

3. If an application is rejected, all monies tendered by the applicant, except the application fee, shall be refunded.

4. Should an applicant desire to withdraw the application, the applicant must make a written request. If the request is received prior to the time that the application is considered for formal action, all monies tendered by the applicant, except the application fee and any amounts expended on advertising or appraisals prior to the receipt of the withdrawal request, will be refunded. If the request for withdrawal is received after the application is approved, all monies tendered are forfeited to the Trust Lands Administration, unless otherwise ordered for a good cause shown.

5. Any deposit to cover advertising, appraisal costs and processing fees shall be forfeited if any lease, permit, grant or certificate is offered but not executed by the applicant.

R850-3-600. Rule Changes During Application Processing.

Applications shall be processed in accordance with the applicable rules in effect at the time the application was accepted except that the Trust Lands Administration may apply rule changes that become effective during the processing of an application if the Trust Lands Administration determines that the application of the rule change is in the best interest of the beneficiary of the land. If the applicant objects to compliance with changes in the rules, then the applicant may elect to withdraw the application, or the Trust Lands Administration may reject the application. For applications which are withdrawn or rejected under this section 600, all fees, except application fees, shall be refunded to the applicant without penalty.

KEY: administrative procedures, residency requirements
June 3, 2003 **53C-1-302(1)(a)(ii)**
Notice of Continuation May 23, 2017 **53C-2-404**

R884. Tax Commission, Property Tax.**R884-24P. Property Tax.****R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).**

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight-line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

- a) purchase price of an asset and its components;
- b) transportation costs;
- c) installation charges and construction costs; and
- d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable

properties in the mining industry, taking into account the industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self-consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The

representative unit sales price is determined from:

- (a) actual sales of like mineral by the taxpayer;
- (b) actual sales of like mineral by other taxpayers; or
- (c) posted prices of like mineral; or

(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

- a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and
- b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

- a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.
- b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.
- c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.
- d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property

Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.

- (1) Definitions.
- (a) "Person" is as defined in Section 68-3-12.
- (b) "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.
- (c) "Unit operator" means a person who operates all producing wells in a unit.
- (d) "Independent operator" means a person operating an oil or gas producing property not in a unit.
- (e) One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.
- (f) "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.
- (g) "Product price" means:
- (i) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.
- (ii) Gas:
- (A) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.
- (B) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.
- (h) "Future net revenue" means annual revenues less costs of the working interests and royalty interest.
- (i) "Revenue" means expected annual gross revenue, calculated by multiplying the product price by expected annual production for the remaining economic life of the property.
- (j) "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:
- (i) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.
- (ii) Interest, depreciation, or any expense not directly related to the unit may not be included as allowable costs.
- (k) "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.
- (2) The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.
- (a) The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.
- (b) The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.
- (c) The discount rate shall contain the same elements as the expected income stream.
- (3) Assessment Procedures.
- (a) Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.
- (b) The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.
- (c) The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in Subsection (3)(b) or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.
- (d) The value of the production assets shall be considered in the value of the oil and gas reserves as determined in Subsection (3)(b). Any other tangible property shall be separately valued at fair market value by the Property Tax Division.
- (e) The minimum value of the property shall be the value of the production assets.
- (4) Collection by Operator.
- (a) The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of the ad valorem tax on each fractional interest according to the estimate made.
- (i) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.
- (ii) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.
- (iii) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.
- (b) The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.
- (c) Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.
- (d) Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon

request, shall be required to submit similar information to unit operators.

R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.

(1) The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

(2) After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor a notice of the preservation easement containing the following information:

- (a) the property owner's name;
- (b) the address of the property; and
- (c) the serial number of the property.

(3) The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-302.

(1) Definitions:

(a) "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.

(b) "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-302.

(c) "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.

(d) "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 3 of the Constitution of Utah from the payment of ad valorem property tax.

(e) "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.

(f) "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.

(g) "Sold," for the purpose of interpreting Subsection (4), means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.

(h) "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.

(i) All definitions contained in Section 11-13-103 apply to this rule.

(2) The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income

and cost approaches to value described below.

(a) The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.

(b) The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.

(c) In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to Subsection (2)(b), a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:

(i) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.

(ii) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.

(3) If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.

(4) Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.

(5) For purposes of calculating the amount of the fee payable under Section 11-13-302(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.

(6) In computing its tax rate pursuant to the formula specified in Section 59-2-924(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-302(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-924.

(7) Subsections (2)(a) and (2)(b) are retroactive to the

lien date of January 1, 1984. Subsection (2)(c) is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.

(1) "State certified general appraiser," "state certified residential appraiser," "state licensed appraiser," and trainee are as defined in Section 61-2b-2.

(2) The ad valorem training and designation program consists of several courses and practica.

(a) Certain courses must be sanctioned by either the Appraiser Qualification Board of the Appraisal Foundation (AQB) or the Western States Association of Tax Administrators (WSATA).

(b) The courses comprising the basic designation program are:

- (i) Course 101 - Basic Appraisal Principles;
- (ii) Course 103 - Uniform Standards of Professional Appraisal Practice (AQB);
- (iii) Course 501 - Assessment Practice in Utah;
- (iv) Course 502 - Mass Appraisal of Land;
- (v) Course 503 - Development and Use of Personal Property Schedules;
- (vi) Course 504 - Appraisal of Public Utilities and Railroads (WSATA); and
- (vii) Course 505 - Income Approach Application.

(3) Candidates must attend 90 percent of the classes in each course and pass the final examination for each course with a grade of 70 percent or more to be successful.

(4) There are four recognized ad valorem designations: ad valorem residential appraiser, ad valorem general real property appraiser, ad valorem personal property auditor/appraiser, and ad valorem centrally assessed valuation analyst.

(a) These designations are granted only to individuals employed in a county assessor office or the Property Tax Division, working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors.

(b) An assessor, county employee, or state employee must hold the appropriate designation to value property for ad valorem taxation purposes.

(5) Ad valorem residential appraiser.

(a) To qualify for this designation, an individual must:

- (i) successfully complete courses 501 and 502;
- (ii) successfully complete a comprehensive residential field practicum; and
- (iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

(6) Ad valorem general real property appraiser.

(a) In order to qualify for this designation, an individual must:

- (i) successfully complete courses 501, 502, and 505;
- (ii) successfully complete a comprehensive field practicum including residential and commercial properties; and
- (iii) attain and maintain state certified appraiser status.

(b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

(7) Ad valorem personal property auditor/appraiser.

(a) To qualify for this designation, an individual must:

- (i) successfully complete courses 101, 103, 501, and 503; and
- (ii) successfully complete a comprehensive auditing

practicum.

(b) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

(8) Ad valorem centrally assessed valuation analyst.

(a) In order to qualify for this designation, an individual must:

- (i) successfully complete courses 501 and 504;
- (ii) successfully complete a comprehensive valuation practicum; and
- (iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

(9) If a candidate fails to receive a passing grade on a final examination, two re-examinations are allowed. If the re-examinations are not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

(10) A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

(a) Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

(b) The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

(11) An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

(a) has completed all education and practicum requirements for designation under Subsections (5), (6), or (8); and

(b) has not completed the non-education requirements for licensure or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(12) An individual holding a specified designation can qualify for other designations by meeting the additional requirements under Subsections (5), (6), (7), or (8).

(13)(a) Maintaining designated status for individuals designated under Subsection (7) requires completion of 14 hours of Tax Commission approved classroom work every two years.

(b) Maintaining designated status for individuals designated under Subsections (5), (6), and (8) requires maintaining their appraisal license or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(14) Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

(a) Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

(b) If more than four years elapse between termination and rehire, and:

(i) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

(ii) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

(15) All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in

section 61-2b-27.

(16) If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met:

(a) The private sector appraisers performing the contracted work must hold the state certified residential appraiser or state certified general appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only state certified general appraisers may appraise nonresidential properties.

(b) All appraisal work shall meet the standards set forth in Section 61-2b-27.

(17) The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

(a) There are no specific licensure, certification, or educational requirements related to this function.

(b) An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;
b) acquisition of personal property; or
c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income

approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction

and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918.5 through 59-2-924.

(1) The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

(a) If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

(i) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax Changes.

(ii) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

(b) The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

(2) The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

(a) New property is created by a new legal description; or

(b) The status of the improvements on the property has changed.

(c) In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

(d) If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in Subsection (1).

(3) Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

(4)(a) All completion dates specified for the disclosure of property tax information must be strictly observed.

(b) Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in Subsection (1).

(5) If the cost of public notice required under Section 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

(6) Calculation of the amount and percentage increase in property tax revenues required by Section 59-2-919 shall be computed by comparing property taxes levied for the current year with property taxes budgeted the prior year, without adjusting for revenues attributable to new growth.

(7) If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

(8) The value of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

(9) The value and taxes of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-924.

(10) The following formulas and definitions shall be used in determining new growth:

(a) Actual new growth shall be computed as follows:

(i) the taxable value of property assessed by the commission and locally assessed real property for the current year adjusted for redevelopment minus year-end taxable value of property assessed by the commission and locally assessed real property for the previous year adjusted for redevelopment; then

(ii) plus or minus the difference between the taxable value of locally assessed personal property for the prior year adjusted for redevelopment and the year-end taxable value of locally assessed personal property for the year that is two years prior to the current year adjusted for redevelopment; then

(iii) plus or minus changes in value as a result of factoring; then

(iv) plus or minus changes in value as a result of reappraisal; then

(v) plus or minus any change in value resulting from a legislative mandate or court order.

(b) Net annexation value is the taxable value for the current year adjusted for redevelopment of all properties annexed into an entity during the previous calendar year minus the taxable value for the previous year adjusted for redevelopment for all properties annexed out of the entity during the previous calendar year.

(c) New growth is equal to zero for an entity with:

(i) an actual new growth value less than zero; and

(ii) a net annexation value greater than or equal to zero.

(d) New growth is equal to actual new growth for:

(i) an entity with an actual new growth value greater than or equal to zero; or

(ii) an entity with:

(A) an actual new growth value less than zero; and

(B) the actual new growth value is greater than or equal to the net annexation value.

(e) New growth is equal to the net annexation value for an entity with:

(i) a net annexation value less than zero; and

(ii) the actual new growth value is less than the net annexation value.

(f) Adjusted new growth equals new growth multiplied by the mean collection rate for the previous five years.

(11)(a) For purposes of determining the certified tax rate, ad valorem property tax revenues budgeted by a taxing entity for the prior year are calculated by:

(i) increasing or decreasing the adjustable taxable value from the prior year Report 697 by the average of the percentage net change in the value of taxable property for the equalization period for the three calendar years immediately preceding the current calendar year; and

(ii) multiplying the result obtained in Subsection (11)(a)(i) by:

(A) the percentage of property taxes collected for the five calendar years immediately preceding the current calendar year; and

(B) the prior year approved tax rate.

(b) If a taxing entity levied the prior year approved tax rate, the budgeted revenues determined under Subsection (11)(a) are reflected in the budgeted revenue column of the prior year Report 693.

(12) Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

(a) the valuation bases for the funds are contained within identical geographic boundaries; and

(b) the funds are under the levy and budget setting authority of the same governmental entity.

(13) For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

(14) No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless

that entity existed on the first day of that calendar year.

R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5.

(1) Definitions.

(a) "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

(b) "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

(c) "Division" means the Property Tax Division of the commission.

(d) "Nonparametric" means data samples that are not normally distributed.

(e) "Parametric" means data samples that are normally distributed.

(f) "Urban counties" means counties classified as first or second class counties pursuant to Section 17-50-501.

(2) The commission adopts the following standards of assessment performance.

(a) For assessment level in each property class, subclass, and geographical area in each county, the measure of central tendency shall meet one of the following measures.

(i) The measure of central tendency shall be within 10 percent of the legal level of assessment.

(ii) The 95 percent confidence interval of the measure of central tendency shall contain the legal level of assessment.

(b) For uniformity of the property assessments in each class of property for which a detailed review is conducted during the current year, the measure of dispersion shall be within the following limits.

(i) In urban counties:

(A) a COD of 15 percent or less for primary residential property, and 20 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 19 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property.

(ii) In rural counties:

(A) a COD of 20 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 25 percent or less for primary residential property, and 31 percent or less for commercial property, vacant land, and secondary residential property.

(iii) For a rural or small jurisdiction with limited development, or for a jurisdiction with a depressed market, the county assessor may petition the division for a five percentage point increase in the COD or COV for one year only. After sufficient examination, the division may determine that a one-year expansion of the COD or COV is appropriate.

(c) Statistical measures.

(i) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

(ii) The measure of dispersion shall be the COV for parametric samples and the COD for nonparametric samples.

(iii) To achieve statistical accuracy in determining assessment level under Subsection (2)(a) and uniformity under Subsection (2)(b) for any property class, subclass, or geographical area, the minimum sample size shall consist of 10 or more ratios.

(3) Each year the division shall conduct and publish an assessment-to-sale ratio study to determine if each county complies with the standards in Subsection (2).

(a) To meet the minimum sample size, the study period

may be extended.

(b) A smaller sample size may be used if:

(i) that sample size is at least 10 percent of the class or subclass population; or

(ii) both the division and the county agree that the sample may produce statistics that imply corrective action appropriate to the class or subclass of property.

(c) If the division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

(i) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

(ii) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

(iii) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

(iv) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

(d) All input to the sample used to measure performance shall be completed by March 31 of each study year.

(e) The division shall conduct a preliminary annual assessment-to-sale ratio study by April 30 of the study year, allowing counties to apply adjustments to their tax roll prior to the May 22 deadline.

(f) The division shall complete the final study immediately following the closing of the tax roll on May 22.

(4) The division shall order corrective action if the results of the final study do not meet the standards set forth in Subsection (2).

(a) Assessment level adjustments, or factor orders, shall be calculated by dividing the legal level of assessment by one of the following:

(i) the measure of central tendency, if the uniformity of the ratios meets the standards outlined in Subsection (2)(b); or

(ii) the 95 percent confidence interval limit nearest the legal level of assessment, if the uniformity of the ratios does not meet the standards outlined in Subsection (2)(b).

(b) Uniformity adjustments or other corrective action shall be ordered if the property fails to meet the standards outlined in Subsection (2)(b)(c). A corrective action order may contain language requiring a county to create, modify, or follow its five-year plan for a detailed review of property characteristics.

(d) All corrective action orders shall be issued by June 10 of the study year, or within five working days after the completion of the final study, whichever is later.

(5) The commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

(a) Prior to the filing of an appeal, the division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without commission approval. Any stipulation by the division subsequent to an appeal is subject to commission approval.

(b) A county receiving a corrective action order resulting from this rule may file and appeal with the commission pursuant to rule R861-1A-11.

(c) A corrective action order will become the final commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

(d) The division may assist local jurisdictions to ensure

implementation of any corrective action orders by the following deadlines.

(i) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

(ii) Other corrective action shall be implemented prior to May 22 of the year following the study year.

(e) The division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in Subsection (5)(d) as practical. The division shall review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the commission for any necessary action.

(f) The county shall be informed of any adjustment required as a result of the compliance audit.

R884-24P-28. Reporting Requirements For Leased or Rented Personal Property Pursuant to Utah Code Ann. Section 59-2-306.

(1) The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

(2) The owner of leased or rented heavy equipment shall file annual reports with the commission, either on forms provided by the commission or electronically, for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

(a) a description of the leased or rented equipment;

(b) the year of manufacture and acquisition cost;

(c) a listing, by month, of the counties where the equipment has situs; and

(d) any other information required.

(3) For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

(4)(a) The completed report shall be submitted to the Property Tax Division of the commission within thirty days after each reporting period.

(b) Noncompliance will require accelerated reporting.

R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.

(1) Except as provided in Section 59-2-1115, household furnishings, furniture, and equipment are subject to property taxation if:

(a) the owner of the dwelling unit commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

(b) the dwelling unit is held out as available for the rent, lease, or use by others.

(2) Household furnishings, furniture, and equipment that meet the definition of qualifying exempt primary residential rental personal property in Section 59-2-102:

(a) qualify for the primary residential exemption under Section 59-2-103; and

(b) are valued for tax under this chapter by:

(i) calculating the value of the personal property using the tables in Tax Commission rule R884-24P-33; and

(ii) multiplying the value calculated under Subsection (2)(b)(i) by 0.55.

R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and underlying real property required in A. shall satisfy the requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

R884-24P-33. 2017 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

(1) Definitions.

(a)(i) "Acquisition cost" does not include indirect costs such as debugging, licensing fees and permits, insurance, or security.

(ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

(b)(i) "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(c) "Cost new" means the actual cost of the property when purchased new.

(i) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

(A) documented actual cost of the new or used vehicle;

or

(B) recognized publications that provide a method for approximating cost new for new or used vehicles.

(ii) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

(A) class 6 heavy and medium duty trucks;

(B) class 13 heavy equipment;

(C) class 14 motor homes;

(D) class 17 vessels equal to or greater than 31 feet in length; and

(E) class 21 commercial trailers.

(d) For purposes of Sections 59-2-108 and 59-2-1115, "item of taxable tangible personal property" means a piece of equipment, machinery, furniture, or other piece of tangible personal property that is functioning at its highest and best use for the purpose it was designed and constructed and is generally capable of performing that function without being combined with other items of personal property. An item of taxable tangible personal property is not an individual component part of a piece of machinery or equipment, but the piece of machinery or equipment. For example, a fully functioning computer is an item of taxable tangible personal property, but the motherboard, hard drive, tower, or sound card are not.

(e) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

(i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

(ii) Percent good schedules are derived from an analysis

of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Penton Price Digests.

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

(c) County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

(3) The provisions of this rule do not apply to:

(a) a vehicle subject to the age-based uniform fee under Section 59-2-405.1;

(b) the following personal property subject to the age-based uniform fee under Section 59-2-405.2:

(i) an all-terrain vehicle;

(ii) a camper;

(iii) an other motorcycle;

(iv) an other trailer;

(v) a personal watercraft;

(vi) a small motor vehicle;

(vii) a snowmobile;

(viii) a street motorcycle;

(ix) a tent trailer;

(x) a travel trailer; and

(xi) a vessel, including an outboard motor of the vessel, that is less than 31 feet in length and

(c) an aircraft subject to the uniform statewide fee under Section 59-2-404.

(4) Other taxable personal property that is not included in the listed classes includes:

(a) Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

(b) Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

(c) Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

(5) Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

(6) All taxable personal property, other than personal property subject to an age-based uniform fee under Section 59-2-405.1 or 59-2-405.2, or a uniform statewide fee under Section 59-2-404, is classified by expected economic life as follows:

(a) Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

(i) Examples of property in the class include:

- (A) barricades/warning signs;
- (B) library materials;
- (C) patterns, jigs and dies;
- (D) pots, pans, and utensils;
- (E) canned computer software;
- (F) hotel linen;
- (G) wood and pallets;
- (H) video tapes, compact discs, and DVDs; and
- (I) uniforms.

(ii) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:

- (A) retail price of the canned computer software;
- (B) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or
- (C) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.

(iv) Video tapes, compact discs, and DVDs are valued at \$15.00 per tape or disc for the first year and \$3.00 per tape or disc thereafter.

TABLE 1

| Year of Acquisition | Percent Good of Acquisition Cost |
|---------------------|----------------------------------|
| 16 | 69% |
| 15 | 40% |
| 14 and prior | 10% |

(b) Class 2 - Computer Integrated Machinery.

(i) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:

(A) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(B) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(C) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(D) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(E) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

(ii) Examples of property in this class include:

- (A) CNC mills;
- (B) CNC lathes;
- (C) high-tech medical and dental equipment such as MRI equipment, CAT scanners, and mammography units.

(iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

| Year of Acquisition | Percent Good of Acquisition Cost |
|---------------------|----------------------------------|
| 16 | 88% |
| 15 | 78% |
| 14 | 67% |
| 13 | 57% |
| 12 | 47% |
| 11 | 36% |
| 10 | 24% |
| 09 and prior | 12% |

(c) Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

(i) Examples of property in this class include:

- (A) office machines;
- (B) alarm systems;
- (C) shopping carts;
- (D) ATM machines;
- (E) small equipment rentals;
- (F) rent-to-own merchandise;
- (G) telephone equipment and systems;
- (H) music systems;
- (I) vending machines;
- (J) video game machines; and
- (K) cash registers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

| Year of Acquisition | Percent Good of Acquisition Cost |
|---------------------|----------------------------------|
| 16 | 82% |
| 15 | 67% |
| 14 | 51% |
| 13 | 34% |
| 12 and prior | 18% |

(d) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

(i) Examples of property in this class include:

- (A) furniture;
- (B) bars and sinks;
- (C) booths, tables and chairs;
- (D) beauty and barber shop fixtures;
- (E) cabinets and shelves;
- (F) displays, cases and racks;
- (G) office furniture;
- (H) theater seats;
- (I) water slides; and
- (J) signs, mechanical and electrical.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

| Year of Acquisition | Percent Good of Acquisition Cost |
|---------------------|----------------------------------|
| 16 | 89% |
| 15 | 80% |
| 14 | 71% |
| 13 | 61% |
| 12 | 52% |
| 11 | 43% |
| 10 | 32% |
| 09 | 22% |
| 08 and prior | 12% |

(e) Class 6 - Heavy and Medium Duty Trucks.

(i) Examples of property in this class include:

- (A) heavy duty trucks;
- (B) medium duty trucks;
- (C) crane trucks;
- (D) concrete pump trucks; and
- (E) trucks with well-boring rigs.

(ii) Taxable value is calculated by applying the percent good factor against the cost new.

(iii) Cost new of vehicles in this class is defined as follows:

- (A) the documented actual cost of the vehicle for new

vehicles; or

(B) 75 percent of the manufacturer's suggested retail price.

(iv) For state assessed vehicles, cost new shall include the value of attached equipment.

(v) The 2017 percent good applies to 2017 models purchased in 2016.

(vi) Trucks weighing two tons or more have a residual taxable value of \$1,750.

TABLE 6

| Model Year | Percent Good of Cost New |
|--------------|--------------------------|
| 17 | 90% |
| 16 | 70% |
| 15 | 64% |
| 14 | 59% |
| 13 | 53% |
| 12 | 48% |
| 11 | 42% |
| 10 | 36% |
| 09 | 31% |
| 08 | 25% |
| 07 | 20% |
| 06 | 15% |
| 05 | 10% |
| 04 and prior | 4% |

(f) Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.

(i) Examples of property in this class include:

(A) medical and dental equipment and instruments;

(B) exam tables and chairs;

(C) microscopes; and

(D) optical equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 7

| Year of Acquisition | Percent Good of Acquisition Cost |
|---------------------|----------------------------------|
| 16 | 90% |
| 15 | 84% |
| 14 | 76% |
| 13 | 68% |
| 12 | 61% |
| 11 | 54% |
| 10 | 45% |
| 09 | 37% |
| 08 | 29% |
| 07 | 20% |
| 06 and prior | 11% |

(g) Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

(i) Examples of property in this class include:

(A) manufacturing machinery;

(B) amusement rides;

(C) bakery equipment;

(D) distillery equipment;

(E) refrigeration equipment;

(F) laundry and dry cleaning equipment;

(G) machine shop equipment;

(H) processing equipment;

(I) auto service and repair equipment;

(J) mining equipment;

(K) ski lift machinery;

(L) printing equipment;

(M) bottling or cannery equipment;

(N) packaging equipment; and

(O) pollution control equipment.

(ii) Except as provided in Subsection (6)(g)(iii), taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii)(A) Notwithstanding Subsection (6)(g)(ii), the taxable value of the following oil refinery pollution control equipment required by the federal Clean Air Act shall be calculated pursuant to Subsection (6)(g)(iii)(B):

(I) VGO (Vacuum Gas Oil) reactor;

(II) HDS (Diesel Hydrotreater) reactor;

(III) VGO compressor;

(IV) VGO furnace;

(V) VGO and HDS high pressure exchangers;

(VI) VGO, SRU (Sulfur Recovery Unit), SWS (Sour Water Stripper), and TGU; (Tail Gas Unit) low pressure exchangers;

(II) VGO, amine, SWS, and HDS separators and drums;

(VIII) VGO and tank pumps;

(IX) TGU modules; and

(X) VGO tank and VGO tank air coolers.

(B) The taxable value of the oil refinery pollution control equipment described in Subsection (6)(g)(iii)(A) shall be calculated by:

(I) applying the percent good factor in Table 8 against the acquisition cost of the property; and

(II) multiplying the product described in Subsection (6)(g)(iii)(B)(I) by 50%.

TABLE 8

| Year of Acquisition | Percent Good of Acquisition Cost |
|---------------------|----------------------------------|
| 16 | 90% |
| 15 | 84% |
| 14 | 76% |
| 13 | 68% |
| 12 | 61% |
| 11 | 54% |
| 10 | 45% |
| 09 | 37% |
| 08 | 29% |
| 07 | 20% |
| 06 and prior | 11% |

(h) Class 9 - Off-Highway Vehicles.

(i) Because Section 59-2-405.2 subjects off-highway vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(i) Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

| Year of Acquisition | Percent Good of Acquisition Cost |
|---------------------|----------------------------------|
| 16 | 92% |
| 15 | 87% |
| 14 | 81% |
| 13 | 75% |
| 12 | 70% |
| 11 | 65% |
| 10 | 57% |
| 09 | 51% |
| 08 | 46% |
| 07 | 40% |
| 06 | 34% |
| 05 | 27% |
| 04 | 19% |
| 03 and prior | 9% |

- (j) Class 11 - Street Motorcycles.
 - (i) Because Section 59-2-405.2 subjects street motorcycles to an age-based uniform fee, a percent good schedule is not necessary.
- (k) Class 12 - Computer Hardware.
 - (i) Examples of property in this class include:
 - (A) data processing equipment;
 - (B) personal computers;
 - (C) main frame computers;
 - (D) computer equipment peripherals;
 - (E) cad/cam systems; and
 - (F) copiers.
 - (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

| Year of Acquisition | Percent Good of Acquisition Cost |
|---------------------|----------------------------------|
| 16 | 62% |
| 15 | 46% |
| 14 | 21% |
| 13 | 9% |
| 12 and prior | 7% |

- (l) Class 13 - Heavy Equipment.
 - (i) Examples of property in this class include:
 - (A) construction equipment;
 - (B) excavation equipment;
 - (C) loaders;
 - (D) batch plants;
 - (E) snow cats; and
 - (F) pavement sweepers.
 - (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.
 - (iii) 2017 model equipment purchased in 2016 is valued at 100 percent of acquisition cost.

TABLE 13

| Year of Acquisition | Percent Good of Acquisition Cost |
|---------------------|----------------------------------|
| 16 | 49% |
| 15 | 46% |
| 14 | 43% |
| 13 | 40% |
| 12 | 38% |
| 11 | 35% |
| 10 | 32% |
| 09 | 29% |
| 08 | 26% |
| 07 | 24% |
| 06 | 21% |
| 05 | 18% |
| 04 | 15% |
| 03 and prior | 13% |

- (m) Class 14 - Motor Homes.
 - (i) Taxable value is calculated by applying the percent good against the cost new.
 - (ii) The 2017 percent good applies to 2017 models purchased in 2016.
 - (iii) Motor homes have a residual taxable value of \$1,000.

TABLE 14

| Model Year | Percent Good of Cost New |
|------------|--------------------------|
| 17 | 90% |
| 16 | 71% |
| 15 | 67% |
| 14 | 63% |
| 13 | 59% |
| 12 | 56% |
| 11 | 52% |

| | |
|--------------|-----|
| 10 | 48% |
| 09 | 44% |
| 08 | 40% |
| 07 | 37% |
| 06 | 33% |
| 05 | 29% |
| 04 | 25% |
| 03 | 22% |
| 02 | 18% |
| 01 and prior | 14% |

- (n) Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.
 - (i) Examples of property in this class include:
 - (A) crystal growing equipment;
 - (B) die assembly equipment;
 - (C) wire bonding equipment;
 - (D) encapsulation equipment;
 - (E) semiconductor test equipment;
 - (F) clean room equipment;
 - (G) chemical and gas systems related to semiconductor manufacturing;
 - (H) deionized water systems;
 - (I) electrical systems; and
 - (J) photo mask and wafer manufacturing dedicated to semiconductor production.
 - (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

| Year of Acquisition | Percent Good of Acquisition Cost |
|---------------------|----------------------------------|
| 16 | 47% |
| 15 | 34% |
| 14 | 24% |
| 13 | 15% |
| 12 and prior | 6% |

- (o) Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.
 - (i) Examples of property in this class include:
 - (A) billboards;
 - (B) sign towers;
 - (C) radio towers;
 - (D) ski lift and tram towers;
 - (E) non-farm grain elevators;
 - (F) bulk storage tanks;
 - (G) underground fiber optic cable;
 - (H) solar panels and supporting equipment; and
 - (I) pipe laid in or affixed to land.
 - (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

| Year of Acquisition | Percent Good of Acquisition Cost |
|---------------------|----------------------------------|
| 16 | 94% |
| 15 | 90% |
| 14 | 86% |
| 13 | 81% |
| 12 | 79% |
| 11 | 76% |
| 10 | 70% |
| 09 | 66% |
| 08 | 64% |
| 07 | 60% |
| 06 | 59% |
| 05 | 54% |
| 04 | 49% |
| 03 | 43% |
| 02 | 36% |

| | |
|--------------|-----|
| 01 | 29% |
| 00 | 22% |
| 99 | 15% |
| 98 and prior | 8% |

(p) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.

- (i) Examples of property in this class include:
 - (A) houseboats equal to or greater than 31 feet in length;
 - (I) sailboats equal to or greater than 31 feet in length; and
 - (C) yachts equal to or greater than 31 feet in length.

(ii) A vessel, including an outboard motor of the vessel, under 31 feet in length:

- (A) is not included in Class 17;
- (B) may not be valued using Table 17; and
- (C) is subject to an age-based uniform fee under Section 59-2-405.2.

(iii) Taxable value is calculated by applying the percent good factor against the cost new of the property.

(iv) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:

- (A) the following publications or valuation methods:
 - (I) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;

(II) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or

(III) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:

- (aa) the manufacturer's suggested retail price for comparable property; or
- (bb) the cost new established for that property by a documented valuation source; or

(B) the documented actual cost of new or used property in this class.

(v) The 2017 percent good applies to 2017 models purchased in 2016.

(vi) Property in this class has a residual taxable value of \$1,000.

TABLE 17

| Model Year | Percent Good of Cost New |
|--------------|--------------------------|
| 17 | 90% |
| 16 | 66% |
| 15 | 64% |
| 14 | 61% |
| 13 | 59% |
| 12 | 57% |
| 11 | 54% |
| 10 | 52% |
| 09 | 50% |
| 08 | 47% |
| 07 | 45% |
| 06 | 43% |
| 05 | 41% |
| 04 | 38% |
| 03 | 36% |
| 02 | 34% |
| 01 | 31% |
| 00 | 29% |
| 99 | 27% |
| 98 | 24% |
| 97 | 20% |
| 96 and prior | 16% |

(q) Class 17a - Vessels Less Than 31 Feet in Length

(i) Because Section 59-2-405.2 subjects vessels less than 31 feet in length to an age-based uniform fee, a percent good schedule is not necessary.

(r) Class 18 - Travel Trailers and Class 18a - Tent Trailers/Truck Campers.

- (i) Because Section 59-2-405.2 subjects travel trailers

and tent trailers/truck campers to an age-based uniform fee, a percent good schedule is not necessary.

(s) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

- (i) Examples of property in this class include:

- (A) oil and gas exploration equipment;
- (B) distillation equipment;
- (C) wellhead assemblies;
- (D) holding and storage facilities;
- (E) drill rigs;
- (F) reinjection equipment;
- (G) metering devices;
- (H) cracking equipment;
- (I) well-site generators, transformers, and power lines;
- (J) equipment sheds;
- (K) pumps;
- (L) radio telemetry units; and
- (M) support and control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

| Year of Acquisition | Percent Good of Acquisition Cost |
|---------------------|----------------------------------|
| 16 | 92% |
| 15 | 84% |
| 14 | 79% |
| 13 | 72% |
| 12 | 65% |
| 11 | 59% |
| 10 | 53% |
| 09 | 45% |
| 08 | 39% |
| 07 | 33% |
| 06 | 26% |
| 05 | 18% |
| 04 and prior | 10% |

(t) Class 21 - Commercial Trailers.

- (i) Examples of property in this class include:

- (A) dry freight van trailers;
- (B) refrigerated van trailers;
- (C) flat bed trailers;
- (D) dump trailers;
- (E) livestock trailers; and
- (F) tank trailers.

(ii) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.

(iii) The 2017 percent good applies to 2017 models purchased in 2016.

(iv) Commercial trailers have a residual taxable value of \$1,000.

TABLE 21

| Model Year | Percent Good of Cost New |
|------------|--------------------------|
| 17 | 95% |
| 16 | 87% |
| 15 | 83% |
| 14 | 79% |
| 13 | 75% |
| 12 | 71% |
| 11 | 67% |
| 10 | 63% |
| 09 | 59% |
| 08 | 55% |
| 07 | 51% |
| 06 | 47% |
| 05 | 41% |
| 04 | 36% |

| | |
|--------------|-----|
| 03 | 30% |
| 02 | 25% |
| 01 and prior | 17% |

(u) Class 21a - Other Trailers (Non-Commercial).

(i) Because Section 59-2-405.2 subjects this class of trailers to an age-based uniform fee, a percent good schedule is not necessary.

(v) Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

(i) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

(ii) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary.

(w) Class 22a - Small Motor Vehicles.

(i) Because Section 59-2-405.2 subjects small motor vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(x) Class 23 - Aircraft Required to be Registered With the State.

(i) Because Section 59-2-404 subjects aircraft required to be registered with the state to a statewide uniform fee, a percent good schedule is not necessary.

(y) Class 24 - Leasehold Improvements on Exempt Real Property.

(i) The Class 24 schedule is to be used only for those leasehold improvements where the underlying real property is owned by an entity exempt from property tax under Section 59-2-1101. See Tax Commission rule R884-24P-32. Leasehold improvements include:

- (A) walls and partitions;
- (B) plumbing and roughed-in fixtures;
- (C) floor coverings other than carpet;
- (D) store fronts;
- (E) decoration;
- (F) wiring;
- (G) suspended or acoustical ceilings;
- (H) heating and cooling systems; and
- (I) iron or millwork trim.

(ii) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

(iii) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

| Year of Installation | Percent of Installation Cost |
|----------------------|------------------------------|
| 16 | 94% |
| 15 | 88% |
| 14 | 82% |
| 13 | 77% |
| 12 | 71% |
| 11 | 65% |
| 10 | 59% |
| 09 | 54% |
| 08 | 48% |
| 07 | 42% |
| 06 | 36% |
| 05 and prior | 30% |

(z) Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

- (i) Examples of property in this class include:
 - (A) aircraft parts manufacturing jigs and dies;
 - (B) aircraft parts manufacturing molds;

- (C) aircraft parts manufacturing patterns;
- (D) aircraft parts manufacturing taps and gauges; and
- (E) aircraft parts manufacturing test equipment.
- (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

| Year of Acquisition | Percent Good of Acquisition Cost |
|---------------------|----------------------------------|
| 16 | 82% |
| 15 | 67% |
| 14 | 51% |
| 13 | 35% |
| 12 | 19% |
| 11 and prior | 4% |

(aa) Class 26 - Personal Watercraft.

(i) Because Section 59-2-405.2 subjects personal watercraft to an age-based uniform fee, a percent good schedule is not necessary.

(bb) Class 27 - Electrical Power Generating Equipment and Fixtures

- (i) Examples of property in this class include:
 - (A) electrical power generators; and
 - (B) control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 27

| Year of Acquisition | Percent Good of Acquisition Cost |
|---------------------|----------------------------------|
| 16 | 97% |
| 15 | 95% |
| 14 | 92% |
| 13 | 90% |
| 12 | 87% |
| 11 | 84% |
| 10 | 82% |
| 09 | 79% |
| 08 | 77% |
| 07 | 74% |
| 06 | 71% |
| 05 | 69% |
| 04 | 66% |
| 03 | 64% |
| 02 | 61% |
| 01 | 58% |
| 00 | 56% |
| 99 | 53% |
| 98 | 51% |
| 97 | 48% |
| 96 | 45% |
| 95 | 43% |
| 94 | 40% |
| 93 | 38% |
| 92 | 35% |
| 91 | 32% |
| 90 | 30% |
| 89 | 27% |
| 88 | 25% |
| 87 | 22% |
| 86 | 19% |
| 85 | 17% |
| 84 | 14% |
| 83 | 12% |
| 82 and prior | 9% |

(cc) Class 28 - Noncapitalized Personal Property. Property shall be classified as noncapitalized personal property if the following conditions are met:

- (i) the property is an item of taxable tangible personal property with an acquisition cost of \$1,000 or less; and
- (ii) the property is eligible as a deductible expense under Section 162 or Section 179, Internal Revenue Code, in the year of acquisition, regardless of whether the deduction is actually claimed.

TABLE 28

| Year of Acquisition | Percent Good of Acquisition Cost |
|---------------------|----------------------------------|
| 16 | 75% |
| 15 | 50% |
| 14 | 25% |
| 13 and prior | 0% |

The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2017.

R884-24P-35. Annual Statement for Certain Exempt Uses of Property Pursuant to Utah Code Ann. Section 59-2-1102.

(1) The purpose of this rule is to provide guidance to property owners required to file an annual statement under Section 59-2-1102 in order to claim a property tax exemption under Subsection 59-2-1101(3)(a)(iv) or (v).

(2) The annual statement filed pursuant to Section 59-2-1102 shall contain the following information for the specific property for which an exemption is sought:

- (a) the owner of record of the property;
 - (b) the property parcel, account, or serial number;
 - (c) the location of the property;
 - (d) the tax year in which the exemption was originally granted;
 - (e) a description of any change in the use of the real or personal property since January 1 of the prior year;
 - (f) the name and address of any person or organization conducting a business for profit on the property;
 - (g) the name and address of any organization that uses the real or personal property and pays a fee for that use that is greater than the cost of maintenance and utilities associated with the property;
 - (h) a description of any personal property leased by the owner of record for which an exemption is claimed;
 - (i) the name and address of the lessor of property described in Subsection (2)(h);
 - (j) the signature of the owner of record or the owner's authorized representative; and
 - (k) any other information the county may require.
- (3) The annual statement shall be filed:
- (a) with the county legislative body in the county in which the property is located;
 - (b) on or before March 1; and
 - (c) using:
 - (i) Tax Commission form PT-21, Annual Statement for Continued Property Tax Exemption; or
 - (ii) a form that contains the information required under Subsection (2).

R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.

A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:

1. the property identification number;
2. the appraised value of the property and, if applicable, any adjustment for residential exemptions expressed in terms of taxable value;
3. if applicable, tax relief for taxpayers eligible for blind, veteran, or poor abatement or the circuit breaker, which shall be shown as credits to total taxes levied; and
4. itemized tax rate information for each taxing entity and total tax rate.

R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.

A. The county assessor shall maintain an appraisal record of all real property subject to assessment by the county. The record shall include the following information:

1. owner of the property;
2. property identification number;
3. description and location of the property; and
4. full market value of the property.

B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1)(a) "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

(b) RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-foot standard shall be approved on an individual basis.

(c) RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track, branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

(2) Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method that has been determined to be nonoperating, and that is not necessary to the conduct of the business, shall be assessed separately by the local county assessor.

(3) Assessment procedures.

(a) Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

(b) RR-ROW is considered operating and necessary to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered railroad operating revenues.

(c) Real property outside of the RR-ROW that is necessary to the conduct of the railroad operation is considered part of the unitary value. Some examples are:

- (i) company homes occupied by superintendents and other employees on 24-hour call;
- (ii) storage facilities for railroad operations;
- (iii) communication facilities; and
- (iv) spur tracks outside of RR-ROW.

(d) Abandoned RR-ROW is considered nonoperating and shall be reported as such by the railroad companies.

(e) Real property outside of the RR-ROW that is not necessary to the conduct of the railroad operations is classified as nonoperating and therefore assessed by the local county assessor. Some examples are:

- (i) land leased to service station operations;
- (ii) grocery stores;
- (iii) apartments;
- (iv) residences; and
- (v) agricultural uses.

(f) RR-ROW obtained by government grant or act of Congress is deemed operating property.

(4) Notice of Determination. It is the responsibility of the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to

the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so that the property may be placed on the roll for local assessment.

(5) Appeals. Any interested party who wishes to contest the determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the notice of determination of operating or nonoperating properties. Request for agency action may be made pursuant to Title 63G, Chapter 4.

R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508, and Section 59-2-705.

(1) Upon completion of commission audits of personal property accounts or land subject to the Farmland Assessment Act, the following procedures shall be implemented:

(a) If an audit reveals an incorrect assignment of property, or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

(b) A revised Notice of Property Valuation and Tax Changes or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

(c) The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

(2) Assessors shall not alter results of an audit without first submitting the changes to the commission for review and approval.

(3) The commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101.

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or harvesting of agricultural products.

C. The following machinery and equipment is used primarily for the production or harvesting of agricultural products:

1. Machinery and equipment used on the farm for storage, cooling, or freezing of fruits or vegetables;

2. Except as provided in C.3., machinery and equipment used in fruit or vegetable growing operations if the machinery and equipment does not physically alter the fruit or vegetables; and

3. Machinery and equipment that physically alters the form of fruits or vegetables if the operations performed by the machinery or equipment are reasonable and necessary in the preparation of the fruit or vegetables for wholesale marketing.

D. Machinery and equipment used for processing of agricultural products are not exempt.

R884-24P-49. Calculating the Utah Apportioned Value of a Rail Car Fleet Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Average market value per rail car" means the fleet rail car market value divided by the number of rail cars in the fleet.

2. "Fleet rail car market value" means the sum of:

a)(1) the yearly acquisition costs of the fleet's rail cars;

(2) multiplied by the appropriate percent good factors contained in Class 10 of R884-24P- 33, Personal Property Valuation Guides and Schedules; and

b) the sum of betterments by year.

(1) Except as provided in A.2.b)(2), the sum of betterments by year shall be depreciated on a 14-year straight line method.

(2) Notwithstanding the provisions of A.2.b)(1), betterments shall have a residual value of two percent.

3. "In-service rail cars" means the number of rail cars in the fleet, adjusted for out-of- service rail cars.

4. a) "Out-of-service rail cars" means rail cars:

(1) out-of-service for a period of more than ten consecutive hours; or

(2) in storage.

b) Rail cars cease to be out-of-service once repaired or removed from storage.

c) Out-of-service rail cars do not include rail cars idled for less than ten consecutive hours due to light repairs or routine maintenance.

5. "System car miles" means both loaded and empty miles accumulated in the U.S., Canada, and Mexico during the prior calendar year by all rail cars in the fleet.

6. "Utah car miles" mean both loaded and empty miles accumulated within Utah during the prior calendar year by all rail cars in the fleet.

7. "Utah percent of system factor" means the Utah car

miles divided by the system car miles.

B. The provisions of this rule apply only to private rail car companies.

C. To receive an adjustment for out-of-service rail cars, the rail car company must report the number of out-of-service days to the commission for each of the company's rail car fleets.

D. The out-of-service adjustment is calculated as follows.

1. Divide the out-of-service days by 365 to obtain the out-of-service rail car equivalent.

2. Subtract the out-of-service rail car equivalent calculated in D.1. from the number of rail cars in the fleet.

E. The taxable value for each rail car fleet apportioned to Utah, for which the Utah percent of system factor is more than 50 percent, shall be determined by multiplying the Utah percent of system factor by the fleet rail car market value.

F. The taxable value for each rail car company apportioned to Utah, for which the Utah percent of system factor is less than or equal to 50 percent, shall be determined in the following manner.

1. Calculate the number of fleet rail cars allocated to Utah under the Utah percent of system factor. The steps for this calculation are as follows.

a) Multiply the Utah percent of system factor by the in-service rail cars in the fleet.

b) Multiply the product obtained in F.1.a) by 50 percent.

2. Calculate the number of fleet rail cars allocated to Utah under the time speed factor. The steps for this calculation are as follows.

a) Divide the fleet's Utah car miles by the average rail car miles traveled in Utah per year. The Commission has determined that the average rail car miles traveled in Utah per year shall equal 200,000 miles.

b) Multiply the quotient obtained in F.2.a) by the percent of in-service rail cars in the fleet.

c) Multiply the product obtained in F.2.b) by 50 percent.

3. Add the number of fleet rail cars allocated to Utah under the Utah percent of system factor, calculated in F.1.b), and the number of fleet rail cars allocated to Utah under the time speed factor, calculated in F.2.c), and multiply that sum by the average market value per rail car.

R884-24P-50. Apportioning the Utah Proportion of Commercial Aircraft Valuations Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.

2. "Ground time" means the time period beginning at the time an aircraft lands and ending at the time an aircraft takes off.

B. The commission shall apportion to a tax area the assessment of the mobile flight equipment owned by a commercial air carrier in the proportion that the ground time in the tax area bears to the total ground time in the state.

C. The provisions of this rule shall be implemented and become binding on taxpayers beginning with the 1999 calendar year.

R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102, 59-2-103, and 59-2-103.5.

(1) "Household" is as defined in Section 59-2-102.

(2) "Primary residence" means the location where domicile has been established.

(3) Except as provided in Subsections (4) and (6)(c) and (f), the residential exemption provided under Section 59-2-

103 is limited to one primary residence per household.

(4) An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.

(5) Factors or objective evidence determinative of domicile include:

(a) whether or not the individual voted in the place he claims to be domiciled;

(b) the length of any continuous residency in the location claimed as domicile;

(c) the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;

(d) the presence of family members in a given location;

(e) the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;

(f) the physical location of the individual's place of business or sources of income;

(g) the use of local bank facilities or foreign bank institutions;

(h) the location of registration of vehicles, boats, and RVs;

(i) membership in clubs, churches, and other social organizations;

(j) the addresses used by the individual on such things as:

(i) telephone listings;

(ii) mail;

(iii) state and federal tax returns;

(iv) listings in official government publications or other correspondence;

(v) driver's license;

(vi) voter registration; and

(vii) tax rolls;

(k) location of public schools attended by the individual or the individual's dependents;

(l) the nature and payment of taxes in other states;

(m) declarations of the individual:

(i) communicated to third parties;

(ii) contained in deeds;

(iii) contained in insurance policies;

(iv) contained in wills;

(v) contained in letters;

(vi) contained in registers;

(vii) contained in mortgages; and

(viii) contained in leases.

(n) the exercise of civil or political rights in a given location;

(o) any failure to obtain permits and licenses normally required of a resident;

(p) the purchase of a burial plot in a particular location;

(q) the acquisition of a new residence in a different location.

(6) Administration of the Residential Exemption.

(a) Except as provided in Subsections (6)(b), (d), and (e), the first one acre of land per residential unit shall receive the residential exemption.

(b) If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

(c) If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

(d) A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the

homesite.

(e) A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.

(f) If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

(g)(i) An application for the residential exemption required by an ordinance enacted under Section 59-2-103.5 shall contain the following information for the specific property for which the exemption is requested:

- (A) the owner of record of the property;
- (B) the property parcel number;
- (C) the location of the property;
- (D) the basis of the owner's knowledge of the use of the property;
- (E) a description of the use of the property;
- (F) evidence of the domicile of the inhabitants of the property; and
- (G) the signature of all owners of the property certifying that the property is residential property.

(ii) The application under Subsection (6)(g)(i) shall be:

- (A) on a form provided by the county; or
- (B) in a writing that contains all of the information listed in Subsection (6)(g)(i).

R884-24P-53. 2017 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

(1) Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

(a) The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

(b) Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

(c) County assessors may not deviate from the schedules.

(d) Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

(2) All property qualifying for agricultural use assessment pursuant to Section 59-2-503 shall be assessed on a per acre basis as follows:

(a) Irrigated farmland shall be assessed under the following classifications.

(i) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

| | |
|----------------|-----|
| 1) Box Elder | 799 |
| 2) Cache | 688 |
| 3) Carbon | 525 |
| 4) Davis | 853 |
| 5) Emery | 498 |
| 6) Iron | 793 |
| 7) Kane | 417 |
| 8) Millard | 788 |
| 9) Salt Lake | 711 |
| 10) Utah | 749 |
| 11) Washington | 649 |
| 12) Weber | 803 |

(ii) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed

below:

TABLE 2
Irrigated II

| | |
|----------------|-----|
| 1) Box Elder | 702 |
| 2) Cache | 587 |
| 3) Carbon | 418 |
| 4) Davis | 751 |
| 5) Duchesne | 486 |
| 6) Emery | 401 |
| 7) Grand | 383 |
| 8) Iron | 695 |
| 9) Juab | 444 |
| 10) Kane | 320 |
| 11) Millard | 691 |
| 12) Salt Lake | 611 |
| 13) Sanpete | 535 |
| 14) Sevier | 562 |
| 15) Summit | 459 |
| 16) Tooele | 447 |
| 17) Utah | 648 |
| 18) Wasatch | 485 |
| 19) Washington | 553 |
| 20) Weber | 704 |

(iii) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

| | |
|----------------|-----|
| 1) Beaver | 557 |
| 2) Box Elder | 552 |
| 3) Cache | 445 |
| 4) Carbon | 277 |
| 5) Davis | 603 |
| 6) Duchesne | 341 |
| 7) Emery | 252 |
| 8) Garfield | 210 |
| 9) Grand | 242 |
| 10) Iron | 552 |
| 11) Juab | 299 |
| 12) Kane | 177 |
| 13) Millard | 547 |
| 14) Morgan | 384 |
| 15) Piute | 332 |
| 16) Rich | 177 |
| 17) Salt Lake | 465 |
| 18) San Juan | 173 |
| 19) Sanpete | 392 |
| 20) Sevier | 418 |
| 21) Summit | 313 |
| 22) Tooele | 299 |
| 23) Uintah | 370 |
| 24) Utah | 497 |
| 25) Wasatch | 337 |
| 26) Washington | 406 |
| 27) Wayne | 328 |
| 28) Weber | 560 |

(iv) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

| | |
|---------------|-----|
| 1) Beaver | 458 |
| 2) Box Elder | 456 |
| 3) Cache | 345 |
| 4) Carbon | 178 |
| 5) Daggett | 188 |
| 6) Davis | 504 |
| 7) Duchesne | 239 |
| 8) Emery | 156 |
| 9) Garfield | 113 |
| 10) Grand | 146 |
| 11) Iron | 451 |
| 12) Juab | 198 |
| 13) Kane | 80 |
| 14) Millard | 445 |
| 15) Morgan | 285 |
| 16) Piute | 232 |
| 17) Rich | 82 |
| 18) Salt Lake | 360 |

| | | |
|-----|------------|-----|
| 19) | San Juan | 79 |
| 20) | Sanpete | 295 |
| 21) | Sevier | 320 |
| 22) | Summit | 216 |
| 23) | Tooele | 204 |
| 24) | Uintah | 273 |
| 25) | Utah | 399 |
| 26) | Wasatch | 240 |
| 27) | Washington | 306 |
| 28) | Wayne | 231 |
| 29) | Weber | 457 |

TABLE 7
Dry III

| | | |
|-----|------------|-----|
| 1) | Beaver | 51 |
| 2) | Box Elder | 93 |
| 3) | Cache | 118 |
| 4) | Carbon | 49 |
| 5) | Davis | 52 |
| 6) | Duchesne | 54 |
| 7) | Garfield | 48 |
| 8) | Grand | 49 |
| 9) | Iron | 49 |
| 10) | Juab | 51 |
| 11) | Kane | 48 |
| 12) | Millard | 47 |
| 13) | Morgan | 64 |
| 14) | Rich | 48 |
| 15) | Salt Lake | 54 |
| 16) | San Juan | 53 |
| 17) | Sanpete | 54 |
| 18) | Summit | 48 |
| 19) | Tooele | 52 |
| 20) | Uintah | 54 |
| 21) | Utah | 50 |
| 22) | Wasatch | 48 |
| 23) | Washington | 48 |
| 24) | Weber | 78 |

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

| | | |
|-----|------------|-----|
| 1) | Beaver | 614 |
| 2) | Box Elder | 665 |
| 3) | Cache | 614 |
| 4) | Carbon | 614 |
| 5) | Davis | 670 |
| 6) | Duchesne | 614 |
| 7) | Emery | 614 |
| 8) | Garfield | 614 |
| 9) | Grand | 614 |
| 10) | Iron | 614 |
| 11) | Juab | 614 |
| 12) | Kane | 614 |
| 13) | Millard | 614 |
| 14) | Morgan | 614 |
| 15) | Piute | 614 |
| 16) | Salt Lake | 614 |
| 17) | San Juan | 614 |
| 18) | Sanpete | 614 |
| 19) | Sevier | 614 |
| 20) | Summit | 614 |
| 21) | Tooele | 614 |
| 22) | Uintah | 614 |
| 23) | Utah | 675 |
| 24) | Wasatch | 614 |
| 25) | Washington | 726 |
| 26) | Wayne | 614 |
| 27) | Weber | 670 |

(ii) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

| | | |
|-----|------------|----|
| 1) | Beaver | 15 |
| 2) | Box Elder | 59 |
| 3) | Cache | 83 |
| 4) | Carbon | 15 |
| 5) | Davis | 16 |
| 6) | Duchesne | 19 |
| 7) | Garfield | 15 |
| 8) | Grand | 15 |
| 9) | Iron | 15 |
| 10) | Juab | 16 |
| 11) | Kane | 15 |
| 12) | Millard | 14 |
| 13) | Morgan | 28 |
| 14) | Rich | 15 |
| 15) | Salt Lake | 15 |
| 16) | San Juan | 17 |
| 17) | Sanpete | 19 |
| 18) | Summit | 15 |
| 19) | Tooele | 14 |
| 20) | Uintah | 19 |
| 21) | Utah | 16 |
| 22) | Wasatch | 15 |
| 23) | Washington | 14 |
| 24) | Weber | 45 |

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

| | | |
|-----|------------|-----|
| 1) | Beaver | 235 |
| 2) | Box Elder | 255 |
| 3) | Cache | 264 |
| 4) | Carbon | 131 |
| 5) | Daggett | 156 |
| 6) | Davis | 268 |
| 7) | Duchesne | 166 |
| 8) | Emery | 138 |
| 9) | Garfield | 104 |
| 10) | Grand | 133 |
| 11) | Iron | 261 |
| 12) | Juab | 152 |
| 13) | Kane | 109 |
| 14) | Millard | 193 |
| 15) | Morgan | 196 |
| 16) | Piute | 190 |
| 17) | Rich | 105 |
| 18) | Salt Lake | 228 |
| 19) | Sanpete | 193 |
| 20) | Sevier | 199 |
| 21) | Summit | 202 |
| 22) | Tooele | 186 |
| 23) | Uintah | 207 |
| 24) | Utah | 251 |
| 25) | Wasatch | 208 |
| 26) | Washington | 227 |
| 27) | Wayne | 172 |
| 28) | Weber | 300 |

(e) Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

(i) Graze 1. The following counties shall assess Graze I property based upon the per acre values listed below:

TABLE 9
GR I

| | | |
|-----|-----------|----|
| 1) | Beaver | 70 |
| 2) | Box Elder | 75 |
| 3) | Cache | 70 |
| 4) | Carbon | 52 |
| 5) | Daggett | 52 |
| 6) | Davis | 61 |
| 7) | Duchesne | 69 |
| 8) | Emery | 72 |
| 9) | Garfield | 76 |
| 10) | Grand | 78 |
| 11) | Iron | 74 |
| 12) | Juab | 65 |
| 13) | Kane | 75 |
| 14) | Millard | 76 |
| 15) | Morgan | 67 |
| 16) | Piute | 91 |
| 17) | Rich | 65 |
| 18) | Salt Lake | 70 |
| 19) | San Juan | 75 |

(d) Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

(i) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

| | |
|----------------|----|
| 20) Sanpete | 63 |
| 21) Sevier | 64 |
| 22) Summit | 72 |
| 23) Tooele | 71 |
| 24) Uintah | 80 |
| 25) Utah | 66 |
| 26) Wasatch | 53 |
| 27) Washington | 65 |
| 28) Wayne | 89 |
| 29) Weber | 70 |

TABLE 12
GR IV

| | |
|----------------|---|
| 1) Beaver | 6 |
| 2) Box Elder | 5 |
| 3) Cache | 5 |
| 4) Carbon | 5 |
| 5) Daggett | 5 |
| 6) Davis | 5 |
| 7) Duchesne | 5 |
| 8) Emery | 6 |
| 9) Garfield | 5 |
| 10) Grand | 6 |
| 11) Iron | 6 |
| 12) Juab | 5 |
| 13) Kane | 5 |
| 14) Millard | 5 |
| 15) Morgan | 6 |
| 16) Piute | 6 |
| 17) Rich | 5 |
| 18) Salt Lake | 5 |
| 19) San Juan | 5 |
| 20) Sanpete | 5 |
| 21) Sevier | 5 |
| 22) Summit | 5 |
| 23) Tooele | 5 |
| 24) Uintah | 6 |
| 25) Utah | 5 |
| 26) Wasatch | 5 |
| 27) Washington | 5 |
| 28) Wayne | 5 |
| 29) Weber | 6 |

(ii) Graze II. The following counties shall assess Graze II property based upon the per acre values listed below:

TABLE 10
GR II

| | |
|----------------|----|
| 1) Beaver | 22 |
| 2) Box Elder | 23 |
| 3) Cache | 23 |
| 4) Carbon | 15 |
| 5) Daggett | 14 |
| 6) Davis | 19 |
| 7) Duchesne | 22 |
| 8) Emery | 21 |
| 9) Garfield | 23 |
| 10) Grand | 22 |
| 11) Iron | 22 |
| 12) Juab | 19 |
| 13) Kane | 24 |
| 14) Millard | 24 |
| 15) Morgan | 21 |
| 16) Piute | 26 |
| 17) Rich | 20 |
| 18) Salt Lake | 22 |
| 19) San Juan | 24 |
| 20) Sanpete | 18 |
| 21) Sevier | 18 |
| 22) Summit | 20 |
| 23) Tooele | 20 |
| 24) Uintah | 29 |
| 25) Utah | 23 |
| 26) Wasatch | 17 |
| 27) Washington | 21 |
| 28) Wayne | 29 |
| 29) Weber | 20 |

(iii) Graze III. The following counties shall assess Graze III property based upon the per acre values below:

TABLE 11
GR III

| | |
|----------------|----|
| 1) Beaver | 16 |
| 2) Box Elder | 17 |
| 3) Cache | 15 |
| 4) Carbon | 13 |
| 5) Daggett | 11 |
| 6) Davis | 13 |
| 7) Duchesne | 13 |
| 8) Emery | 14 |
| 9) Garfield | 16 |
| 10) Grand | 15 |
| 11) Iron | 15 |
| 12) Juab | 13 |
| 13) Kane | 15 |
| 14) Millard | 16 |
| 15) Morgan | 13 |
| 16) Piute | 18 |
| 17) Rich | 13 |
| 18) Salt Lake | 15 |
| 19) San Juan | 17 |
| 20) Sanpete | 13 |
| 21) Sevier | 13 |
| 22) Summit | 14 |
| 23) Tooele | 13 |
| 24) Uintah | 19 |
| 25) Utah | 14 |
| 26) Wasatch | 12 |
| 27) Washington | 13 |
| 28) Wayne | 18 |
| 29) Weber | 14 |

(iv) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed below:

(f) Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 13
Nonproductive Land

| | |
|--------------------|---|
| Nonproductive Land | |
| 1) All Counties | 5 |

R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;
7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;
10. procedures for contesting bids and sales;
11. criteria for striking properties to the county;
12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and
13. disclaimers by the county with respect to sale procedures and actions.

R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301 and 59-2-801.

A. For purposes of Section 59-2-801, the previous year's

statewide rate shall be calculated as follows:

1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.

2. The values obtained in A.1. for each county are summed to arrive at the statewide rate.

B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Motor Vehicle Division of the State Tax Commission for determining the proration of registration fees.

C. For purposes of Section 59-2-801(2), principal route means lane miles of interstate highways and clover leaves, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.

(1) Definitions.

(a) "Issued" means the date on which the judgment is signed.

(b) "2.5% of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year" includes any revenues collected by a judgment levy imposed in the prior year.

(2) A taxing entity's share of a judgment or order shall include the taxing entity's share of any interest that must be paid with the judgment or order.

(3) The judgment levy public hearing required by Section 59-2-918.5 shall be held as follows:

(a) For taxing entities operating under a July 1 through June 30 fiscal year, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(b) For taxing entities operating under a January 1 through December 31 fiscal year:

(i) for judgments issued from the prior March 1 through September 15, the public hearing shall be held at the same time as the hearing at which the annual budget is adopted;

(ii) for judgments issued from the prior September 16 through the last day of February, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(c) If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by Subsections (3)(a) and (3)(b)(ii) shall be held at the same time as the hearing required under Section 59-2-919.

(4) If the Section 59-2-918.5 advertisement is combined with the Section 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.

(5) In the case of taxing entities operating under a January 1 through December 31 fiscal year, the advertisement for judgments issued from the previous December 16 through May 31 shall include any judgments issued from the previous June 1 through December 15 that the taxing entity advertised and budgeted for at its December budget hearing.

(6) All taxing entities imposing a judgment levy shall file with the commission a signed statement certifying that all judgments for which the judgment levy is imposed have met the statutory requirements for imposition of a judgment levy.

(a) The signed statement shall contain the following information for each judgment included in the judgment levy:

(i) the name of the taxpayer awarded the judgment;

(ii) the appeal number of the judgment; and

(iii) the taxing entity's pro rata share of the judgment.

(b) Along with the signed statement, the taxing entity must provide the commission the following:

(i) a copy of all judgment levy newspaper advertisements required;

(ii) the dates all required judgment levy advertisements were published in the newspaper;

(iii) a copy of the final resolution imposing the judgment levy;

(iv) a copy of the Notice of Property Valuation and Tax Changes, if required; and

(v) any other information required by the commission.

(7) The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to judgments issued prior to January 1, 1999.

R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

1. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;

2. time series models, weighted 40 percent; and

3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and

2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P- 33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed

commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the vehicle; or
2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for

purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

- a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

- b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2-405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market

value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2-217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the

appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1) Purpose. The purpose of this rule is to:

(a) specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

(b) identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

(2) Definitions:

(a) "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

(b) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

(c) "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

(d) "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

(i) Unitary properties include:

(A) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(B) all property of public utilities as defined in Section 59-2-102.

(ii) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(A) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(B) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(C) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

(3) All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

(4) General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

(a) The assemblage or enhanced value attributable to the

tangible property should be included in the assessed value. See *Beaver County v. WilTel, Inc.*, 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

(b) The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in Subsection (5).

(i) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

(ii) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in Subsection (5)(d).

(iii) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

(c) Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

(5) Appraisal Methodologies.

(a) Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

(i) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(A) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(B) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(I) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(II) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(III) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

(ii) Replacement cost is the estimated cost to construct,

at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

(iii) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

(iv) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

(v) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

(b) Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

(i) Yield Capitalization. The yield capitalization formula is $CF/(k-g)$, where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(A) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(I) NOI is defined as net income plus interest.

(II) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(III) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

(Aa) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

(Bb) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(B) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(I) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(II) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the

Risk Premium and Dividend Growth models, or other recognized models.

(Aa) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

(Bb) The CAPM formula is $k(e) = R(f) + (\text{Beta} \times \text{Risk Premium})$, where $k(e)$ is the cost of equity and $R(f)$ is the risk free rate.

(Cc) The risk free rate shall be the current market rate on 20-year Treasury bonds.

(Dd) The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

(Ee) The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(C) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(I) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

(ii) A discounted cash flow (DCF) method may be impractical to implement in a mass appraisal environment, but may be used when reliable cash flow estimates can be established.

(A) A DCF model should incorporate for the terminal year, and to the extent possible for the holding period, growth and discount rate assumptions that would be used in the yield capitalization method defined under Subsection (5)(b)(i).

(B) Forecasted growth may be used where unusual income patterns are attributed to

- (I) unused capacity;
- (II) economic conditions; or
- (III) similar circumstances.

(C) Growth may not be attributed to assets not in place as of the lien date.

(iii) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

(c) Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

(I) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

(II) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's

equity.

(d) Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

(6) Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

(a) Cost Regulated Utilities.

(i) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(A) subtracting intangible property;

(B) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(C) adding any taxable items not included in the utility's net plant account or rate base.

(ii) Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

(iii) Items excluded from rate base under Subsections (6)(a)(i)(A) or (B) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

(b)(i) Railroads.

(ii) The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

(c) Airlines, air charter services, and air contract services.

(i) For purposes of this Subsection (6)(c):

(A) "aircraft pricing guide" means a nationally recognized publication that assigns value estimates for individual commercial aircraft that are in average condition typical for their type and vintage, and identified by year, make and model;

(B) "airline" means an:

(I) airline under Section 59-2-102;

(II) air charter service under Section 59-2-102; and

(III) air contract service under Section 59-2-102;

(C) "airline market indicator" means an estimate of value based on an aircraft pricing guide; and

(D) "non-mobile flight equipment" means all operating property of an airline, air charter service, or air contract service that is not within the definition of mobile flight equipment under Section 59-2-102.

(ii) In situations where the use of preferred methods for determining fair market value under Subsection (5) does not produce a reasonable estimate of the fair market value of the property of an airline operating as a unit, an airline market indicator published in an aircraft pricing guide, and adjusted

as provided in Subsections (6)(c)(ii)(A) and (6)(c)(ii)(B), may be used to estimate the fair market value of the airline property.

(A)(I) In order to reflect the value of a fleet of aircraft as part of an operating unit, an aircraft market indicator shall include a fleet adjustment or equivalent valuation for a fleet.

(II) If a fleet adjustment is provided in an aircraft pricing guide, the adjustment under Subsection (6)(c)(ii)(A)(I) shall follow the directions in that guide. If no fleet adjustment is provided in an aircraft pricing guide, the standard adjustment under Subsection (6)(c)(ii)(A)(I) shall be 20 percent from a wholesale value or equivalent level of value as published in the guide.

(B) Non-mobile flight equipment shall be valued using the cost approach under Subsection (5)(a) or the market or sales comparison approach under Subsection (5)(c), and added to the value of the fleet.

(iii) An income capitalization approach under Subsection (5)(b) shall incorporate the information available to make an estimate of future cash flows.

(iv)(A) When an aircraft market indicator under Subsection (6)(c)(ii) is used to estimate the fair market value of an airline, the Division shall:

(I) calculate the fair market value of the airline using the preferred methods under Subsection (5);

(II) retain the calculations under Subsection (6)(c)(iv)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(iv)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) When an aircraft market indicator under Subsection (6)(c)(ii) is used, the Division shall justify in any appraisal report issued with an assessment why the preferred methods under Subsection (5) were not used.

(v)(A) When the preferred methods under Subsection (5) are used to estimate the fair market value of an airline, the Division shall:

(I) calculate an aircraft market indicator under Subsection (6)(c)(ii);

(II) retain the calculations under Subsection (6)(c)(v)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(v)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) Value estimates from an aircraft pricing guide under Subsection (6)(c)(i)(A) along with the valuation of non-mobile flight equipment under Subsection (6)(c)(ii)(B) shall, when possible, also be included in an assessment or appraisal report for purposes of comparison.

(C) Reasons for not including a value estimate required under Subsection (6)(c)(v)(B) include:

(I) failure to file a return; or

(II) failure to identify specific aircraft.

R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall

provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Veterans With a Disability and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.

For purposes of Sections 59-2-1104 and 59-2-1106, the taxable value of tangible personal property subject to a uniform fee under Sections 59-2-405.1 or 59-2-405.2 shall be calculated by dividing the uniform fee the tangible personal property is subject to by .015.

R884-24P-65. Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.

A. "Transitory personal property" means tangible personal property that is used or operated primarily at a location other than a fixed place of business of the property owner or lessee.

B. Transitory personal property in the state on January 1 shall be assessed at 100 percent of fair market value.

C. Transitory personal property that is not in the state on January 1 is subject to a proportional assessment when it has been in the state for 90 consecutive days in a calendar year.

1. The determination of whether transitory personal property has been in the state for 90 consecutive days shall include the days the property is outside the state if, within 10 days of its removal from the state, the property is:

a) brought back into the state; or

b) substituted with transitory personal property that performs the same function.

D. Once transitory personal property satisfies the conditions under C., tax shall be proportionally assessed for the period:

1. beginning on the first day of the month in which the property was brought into Utah; and

2. for the number of months remaining in the calendar year.

E. An owner of taxable transitory personal property who removes the property from the state prior to December and who qualifies for a refund of taxes assessed and paid, shall receive a refund based on the number of months remaining in the calendar year at the time the property is removed from the state and for which the tax has been paid.

1. The refund provisions of this subsection apply to transitory personal property taxes assessed under B. and C.

2. For purposes of determining the refund under this subsection, any portion of a month remaining shall be counted as a full month.

F. If tax has been paid for transitory personal property and that property is subsequently moved to another county in Utah:

1. No additional assessment may be imposed by any county to which the property is subsequently moved; and

2. No portion of the assessed tax may be transferred to the subsequent county.

R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Sections 59-2-

1001 and 59-2-1004.

- (1)(a) "Factual error" means an error that is:
- (i) objectively verifiable without the exercise of discretion, opinion, or judgment;
 - (ii) demonstrated by clear and convincing evidence; and
 - (iii) agreed upon by the taxpayer and the assessor.
- (b) Factual error includes:
- (i) a mistake in the description of the size, use, or ownership of a property;
 - (ii) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;
 - (iii) an error in the classification of a property that is eligible for a property tax exemption under:
 - (A) Section 59-2-103; or
 - (B) Title 59, Chapter 2, Part 11;
 - (iv) an error in the classification of a property that is eligible for assessment under Title 59, Chapter 2, Part 5;
 - (v) valuation of a property that is not in existence on the lien date; and
 - (vi) a valuation of a property assessed more than once, or by the wrong assessing authority.
- (c) Factual error does not include:
- (i) an alternative approach to value;
 - (ii) a change in a factor or variable used in an approach to value; or
 - (iii) any other adjustment to a valuation methodology.
- (2) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:
- (a) the name and address of the property owner;
 - (b) the identification number, location, and description of the property;
 - (c) the value placed on the property by the assessor;
 - (d) the taxpayer's estimate of the fair market value of the property;
 - (e) evidence or documentation that supports the taxpayer's claim for relief; and
 - (f) the taxpayer's signature.
- (3) If the evidence or documentation required under Subsection (2)(e) is not attached, the county will notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.
- (4) If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (2)(e) and the county has notified the taxpayer under Subsection (3), the county may dismiss the matter for lack of evidence to support a claim for relief.
- (5) If the information required under Subsection (2) is supplied, the county board of equalization shall render a decision on the merits of the case.
- (6) The county board of equalization may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.
- (7) The county board of equalization shall prepare and maintain a record of the appeal.
- (a) For appeals concerning property value, the record shall include:
- (i) the name and address of the property owner;
 - (ii) the identification number, location, and description of the property;
 - (iii) the value placed on the property by the assessor;
 - (iv) the basis for appeal stated in the taxpayer's appeal;
 - (v) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's

records; and

- (vi) the decision of the county board of equalization and the reasons for the decision.
- (b) The record may be included in the minutes of the hearing before the county board of equalization.
- (8)(a) The county board of equalization shall notify the taxpayer in writing of its decision.
- (b) The notice required under Subsection (8)(a) shall include:
- (i) the name and address of the property owner;
 - (ii) the identification number of the property;
 - (iii) the date the notice was sent;
 - (iv) a notice of appeal rights to the commission; and
 - (v) a statement of the decision of the county board of equalization; or
 - (vi) a copy of the decision of the county board of equalization.
- (9) A county shall maintain a copy of a notice sent to a taxpayer under Subsection (8).
- (10) If a decision affects the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.
- (11) Decisions by the county board of equalization are final orders on the merits.
- (12) Except as provided in Subsection (14), a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:
- (a) During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.
 - (b) During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.
 - (c) The county did not comply with the notification requirements of Section 59-2-919.1.
 - (d) A factual error is discovered in the county records pertaining to the subject property.
 - (e) The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.
- (13) Appeals accepted under Subsection (12)(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.
- (14) The provisions of Subsection (12) apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.
- (15) The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.
- R884-24P-67. Information Required for Valuation of Low-Income Housing Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-301.3.**
- (1) The purpose of this rule is to provide an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects.
- (2) The Utah Housing Corporation shall provide the

following information that it has obtained from the owner of a low-income housing project to the commission:

(a) for each low-income housing project in the state that is eligible for a low-income housing tax credit:

(i) the Utah Housing Corporation project identification number;

(ii) the project name;

(iii) the project address;

(iv) the city in which the project is located;

(v) the county in which the project is located;

(vi) the building identification number assigned by the Internal Revenue Service for each building included in the project;

(vii) the building address for each building included in the project;

(viii) the total apartment units included in the project;

(ix) the total apartment units in the project that are eligible for low-income housing tax credits;

(x) the period of time for which the project is subject to rent restrictions under an agreement described in Subsection (2)(b);

(xi) whether the project is:

(A) the rehabilitation of an existing building; or

(B) new construction;

(xii) the date on which the project was placed in service;

(xiii) the total square feet of the buildings included in the project;

(xiv) the maximum annual federal low-income housing tax credits for which the project is eligible;

(xv) the maximum annual state low-income housing tax credits for which the project is eligible; and

(xvi) for each apartment unit included in the project:

(A) the number of bedrooms in the apartment unit;

(B) the size of the apartment unit in square feet; and

(C) any rent limitation to which the apartment unit is subject; and

(b) a recorded copy of the agreement entered into by the Utah Housing Corporation and the property owner for the low-income housing project; and

(c) construction cost certifications for the project received from the low-income housing project owner.

(3) The Utah Housing Corporation shall provide the commission the information under Subsection (2) by January 31 of the year following the year in which a project is placed into service.

R884-24P-68. Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value That is At or Below the Statutorily Prescribed Amount Pursuant to Utah Code Ann. Section 59-2-1115.

(1) The purpose of this rule is to provide for the administration of the property tax exemption for a taxpayer whose taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount.

(a) Total aggregate fair market value is determined by aggregating the fair market value of all taxable tangible personal property owned by a taxpayer within a county.

(b) If taxable tangible personal property is required to be apportioned among counties, the determination of whether taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount shall be made after apportionment.

(2) A taxpayer shall apply for the exemption provided under Section 59-2-1115:

(a) if the county assessor has requested a signed statement from the taxpayer under Section 59-2-306, within the time frame set forth under Section 59-2-306 for filing the

signed statement; or

(b) if the county assessor has not requested a signed statement from the taxpayer under Section 59-2-306, within 30 days from the day the taxpayer is requested to indicate whether the taxpayer has taxable tangible personal property in the county that is at or below the statutorily prescribed amount.

R884-24P-70. Real Property Appraisal Requirements for County Assessors Pursuant to Utah Code Ann. Sections 59-2-303.1 and 59-2-919.1.

(1) Definitions.

(a) "Accepted valuation methodologies" means those methodologies approved or endorsed in the Standard on Mass Appraisal of Real Property and the Standard on Automated Valuation Models published by the International Association of Assessing Officers (IAAO).

(b) "Database," as referenced in Section 59-2-303.1(6), means an electronic storage of data using computer hardware and software that is relational, secure and archival, and adheres to generally accepted information technology standards of practice.

(2) County mass appraisal systems, as defined in Section 59-2-303.1, shall use accepted valuation methodologies to perform the annual update of all residential parcels.

(3)(a) A detailed review of property characteristics shall include a sufficient inspection to determine any changes to real property due to:

(i) new construction, additions, remodels, demolitions, land segregations, changes in use, or other changes of a similar nature; and

(ii) a change in condition or effective age.

(b)(i) A detailed review of property characteristics shall be made in accordance with the IAAO Standard on Mass Appraisal of Real Property.

(ii) When using aerial photography, including oblique aerial photography, the date of the photographic flight is the property review date for purposes of Section 59-2-303.1.

(4) The last property review date to be included in the county's computer system shall include the actual day, month, and year that the last detailed review of a property's characteristics was conducted.

(5) The last property review date to be included on the notice shall include at least the actual year or tax year that the last detailed review of a property's characteristics was conducted. The month and day of the review may also be included on the notice at the discretion of the county assessor and auditor.

(6)(a) The five-year plan shall detail the current year plus four subsequent years into the future. The plan shall define the properties being reviewed for each of the five years by one or more of the following:

(i) class;

(ii) property type;

(iii) geographic location; and

(iv) age.

(b) The five-year plan shall also include parcel counts for each defined property group.

R884-24P-71. Agreements with Commercial or Industrial Taxpayers for Equal Property Tax Payments Pursuant to Utah Code Ann. Section 59-2-1308.5.

(1) An agreement with a commercial or industrial taxpayer for equal property tax payments under Section 59-2-1308.5 is effective:

(a) the current calendar year, if the agreement is agreed to by all parties on or before May 31; or

(b) the subsequent calendar year, if the agreement is

agreed to by all parties after May 31.

(2) An agreement under Subsection (1) affects only those taxing entities that are a party to the agreement.

(3) The commission shall ensure that an agreement under Subsection (1) does not affect the calculation of the certified tax rate by adjusting the formula under Section 59-2-924 so that the collection ratio for each taxpayer that is a party to the agreement is based on the amount that would have been collected according to the same valuation and assessment methodologies that would have been applied in the absence of the agreement.

R884-24P-72. State Farmland Evaluation Advisory Committee Procedures Pursuant to Utah Code Ann. Section 59-2-514.

(1) "Committee" means the State Farmland Evaluation Advisory Committee established in Section 59-2-514.

(2) The committee is subject to Title 52, Chapter 4, Open and Public Meetings Act.

(3) A committee member may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) the agenda posted for the meeting establishes one or more anchor locations for the meeting where the public may attend;

(b) at least one committee member is at an anchor location; and

(c) all of the committee members may be heard by any person attending an anchor location.

KEY: taxation, personal property, property tax, appraisals

December 8, 2016

Notice of Continuation November 10, 2016

Art. XIII, Sec 2

- 9-2-201
- 11-13-302
- 41-1a-202
- 41-1a-301
- 59-1-210
- 59-2-102
- 59-2-103
- 59-2-103.5
- 59-2-104
- 59-2-201
- 59-2-210
- 59-2-211
- 59-2-301
- 59-2-301.3
- 59-2-302
- 59-2-303
- 59-2-303.1
- 59-2-305
- 59-2-306
- 59-2-401
- 59-2-402
- 59-2-404
- 59-2-405
- 59-2-405.1
- 59-2-406
- 59-2-508
- 59-2-514
- 59-2-515
- 59-2-701
- 59-2-702
- 59-2-703
- 59-2-704
- 59-2-704.5
- 59-2-705
- 59-2-801
- 59-2-918 through 59-2-924
- 59-2-1002

- 59-2-1004
- 59-2-1005
- 59-2-1006
- 59-2-1101
- 59-2-1102
- 59-2-1104
- 59-2-1106
- 59-2-1107 through 59-2-1109
- 59-2-1113
- 59-2-1115
- 59-2-1202
- 59-2-1202(5)
- 59-2-1302
- 59-2-1303
- 59-2-1308.5
- 59-2-1317
- 59-2-1328
- 59-2-1330
- 59-2-1347
- 59-2-1351
- 59-2-1365
- 59-2-1703

R907. Transportation, Administration.**R907-80. Disposition of Surplus Land.****R907-80-1. Authorities.**

The Department of Transportation makes this rule pursuant to Utah Code sections 72-5-111, 72-5-117, 72-5-404, and 78B-6-521, which authorize the Executive Director to prescribe the terms and conditions for the sale or exchange of surplus right of way, and to make rules to ensure that the value of the real property is consistent with the proposed price and other terms of the purchase, sale, or exchange.

R907-80-2. Definitions.

1. "Appraisal" means the same as it is defined in Utah Code section 61-2G-102(1)(a).

2. "Confirmable Delivery Method" means any method of delivering documents that provides a way to confirm they were delivered to the intended party or location.

3. The "Department" means the Utah Department of Transportation.

4. The "Director" means the Executive Director of the Utah Department of Transportation or the Executive Director's designee.

5. "First right of refusal" means the same as "right of first refusal" and "right of first consideration."

6. "Minimum acceptable selling price" means a price established by the Department based upon the market value of the property as established by an appraisal or other means; plus costs associated with preparing the property for and executing the sale, such as the costs of advertising, appraising, performing environmental assessments, and processing the transaction.

7. As used in this rule, "surplus land," "surplus property," or "land" mean an estate in real property to which the Department is the owner and the Director has declared to be surplus.

8. The "Transportation Commission" or "Commission" means the Utah Transportation Commission.

9. A "Utah Public Entity" means a political subdivision of the State, an agency of the state, a county, a municipality, or a special services district of the state, a county, or municipality.

R907-80-3. Sales or Exchange Initiation Process.

In determining the appropriateness of a parcel of surplus land for sale or exchange, the Department may consider nominations by interested parties.

R907-80-4. Sales Deposits.

Should the Department evaluate a parcel of surplus land for sale or exchange due to a nomination by an interested party, the interested party making such nomination may be required to deposit funds in an amount determined by the Department to be used to offset costs incurred in preparing the parcel for sale. In the event the interested party making the deposit is the successful buyer of such Land, the Department will subtract the deposit amount from the total of the purchase price and fees charged to the buyer for preparing the Land for sale. In the event the person making the deposit is not the successful buyer of such property or the property is not offered for sale, the Department will refund the deposit.

R907-80-5. Methods of Sale.

1. The Department may sell Land or assets using one of the methods described below:

- (a) A public sale auction pursuant to R907-80-7,
- (b) A negotiated sale pursuant to R907-80-9, or
- (c) A negotiated exchange pursuant to R907-80-10.

2. The Department will execute sales and exchanges pursuant to rule R933-1-4.

R907-80-6. Public Sale Notice and Advertising.

1. At least 14 days prior to a public sale, the Department must send notice by Confirmable Delivery Method to:

(a) Persons holding a first right of refusal per Utah Code section 72-5-111, 78B-6-520.3, and 78B-6-521(2)(a); and

(b) Lessees and permit holders of record on the subject property.

2. The Department may notify the public about the sale of surplus property by commercially feasible methods, including publication of a notice in one or more newspapers of general circulation in the county in which the sale is proposed at least 30 days before the deadline to submit bids.

3. The notice and any associated advertising will include a general description of the parcel including township, range, and section, and any other information that may create interest in the sale. The Department must also identify the desired form of payment, whether money, in-kind, or both.

4. The Department may advertise public sales using any other methods the Director has determined may increase the potential for additional competition at the sale.

R907-80-7. Public Sale Auctions.

The public sale auction is the Department's preferred method of disposing of its surplus property because it maximizes transparency, opportunities for persons and entities wishing to obtain the Department's surplus property, fairness and impartiality in the disposal process and it fosters competition, which maximizes the value the Department receives for its property. Public sale auctions will be conducted as follows:

1. The Comptroller's Office of the Department will accept sealed bids by any means of delivery until 5:00 P.M. the day prior to the auction.

2. The officer conducting the auction will accept sealed bids by personal delivery on the day of the auction up until the beginning of the auction.

3. A sealed bid must contain funds in an amount equal to at least 10% of the total bid amount offered to purchase the subject property and may be required to consist of certified funds. Bids and bid deposits must be a specified dollar amount. The Department has the right to reject any bid however submitted.

4. The Department may require buyers who have defaulted on certificates of sale in the past to make larger deposits or submit sealed bids in the form of certified funds even if such a requirement is not contained in the notice of sale.

5. The officer conducting the auction will open all sealed bids after declaring that the auction has started. After determining which are the highest three bids, the officer will allow the persons submitting the three highest bids, and bids that are within 20% of the third highest sealed bid, to enter into oral bidding. Oral bids must be for more than the amount of the highest sealed bid, subject to those terms and conditions set forth in R907-80-7(6). Persons who submit sealed bids eligible to participate in the oral bidding will also be allowed to participate by telephone, subject to the terms and conditions of R907-80-7(6).

6. Bids less than the minimum acceptable selling price will be disqualified and the bidder will not be eligible for oral bidding even if such bids would otherwise meet those requirements in R907-80-7(4) or (6).

7. All bids, whether sealed or oral, constitute a valid offer to purchase. An attempt to withdraw a sealed bid after the first sealed bid has been opened, or an attempt to withdraw or amend an oral bid may result in the forfeiture of the bid deposit and any other remedy afforded the Department at law or equity.

8. At the conclusion of the auction and subject to the terms of R907-80-8, the successful bidder must sign a written offer agreement prepared by the Department that states the terms included in the public sale notice.

9. If the successful bidder defaults on the offer agreement, or otherwise fails to meet the requirements of R907-80-11, and upon approval by the Director, the property may be offered for sale to the person whose bid was second highest at the auction provided that the terms of the sale meet or exceed the minimum acceptable selling price established for the subject property. The second highest bidder will have 30 days from the date of the Department's offer to submit the purchase price balance plus costs required by R907-80-9(5).

10. Third parties owning authorized improvements on the parcel at the time of the sale will be allowed 90 days from the date of the sale to remove the improvements. This provision is not applicable when such improvements are permitted under a valid existing right of record when such right survives the sale of the parcel, or the improvements are subject to a separate lease agreement.

R907-80-8. First Right of Refusals.

1. The Department will notify individuals holding a first right of refusal at the close of the auction about the auction pursuant to Utah Code sections 72-5-111, 78B-6-520.3, 78B-6-521.

2. The Department will notify the holder of a first right of refusal by registered mail of the amount and terms of the highest offer as soon as practicable after the end of a public sales auction. The holder of the first right of refusal will have 90 days after being so notified to inform the Department, in writing, whether the holder agrees to the amount and terms of the highest offer or to waive the right. If the Department does not receive such written notification at the end of 90 days, the Department will consider the right waived.

3. If a holder of a first right of refusal waives the right, the bidder making the highest offer at the close of a public sale auction will enter into a purchase contract with the Department.

4. If a holder of a first right of refusal exercises the right, the holder will enter into a purchase contract with the Department for a price and at terms not lower than the highest offer made at the close of a public sale auction, and the Department will notify the bidder making the highest offer of the holder's decision to exercise the right.

5. Closings will be executed according to the requirements of R907-80-13.

R907-80-9. Negotiated Sales, Justifications, Procedures, and Public Notice.

1. The Department may dispose of surplus land by negotiated sale when the Executive Director determines such a sale serves the best interests of the State. The Department may sell surplus land or other property by negotiated sale if:

- (a) The buyer is a Utah public entity, and the property is being transferred for a public use, or
- (b) The buyer of the surplus land also owns adjoining land.

2. Before the Department may close on a negotiated sale, the Department must publish a Notice of Negotiated Sale. The Notice of Negotiated Sale must include:

- (a) A general description of the subject property including the street address and a brief description of the location of the subject property;
- (b) Contact information of the Department office where interested parties can obtain more information;
- (c) The identity of and contact information for the Utah Public Entity buying the property;
- (d) The public purpose for which the Utah Public Entity

will use the property; and

- (d) The terms of the sale.

3. The Department must publish a Notice of Negotiated Sale on the Department's Internet website, on the Utah Public Notice website, or in a newspaper of general circulation as defined by Utah Code section 45-1-201 for 14 consecutive days before the sale.

4. In the event a party submits a competing offer to purchase the property from the Department, the Department must evaluate the offer and accept the offer that best serves interests of the State. A written justification statement that articulates the reasoning used to determine the offer that best serves the interests of the State must be a part of all negotiated sales files.

5. The Department may require a buyer of surplus land purchased through a negotiated sale to reimburse the Department for costs incurred in preparing the parcel for sale. These costs may include, but are not limited to costs for advertising, appraisal, environmental assessments, and a sale processing charge.

R907-80-10. Negotiated Exchanges.

1. The Department may exchange real property for other real property with a Utah Public Entity, an individual, business, private enterprise, or not-for-profit organization.

2. The Transportation Commission must approve exchanges made to acquire land the Department needs for highway use.

3. Real property exchange transactions are not subject to competitive solicitation procedures.

4. Exchanges of surplus real property must comply with state law. Exchanges of real property involving the Department and a Utah public entity must follow the requirements of the Interlocal Cooperation Act, Utah Code sections 11-13-101 through 608.

5. The financial consideration received for any real property exchange to an individual, business, private enterprise, or not-for-profit organization must be equal to or higher than the current market value of the Department's real property, as determined by any reasonable means.

6. Real property received in an exchange must be free from all liens, encumbrances, and clouds on title unless the Director determines after review that accepting the property is in the best interests of the State. The Director's justification for accepting property with a lien, encumbrance, or cloud on title must be in writing.

R907-80-11. Contracts of Sale or Exchange.

1. The Department will prepare and deliver a contract of sale to the buyer following a public auction sale or upon concurrence of the parties in a negotiated sale or an exchange. This contract must contain the legal description of all subject property or properties, and include:

- (a) Information regarding the amount paid or the values of the properties exchanged;
- (b) The identities of buyer of the land or the entity or entities participating in the exchange with the Department;
- (c) Provisions for remedies the Department may elect in the event of a default; and
- (d) Any other terms, covenants, deed restrictions, or conditions that the Department considers appropriate.

2. Buyers or persons participating in a property exchange must execute contracts of sale or exchange and return them to the Department within 20 days from the date the Department delivers the contract. If the Department does not receive the contract within the 20-day period, the Department will send notice by a confirmable delivery method to the buyer or exchanging party giving notice that after 10 days the transaction may be canceled with all monies

received by the Department, including any deposit made, will be forfeited to the Department. Notification of this forfeiture provision must accompany the transmittal of the contract.

3. The Director must sign a contract of sale or exchange after the buyer has signed and returned the contract to the Department. The contract may not be final and no rights may vest in the buyer until the Director signs the contract. The Department must reserve the right to cancel a sale or exchange of surplus land for any reason prior to execution of the contract by the Director.

4. A contract of sale or exchange may be assigned to any person qualified to purchase surplus lands, provided that the assignment is approved by the Director, and that no assignment is effective until the Director approves the assignment in writing.

5. An assignment of a contract of sale or exchange must be consistent with these rules, executed by all necessary parties and acknowledged, and must clearly set forth the contract of sale or exchange number, the Land involved, and the name and address of the assignee.

6. Assignment of a contract of sale or exchange does not relieve the assignor from any obligations under the original contract of sale.

7. The Department will issue a quit claim deed to the appropriate person upon payment in full or all amounts owed to the Department and surrender of the original contract of sale or exchange for any tract of land sold or exchanged.

R907-80-12. Competition Protection.

1. Collusion between bidders or between a bidder and an employee or agent of the Department to affect a public sale auction is prohibited. Anyone having reason to believe that a public sale auction conducted under this rule may have been affected by collusion between bidders or between one or more bidders and an employee or agent of the Department must report that information to the attorney general as soon as reasonably possible.

2. Should an adjudicative body determine that collusion intended to affect a public sale auction conducted under this rule has occurred, the resulting sale will be voidable by the Department.

R907-80-13. Closings.

1. All auction sales, negotiated sales, or negotiated exchanges must go through this closing process.

2. Transactions must be closed within 30 days after the date of the contract unless good cause exists to delay the closing. Information intended to show that good cause that warrants delaying a closing exists must be provided in writing to the Director within 30 days after the date of the contract. The Director must determine if good cause to delay exists.

3. A minimum of 3% security deposit on a negotiated sale will be required to be held in escrow.

4. If closing does not complete within 30 days after the date of the contract, the deposit money becomes non-refundable if the Director decides good cause to delay does not exist.

5. If closing is not complete within the 30 days after the date of the contract and the Director determines that good cause to delay does not exist, the buyer still wishes to buy the property, and the Department agrees to allow the buyer more time to complete the purchase, the buyer must provide an additional 7% security deposit to the Department to be held in escrow and the parties will have an additional 30 days after the date of the contract to close.

6. If the buyer does not provide the additional 7% security deposit required by R907-80-13(5) within 5 business days after the date the Department agrees to allow the buyer more time to complete the purchase, the purchase contract is

voidable and the Department may contact the next highest bidder who will then have an opportunity to purchase the property.

7. If closing is not complete within the additional 30 days allowed by R907-80-13(5), all deposit money becomes non-refundable, the contract becomes voidable and the Department may provide the next highest bidder an opportunity to purchase the property.

8. The closing of a real property transaction may be conducted at a title company provided the buyer pays for all related costs. If a title company is used for closing, the Department will instruct the company to record the deed, and after recording, send it to the Department of Transportation, Director of Right of Way.

9. Only the Executive Director is authorized to sign closing papers, real property contracts, or deeds.

10. The Executive Director must approve all property sales or exchanges in writing prior to completion of the closing.

KEY: surplus land, negotiated exchanges, public sales auctions, negotiated sales
May 22, 2017

72-5-117

72-5-111

72-5-404

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) 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 to the Administrative Procedures Act.

KEY: certificate of registration, Utah-based aircraft, aircraft, penalties

May 22, 2017

72-10-112(3)(b)

R978. Veterans' and Military Affairs, Administration.**R978-1. Rule Governing Veterans' Affairs.****R978-1-1. Authority.**

(1) This rule is established pursuant to Section 71-8-2 which established the Department of Veterans' and Military Affairs. This rule is made pursuant to Title 63G, Chapter 3 of the Utah Administrative Rulemaking Act.

R978-1-2. Purpose.

(1) The purpose of this rule is to define the functions and mission of the Department of Veterans' and Military Affairs under Sections 71-8-1 through 71-11-10 and 38 CFR.

R978-1-3. Definitions.

(1) Terms used in this rule are defined in Sections 71-8-1, 71-10-1, and 71-11-2.

(2) Additional terms are defined as follows:

(a) "Homeless veteran" means a qualified veteran who is currently experiencing an episode of homelessness without a stable, regular indoor place of residence.

(b) "Nursing Home" means a State licensed facility accommodating persons who require skilled nursing care and related medical services.

(c) "State Officer" means the State official authorized to oversee the operations of a State veterans nursing home.

(d) "Widow" means the unmarried spouse of a deceased veteran of either sex.

R978-1-4. Nursing Homes.

(1) The department shall administer the various state veterans' nursing homes in accordance with Title 71, Chapter 11, Utah Veterans' Nursing Home Act.

(2) Each nursing home shall have a State Officer who shall act as the department's liaison to carry out the requirements of this act.

(3) Each home shall enforce admission requirements in accordance with Section 71-11-6 as established by the department.

(4) Each home shall comply with 38 CFR 51, "Per Diem for Nursing Home Care of Veterans" for per diem payments, per diem payments for veterans with service connected disabilities, payments for drugs and medicines for certain veterans, and nursing home standards.

(5) The department may contract with reputable nursing home management firms for the day-to-day operation of the nursing homes as provided in 38 CFR 51.210. Selection shall be by a competitive bid process under State Purchasing rules with criteria established by the department. The department shall establish the duration for the management contracts and other contractual terms and conditions in the best interests of the residents.

(6) Notwithstanding the authority of the management firm to employ and direct all nursing home employees, the State Officer shall be an employee of the department and shall be independent of the management firm. The State Officer shall oversee the operations of the state nursing home.

R978-1-5. Cemetery and Memorial Park.

(1) The department shall administer the state veterans' cemetery and memorial park in accordance with Section 71-7-3.

(2) Fees charged for burial expenses shall be posted at the cemetery office and on the department website. Fees charges for other funeral expenses, including headstone replacement, shall be posted at the cemetery office and on the department website.

(3) Private burial fees shall be equivalent to the annually determined federal burial reimbursement rate.

R978-1-6. Homeless Veterans.

(1) The department shall coordinate with local, state and federal programs providing short and long term housing for homeless veterans in the state as provided in Subsection 71-8-3 (1)(d).

R978-1-7. Education Programs.

(1) The department shall administer the State Approving Agency (SAA) for Veterans Education as directed in Subsection 71-8-3(1)(e).

(2) The SAA shall perform all duties necessary for the inspection, approval and supervision of educational programs offered by qualified educational institutions, training establishments, and tests for licensing and certification in accordance with the standards and provisions of 38 U.S.C. 30, 32, 33, 35, and 36, and 10 U.S.C. 1606 and 1607.

(3) The SSA shall provide in-depth technical assistance and outreach liaison with all related organizations, agencies, individuals and activities to help veterans and other eligible persons achieve their educational and vocational goals.

(4) The SSA shall reach out to eligible persons and inform them of their benefits through the GI Bill, which will assist veterans in making the most informed decision toward their vocational and educational goals.

(5) The SSA shall perform other duties and functions as determined by the U.S. Department of Veteran Affairs via annual contract for SSA services.

R978-1-8. State Benefits.

(1) The department shall assist veterans, their widows and dependents in procurement of all rights and benefits which may accrue to them by reason of military service to the United States in accordance with Section 71-9-1. Specifically, the department shall disseminate information on benefits to veterans and interested parties via:

- (a) community outreach
- (b) fairs, exhibits and community events
- (c) the Utah Veterans Voice publication and other appropriate print and electronic media
- (d) the department's public website (<http://veterans.utah.gov>)
- (e) cooperative activities with other veterans organizations

(2) Specific state benefits that the department shall assist veterans and their dependents in securing include:

- (a) Disabled Veteran Property Tax Abatement
- (b) Purple Heart Tuition Waiver
- (c) Purple Heart Fee Exemption
- (d) Scott B Lundell Tuition Waiver for military members' surviving dependents
- (e) Honorary high school diplomas
- (f) Veteran's license plates
- (g) Free use of armories
- (h) Fishing license privileges
- (i) Special fun tags
- (j) America the Beautiful pass
- (k) Trax/bus reduced fare cards
- (l) Veterans Upward Bound
- (m) Utah Veterans with Disabilities Honors Pass
- (n) Veterans assistance registry
- (o) Resident tuition for state colleges and universities
- (p) Such other state benefits to veterans as may be established by statute

R978-1-9. Federal Benefits.

(1) The department cannot administer any federal veterans benefit programs, but it shall provide information and assistance to veterans, their widows and dependents in understanding and navigating the rules of federal veterans'

benefits. These federal benefits include:

- (a) Veterans compensation and pensions
- (b) Dependency and indemnity compensation (DIC) payments
- (c) Disability compensation
- (d) Home loan guarantee program
- (e) G.I. Bill
- (2) The department may contract with other military service organizations to assist veterans, their spouses, widows and dependents in securing their rights, benefits, and employment preferences as provided in Section 71-9-1.

R978-1-10. Tracking Veteran Employees.

(1) The department shall coordinate with the Utah State Department of Human Resource Management (DHRM) to maintain current counts of the number of veterans employed by the State of Utah in each department, as provided in Subsection 71-8-3 (5). The department shall encourage state agencies and departments to properly record veteran status for all employees.

(2) A count of veterans in state government shall be updated and kept on file at least twice per year.

R978-1-11. Record of Veterans.

(1) The department shall create and maintain a record of veterans in Utah as provided in Subsection 71-8-3 (6).

(2) The department shall maintain a searchable self-registration for Utah veterans on the department website.

(3) The department shall work with the Utah Department of Information Technology, the Department of Workforce Services, and the Utah Drivers License Division to develop a searchable, digital database of Utah veterans.

(4) The department shall secure paper and digital copies of veterans' form DD-214 to assist in creating a database of verified veterans from Utah and to assist Utah veterans in securing all available benefits.

(5) The department shall contract, as appropriate, for technical assistance in creating and maintaining veterans' databases.

R978-1-12. Military Affairs.

(1) The department shall develop and maintain cooperative relationships with military-related organizations and with leaders of military installations in Utah in accordance with 71-8-3 including but not limited to:

- (a) Camp Williams
- (b) Dugway Proving Ground
- (c) Hill Air Force Base including Ogden Air Logistics Complex
- (d) Tooele Army Depot
- (e) Utah Test and Training Range

(2) The department shall develop and maintain cooperative relationships with Utah's congressional delegation and military staffers and shall cooperate on military issues, challenges and opportunities that arise in Utah.

R978-1-13. Boards.

(1) The department provides support and participates in several boards in order to accomplish its mission. These boards include, but are not limited to:

- (a) Veterans Advisory Council
- (b) George E. Wahlen Ogden Veterans Home Advisory Board
- (c) William E. Christoffersen Salt Lake Veterans Home Advisory Board
- (d) Mervyn S. Bennion Central Utah Veterans Home Advisory Board
- (e) Southern Utah Veterans Home Advisory Board
- (f) Utah Veterans Cemetery and Memorial Park

Advisory Board

- (g) Other boards as may be created
- (2) Board members are appointed in accordance with statute:

(a) The Governor appoints members of the Veterans Advisory Council with input from the department executive director.

(b) The executive director appoints members of the remaining boards with input from the state officers of the nursing homes and the cemetery manager.

(3) Boards meet at a minimum of quarterly with agenda and minutes maintained and posted as required by statute.

(a) Board members may participate in required meetings either in person or by electronic means to include, but not limited to: telephone, internet or mobile device.

(b) If a board member does participate via telephonic communication, the board member will be on speaker phone. The speaker phone will be amplified so that the other board members and all other persons present in the board meeting will be able to hear all participants.

(c) All those participating either in person or by electronic means will count for quorum requirements and voting on issues, as appropriate.

KEY: veterans' and military affairs

May 9, 2017

Notice of Continuation March 1, 2017

71-8-2

R982. Workforce Services, Administration.**R982-101. Americans with Disabilities Complaint Procedure.****R982-101-100. Authority and Purpose.**

(1) The legal authority for these rules is found in U. C. A. Sections 35A-1-104 and 63G-3-201(3) and Title II of the Americans with Disabilities Act (ADA).

(2) No qualified individual with a disability, by reason of such disability, shall be excluded from participation in or be denied the benefits, services, programs, or activities of the Department, or be subjected to discrimination by the Department.

(3) The Department will provide prompt and equitable resolution of all complaints filed with, received by, or referred to the Department by qualified individuals with disabilities arising from exclusion from participation in, or denial of benefits or services, programs or activities, administered by the Department.

R982-101-101. Definitions.

(1) "ADA coordinator" (coordinator) means the Department's coordinator or coordinators who have responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals alleging discrimination in the receipt of services or work accommodation due to disability.

(2) "Executive Director" (Director) means the chief administrative officer of the Department appointed by the governor pursuant to Utah Code Ann. 35A-1-201(1)(a) or the Director's designee.

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

(4) "Qualified individual with a disability" The Department adopts the definition in Title II of the ADA. The term generally means a person who has a disability which limits one or more major life activities and who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Department or who, with or without reasonable accommodation, can perform the essential functions of the position in the Department, or who would otherwise be an eligible applicant for vacant positions with the Department, as well as those who are employees of the Department.

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

R982-101-102. Classification of Records.

The record of each complaint and appeal, and all written records produced or received as part of the complaint procedure under this rule, shall be classified as protected as defined under Section 63G-2-305 until the coordinator, Director, or designee issues the decision, at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63G-2-302, or controlled as defined in Section 63G-2-304. All other information gathered as part of the complaint record shall be classified as private information. The written decision of the coordinator, Director or designee shall be classified as protected information.

R982-101-103. Relationship to Other Laws.

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

Complaint Procedures, 28 CFR 35.170, et seq.; or any other federal law, Utah law or the common law that provides equal or greater protection for the rights of individuals with disabilities.

R982-101-104. Appointment of ADA Coordinator.

The Director shall appoint one or more persons as the ADA coordinator to investigate and resolve complaints filed by qualified individuals with disabilities.

R982-101-200. Filing of Complaints by Department Employees or Applicants for a Vacant Position.

(1) A complaint shall be filed in a timely manner to assure prompt, effective investigation, but no later than 180 days from the date of the alleged act of discrimination.

(2) The complaint may be filed by a qualified individual with a disability with any Division, Office or Regional Office of the Department or directly with the coordinator. The complaint shall be in writing or in another accessible format suitable to the individual. Complaints filed locally are to be forwarded immediately to the coordinator. If filed directly with the coordinator it should be delivered or mailed to:

ADA Coordinator
Department of Workforce Services
140 East 300 South
Salt Lake City, UT 84145-0249

(3) Each complaint shall be in writing or in another accessible format suitable to the individual and include:

- (a) the individual's name and address;
- (b) the nature and extent of the individual's disability;
- (c) the Department's alleged discriminatory action in sufficient detail to inform the Department of the nature and the date of the alleged violation;
- (d) a description of the action and accommodation desired; and,
- (e) be signed by the individual or legal representative.

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

(5) With or without exhausting Department procedures, individuals may also file complaints alleging discrimination in employment with:

Utah Anti-Discrimination and Labor Division
160 East 300 South
Salt Lake City, UT 84114
or,
Equal Employment Opportunity Commission
4520 North Central Avenue, Suite 300
Phoenix, AZ 85012-1848
Phone 602-640-2598

R982-101-201. Investigation and Resolution of Employee Complaints.

(1) The coordinator shall conduct an investigation of each complaint received.

(2) Within 15 working days after receiving the complaint, the coordinator shall either issue a decision in writing stating the action that will be taken on the complaint, that no action will be taken on the complaint, or notify the complainant in writing that the decision is being delayed and the amount of additional time needed to issue a decision.

(3) The party initiating the complaint and the Department may agree in writing to waive or extend the time limits set forth in the complaint process.

R982-101-202. Appeals of Employee Complaints.

(1) The complainant may appeal the decision of the coordinator by filing an appeal within five working days from the receipt of the decision. The appeal shall be in writing or in

another accessible format suitable to the individual.

(2) The filing of an appeal shall be considered as authorization by the complainant to allow review of all information, including information classified as other than public information, by the Director.

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

(4) The Director shall review the coordinator's findings and decision and may conduct an additional investigation.

(5) The Director shall either issue a decision within ten working days of receipt of the appeal, or shall notify the complainant in writing or in another accessible format suitable to the individual that the decision is being delayed and the amount of additional time needed to issue a decision.

(6) Nothing in this rule relieves the complainant from complying with or assisting in the complaint process by providing information necessary to make a decision on the complaint.

(7) Nothing in this rule requires the Director to gather information or seek documentation to support the complaint.

(8) The decision issued by the Director shall constitute the final agency action.

(9) The Director may appoint a designee other than the coordinator to fulfill the Director's obligations under this rule.

R982-101-300. Filing of Complaints by Clients.

(1) The Department will resolve all written complaints filed by a qualified individual with a disability with the Department arising from exclusion from participation in, or denial of benefits or services, programs or activities, administered by the Department. Complaints shall be made on a form as developed by the Department.

(2) All client complaints shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 180 days from the date of the alleged act of discrimination.

(3) The complaint may be filed with any Division, Regional Office or Local Office of the Department or directly with the coordinator. Complaints filed locally are to be forwarded immediately to the coordinator. The complaint shall be in writing or in another accessible format suitable to the individual and delivered or mailed to:

ADA Coordinator
Department of Workforce Services
140 E 300 South
Salt Lake City, UT 84145-0249

(4) Each complaint shall include:

(a) the individual's name and address;
(b) the nature and extent of the individual's disability;
(c) the Department's alleged discriminatory action in sufficient detail to inform the Department of the nature and the date of the alleged violation;

(d) a description of the action and accommodation desired; and,

(e) be signed by the individual or legal representative.

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

(6) With or without exhausting Department procedures, complainants may also file complaints alleging discrimination in the delivery of services with:

Director, Civil Rights Center
U.S. Department of Labor
200 Constitution Avenue, NW Room N4123
Washington, D.C. 20210; or
Office of Civil Rights
U.S. Department of Health and Human Services
Federal Office Building

1961 Stout Street

Denver, CO 80295-3538

Or, for employment related complaints based on disability:

Utah Anti-Discrimination and Labor Division

160 East 300 South

Salt Lake City, UT 84114; or

Equal Employment Opportunity Commission

4520 North Central Avenue, Suite 300

Phoenix, AZ 85012-1848

Phone 602-640-2598.

R982-101-301. Investigation of Client Complaints.

(1) The coordinator shall document the filing of the complaint and shall assemble all the necessary information to process the complaint.

(2) When conducting the investigation, the coordinator may seek assistance from the Attorney General or any Department employee or other person or agency in determining what action, if any, shall be taken on the complaint.

R982-101-302. Issuance of Decisions and Appeal Rights of Client Complaints.

The coordinator shall issue a decision in writing or other accessible format suitable to the individual within 90 days from the date the complaint was received by the Department. The decision shall inform the parties of their appeal rights and the procedure for filing an appeal. The decision shall outline what action was taken or will be taken, if any.

KEY: disabilities, complaints

January 1, 2003

Notice of Continuation May 31, 2017

35A-1-104

R982. Workforce Services, Administration.**R982-201. Government Records Access and Management Act.****R982-201-101. Request for Access to Department of Workforce Services Records.**

1. Authority. As required by Subsection 63G-2-204(2)(d), this rule specifies where and to whom a request for access of Department of Workforce Services (DWS) records shall be directed.

2. Definition. Words used in R982-201 are defined in Section 63G-2-103.

3. Requests for Access.

a. All requests for records shall be submitted in accordance with Subsection 63G-2-204(1).

b. A person may submit a request for a record to any DWS office. If the record requested is one originated in that office, that office will respond to the request. If the record is unknown or not available in the office where the request is filed, the request will be sent immediately to the appropriate Employment Center or administrative office. If the office is unsure as to which office is the appropriate one, the request will be sent to the Department of Workforce Services, Records Manager.

4. News Media/Expedited Release. If a requester demonstrates that he is a member of the news media or that expedited release of the record benefits the public rather than an individual, the request shall be submitted to the Department of Workforce Services, Records Manager, or Public Information Officer.

R982-201-102. Fee Schedule for Records Copies.

1. Authority. Pursuant to Section 63G-2-203, the Department will charge fees for the copying and compiling of records, and may waive fees as specified in this rule.

2. Fee Rates. For records which are reproducible in their current form the fee charged for making copies shall be established by the Executive Director in accordance with Section 63G-2-203(1).

3. Payment Waiver.

a. The right to waive payment of fees for copying records shall reside with the staff in the Employment Center or administrative office. No fees shall be charged for reviewing a record or inspecting a record according to Subsections 63G-2-203(4)(a) and (b).

b. Fees shall not be waived where records are provided to professionals providing services for a fee to individuals who would otherwise have access to records under Sections 63G-2-301 through 63G-2-305.

R982-201-103. Appellate Requests, Research Requests and Intellectual Property Access Requests.

1. Authority. As required by Subsection 63G-2-401(9), this rule specifies where and to whom appeals on records access denials may be directed and Subsection 63G-2-201(10) to whom and where requests regarding duplication and distribution of materials for which the agency owns the intellectual property rights, Subsection 63G-2-202(8) regarding requests for access for research purposes may be submitted.

2. Appeals and Special Requests.

a. All first level appeals shall be directed to the individual(s) designated by the Executive Director of the Department of Workforce Services.

b. Special requests including requests for access to records for research purposes, and duplication and distribution of materials for which the agency owns the intellectual property rights shall be submitted to the individuals designated by the Executive Director for the respective Division, Office, Institution, or Bureau of the

Department of Workforce Services.

3. Discretionary Access Authority. Notwithstanding Section 35A-4-312 of the Employment Security Act and other state or Federal statute or Federal rules and as specified in Subsection 63G-2-201(5)(b) decisions regarding discretionary access to records that are private, or protected under Sections 63G-2-302 and 63G-2-305 where the public interest to know exceeds the right of privacy shall be determined by the Executive Director or designee of the Executive Director.

R982-201-104. Records Modification and Clarification.

1. Authority. Section 63G-2-603 Governmental Records Access and Management Act and Section 63G-4-202 Utah Administrative Procedures Act designate the option of either formal or informal hearings governing modification of records in dispute.

2. Hearings. Hearings on disputed records accuracy shall be conducted informally.

KEY: records**November 6, 1997****Notice of Continuation May 31, 2017****35A-1-104**

R982. Workforce Services, Administration.**R982-301. Councils.****R982-301-101. General Definitions.**

1. Employer. This rule adopts the definition of employer as used in Section 35A-4-203 except that for purposes of this rule, and for purposes of membership on the State Council on Workforce Services, also known as the State Workforce Investment Board an employer shall be a for-profit enterprise.

2. Median sized employer. The median sized employer shall be calculated, based on the previous calendar year, by the Workforce Research and Analysis Division each June 30. The median sized employer is determined by arranging the establishments in an array by number of employees including the number of employees in each employer size interval, and choosing the employer in the array that employs the middle number of employees.

3. Attendance. Pursuant to Subsection 35A-2-103(6)(b), a council member may be considered present at the meeting when given permission by the council chair to participate in the business of the meeting by videoconference or teleconference.

4. Conflict of Interest. Prior to voting on any matter before a council, a council member must disclose and declare for the council records any direct financial benefit the member would receive from a matter being considered by the council.

R982-301-102. State Council on Workforce Services.

1. Authority. As required by Subsections 35A-1-206(2)(a)(iv)(A) and 35A-1-206(2)(a)(iv)(B), this rule defines Small Employers and Large Employers for membership on the State Council on Workforce Services.

2. Definitions.

a. "Small employer" means an employer who employs fewer employees than the median sized employer in the state.

b. "Large employer" means an employer who employs a number of employees that is greater than or equal to the median sized employer in the state.

c. "Median Sized Employer" as used in R982-301-102(2)(a) and R982-301-102(2)(b) is based solely on the number of employees an employer has in his/her employ in the state during the calendar year.

d. "Rural employer" means an employer whose primary worksite is located in a rural area outside the Wasatch Front as determined by the Department.

e. Council membership shall include a large and a small rural employer.

KEY: councils**August 18, 2011****Notice of Continuation May 31, 2017****35A-1-104(1)****35A-1-206(2)(a)(iv)(A)****35A-1-206(2)(a)(iv)(B)****35A-2-103(2)(a)(i)****35A-2-103(2)(a)(ii)**

R982. Workforce Services, Administration.**R982-403. Energy Assistance Income Standards, Income Eligibility, and Payment Determination.****R982-403-1. Energy Assistance Income Standards.**

For HEAT assistance cases, the local HEAT office shall determine the countable income of the household. Income must be at or below 150% of the federal poverty level to qualify for HEAT assistance.

R982-403-2. Countable Income.

Countable income is gross income minus exclusions, disregards, and deductions.

R982-403-3. Unearned Income.

(1) Countable unearned income is cash received by an individual for which no service is performed.

(2) Sources of unearned income include the following:

(a) Pensions and annuities including Railroad Retirement, Social Security, Supplemental Security Income, Veteran's benefits and Civil Service retirement benefits;

(b) Disability benefits including Industrial Compensation, sick pay, mortgage insurance and paycheck insurance;

(c) Unemployment Compensation;

(d) Strike or union benefits;

(e) Veteran's benefits;

(f) Child support and alimony;

(g) Veteran's Educational Assistance intended for family members;

(h) Trust payments, withdrawals, and/or dividends received on a regular basis;

(i) Tribal fund gratuities unless excluded by law.

(j) Money from sales contracts and mortgages;

(k) Personal injury settlements;

(l) Financial payments made by the Department of Workforce Services;

(m) Income from Rental Property. If the client also manages the property, the income is earned;

(n) Temporary Assistance to Needy Families (TANF);

(o) Emergency Work Program (EWP);

(p) Work allowances;

(q) Foster Care Payments;

(r) Severance pay paid out weekly;

(s) 401K payments;

(t) Retirement income;

(u) Payments received or drawn down from assets like a reverse mortgage or withdrawals from accounts;

(v) Gifts received, or payments made on a client's behalf on a regular basis.

R982-403-4. Earned Income.

(1) Earned income is income in cash or in kind received by an individual for which a service is performed.

(2) Sources of earned income include the following:

(a) Wages, including military base pay;

(b) Salaries;

(c) Commissions;

(d) Rent amount, when client works in return for rent;

(e) Monies from self-employment including baby-sitting;

(f) Tips;

(g) Sale of livestock and poultry;

(h) Work Study;

(i) Military payments to cover Basic Allowance for Quarters and Basic Allowance for Substance;

(j) Money the employee chooses to have withheld for benefit plans including Flex Plans and Cafeteria Plans;

(k) Income from rental property if client also manages the property.

R982-403-5. Income Exclusions.

The income listed below is not counted when determining eligibility:

(1) Earned income of an unemancipated household member;

(2) Cash over which the household has no direct control;

(3) Reimbursements for expenses directly related to employment, training, schooling, and volunteer activities;

(4) Reimbursements for incurred medical expenses;

(5) Bona fide loans. A bona fide loan is a loan which has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment;

(6) Compensation paid to individual volunteers under the Retired Senior Volunteers Program, Green Thumb and the Foster Grandparent Program;

(7) Incentive and training expenses paid by the HEAT Self Sufficiency program.

(8) Earned Income Tax Credit;

(9) Financial payments from Workforce Innovation and Opportunity Act;

(10) Value of SNAP;

(11) Educational loans, grants, scholarships or college work study with the exception of Veterans Educational Assistance intended for the family members of the student. The student's portion is exempt;

(12) Interest or dividend income;

(13) Compensation or reimbursement paid to Volunteers In Service To America, Senior Health Aides, Senior Core of Retired Executives, Senior Companions and ACE;

(14) Church cash assistance and voluntary cash contributions by others unless received on a regular basis;

(15) Rental subsidies and relocation assistance;

(16) Utility subsidies;

(17) The full military pay for an active duty soldier not in the home. However, any amount taken out of his or her military pay and sent home for the family's support is counted; and

(18) Any funds, payments, or tribal benefits required by Public Law 98-64, Public Law 93-134(7), Public Law 92-254, Public Law 94-540, Public Law 94-114 and Public Law 96-240(9); Public Law 92-203, Public Law 101-201 or Public Law 101-239(10405), Public Law 100-383, Public Law 101-426, or by Public Law 100-707.

R982-403-6. Income Disregard.

(1) 20% of earned income, including self-employment earned income, will be disregarded. "Disregard" means a portion of income that is not counted.

(2) For self-employed households the cost of doing business will be deducted. The 20% disregard will be applied to the remainder.

R982-403-7. Income Deductions.

(1) A deduction for payments on uncompensated medical bills will be allowed when those payments are actually made by a member of the household during the same time period as the income being counted.

(a) The client must verify the payment was made directly to a medical provider by a member of the household, for a member of the household in the month prior to the month of application and that they will not be reimbursed by a third party.

(b) Health and accident insurance payments, dental insurance payments, and Medical Assistance Only (MAO) payments are considered medical expenses.

(2) A deduction for child support and alimony payments will be allowed when those payments were actually made by a

member of the household during the same time period as the income being counted.

(a) The client must verify the payment was actually made directly to the custodial adult or through the court.

(b) Payments in lieu of child support and alimony, including car payments or mortgage payments, are deductible.

R982-403-8. Self-Employment Income.

(1) A self-employed person is someone who earns income directly from his or her own business, trade, or profession.

(2) Self-employment income will be determined by using the previous year's tax return or as follows:

(a) All gross self-employment income is counted, including capital gains. The proceeds from the sale of capital goods or equipment will be calculated in the same way as a capital gain for Federal income tax purposes. Even if only part of the proceeds from the sale of capital goods or equipment is taxed, the full amount of the capital gain will be counted as income for HEAT program purposes.

(b) The cost of doing business will be deducted.

(i) Allowable business costs include:

(A) labor;

(B) stock;

(C) raw materials;

(D) seed and fertilizer;

(E) interest paid toward the purchase of income producing property;

(F) insurance premiums;

(G) taxes paid on income producing property;

(H) Transportation costs will be allowed only if the person must move from place to place in the course of business.

(ii) The following items will not be allowed as business expenses:

(A) payments on the principal of the purchase price of income producing real estate and capital assets, equipment, machinery and other durable goods;

(B) net losses from previous periods;

(C) federal, state and local income taxes, money set aside for retirement purposes, and other work related personal expenses;

(D) depreciation.

R982-403-9. HEAT Financial Eligibility and Payment Determination.

All countable income received in the previous calendar month for the current applicant household will be used to determine eligibility. Terminated income received in the previous calendar month or the month of application is exempt if no new source of income is identified. Failure to provide verification of income will result in the HEAT application being denied.

Verification of countable income includes preceding or current month's SSI or SSA checks, divorce decrees, award letters, or current check stubs if the income is stable and the amount is the same as the actual income received in the previous calendar month.

KEY: energy assistance, self-employment income, income eligibility, payment determination

October 1, 2014

35A-8-1403

R982. Workforce Services, Administration.**R982-601. Provider Code of Conduct.****R982-601-101. Statement of Purpose.**

The Provider Code of Conduct is written in addition to all Department of Workforce Services policies, rules and regulations governing delivery of services to clients. The purpose of the code is to protect vulnerable clients from abuse, neglect, maltreatment and exploitation. The Code of Conduct clarifies the expectation of conduct for providers of contracted, licensed and certified programs and their employees, which includes administrative staff, non direct care staff, direct care staff, support services staff and any others when interacting with clients. Written agency policy required by this code must be approved by the licensing or certifying authority. Nothing in this Code shall be interpreted to mean that clients should not be held accountable for misbehavior or inappropriate behavior on their part, or that providers are restricted from instituting suitable consequences for such behavior.

R982-601-102. Abuse, Sexual Abuse and Sexual Exploitation, Neglect, Exploitation, and Maltreatment Prohibited.

A. No contracted, licensed or certified agency, individual, employee shall abuse, sexually abuse or sexually exploit, neglect, exploit or maltreat; (as defined below) any client.

1. No person shall cause physical injury to any client. All injury to clients (explained or unexplained) shall be documented in writing and immediately reported to supervisory personnel.

2. No person by acting, failing to act, encouragement to engage in, or failure to deter from will cause any client to be subject to abuse, sexual abuse or sexual exploitation, neglect, exploitation, or maltreatment.

3. No person shall engage any client as an observer or participant in sexual acts.

4. A person may not make clearly improper of a client or their resources for profit or advantage.

B. Failure to comply with this Code of Conduct may result in corrective action, probation, suspension, and/or termination of contract, license or certification, in accordance with administrative procedures act and Department of Workforce Services regulations.

R982-601-103. Definition of Client.

Any person under the age of 18 years; and any person 18 years of age or older who is impaired because of mental illness, mental deficiency, physical illness or disability, use of drugs, intoxication, or other cause, to the extent that he is unable to care for his own personal safety, health or medical care; and is a participant in, or a recipient of a program or service contracted with, or licensed or certified by the Department of Workforce Services.

R982-601-104. Definitions of Abuse, Sexual Abuse and Sexual Exploitation, Neglect, Exploitation, and Maltreatment.

A. Abuse of clients may include, but is not limited to:

1. Harm or threatened harm, meaning damage or threatened damage to the physical or emotional health and welfare of a client such as failure.

2. Unlawful confinement.

3. Deprivation of life-sustaining treatment.

4. Physical injury including, but not limited to, any contusion of the skin, laceration, malnutrition, burn, fracture of any bone, subdural hematoma, injury to any internal organ, any injury causing bleeding, or any physical condition which imperils a client's health or welfare.

5. Any type of physical hitting or corporal punishment inflicted in any manner upon the body.

B. Sexual abuse and sexual exploitation will include, but not be limited to:

1. Engaging in sexual intercourse with any client.

2. Touching the anus or any part of the genitals or otherwise taking indecent liberties with a client, or causing an individual to take indecent liberties with a client, with the intent to arouse or gratify the sexual desire of any person.

3. Employing, using, persuading, inducing, enticing, or coercing a client to pose in the nude.

4. Employing, using, persuading, inducing, enticing or coercing a client to engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct. This includes displaying, distributing, possessing for the purpose of distribution, or selling material depicting nudity, or engaging in sexual or simulated sexual conduct with a client.

5. Committing or attempting to commit acts of sodomy or molestation with a client.

6. This definition is not to include therapeutic processes used in the treatment of sexual deviancy or dysfunction which have been outlined in the clients treatment plan and is in accordance with written agency policy.

C. Neglect may include but is not limited to:

1. Denial of sufficient nutrition.

2. Denial of sufficient sleep.

3. Denial of sufficient clothing, or bedding.

4. Failure to provide adequate supervision; including impairment of employee resulting in inadequate supervision. Impairment of an employee may include but is not limited to use of alcohol and drugs, illness, sleeping.

5. Failure to arrange for medical care and/or medical treatment as prescribed or instructed by a physician when not contraindicated by agency after consultation with agency physician.

6. Denial of sufficient shelter, except in accordance with the written agency policy.

D. Exploitation will include, but is not limited to:

1. Utilizing the labor of a client without giving just or equivalent return except as part of a written agency policy which is in accordance with reasonable therapeutic interventions and goals.

2. Using property belonging to clients.

3. Acceptance of gifts as a condition of receipt of program services.

E. Maltreatment will include, but is not limited to:

1. Physical exercises, such as running laps or performing pushups, except in accordance with an individual's service plan and written agency policy.

2. Chemical, mechanical or physical restraints except when authorized by individual's service plan and administered by appropriate personnel or when threat of injury to the client or other person exists.

3. Assignment of unduly physically strenuous or harsh work.

4. Requiring or forcing the individual to take an uncomfortable position, such as squatting or bending, or requiring or forcing the individual to repeat physical movements when used solely as a means of punishment.

5. Group punishments for misbehaviors of individuals except in accordance with the written agency policy.

6. Verbal abuse by agency personnel: engaging in language whose intent or result is demeaning to the client except in accordance with written agency policy which is in accordance with reasonable therapeutic interventions and goals.

7. Denial of any essential program service solely for

disciplinary purposes except in accordance with written agency policy.

8. Denial of visiting or communication privileges with family or significant others solely for disciplinary purposes except in accordance with written agency policy.

9. Requiring the individual to remain silent for long periods of time solely for the purpose of punishment.

10. Extensive withholding of emotional response or stimulation.

11. Exclusion of a client from entry to the residence except in accordance with the written agency policy.

R982-601-105. Reporting Requirements.

Any contracted, licensed or certified agency, individual, or employee is responsible to document and report abuse, sexual abuse and sexual exploitation, neglect, maltreatment and exploitation as outlined in this Code and cooperate fully in any resulting investigation.

1. Any person will immediately report abuse, sexual abuse and sexual exploitation, neglect, maltreatment or exploitation by contacting the local Regional Office within 24 hours. During weekends and on holidays such reports will be made to the Regional Office On-call worker.

2. All reports and documentation made regarding situations of abuse, sexual abuse and sexual exploitation, neglect, and exploitation will be made available upon request, or with court order when required by federal regulations, to appropriate Department of Workforce Services personnel and law enforcement.

3. All injury to clients (explained or unexplained) shall be documented in writing and immediately reported to supervisory personnel.

4. A poster, provided by the Department of Workforce Services, notifying contractor employees of their responsibilities to report violations and giving appropriate phone numbers, is required to be prominently displayed in all contractor facilities.

KEY: economic development, training programs, code of conduct, unemployed workers

July 1, 1997

35A-1-104(1)

Notice of Continuation May 31, 2017

35A-1-104(2)

R986. Workforce Services, Employment Development.**R986-100. Employment Support Programs.****R986-100-101. Authority.**

(1) The legal authority for these rules and for the Department of Workforce Services to carry out its responsibilities is found in Sections 35A-1-104 and 35A-3-103.

(2) If any applicable federal law or regulation conflicts with these rules, the federal law or regulation is controlling.

R986-100-102. Scope.

(1) These rules establish standards for the administration of the following programs, for the collection of overpayments as defined in 35A-3-602(7) and/or disqualifications from any public assistance program provided under a state or federally funded benefit program;

- (a) Supplemental Nutrition Assistance Program (SNAP)
- (b) Family Employment Program (FEP)
- (c) Family Employment Program Two Parent (FEPTP)
- (d) Refugee Resettlement Program (RRP)
- (e) Working Toward Employment (WTE)
- (f) General Assistance (GA)
- (g) Child Care Assistance (CC)
- (h) Emergency Assistance Program (EA)
- (i) Adoption Assistance Program (AA)
- (j) Activities funded with TANF monies

(2) The rules in the 100 section (R986-100 et seq.) apply to all programs listed above. Additional rules which apply to each specific program can be found in the section number assigned for that program. Nothing in R986 et seq. is intended to apply to Unemployment Insurance.

R986-100-103. Acronyms.

The following acronyms are used throughout these rules:

- (1) "AA" Adoption Assistance Program
- (2) "ALJ" Administrative Law Judge
- (3) "CC" Child Care Assistance
- (4) "CFR" Code of Federal Regulations
- (5) "DCFS" Division of Children and Family Services
- (6) "DWS" Department of Workforce Services
- (7) "EA" Emergency Assistance Program
- (8) "FEP" Family Employment Program
- (9) "FEPTP" Family Employment Program Two Parent
- (10) "GA" General Assistance
- (11) "INA" Immigration and Nationality Act
- (12) "IPV" intentional program violation
- (13) "ORS" Office of Recovery Service, Utah State Department of Human Services
- (14) "PRWORA" the Personal Responsibility and Work Opportunity Reconciliation Act of 1996
- (15) "RRP" Refugee Resettlement Program
- (16) "SNAP" Supplemental Nutrition Assistance Program
- (17) "SNB" Standard Needs Budget
- (18) "SSA" Social Security Administration
- (19) "SSDI" Social Security Disability Insurance
- (20) "SSI" Supplemental Security Insurance
- (21) "SSN" Social Security Number
- (22) "TANF" Temporary Assistance for Needy Families
- (23) "TCA" Transitional Cash Assistance
- (24) "UCA" Utah Code Annotated
- (25) "UI" Unemployment Compensation Insurance
- (26) "USCIS" United States Citizenship and Immigration Services.
- (27) "VA" US Department of Veteran Affairs
- (28) "WTE" Working Toward Employment Program
- (29) "WIOA" Workforce Innovation and Opportunity Act
- (30) "WSL" Work Site Learning

R986-100-104. Definitions of Terms Used in These Rules.

In addition to the definitions of terms found in 35A Chapter 3, the following definitions apply to programs listed in R986-100-102:

(1) "Applicant" means any person requesting assistance under any program in Section 102 above.

(2) "Assistance" means "public assistance."

(3) "Certification period" is the period of time for which public assistance is presumptively approved. At the end of the certification period, the client must cooperate with the Department in providing any additional information needed to continue assistance for another certification period. The length of the certification period may vary between clients and programs depending on circumstances.

(4) "Client" means an applicant for, or recipient of, public assistance services or payments, administered by the Department.

(5) "Confidential information" means information that has limited access as provided under the provisions of UCA 63G-2-201 or 7 CFR 272.1. The name of a person who has disclosed information about the household without the household's knowledge is confidential and cannot be released. If the person disclosing the information states in writing that his or her name and the information may be disclosed, it is no longer considered confidential.

(6) "Department" means the Department of Workforce Services.

(7) "Education or training" means:

- (a) basic remedial education;
- (b) adult education;
- (c) high school education;
- (d) education to obtain the equivalent of a high school diploma;
- (e) education to learn English as a second language;
- (f) applied technology training;
- (g) employment skills training;
- (h) WSL; or
- (i) post high school education.

(8) "Employment plan" consists of two parts, a participation agreement and an employment plan. Together they constitute a written agreement between the Department and a client that describes the requirements for continued eligibility and the result if an obligation is not fulfilled.

(9) "Executive Director" means the Executive Director of the Department of Workforce Services.

(10) "Financial assistance" means payments, other than for SNAP, child care or medical care, to an eligible individual or household under FEP, FEPTP, RRP, GA, or WTE and which is intended to provide for the individual's or household's basic needs.

(11) "Full-time education or training" means education or training attended on a full-time basis as defined by the institution attended.

(12) "Group Home." The Department uses the definition of group home as defined by the state Department of Human Services.

(13) "Household assistance unit" means a group of individuals who are living together or who are considered to be living together, and for whom assistance is requested or issued. For all programs except SNAP and CC, the individuals included in the household assistance unit must be related to each other as described in R986-200-205.

(14) "Income match" means accessing information about an applicant's or client's income from a source authorized by law. This includes state and federal sources.

(15) "Local office" means the Employment Center which serves the geographical area in which the client resides.

(16) "Material change" means anything that might affect household eligibility, participation levels or the level of any

assistance payment including a change in household composition, eligibility, assets and/or income.

(17) "Minor child" is a child under the age of 18, or under 19 years of age and in school full time and expected to complete his or her educational program prior to turning 19, and who has not been emancipated either by a lawful marriage or court order.

(18) "Parent" means all natural, adoptive, and stepparents.

(19) "Public assistance" means:

(a) services or benefits provided under UCA 35A Chapter 3, Employment Support Act;

(b) medical assistance provided under Title 26, Chapter 18, Medical Assistance Act;

(c) foster care maintenance payments provided with the General Fund or under Title IV-E of the Social Security Act;

(d) SNAP; and

(e) any other public funds expended for the benefit of a person in need of financial, medical, food, housing, or related assistance.

(20) "Recipient" means any individual receiving assistance under any of the programs listed in Section 102.

(21) Review or recertification. Client's who are found eligible for assistance or certain exceptions under R986-200-218 are given a date for review or recertification at which point continuing eligibility is determined.

(22) "Standard needs budget" is determined by the Department based on a survey of basic living expenses.

(23) "Work Site Learning" or "WSL" means work experience or training program.

R986-100-105. Availability of Program Manuals.

(1) Program manuals for all programs are available for examination on the Department's Internet site. If an interested party cannot obtain a copy from the Internet site, a copy will be provided by the Department upon request. Reasonable costs of copying may be assessed if more than ten pages are requested.

(2) For SNAP, copies of additional information available to the public, including records, regulations, plans, policy memos, and procedures, are available for examination upon request by members of the public, during office hours, at the Department's administrative offices, as provided in 7 CFR 272.1(d)(1) (1999).

R986-100-106. Residency Requirements.

(1) To be eligible for assistance for any program listed in R986-100-102, a client must be living in Utah voluntarily and not for a temporary purpose. There is no requirement that the client have a fixed place of residence. An individual is not eligible for public assistance in Utah if they are receiving public assistance in another state.

(2) The Department may require that a household live in the area served by the local office in which they apply.

(3) Individuals are not eligible if they are:

(a) in the custody of the criminal justice system;

(b) residents of a facility administered by the criminal justice system;

(c) residents of a nursing home;

(d) hospitalized; or

(e) residents in an institution.

(4) Individuals who reside in a temporary shelter, including shelters for battered women and children, for a limited period of time are eligible for public assistance if they meet the other eligibility requirements.

(5) Residents of a substance abuse or mental health facility may be eligible if they meet all other eligibility requirements. To be eligible for SNAP, the substance abuse or mental health facility must be an approved facility.

Approval is given by the Department. Approved facilities must notify the Department and give a "change report form" to a client when the client leaves the facility and tell the client to return it to the local office. The change report form serves to notify the Department that the client no longer lives in the approved facility.

(6) Residents of a group home may be eligible for SNAP provided the group home is an approved facility. The state Department of Human Services provides approval for group homes.

R986-100-107. Client Rights.

(1) A client may apply or reapply at any time for any program listed in R986-100-102 by completing and signing an application and turning it in, in person or by mail, at the local office.

(2) If a client needs help to apply, help will be given by the local office staff.

(3) No individual will be discriminated against because of race, color, national origin, sex, age, religion or disability.

(4) A client's home will not be entered without permission.

(5) Advance notice will be given if the client must be visited at home outside Department working hours.

(6) A client may request an agency conference to reconcile any dispute which may exist with the Department.

(7) Information about a client obtained by the Department will be safeguarded.

(8) If the client is physically or mentally incapable or has demonstrated an inability to manage funds, the Department may make payment to a protective payee.

R986-100-108. Safeguarding and Release of Information.

(1) All information obtained on specific clients, whether kept in the case file, in the computer system, maintained by the Department, the state, or somewhere else, is safeguarded in accordance with the provisions of Sections 63G-2-101 through 63G-2-901 and 7 CFR 272.1(c) and 7 CFR 272.8 and PRWORA (1996) Title VIII, Section 837.

(2) General statistical information may be released if it does not identify a specific client. This includes information obtained by the Department from another source. Information obtained from the federal government for purposes of income match can never be released.

R986-100-109. Release of Information to the Client or the Client's Representative.

(1) Information obtained by the Department from any source, which would identify the individual, will not be released without the individual's consent or, if the individual is a minor, the consent of his or her parent or guardian.

(2) A client may request, review and/or be provided with copies of anything in the case record unless it is confidential. This includes any records kept on the computer, in the file, or somewhere else.

(3) Information that may be released to the client may be released to persons other than the client with written permission from the client. All such requests must include:

(a) the date the request is made;

(b) the name of the person who will receive the information;

(c) a description of the specific information requested including the time period covered by the request; and

(d) the signature of the client.

(4) The client is entitled to a copy of his or her file at no cost. Duplicate requests may result in an appropriate fee for the copies in accordance with Department policy which will not be more than the cost to the Department for making copies.

(5) The original case file will only be removed from the office as provided in R986-100-110(6) and cannot be given to the client.

(6) Information that is not released to the client because it is confidential, cannot be used at a hearing or to close, deny or reduce assistance.

(7) Requests for information intended to be used for a commercial or political reason will be denied.

R986-100-110. Release of Information Other Than at the Request of the Client.

(1) Information obtained from or about a client will not be published or open to public inspection in any manner which would reveal the client's identity except:

(a) unless there has been a criminal conviction against the client for fraud in obtaining public assistance. In that instance, the Department will only provide information available in the public record on the criminal charge; or

(b) if an abstract has been docketed in the district court on an overpayment, the Department can provide information that is a matter of public record in the abstract.

(2) Any information obtained by the Department pursuant to an application for or payment of public assistance may not be used in any court or admitted into evidence in an action or proceeding, except:

(a) in an action or proceeding arising out of the client's receipt of public assistance, including fraudulently obtaining or retaining public assistance, or any attempt to fraudulently obtain public assistance; or

(b) where obtained pursuant to a court order.

(3) If the case file, or any information about a client in the possession of the Department, is subpoenaed by an outside source, legal counsel for the Department will ask the court to quash the subpoena or take such action as legal counsel deems appropriate.

(4) Information obtained by the Department from the client or any other source, except information obtained from an income match, may be disclosed to:

(a) an employee of the Department in the performance of the employee's duties unless prohibited by law;

(b) an employee of a governmental agency that is specifically identified and authorized by federal or state law to receive the information;

(c) an employee of a governmental agency to the extent the information will aid in the detection or avoidance of duplicate, inconsistent, or fraudulent claims against public assistance programs, or the recovery of overpayments of public assistance funds;

(d) an employee of a law enforcement agency to the extent the disclosure is necessary to avoid a significant risk to public safety or to aid a felony criminal investigation except no information regarding a client receiving SNAP assistance can be provided under this paragraph;

(e) to a law enforcement officer when the client is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation or when the client has information which will assist a law enforcement officer in locating or apprehending an individual who is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation and the officer is acting in his official capacity. The only information under this paragraph which can be released on a client receiving SNAP is the client's address, SSN and photographic identification;

(f) to a law enforcement official, upon written request, for the purpose of investigating an alleged violation of the Food Stamp Act, 7 USC 2011 et seq., as amended, or any regulation promulgated pursuant to the act. The written request shall include the identity of the individual requesting

the information and his/her authority to do so, the violation being investigated, and the identity of the person being investigated. Under this paragraph, the Department can release to the law enforcement official, more than just the client's address, SSN and photo identification;

(g) an educational institution, or other governmental entity engaged in programs providing financial assistance or federal needs-based assistance, job training, child welfare or protective services, foster care or adoption assistance programs, and to individuals or other agencies or organizations who, at the request of the Department, are coordinating services and evaluating the effectiveness of those services;

(h) to certify receipt of assistance for an employer to get a tax credit; or

(i) information necessary to complete any audit or review of expenditures in connection with a Department public assistance program. Any information provided under this part will be safeguarded by the individual or agency receiving the information and will only be used for the purpose expressed in its release.

(5) Any information released under paragraph (4) above can only be released if the Department receives assurances that:

(a) the information being released will only be used for the purposes stated when authorizing the release; and

(b) the agency making the request has rules for safeguarding the information which are at least as restrictive as the rules followed by the Department and that those rules will be adhered to.

(6) Case records or files will not be removed from the local office except by court order, at the request of authorized Department employees, the Department's Information Disclosure Officer, the Department's Quality Control office or ORS.

(7) In an emergency, as determined to exist by the Department's Information Disclosure Officer, information may be released to persons other than the client before permission is obtained.

(8) For clients receiving CC, the Department may provide limited additional information to the child care provider identified by the client as the provider as provided in R986-700-703.

(9) Taxpayer requests to view public assistance payrolls will be denied.

R986-100-111. How to Apply For Assistance.

(1) To be eligible for assistance, a client must complete and sign an application for assistance.

(2) The application is not complete until the applicant has provided complete and correct information and verification as requested by the Department so eligibility can be determined or re-established at the time of review at the end of the certification period. The client must agree to provide correct and complete information to the Department at all times to remain eligible. This includes:

(a) property or other assets owned by all individuals included in the household unit;

(b) insurance owned by any member of the immediate family;

(c) income available to all individuals included in the household unit;

(d) a verified SSN for each household member receiving assistance. If any household member does not have a SSN, the client must provide proof that the number has been applied for. If a client fails to provide a SSN without good cause, or if the application for a SSN is denied for a reason that would be disqualifying, assistance will not be provided for that household member. Good cause in this paragraph

means the client has made every effort to comply. Good cause does not mean illness, lack of transportation or temporary absence because the SSA makes provisions for mail-in applications in lieu of applying in person. Good cause must be established each month for continued benefits;

(e) the identity of all individuals who are living in the household regardless of whether they are considered to be in the household assistance unit or not;

(f) proof of relationship for all dependent children in the household. Proof of relationship is not needed for SNAP or child care; and

(g) a release of information, if requested, which would allow the Department to obtain information from otherwise protected sources when the information requested is necessary to establish eligibility or compliance with program requirements.

(3) All clients, including those not required to participate in an employment plan, will be provided with information about applicable program opportunities and supportive services.

R986-100-112. Assistance Cannot Be Paid for Periods Prior to Date of Application.

(1) Assistance payments for any program listed in Section 102 above cannot be made for any time period prior to the day on which the application for assistance was received by the Department.

(2) If an application for assistance is received after the first day of the month, and the client is eligible to receive assistance, payment for the first month is prorated from the date of the application.

(3) If additional verifying information is needed to complete an application, it must be provided within 30 days of the date the application was received. If the client is at fault in not providing the information within 30 days, the first day the client can be eligible is the day on which the verification was received by the Department.

(4) If the verification is not received within 60 days of the date the application was received by the Department, a new application is required and assistance payments cannot be made for periods prior to the date the new application is received.

(5) If an application for assistance was denied and no appeal taken within 90 days, or a decision unfavorable to the client was issued on appeal, assistance cannot be claimed, requested, or paid for that time period.

R986-100-113. A Client Must Inform the Department of All Material Changes.

(1) A material change is any change which might affect eligibility.

(2) Households receiving assistance must report all material changes to the Department as follows:

(a) households receiving SNAP must report a change in the household's gross income if the income exceeds 130% of the federal poverty level. The change must be reported within ten days from the end of the calendar month in which the change occurred. Changes reported by the tenth of the month following the month when the change occurred are considered timely; and

(b) households receiving GA, WTE, FEP, FEPTP, AA and RRP that do not meet the requirements of paragraph (2)(a) must report the following changes within ten days of the change occurring:

(i) if the household's gross income exceeds 185% of the adjusted standard needs budget;

(ii) a change of address;

(iii) if any eligible child leaves the household and the household receives FEP, FEPTP or AA;

(iv) if a parent, step-parent, spouse, or former spouse moves into the household or if a marriage or adoption occurs with or between the already reported household members;

(v) if a child becomes eligible for foster care or subsidized adoption financial assistance;

(vi) a change in student status of a child in the household;

(vii) if a client receiving TCA is not longer employed or is working less than an average of 30 hours per week;

(viii) if there is a change in disability status of a GA client; and/or

(ix) if a GA client becomes employed.

(3) Households that do not meet the requirements of paragraph (2)(a) of this section will be assigned a review month. In addition to the ten-day reporting requirements listed in paragraph (2)(b) of this section, the household must report, by the last day of the review month, all material changes that have occurred since the last review, or the date of application if it is the first review. The household is also required to accurately complete all review forms and reports as requested by the Department.

(4) Most changes which result in an increase of assistance will become effective the month following the month in which the report of the change was made. If verification is necessary, verification and changes will be made in the month following the month in which verification was received. If the change is to add a person to the household, the person will be added effective on the date reported, provided necessary verification is received within 30 days of the change. If verification is received after 30 days, the increase will be made effective the date verification was received.

R986-100-114. A Client's Continuing Obligation to Provide Verification and Information.

(1) A client who is eligible for assistance must provide additional verification and information, which may affect household eligibility or ongoing eligibility, after the application is approved if requested by the Department.

(2) The client must provide information to determine if eligibility was appropriately established and if payments made under these rules were appropriate. This information may be requested by an employee of the Department or a person authorized to obtain the information under contract with the Department such as an employee of ORS.

R986-100-114a. Determining When a Document or Information is Considered Received by the Department.

(1) The date of receipt of a document filed with the Department is the date the document is actually received by the Department and not the post mark date. Any document or information received after 5 p.m. by Fax, postal mail, email or hand delivery, will be considered received the next day Department offices are open. If an application for assistance or other information is filed through the "myCase" system, it will be considered received the day it was filed online even if it is filed after 5 p.m. or on a Saturday, Sunday, or legal holiday.

(2) If a document has a due date and that due date falls on a Saturday, Sunday, or legal holiday, the time permitted for filing the document will be extended to 5 p.m. on the next day Department offices are open.

(3) "Document" as used in this section means application for assistance, verification, report, form and written notification of any kind.

(4) A verbal report or notification will be considered received on the date the client talks to a Department representative. A voice message received after 5 p.m. will be considered received the next day Department offices are open.

R986-100-115. Underpayment Due to an Error on the Part of the Department.

(1) If it is determined that a client was entitled to assistance but, due to an error on the part of the Department, assistance was not paid, the Department will correct its error and make retroactive payment.

(2) If a client receives assistance payments and it is later discovered that due to Department error the assistance payment should have been made at a higher level than the client actually received, retroactive payment will be made to correct the Department's error.

(3) If the client's public assistance was terminated due to the error, the client will be notified and assistance, plus any retroactive payments, will commence immediately.

(4) An underpayment found to have been made within the last 12 calendar months will be corrected and issued to the client. Errors which resulted in an underpayment which were made more than 12 months prior to the date of the discovery of the error are not subject to a retroactive payment.

(5) Retroactive payment under this section cannot be made for any month prior to the date on which the application for assistance was completed.

(6) The client must not have been at fault in the creation of the error.

R986-100-116. Overpayments.

(1) A client is responsible for repaying any overpayment for any program listed in R986-100-102 regardless of who was at fault in creating the overpayment.

(2) Underpayments may be used to offset an overpayment for the same program.

(3) If a change is not reported as required by R986-100-113 it may result in an overpayment.

(4) The Department will collect overpayments for all programs listed in R986-100-102 as provided by federal regulation for SNAP unless otherwise noted in this rule or inconsistent with federal regulations specific to those other programs.

(5) This rule will apply to overpayments determined under contract with the Department of Health.

(6) If an obligor has more than one overpayment account and does not tell the Department which account to credit, the Department will make that determination.

R986-100-117. Disqualification For Fraud (Intentional Program Violations or IPV's).

(1) Any person, including a child care provider, who is at fault in obtaining or attempting to obtain, an overpayment of assistance, as defined in Section 35A-3-602 from any of the programs listed in R986-100-102 or otherwise intentionally breaches any program rule either personally or through a representative is guilty of an intentional program violation (IPV). Acts which constitute an IPV include but are not limited to:

(a) knowingly making false or misleading statements;
(b) misrepresenting, concealing, or withholding facts or information;

(c) posing as someone else;
(d) knowingly taking, using or accepting a public assistance payment the party knew or should have known they were not eligible to receive or not reporting the receipt of a public assistance payment the individual knew or should have known they were not eligible to receive;

(e) not reporting a material change as required by and in accordance with these rules;

(f) committing an act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity; or

(g) accessing TANF public assistance funds through an electronic benefit transfer, including through an automated

teller machine or point-of-sale device, in an establishment in the state that;

(i) exclusively or primarily sells intoxicating liquor,
(ii) allows gambling or gaming, or
(iii) provides adult-oriented entertainment where performers disrobe or perform unclothed.

(2) An IPV occurs when a person commits any of the above acts in an attempt to obtain, maintain, increase or prevent the decrease or termination of any public assistance payment(s).

(3) When the Department determines or receives notice from a court that fraud or an IPV has occurred, the client is disqualified from receiving assistance of the same type for the time period as set forth in rule, statute or federal regulation.

(4) Disqualifications run concurrently.

(5) All income and assets of a person who has been disqualified from assistance for an IPV continue to be counted and affect the eligibility and assistance amount of the household assistance unit in which the person resides.

(6) If an individual has been disqualified in another state, the disqualification period for the IPV in that state will apply in Utah provided the act which resulted in the disqualification would have resulted in a disqualification had it occurred in Utah. If the individual has been disqualified in another state for an act which would have led to disqualification had it occurred in Utah and is found to have committed an IPV in Utah, the prior periods of disqualification in any other state count toward determining the length of disqualification in Utah.

(7) The client will be notified that a disqualification period has been determined. The disqualification period shall begin no later than the second month which follows the date the client receives written notice of the disqualification and continues in consecutive months until the disqualification period has expired.

(8) Nothing in these rules is intended to limit or prevent a criminal prosecution for fraud based on the same facts used to determine the IPV.

R986-100-118. Additional Penalty for a Client Who Intentionally Misrepresents Residence.

A person who has been convicted in federal or state court of having made a fraudulent statement or representation with respect to the place of residence in order to receive assistance simultaneously from two or more states is disqualified from receiving assistance for any and all programs listed in R986-100-102 above, for a period of 10 years. This applies even if Utah was not one of the states involved in the original fraudulent misrepresentation.

R986-100-118a. Improper Access of Public Assistance Benefits.

(1) A client may not access assistance payments through an electronic benefit transfer, including through an automated teller machine or point-of-sale device, in an establishment in the state that;

(a) exclusively or primarily sells intoxicating liquor,
(b) allows gambling or gaming, or
(c) provides adult-oriented entertainment where performers disrobe or perform unclothed.

(2) Violation of the provisions of subsection (1) of this section will result in;

(a) a warning letter for the first offense,
(b) a one month disqualification for the second offense, and

(c) a three month disqualification for the third and all subsequent offenses.

R986-100-119. Reporting Possible Child Abuse or

Neglect.

When a Department employee has reason to believe that a child has been subjected to abuse or neglect, it shall be reported under the provisions of Section 62A-4a-401 et seq.

R986-100-120. Discrimination Complaints.

(1) Complaints of discrimination can be made in person, by phone, or in writing to the local office, the Office of the Executive Director or the Director's designee, the Department's Equal Opportunity Officer, or the appropriate Federal agency.

(2) Complaints shall be resolved and responded to as quickly as possible.

(3) A record of complaints will be maintained by the local office including the response to the complaint.

(4) If a complaint is made to the local office, a copy of the complaint together with a copy of the written response will be sent to the Office of the Executive Director or the Director's designee.

(5) Discrimination complaints pertaining to SNAP will also be sent to the Secretary of Agriculture or the Administrator of Food and Nutrition Service, Washington, D.C., 20250 in accordance with the provisions of 7 CFR 272.6 (1999).

R986-100-121. Agency Conferences.

(1) Agency conferences are used to resolve disputes between the client and Department staff.

(2) Clients or Department staff may request an agency conference at any time to resolve a dispute regarding a denial or reduction of assistance.

(3) Clients may have an authorized representative attend the agency conference.

(4) An agency conference will be attended by the client's employment counselor and the counselor's supervisor unless the client or the supervisor request that the employment counselor not attend the conference.

(5) If an agency conference has previously been held on the same dispute, the Department may decline to hold the requested conference if, in the judgment of the employment counselor's supervisor, it will not result in the resolution of the dispute.

(6) If the Department requests the agency conference and the client fails to respond, attend or otherwise cooperate in this process, documentation in the case file of attempts by the staff to follow these steps will be considered as compliance with the requirement to attempt to resolve the dispute.

(7) An agency conference may be held after a client has made a request for hearing in an effort to resolve the dispute. If so, the client must be notified that failure to participate or failure to resolve the dispute at the agency conference will not affect the client's right to proceed with the hearing.

R986-100-122. Advance Notice of Department Action.

(1) Except as provided in (2) below, clients will be notified in writing when a decision concerning eligibility, amount of assistance payment or action on the part of the Department which affects the client's eligibility or amount of assistance has been made. Notice will be sent prior to the effective date of any action to reduce or terminate assistance payments. The Department will send advance notice of its intent to collect overpayments or to disqualify a household member.

(2) Except for overpayments, advance notice is not required when:

(a) the client requests in writing that the case be closed;

(b) the client has been admitted to an institution under governmental administrative supervision;

(c) the client has been placed in skilled nursing care, intermediate care, or long-term hospitalization;

(d) the client's whereabouts are unknown and mail sent to the client has been returned by the post office with no forwarding address;

(e) it has been determined the client is receiving public assistance in another state;

(f) a child in the household has been removed from the home by court order or by voluntary relinquishment;

(g) a special allowance provided for a specific period is ended and the client was informed in writing at the time the allowance began that it would terminate at the end of the specified period;

(h) a household member has been disqualified for an IPV in accordance with 7 CFR 273.16, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member;

(i) the Department has received factual information confirming the death of a client or payee if there is no other relative able to serve as a new payee;

(j) the client's certification period has expired;

(k) the action to terminate assistance is based on the expiration of the time limits imposed by the program;

(l) the client has provided information to the Department, or the Department has information obtained from another reliable source, that the client is not eligible or that payment should be reduced or terminated;

(m) the Department determines that the client willfully withheld information or;

(n) when payment of financial assistance is made after performance under R986-200-215 and R986-400-454 no advance notice is needed when performance requirements are not met.

(3) For SNAP recipients and recipients of assistance under R986-300, no action will be taken until ten days after notice was sent unless one of the exceptions in (2)(a) through (k) above apply.

(4) Notice is complete if sent to the client's last known address. If notice is sent to the client's last known address and the notice is returned by the post office or electronically with no forwarding address, the notice will be considered to have been properly served. If a client elects to receive correspondence electronically, notice is complete when sent to the client's last known email address and/or posted to the client's Department sponsored web page.

R986-100-123. The Right To a Hearing and How to Request a Hearing.

(1) A client has the right to a review of an adverse Department action by requesting a hearing.

(2) In cases where the Department sends notice of its intent to take action to collect an alleged overpayment but there is no alleged SNAP overpayment, the client must request a hearing in writing or orally within 30 days of the date of notice of agency action. In all other cases, the client must request a hearing in writing or orally within 90 days of the date of the notice of agency action with which the client disagrees.

(3) Only a clear expression by the client to the effect that the client wants an opportunity to present his or her case is required.

(4) The request for a hearing can be made at the local office or the Division of Adjudication.

(5) If the client disagrees with the level of SNAP benefits paid or payable, the client can request a hearing within the certification period, even if that is longer than 90 days.

(6) If a request for restoration of lost SNAP benefits is made within one year of the loss of benefits a client may

request a hearing within 90 days of the date of the denial of restoration.

(7) In the case of an overpayment and/or IPV the obligor may contact the presiding officer and attempt to resolve the dispute. If the dispute cannot be resolved, the obligor may still request a hearing provided it is filed within the time limit provided in the notice of agency action.

R986-100-124. How Hearings Are Conducted.

(1) Hearings are held at the state level and not at the local level.

(2) Where not inconsistent with federal law or regulation governing hearing procedure, the Department will follow the Utah Administrative Procedures Act.

(3) Hearings for all programs listed in R986-100-102 and overpayments and IPV's in Section 35A-3-601 et seq. are declared to be informal.

(4) Hearings are conducted by an ALJ or a Hearing Officer in the Division of Adjudication. A Hearing Officer has all of the same rights, duties, powers and responsibilities as an ALJ under these rules and the terms are interchangeable.

(5) Hearings are scheduled as telephone hearings. Every party wishing to participate in the telephone hearing must call the Division of Adjudication before the hearing and provide a telephone number where the party can be reached at the time of the hearing. If the client fails to call in advance, as required by the notice of hearing, the appeal will be dismissed.

(6) If a client requires an in-person hearing, the client must contact an ALJ and request that the hearing be scheduled as an in-person hearing. The request should be made sufficiently in advance of the hearing so that all other parties may be given notice of the change in hearing type and the opportunity to appear in person also. Requests will only be granted if the client can show that an in-person hearing is necessary to accommodate a special need or if the ALJ deems an in-person hearing is necessary to ensure an orderly and fair hearing which meets due process requirements. If the ALJ grants the request, all parties will be informed that the hearing will be conducted in person. Even if the hearing is scheduled as an in-person hearing, a party may elect to participate by telephone. In-person hearings are held in the office of the Appeals Unit unless the ALJ determines that another location is more appropriate. A client can participate from the local Employment Center.

(7) the Department is not responsible for any travel costs incurred by the client in attending an in-person hearing.

(8) the Division of Adjudication will permit collect calls from parties and their witnesses participating in telephone hearings.

R986-100-125. When a Client Needs an Interpreter at the Hearing.

(1) If a client notifies the Department that an interpreter is needed at the time the request for hearing is made, the Department will arrange for an interpreter at no cost to the client.

(2) If an interpreter is needed at the hearing by a client or the client's witness(es), the client may arrange for an interpreter to be present at the hearing who is an adult with fluent ability to understand and speak English and the language of the person testifying, or notify the Division of Adjudication at the time the appeal is filed that assistance is required in arranging for an interpreter.

R986-100-126. Procedure For Use of an Interpreter.

- (1) The ALJ will be assured that the interpreter:
 - (a) understands the English language; and
 - (b) understands the language of the client or witness for

whom the interpreter will interpret.

(2) The ALJ will instruct the interpreter to interpret, word for word, and not summarize, add, change, or delete any of the testimony or questions.

(3) The interpreter will be sworn to truthfully and accurately translate all statements made, all questions asked, and all answers given.

(4) The interpreter will be instructed to translate to the client the explanation of the hearing procedures as provided by the ALJ.

R986-100-127. Notice of Hearing.

(1) All interested parties will be notified by mail at least 10 days prior to the hearing.

(2) Advance written notice of the hearing can be waived if the client and Department agree.

(3) The notice shall contain:

(a) the time, date, and place, or conditions of the hearing. If the hearing is to be by telephone, the notice will provide the number for the client to call and a notice that the client can call the number collect;

(b) the legal issues or reason for the hearing;

(c) the consequences of not appearing;

(d) the procedures and limitations for requesting rescheduling; and

(e) notification that the client can examine the case file prior to the hearing.

(4) If a client has designated a person or professional organization as the client's agent, notice of the hearing will be sent to that agent. It will be considered that the client has been given notice when notice is sent to the agent.

(5) When a new issue arises during the hearing or under other unusual circumstances, advance written notice may be waived, if the Department and the client agree, after a full verbal explanation of the issues and potential results.

(6) The client must notify any representatives, including counsel and witnesses, of the time and place of the hearing and make necessary arrangements for their participation.

(7) The notice of hearing will be translated, either in writing or verbally, for certain clients participating in the RRP program in accordance with RRP regulations.

R986-100-128. Hearing Procedure.

(1) Hearings are not open to the public.

(2) A client may be represented at the hearing. The client may also invite friends or relatives to attend as space permits.

(3) Representatives from the Department or other state agencies may be present.

(4) All hearings will be conducted informally and in such manner as to protect the rights of the parties. The hearing may be recorded.

(5) All issues relevant to the appeal will be considered and decided upon.

(6) The decision of the ALJ will be based solely on the testimony and evidence presented at the hearing.

(7) All parties may testify, present evidence or comment on the issues.

(8) All testimony of the parties and witnesses will be given under oath or affirmation.

(9) Any party to an appeal will be given an adequate opportunity to be heard and present any pertinent evidence of probative value and to know and rebut by cross-examination or otherwise any other evidence submitted.

(10) The ALJ will direct the order of testimony and rule on the admissibility of evidence.

(11) Oral or written evidence of any nature, whether or not conforming to the legal rules of evidence including hearsay, may be accepted and will be given its proper weight.

(12) Official records of the Department, including reports submitted in connection with any program administered by the Department or other State agency may be included in the record.

(13) The ALJ may request the presentation of and may take such additional evidence as the ALJ deems necessary.

(14) The parties, with consent of the ALJ, may stipulate to the facts involved. The ALJ may decide the issues on the basis of such facts or may set the matter for hearing and take such further evidence as deemed necessary to determine the issues.

(15) The ALJ may require portions of the evidence be transcribed as necessary for rendering a decision.

(16) Unless the client requests a continuance, the decision of the ALJ will be issued within 60 days of the date on which the client requests a hearing.

(17) A decision of the ALJ which results in a reversal of the Department decision shall be complied with within 10 days of the issuance of the decision.

R986-100-129. Rescheduling or Continuance of Hearing.

(1) The ALJ may adjourn, reschedule, continue or reopen a hearing on the ALJ's own motion or on the motion of the client or the Department.

(2) If a party knows in advance of the hearing that they will be unable to proceed with or participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time.

(a) The request must be received prior to the hearing.

(b) The request must be made orally or in writing to the ALJ who is scheduled to hear the case. If the request is not received prior to the hearing, the party must show cause for failing to make a timely request.

(c) The party making the request must show cause for the request.

(d) Normally, a party will not be granted more than one request for a continuance.

(3) The rescheduled hearing must be held within 30 days of the original hearing date.

R986-100-130. Default Order or Dismissal for Failure to Participate.

(1) The Department will issue a default order if an obligor in an IPV or IPV overpayment case fails to participate in the administrative process. Participation for an obligor means:

(a) signing and returning to the Department an approved stipulation for repayment and making all of the payments as agreed,

(b) requesting and participating in a hearing, or

(c) paying the overpayment in full.

(2) If a hearing has been scheduled at the request of a client or an obligor in a case not involving an IPV and the client or obligor fails to appear at or participate in the hearing, either in person or through a representative, the ALJ will, unless a continuance or rescheduling has been requested, dismiss the request for a fair hearing.

(3) A default order will be based on the record and best evidence available at the time of the order.

R986-100-131. Setting Aside A Default or Dismissal and/or Reopening the Hearing After the Hearing Has Been Concluded.

(1) Any party who fails to participate personally or by authorized representative as defined in R986-100-130 may request that the default order or dismissal be set aside and a hearing or a new hearing be scheduled. If a party failed to participate in a hearing but no decision has yet been issued, the party may request that the hearing be reopened.

(2) The request must be in writing, must set forth the reason for the request and must be mailed, faxed or delivered to the ALJ or presiding officer who issued the default order or dismissal within ten days of the issuance of the default or dismissal. If the request is made after the expiration of the ten-day time limit, the party requesting reopening must show good cause for not making the request within ten days.

(3) The ALJ has the discretion to schedule a hearing to determine if a party requesting that a default order or dismissal be set aside or a reopening satisfied the requirements of this rule or may grant or deny the request on the basis of the record in the case.

(4) If a presiding officer issued the default or dismissal, the officer shall forward the request to the Division of Adjudication. The request will be assigned to an ALJ who will then determine if the party requesting that the default or dismissal be set aside or that the hearing be reopened has satisfied the requirements of this rule.

(5) The ALJ may, on his or her own motion, reschedule, continue or reopen a case if it appears necessary to take continuing jurisdiction based on a mistake as to facts or if the denial of a hearing would be an affront to fairness. A presiding officer may, on his or her own motion, set aside a default or dismissal on the same grounds.

(6) If a request to set aside the default or dismissal or a request for reopening is not granted, the ALJ will issue a decision denying the request to reopen. A copy of the decision will be given or mailed to each party, with a clear statement of the right of appeal or judicial review. A defaulted party may appeal a denial of a request to set aside a default or dismissal by following the procedure in R986-100-135. The appeal can only contest the denial of the request to set aside the default and not the underlying merits of the case. If the default or dismissal is set aside on appeal, the Executive Director or designee may rule on the merits or remand the case to an ALJ for a ruling on the merits on an additional hearing if necessary.

R986-100-132. What Constitutes Grounds to Set Aside a Default or Dismissal.

(1) A request to reopen or set aside for failure to participate:

(a) will be granted if the party was prevented from participating and/or appearing at the hearing due to circumstances beyond the party's control;

(b) may be granted upon such terms as are just for any of the following reasons: mistake, inadvertence, surprise, excusable neglect or any other reason justifying relief from the operation of the decision. The determination of what sorts of neglect will be considered excusable is an equitable one, taking into account all of the relevant circumstances including:

(i) the danger that the party not requesting reopening will be harmed by reopening,

(ii) the length of the delay caused by the party's failure to participate including the length of time to request reopening,

(iii) the reason for the request including whether it was within the reasonable control of the party requesting reopening,

(iv) whether the party requesting reopening acted in good faith, and

(v) whether the party was represented by another at the time of the hearing. Because they are required to know and understand Department rules, attorneys and professional representatives are held to a higher standard, and

(vi) whether based on the evidence of record and the parties arguments or statements, setting aside the default and taking additional evidence might effect the outcome of the

case.

(2) Requests to reopen or set aside are remedial in nature and thus must be liberally construed in favor of providing parties with an opportunity to be heard and present their case. Any doubt must be resolved in favor of granting reopening.

R986-100-133. Canceling an Appeal and Hearing.

When a client notifies the Division of Adjudication or the ALJ that the client wants to cancel the hearing and not proceed with the appeal, a decision dismissing the appeal will be issued. This decision will have the effect of upholding the Department decision. The client will have ten days in which to reinstate the appeal by filing a written request for reinstatement with the Division of Adjudication.

R986-100-134. Payments of Assistance Pending the Hearing.

(1) A client is entitled to receive continued assistance pending a hearing contesting a Department decision to reduce or terminate SNAP or RRP financial assistance if the client's request for a hearing is received no later than 10 days after the date of the notice of the reduction, or termination. The assistance will continue unless the certification period expires until a decision is issued by the ALJ. If the certification period expires while the hearing or decision is pending, assistance will be terminated. If a client becomes ineligible or the assistance amount is reduced for another reason pending a hearing, assistance will be terminated or reduced for the new reason unless a hearing is requested on the new action.

(2) If the client can show good cause for not requesting the hearing within 10 days of the notice, assistance may be continued if the client can show good cause for failing to file in a timely fashion. Good cause in this paragraph means that the delay in filing was due to circumstances beyond the client's control or for circumstances which were compelling and reasonable. Because the Department allows a client to request a hearing by telephone or mail, good cause does not mean illness, lack of transportation or temporary absence.

(3) A client can request that payment of assistance not be continued pending a hearing but the request must be in writing.

(4) If payments are continued pending a hearing, the client is responsible for any overpayment in the event of an adverse decision.

(5) If the decision of the ALJ is adverse to the client, the client is not eligible for continued assistance pending any appeal of that decision.

(6) If a decision favorable to the client is rendered after a hearing, and payments were not made pending the decision, retroactive payment will be paid back to the date of the adverse action if the client is otherwise eligible.

(7) Financial assistance payments under FEP, FEPTP, GA or WTE, and CC subsidies will not continue during the hearing process regardless of when the appeal is filed.

(8) Financial assistance under the RRP will not extend for longer than the eight-month time limit for that program under any circumstances.

(9) Assistance is not allowed pending a hearing from a denial of an application for assistance.

R986-100-135. Further Appeal From the Decision of the ALJ or Presiding Officer.

Either party has the option of appealing the decision of the ALJ or presiding officer to either the Executive Director or person designated by the Executive Director or to the District Court. The appeal must be filed, in writing, within 30 days of the issuance of the decision of the ALJ or presiding officer. If a request for a fair hearing is not timely filed under

R986-100-123, there are no further appeal rights.

KEY: employment support procedures

October 1, 2016

Notice of Continuation September 2, 2015

35A-3-101 et seq.

35A-3-301 et seq.

35A-3-401 et seq.

R986. Workforce Services, Employment Development.**R986-200. Family Employment Program.****R986-200-201. Authority for Family Employment Program (FEP) and Family Employment Program Two Parent (FEPTP) and Other Applicable Rules.**

(1) The Department provides services to eligible families under FEP and FEPTP under the authority granted in the Employment Support Act, UCA 35A-3-301 et seq. Funding is provided by the federal government through Temporary Aid to Needy Families (TANF) as authorized by PRWORA.

(2) Rule R986-100 applies to FEP and FEPTP unless expressly noted otherwise.

R986-200-202. Family Employment Program (FEP).

(1) The goal of FEP is to increase family income through employment, and where appropriate, child support and/or disability payments.

(2) FEP is for families with no more than one able bodied parent in the household. If the family has two able bodied parents in the household, the family is not eligible for FEP but may be eligible for FEPTP. Able bodied means capable of earning at least \$500 per month in the Utah labor market.

(3) If a household has at least one incapacitated parent, the parent claiming incapacity must verify that incapacity in one of the following ways:

- (a) receipt of disability benefits from SSA;
- (b) 100% disabled by VA; or
- (c) by submitting a written statement from:
 - (i) a licensed medical doctor;
 - (ii) a doctor of osteopathy;
 - (iii) a licensed Mental Health Therapist as defined in

UCA 58-60-102;

- (iv) a licensed Advanced Practice Registered Nurse; or
- (v) a licensed Physician's Assistant.

(d) the written statement in paragraph (c) of this subsection must be based on a current physical examination of the parent, not just a review of parent's medical records.

(4) Incapacity means not capable of earning \$500 per month. The incapacity must be expected to last 30 days or longer.

(5) An applicant or parent must cooperate in the obtaining of a second opinion regarding incapacity if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the parent requests the second opinion.

(6) An incapacitated parent is included in the FEP household assistance unit and the parent's income and assets are counted toward establishing eligibility unless the parent is a SSI recipient. If the parent is a SSI recipient, that parent is not included in the household and none of the income or assets of the SSI recipient is counted.

(7) An incapacitated parent who is included in the household must still negotiate, sign and agree to participate in an employment plan. If the incapacity is such that employment is not feasible now or in the future, participation may be limited to cooperating with ORS and filing for any assistance or benefits to which the parent may be entitled. If it is believed the incapacity might not be permanent, the parent will also be required to seek assistance in overcoming the incapacity.

R986-200-203. Citizenship and Alienage Requirements.

(1) All persons in the household assistance unit who are included in the financial assistance payment, including children, must be a citizen of the United States or meet

alienage criteria.

(2) An alien is not eligible for financial assistance unless the alien meets the definition of qualified alien. A qualified alien is an alien:

(a) who is paroled into the United States under section 212(d)(5) of the INA for at least one year;

(b) who is admitted as a refugee under section 207 of the INA;

(c) who is granted asylum under section 208 of the INA;

(d) who is a Cuban or Haitian entrant in accordance with the requirements of 45 CFR Part 401;

(e) who is an Amerasian from Vietnam and was admitted to the United States as an immigrant pursuant to Public Law 100-202 and Public Law 100-461;

(f) whose deportation is being withheld under sections 243(h) or 241(b)(3) of the INA;

(g) who is lawfully admitted for permanent residence under the INA;

(h) who is granted conditional entry pursuant to section 203(a)(7) of the INA;

(i) who meets the definition of certain battered aliens under Section 8 U.S.C. 1641(c); or

(j) who is a certified victim of trafficking.

(3) All aliens granted lawful temporary or permanent resident status under Sections 210, 302, or 303 of the Immigration Reform and Control Act of 1986, are disqualified from receiving financial assistance for a period of five years from the date lawful temporary resident status is granted.

(4) Aliens are required to provide proof, in the form of documentation issued by the United States Citizenship and Immigration Services (USCIS), of immigration status. Victims of trafficking can provide proof from the Office of Refugee Resettlement.

R986-200-204. Eligibility Requirements.

(1) To be eligible for financial assistance under the FEP or FEPTP a household assistance unit must include:

(a) a pregnant woman when it has been medically verified that she is in the third calendar month prior to the expected month of delivery, or later, and who, if the child were born and living with her in the month of payment, would be eligible. The unborn child is not included in the financial assistance payment; or

(b) at least one minor dependent child who is a citizen or meets the alienage criteria. All minor children age 6 to 16 must attend school, or be exempt under 53A-11-102, to be included in the household assistance unit for a financial assistance payment for that child.

(i) A minor child is defined as being under the age of 18 years and not emancipated by marriage or by court order; or

(ii) an unemancipated child, at least 18 years old but under 19 years old, with no high school diploma or its equivalent, who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and the school has verified a reasonable expectation the 18 year old will complete the program before reaching age 19.

(2) Households must meet other eligibility requirements of income, assets, and participation in addition to the eligibility requirements found in R986-100.

(3) Persons who are fleeing to avoid prosecution of a felony, or who are violating parole or probation for a felony or a misdemeanor, are ineligible for financial assistance.

(4) All clients who are required to complete a negotiated employment plan as provided in R986-200-206 must attend a FEP orientation meeting, sign a FEP Agreement, and negotiate and sign an employment plan within 30 days of submitting his or her application for assistance. Attendance at the orientation meeting can only be excused for reasonable

cause as defined in R986-200-212(8). The application for assistance will not be complete until the client has attended the meeting.

(5) If a parent in the financial assistance household received TANF funded financial assistance benefits from another state or from a tribe, the entire household is ineligible to receive TANF funded financial assistance in Utah the same month. This is true even if household composition has changed. If a child in the household has received TANF funded financial assistance in another household, in this or any other state, the child will be excluded from the household determination in the same month according to the provisions of R986-200-205(2)(d). TANF funded financial assistance in Utah is FEP, FEP-TP, Emergency Assistance and AA.

R986-200-205. How to Determine Who Is Included in the Household Assistance Unit.

The amount of financial assistance for an eligible household is based on the size of the household assistance unit and the income and assets of all people in the household assistance unit.

(1) The income and assets of the following individuals living in the same household must be counted in determining eligibility of the household assistance unit:

(a) all natural parents, adoptive parents, parents listed on the birth certificate and stepparents, unless expressly excluded in this section, who are related to and residing in the same household as an eligible dependent child. Natural parentage is determined as follows:

(i) A woman is the natural parent if her name appears on the birth record of the child.

(ii) For a man to be determined to be the natural parent, that relationship must be established or acknowledged or his name must appear on the birth record. If the parents have a solemnized marriage at the time of birth, relationship is established and can only be rebutted by a DNA test;

(b) household members who would otherwise be included but who are absent solely by reason of employment, school or training, or who will return home to live within 30 days;

(c) all minor siblings, half-siblings, and adopted siblings living in the same household as an eligible dependent child; and

(d) all spouses living in the household.

(2) The following individuals in the household are not counted in determining the household size for determining payment amount nor are the assets or income of the individuals counted in determining household eligibility:

(a) a recipient of SSI benefits. If the SSI recipient is the parent and is receiving FEP assistance for the child(ren) residing in the household, the SSI parent must cooperate with establishing paternity and child support enforcement for the household to be eligible. If the only dependent child is a SSI recipient, the parent or specified relative may receive a FEP assistance payment which does not include that child, provided the parent or specified relative is not on SSI and can meet all other requirements;

(b) a child during any month in which a foster care maintenance payment is being provided to meet the child's needs. If the only dependent child in the household is receiving a foster care maintenance payment, the parent or specified relative may still receive a FEP assistance payment which does not include the child, provided all other eligibility, income and asset requirements are met;

(c) an absent household member who is expected to be gone from the household for 180 days or more unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included.

(d) a child who was counted as a dependent in a household that received TANF funded financial assistance or in a specified relative household in the same month. A child cannot be counted as a dependent in two households that receive TANF funded financial assistance or specific relative assistance in the same month.

(3) The household assistance unit can choose whether to include or exclude the following individuals living in the household. If included, all income and assets of that person are counted:

(a) all absent household members who are not required to participate in an employment plan under R986-200-210 and who are expected to be temporarily absent from the home for more than 30 but not more than 180 consecutive days unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included. If the household member is required to participate in an employment plan, the household member must be included.

(b) Native American children, or deaf or blind children, who are temporarily absent while in boarding school, even if the temporary absence is expected to last more than 180 days;

(c) an adopted child who receives a federal, state or local government special needs adoption payment. If the adopted child receiving this type of payment is the only dependent child in the household and excluded, the parent(s) or specified relative may still receive a FEP or FEPTP assistance payment which does not include the child, provided all other eligibility requirements are met. If the household chooses to include the adopted child in the household assistance unit under this paragraph, the special needs adoption payment is counted as income;

(d) former stepchildren who have no blood relationship to a dependent child in the household;

(e) a specified relative. If a household requests that a specified relative be included in the household assistance unit, only one specified relative can be included in the financial assistance payment regardless of how many specified relatives are living in the household. The income and assets of all household members are counted according to the provisions of R986-200-241.

(f) if the only adult in the household is temporarily absent, the dependent child or children must be left under the care of an adult or benefits will be denied;

(4) In situations where there are children in the home for which there is court order regarding custody of the children, the Department will determine if the children should be included in the household assistance unit based on the actual living arrangements of the children and not on the custody order. If the child lives in the home 50% or more of the time, the child must be included in the household assistance unit and duty of support completed. It is not an option to exclude the child. This is true even if the court awarded custody to the other parent or the court ordered joint custody. If the child lives in the household less than 50% of the time, the child cannot be included in the household. It is not an option to include the child. This is true even if the parent applying for financial assistance has been awarded custody by the court or the court ordered joint custody. If financial assistance is allowed, a joint custody order might be modified by the court under the provisions of 30-3-10.2(4) and 30-3-10.4.

(5) The income and assets of the following individuals are counted in determining eligibility even though the individual is not included in the assistance payment:

(a) a household member who has been disqualified from the receipt of assistance because of an IPV, (fraud determination);

(b) a household member who does not meet the

citizenship and alienage requirements; or

(c) a minor child who is not in school full time or participating in self sufficiency activities.

R986-200-206. Participation Requirements.

(1) Payment of any and all financial assistance is contingent upon all parents in the household, including adoptive and stepparents, participating, to the maximum extent possible, in:

(a) assessment and evaluation;
(b) the completion of a negotiated employment plan;
and

(c) assisting ORS in good faith to:
(i) establish the paternity of all minor children; and
(ii) establish and enforce child support obligations.

(d) obtaining any and all other sources of income. If any household member is or appears to be eligible for unemployment, SSA, Workers Compensation, VA, or any other benefits or forms of assistance, the Department will refer the individual to the appropriate agency and the individual must apply for and pursue obtaining those benefits. If an individual refuses to apply for and pursue these benefits or assistance, the individual is ineligible for financial assistance. Pursuing these benefits includes cooperating fully and providing all the necessary documentation to insure receipt of benefits. If the individual is already receiving assistance from the Department and it is found he or she is not cooperating fully to obtain benefits from another source, the individual will be considered to not be participating in his or her employment plan. If the individual is otherwise eligible for FEP or FEPTP, financial assistance will be provided until eligibility for other benefits or assistance has been determined. If an individual's application for SSA benefits is denied, the individual must fully cooperate in prosecuting an appeal of that SSA denial at least to the Social Security ALJ level.

(2) Parents who have been determined to be ineligible to be included in the financial assistance payment are still required to participate.

(3) Children at least 16 years old but under 18 years old, unless they are in school full-time or in school part-time and working less than 100 hours per month are required to participate.

R986-200-207. Participation in Child Support Enforcement.

(1) Receipt of child support is an important element in increasing a family's income.

(2) Every natural, legal or adoptive parent has a duty to support his or her children and stepchildren even if the children do not live in the parental home.

(3) A parent's duty to support continues until the child:

(a) reaches age 18;
(b) is 18 years old and enrolled in high school during the normal and expected year of graduation;
(c) is emancipated by marriage or court order;
(d) is a member of the armed forces of the United States;

or

(e) is self supporting.

(4) A client receiving financial assistance automatically assigns to the state any and all rights to child support for all children who are included in the household assistance unit while receiving financial assistance. The assignment of rights occurs even if the client claims or establishes "good cause or other exception" for refusal to cooperate. The assignment of rights to support, cooperation in establishing paternity, and establishing and enforcing child support is a condition of eligibility for the receipt of financial assistance.

(5) For each child included in the financial assistance

payment, the client must also assign any and all rights to alimony or spousal support from the noncustodial parent while the client receives public assistance.

(6) The client must cooperate with the Department and ORS in establishing and enforcing the spousal and child support obligation from any and all natural, legal, or adoptive non-custodial parents.

(7) If a parent is absent from the home, the client must identify and help locate the non-custodial parent.

(8) If a child is conceived or born during a marriage, the husband is considered the legal father, even if the wife states he is not the natural father.

(9) If the child is born out of wedlock, the client must also cooperate in the establishment of paternity.

(10) ORS is solely responsible for determining if the client is cooperating in identifying the noncustodial parent and with child support establishment and enforcement efforts for the purposes of receipt of financial assistance. The Department cannot review, modify, or reject a decision made by ORS.

(11) Unless good cause is shown, financial assistance will terminate if a parent or specified relative does not cooperate with ORS in establishing paternity or enforcing child support obligations.

(12) Upon notification from ORS that the client is not cooperating, the Department will commence reconciliation procedures as outlined in R986-200-212. If the client continues to refuse to cooperate with ORS at the end of the reconciliation process, financial assistance will be terminated.

(13) Termination of financial assistance for non cooperation is immediate, without a reduction period outlined in R986-200-212, if:

(a) the client is a specified relative who is not included in the household assistance unit;

(b) the client is a parent receiving SSI benefits;

(c) the client is participating in FEPTP; or

(d) the client is an undocumented alien parent.

(14) Once the financial assistance has been terminated due to the client's failure to cooperate with child support enforcement, the client must then reapply for financial assistance. This time, the client must cooperate with child support collection prior to receiving any financial assistance.

(15) A specified relative, undocumented alien parent, SSI recipient, or disqualified parent in a household receiving FEP assistance must assign rights to support of any kind and cooperate with all establishment and enforcement efforts even if the parent or relative is not included in the financial assistance payment.

R986-200-208. Good Cause for Not Cooperating With ORS.

(1) The Department is responsible for determining if the client has good cause or other exception for not cooperating with ORS.

(2) To establish good cause for not cooperating, the client must file a request for a good cause determination and provide proof of good cause within 20 days of the request.

(3) A client has the right to request a good cause determination at any time, even if ORS or court proceedings have begun.

(4) Good cause for not cooperating with ORS can be shown if one of following circumstances exists:

(a) The child, for whom support is sought, was conceived as a result of incest or rape. To prove good cause under this paragraph, the client must provide:

(i) birth certificates;

(ii) medical records;

(iii) Department records;

(iv) records from another state or federal agency;

(v) court records; or
 (vi) law enforcement records.
 (b) Legal proceedings for the adoption of the child are pending before a court. Proof is established if the client provides copies of documents filed in a court of competent jurisdiction.

(c) A public or licensed private social agency is helping the client resolve the issue of whether to keep or relinquish the child for adoption and the discussions between the agency and client have not gone on for more than three months. The client is required to provide written notice from the agency concerned.

(d) The client's cooperation in establishing paternity or securing support is reasonably expected to result in physical or emotional harm to the child or to the parent or specified relative. If harm to the parent or specified relative is claimed, it must be significant enough to reduce that individual's capacity to adequately care for the child.

(i) Physical or emotional harm is considered to exist when it results in, or is likely to result in, an impairment that has a substantial effect on the individual's ability to perform daily life activities.

(ii) The source of physical or emotional harm may be from individuals other than the noncustodial parent.

(iii) The client must provide proof that the individual is likely to inflict such harm or has done so in the past. Proof must be from an independent source such as:

(A) medical records or written statements from a mental health professional evidencing a history of abuse or current health concern. The record or statement must contain a diagnosis and prognosis where appropriate;

(B) court records;

(C) records from the Department or other state or federal agency; or

(D) law enforcement records.

(5) If a claim of good cause is denied because the client is unable to provide proof as required under Subsection (4) (a) or (d) the client can request a hearing and present other evidence of good cause at the hearing. If the ALJ finds that evidence credible and convincing, the ALJ can make a finding of good cause under Subsections (4) (a) or (d) based on the evidence presented by the client at the hearing. A finding of good cause by the ALJ can be based solely on the sworn testimony of the client.

(6) When the claim of good cause for not cooperating is based in whole or in part on anticipated physical or emotional harm, the Department must consider:

(a) the client's present emotional health and history;

(b) the intensity and probable duration of the resulting impairment;

(c) the degree of cooperation required; and

(d) the extent of involvement of the child in the action to be taken by ORS.

(7) The Department recognizes no other exceptions, apart from those recognized by ORS, to the requirement that a client cooperate in good faith with ORS in the establishment of paternity and establishment and enforcement of child support.

(8) If the client has exercised his or her right to an agency review or adjudicative proceeding under Utah Administrative Procedures Act on the question of non-cooperation as determined by ORS, the Department will not review, modify, or reverse the decision of ORS on the question of non-cooperation. If the client did not have an opportunity for a review with ORS, the Department will refer the request for review to ORS for determination.

(9) Once a request for a good cause determination has been made, all collection efforts by ORS will be suspended until the Department has made a decision on good cause.

(10) A client has the right to appeal a Department decision on good cause to an ALJ by following the procedures for appeal found in R986-100.

(11) If a parent requests a hearing on the basis of good cause for not cooperating, the resulting decision cannot change or modify the determination made by ORS on the question of good faith.

(12) Even if the client establishes good cause not to cooperate with ORS, if the Department supervisor determines that support enforcement can safely proceed without the client's cooperation, ORS may elect to do so. Before proceeding without the client's cooperation, ORS will give the client advance notice that it intends to commence enforcement proceedings and give the client an opportunity to object. The client must file his or her objections with ORS within 10 days.

(13) A determination that a client has good cause for non-cooperation may be reviewed and reversed by the Department upon a finding of new, or newly discovered evidence, or a change in circumstances.

R986-200-209. Participation in Obtaining an Assessment.

(1) Within 30 business days of the date the application for financial assistance has been completed and approved, the client will be assigned to an employment counselor and must complete an assessment.

(2) The assessment evaluates a client's needs and is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

(a) family circumstances including health, needs of the children, support systems, and relationships;

(b) personal needs or potential barriers to employment;

(c) education;

(d) work history;

(e) skills;

(f) financial resources and needs; and

(g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

R986-200-210. Requirements of an Employment Plan.

(1) Within 15 business days of completion of the assessment, the following individuals in the household assistance unit are required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan:

(a) All parents, including parents whose income and assets are included in determining eligibility of the household but have been determined to be ineligible or disqualified from being included in the financial assistance payment.

(b) Dependent minor children who are at least 16 years old, who are not parents, unless they are full-time students or are employed an average of 30 hours a week or more.

(2) The goal of the employment plan is obtaining marketable employment and it must contain the soonest possible target date for entry into employment consistent with the employability of the individual.

(3) An employment plan consists of activities designed to help an individual become employed. For each activity there will be:

(a) an expected outcome;

(b) an anticipated completion date;

(c) the number of participation hours agreed upon per week; and

(d) a definition of what will constitute satisfactory progress for the activity.

(4) Each activity must be directed toward the goal of increasing the household's income.

(5) Activities may require that the client:

(a) obtain immediate employment. If so, the parent client shall:

(i) promptly register for work and commence a search for employment for a specified number of hours each week; and

(ii) regularly submit a report to the Department on:

(A) how much time was spent in job search activities;

(B) the number of job applications completed;

(C) the interviews attended;

(D) the offers of employment extended; and

(E) other related information required by the Department.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the parent client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) relocate from a rural area which would require a round trip commute in excess of two hours in order to find employment;

(g) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(h) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.

(6) The client must meet the performance expectations of, and provide verification for, each eligible activity in the employment plan in order to stay eligible for financial assistance. A list of what will be considered acceptable documentation is available at each employment center.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which includes providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available, supportive services will be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

(11) The number of hours of participation in subsection (3)(c) of this section will not be lower than 30 hours per week. All 30 hours must be in eligible activities. 20 of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the number of hours of participation in subsection (3)(c) of this section is a minimum of 20 hours per week and all of those 20 hours must be in priority activities.

(12) In the event a client has barriers which prevent the client from 30 hours of participation per week, or 20 hours in priority activities, a lower number of hours of participation can be approved if:

(a) the Department identifies and documents the barriers which prevent the client from full participation; and

(b) the client agrees to participate to the maximum extent possible to resolve the barriers which prevent the client

from participating.

R986-200-211. Education and Training As Part of an Employment Plan.

(1) A parent client's participation in education or training beyond that required to obtain a high school diploma or its equivalent will only be approved if all of the following are met:

(a) The client can demonstrate that the education or training would substantially increase the income level that the client would be able to achieve without the education and training, and would offset the loss of income the household incurs while the education or training is being completed.

(b) The client does not already have a degree or skills training certificate in a currently marketable occupation.

(c) An assessment specific to the client's education and training aptitude has been completed showing the client has the ability to be successful in the education or training.

(d) The mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed.

(e) The specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(f) The client, when determined appropriate, is willing to complete the education/training as quickly as possible, such as attending school full time which may include attending school during the summer.

(2) Graduate work can never be approved or supported as part of an employment plan.

R986-200-212. Reconciling Disputes and Termination of Financial Assistance for Failure to Comply.

If a client who is required to participate in an employment plan consistently fails, without reasonable cause, to show good faith in complying with the employment plan, the Department will terminate all or part of the financial assistance. This will apply if the Department is notified that the client has failed to cooperate with ORS as provided in R986-200-207. A termination for the reasons mentioned in this paragraph will occur only after the Department attempts reconciliation through the following process:

(1) When an employment counselor discovers that a client is not complying with his or her employment plan, the employment counselor will attempt to discuss compliance with the client and explore solutions. The employment counselor will also send written notice of the failure to comply to the client. The notice will specify a date certain by which the client must comply and the consequences of not complying by that date.

(2) If compliance is not resolved by the date specified in the notice sent under subsection (1) of this section, the employment counselor will send a second written notice and initiate termination of the household financial assistance. This second notice will advise the client that the financial assistance will terminate at the end of that month unless the client resolves the problem, as provided in paragraph (2)(a) of this section. This second notice will also provide a date certain by which the compliance problems must be resolved for benefits to continue.

(a) If the client establishes reasonable cause for not complying with the employment plan or provides required documentation by the date specified in the first or second notice, financial assistance will continue or be restored.

(b) If the compliance problem is not resolved as provided in subparagraph (a) of this subsection, the

household will be ineligible for financial assistance for one full month. The client must then reapply for financial benefits and successfully complete a two week trial participation period before financial assistance will be approved.

(3) A client must demonstrate a genuine willingness to comply with the employment plan during the two week trial period.

(4) The two week trial period may be waived only if the client has cured all previous compliance issues prior to re-application.

(5) The provisions of this section apply to clients who are eligible for and receiving financial assistance during an extension period as provided in R986-200-218.

(6) A child age 16-18 who is not a parent and who is not participating will be removed from the financial assistance grant. The financial assistance will continue for other household members provided they are participating. If the child successfully completes a two week trial period, the child will be added back on to the financial assistance grant.

(7) Reasonable cause under this section means the client was prevented from participating through no fault of his or her own or failed to participate for reasons that are reasonable and compelling.

(8) Reasonable cause can also be established, as provided in 45 CFR 261.56, by a client who is a single custodial parent caring for a child under age six who refuses to engage in required work because he or she is unable to obtain needed child care because appropriate and affordable child care arrangements are not available within a reasonable distance from the home or work site.

(9) If a client is also receiving SNAP and the client is disqualified for non-participation under this section, the client will also be subject to the SNAP sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under SNAP regulations.

R986-200-213. Financial Assistance for a Minor Parent.

(1) Financial assistance may be provided to a single minor parent who resides in a place of residence maintained by a parent, legal guardian, or other adult relative of the single minor parent, unless the minor parent is exempt.

(2) The single minor parent may be exempt when:

(a) The minor parent has no living parent or legal guardian whose whereabouts is known;

(b) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home;

(c) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for FEP and the minor parent was self supporting during this same period of time; or

(d) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian. A referral will be made to DCFS if allegations are made under this paragraph.

(3) Prior to authorizing financial assistance, the Department must approve the living arrangement of all single minor parents exempt under section (2) above. Approval of the living arrangement is not a certification or guarantee of the safety, quality, or condition of the living arrangements of the single minor parent.

(4) All minor parents regardless of the living arrangement must participate in education for parenting and life skills in infant and child wellness programs operated by the Department of Health and, for not less than 20 hours per week:

(a) attend high school or an alternative to high school, if the minor parent does not have a high school diploma;

(b) participate in education and training; and/or

(c) participate in employment.

(5) If a single minor parent resides with a parent, the Department shall include the income of the parent of the single minor parent in determining the single minor parent's eligibility for financial assistance.

(6) If a single minor parent resides with a parent who is receiving financial assistance, the single minor parent is included in the parent's household assistance unit.

(7) If a single minor parent receives financial assistance but does not reside with a parent, the Department shall seek an order requiring that the parent of the single minor parent financially support the single minor parent.

R986-200-214. Assistance for Specified Relatives.

(1) Specified relatives include:

(a) grandparents;

(b) brothers and sisters;

(c) stepbrothers and stepsisters;

(d) aunts and uncles;

(e) first cousins;

(f) first cousins once removed;

(g) nephews and nieces;

(h) people of prior generations as designated by the prefix grand, great, great-great, or great-great-great;

(i) brothers and sisters by legal adoption;

(j) the spouse of any person listed above;

(k) the former spouse of any person listed above;

(l) individuals who can prove they met one of the above mentioned relationships via a blood relationship even though the legal relationship has been terminated;

(m) former stepparents

(n) a Native American adult who has a Native American child placed in, or living in that adult's home, and both the child and the adult are members of, or eligible for membership in, a federally recognized tribe; and

(o) an adult of the same ethnicity, culture, country of origin, religion, language and/or nationality as the refugee/asylee child in his or her care.

(2) The specified relative must provide proof of relationship to the child. If the specified relative is unable to provide proof, but DCFS has determined that one of the relationships in subparagraph (1) of this section exists, the Department will accept the DCFS determination. DCFS will not be liable for any potential overpayment resulting from a determination made regarding relationship.

(3) The Department shall require compliance with Section 30-1-4.5

(4) A specified relative may apply for financial assistance for the child. If the child is otherwise eligible, FEP rules apply.

(5) The child must have a blood or a legal relationship to the specified relative even if the legal relationship has been terminated, or have a blood relationship to a dependent child who is in the home and who is included in the household for assistance purposes. This does not apply to specified relatives who are eligible under subsection (1)(n) and (o) of this section;

(6) Both parents must be absent from the home where the child lives. This is true even for a parent who has had his or her parental rights terminated;

(7) The child must be currently living with, and not just visiting, the specified relative;

(8) The parents' obligation to financially support their child will be enforced and the specified relative must cooperate with child support enforcement; and

(9) If the parent(s) state they are willing to support the child if the child would return to live with the parent(s), the child is ineligible unless there is a court order removing the

child from the parent(s) home.

(10) If the specified relative is currently receiving FEP or FEPTP, the child must be included in that household assistance unit.

(11) The income and resources of the specified relative are not counted unless the specified relative requests inclusion in the household assistance unit.

(12) If the specified relative is not currently receiving FEP or FEPTP, and the specified relative does not want to be included in the financial assistance payment, the specified relative shall be paid, on behalf of the child, the full standard financial assistance payment for one person. The size of the financial assistance payment shall be increased accordingly for each additional eligible child in the household assistance unit excluding the dependent child(ren) of the specified relative. Since the specified relative is not included in the household assistance unit, the income and assets of the specified relative, or the relative's spouse, are not counted.

(13) The specified relative may request to be included in the household assistance unit. If the specified relative is included in the household assistance unit, the household must meet all FEP eligibility requirements including participation requirements and asset limits.

(14) Income eligibility for a specified relative who wants to be included in the household assistance unit is calculated according to R986-200-241.

R986-200-215. Family Employment Program Two Parent Household (FEPTP).

(1) FEPTP is for households otherwise eligible for FEP but with two able-bodied parents in the household. Eligible refugee households with two able-bodied parents and at least one dependent child, must first exhaust RRP benefits before considering eligibility for FEPTP.

(2) Families may only participate in this program for seven months out of any 13-month period. Months of participation count toward the 36-month time limit in Sections 35A-3-306 and R986-200-217.

(3) Both parents must participate in eligible activities for a combined total of 60 hours per week, as defined in the employment plan. At least 50 of those hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. Refugee families may participate in any combination of eligible and priority activities for a combined total of 60 hours per week, as provided in the employment plan.

(4) Both parents are required to participate every week as defined in the employment plan, unless the parent can establish reasonable cause for not participating. Reasonable cause is defined in rule R986-200-212(8).

(5) Payment is made twice per month and only after proof of participation. Payment is based on the number of hours of participation by both parents. The amount of assistance is equal to the FEP payment for the household size prorated based on the number of hours which the parents participated up to a maximum of 60 hours of participation per week. In no event can the financial assistance payment per month for a FEPTP household be more than for the same size household participating in FEP.

(6) If it is determined by the employment counselor that either one of the parents has failed to participate to the maximum extent possible assistance for the entire household unit will terminate immediately.

(7) Because payment is made after performance, advance notice is not required to terminate or reduce assistance payments for households participating in FEPTP.

(8) The parents must meet all other requirements of FEP including but not limited to, income and asset limits, cooperation with ORS if there are legally responsible persons

outside of the household assistance unit, signing a participation agreement and employment plan and applying for all other assistance or benefits to which they might be entitled.

R986-200-216. Diversion.

(1) Diversion is a one-time financial assistance payment provided to help a client avoid receiving extended cash assistance.

(2) In determining whether a client should receive diversion assistance, the Department will consider the following:

- (a) the applicant's employment history;
 - (b) the likelihood that the applicant will obtain immediate full-time employment;
 - (c) the applicant's housing stability; and
 - (d) the applicant's child care needs, if applicable.
- (3) To be eligible for diversion the applicant must;

(a) have a need for financial assistance to pay for housing or substantial and unforeseen expenses or work related expenses which cannot be met with current or anticipated resources;

(b) show that within the diversion period, the applicant will be employed or have other specific means of self support, and

(c) meet all eligibility criteria for a FEP financial assistance payment except the applicant does not need to cooperate with ORS in obtaining support. If the client is applying for other assistance such as medical or child care, the client will have to follow the eligibility rules for that type of assistance which may require cooperation with ORS.

(4) If the Department and the client agree diversion is appropriate, the client must sign a diversion agreement listing conditions, expectations and participation requirements.

(5) The diversion payment will equal three times the monthly financial assistance payment for the household size. All income expected to be received during the three-month period including wages and child support must be considered when negotiating diversion.

(6) Child support will belong to the client during the three-month period, whether received by the client directly or collected by ORS. ORS will not use the child support to offset or reimburse the diversion payment.

(7) The client must agree to have the financial assistance portion of the application for assistance denied.

(8) If a diversion payment is made, the client is ineligible for FEP for the three months covered by the diversion payment and must reapply at the end of the three month period.

(9) Diversion assistance is not available to clients participating in FEPTP. This is because FEPTP is based on performance and payment can only be made after performance.

(10) A household can only receive one diversion assistance payment in a 12 month period.

R986-200-217. Time Limits.

(1) Except as provided in R986-200-218 and in Section 35A-3-306, a family cannot receive financial assistance under the FEP or FEPTP for more than 36 months.

(2) The following months count toward the 36-month time limit regardless of whether the financial assistance payment was made in this or any other state:

(a) each month when a parent client received financial assistance beginning with the month of January, 1997;

(b) each month beginning with January, 1997, where a parent resided in the household, the parent's income and assets were counted in determining the household's eligibility, but the parent was disqualified from being included in the

financial payment. Disqualification occurs when a parent has been determined to have committed fraud in the receipt of public assistance or when the parent is an ineligible alien; and

(c) each month when financial assistance was reduced or a partial financial assistance payment was received beginning with the month of January, 1997.

(3) Months which do not count toward the 36 month time limit are:

(a) months where both parents were absent from the home and dependent children were cared for by a specified relative who elected to be excluded from the household unit;

(b) months where the client received financial assistance as a minor child and was not the head of a household or married to the head of a household;

(c) months during which the parent lived in Indian country, as defined in Title 18, Section 1151, United States Code 1999, or an Alaskan Native village, if the most reliable data available with respect to the month, or a period including the month, indicate that at least 50% of the adults living in Indian country or in the village were not employed;

(d) months when a parent resided in the home but were excluded from the household assistance unit. A parent is excluded when they receive SSI benefits;

(e) diversion assistance does not count toward the 36 month time limit. If a client has already used 36 months of financial assistance, the client is not eligible for diversion assistance unless the client meets one of the extension criteria in R986-200-218 in addition to all other eligibility criteria of diversion assistance; or

(f) months when a parent client received transitional assistance.

R986-200-218. Exceptions to the Time Limit.

Exceptions to the time limit may be allowed for up to 20% of the average monthly number of families receiving financial assistance from FEP and FEPTP during the previous Federal fiscal year for the following reasons:

(1) A hardship under Section 35A-3-306 is determined to exist when a parent:

(a) is determined to be medically unable to work. The client must provide proof of inability to work in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) receipt of VA Disability benefits based on the parent being 100% disabled;

(iii) placement on the Division of Services to People with Disabilities' waiting list. Being on the waiting list indicates the person has met the criteria for a disability; or

(iv) is currently receiving Temporary Total or Permanent Total disability Workers' Compensation benefits;

(v) a medical statement completed by a medical doctor, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, or a doctor of osteopathy, stating the parent has a medical condition supported by medical evidence, which prevents the parent from engaging in work activities capable of generating income of at least \$500 a month. The statement must be completed by a professional skilled in both the diagnosis and treatment of the condition; or

(vi) a statement completed by a licensed clinical social worker, licensed psychologist, licensed Mental Health Therapist as defined in UCA Section 58-60-102, or psychiatrist stating that the parent has been diagnosed with a mental health condition that prevents the parent from engaging in work activities capable of generating income of at least \$500 a month. Substance abuse is considered the same as mental health condition;

(b) is under age 19 through the month of their nineteenth birthday;

(c) is currently engaged in an approved full-time job

preparation activity which the parent was expected to complete within the 36 month time limit but completion within the 36 months was not possible through no fault of the parent;

(d) was without fault and a delay in the delivery of services provided by the Department occurred. The delay must have had an adverse effect on the parent causing a hardship and preventing the parent from obtaining employment. An extension under this section cannot be granted for more than the length of the delay;

(e) moved to Utah after exhausting 36 months of assistance in another state or states and the parent did not receive supportive services in that state or states as required under the provisions of PRWORA. To be eligible for an exception under this section, the failure to receive supportive services must have occurred through no fault of the parent and must contribute to the parent's inability to work. An exception under this section can never be for longer than the delay in services;

(f) completed an educational or training program at the 36th month and needs additional time to obtain employment;

(g) is unable to work because the parent is required in the home to meet the medical needs of a dependent. Dependent for the purposes of this paragraph means a person who the parent claims as a dependent on his or her income tax filing. Proof, consisting of a medical statement from a health care professional listed in subparagraph (1)(a)(v) or (vi) of this section is required unless the dependent is on the Travis C medicaid waiver program. The medical statement must include all of the following:

(i) the diagnosis of the dependent's condition,

(ii) the recommended treatment needed or being received for the condition,

(iii) the length of time the parent will be required in the home to care for the dependent, and

(iv) whether the parent is required to be in the home full-time or part-time; or

(h) is currently receiving assistance under one of the exceptions in this section and needs additional time to obtain employment. A client can only receive assistance for one month under this subparagraph. If the Department determines that granting an exception under this subparagraph adversely impacts its federally mandated participation rate requirements or might otherwise jeopardize its funding, the one month exception will not be granted;

(i) the client is currently participating in the Intergenerational Welfare Dependency Poverty Pilot Program, "Next Generation Kids" and needs additional time to obtain job training and preparation to decrease the risk of his/her children being part of intergenerational welfare dependency. This exception will not be available if the Pilot Program is to end; or

(j) parents who volunteer to fully participate in a Department-approved employment and training activity. Department approval will only be granted if all the requirements of Department rule 986-200-211(1)(a) through (f) are met.

(2) Additional months of financial assistance may be provided if the family includes an individual who has been battered or subjected to extreme cruelty which is a barrier to employment and the implementation of the time limit would make it more difficult to escape the situation. Battered or subjected to extreme cruelty means:

(a) physical acts which resulted in, or threatened to result in, physical injury to the individual;

(b) sexual abuse;

(c) sexual activity involving a dependent child;

(d) threats of, or attempts at, physical or sexual abuse;

(e) mental abuse which includes stalking and

harassment; or

(f) neglect or deprivation of medical care.

(3) Employment extension. An extension to the time limit can be granted for a maximum of an additional 24 months if during the previous two months, the parent client was employed for no less than 20 hours per week. The employment can consist of self-employment if the parent's net income from that self-employment is at or above minimum wage.

(a) If, at the end of the 24-month extension, the parent client qualifies for an exception under subsections (1) or (2) of this section, an exception can be granted under the provisions of those sections.

(b) A family cannot receive financial assistance for more than a total of 60 months unless an exception can be granted under subsections (1) and (2) of this section.

(4) All clients receiving an extension or an exception must continue to participate, to the maximum extent possible, in an employment plan. This includes cooperating with ORS in the collection, establishment, and enforcement of child support and the establishment of paternity, if necessary.

(5) If a household filing unit contains more than one parent, and one parent has received at least 36 months of assistance as a parent, then the entire filing unit is ineligible unless both parents meet one of the exceptions or extension listed above. Both parents need not meet the same exception or extension.

(6) A family in which the only parent or both parents are ineligible aliens cannot be granted an extension under Section (3) above or for any of the reasons for an exception in Subsections (1)(c), (d), (e) or (f). This is because ineligible aliens are not legally able to work and supportive services for work, education and training purposes are inappropriate.

(7) A client who is no longer eligible for financial assistance may be eligible for other kinds of public assistance including SNAP, Child Care Assistance and medical coverage. The client must follow the appropriate application process to determine eligibility for assistance from those other programs.

(8) Exceptions and extensions are subject to a review at least once every six months.

R986-200-219. Emergency Assistance (EA) for Needy Families With Dependent Children.

(1) EA is provided in an effort to prevent homelessness. It is a payment which is limited to use for utilities and rent or mortgage.

(2) To be eligible for EA the family must meet all other FEP requirements except:

(a) the client need only meet the "gross income" test. Gross income which is available to the client must be equal to or less than 185% of the standard needs budget for the client's filing unit; and

(b) the client is not required to enter into an employment plan or cooperate with ORS in obtaining support.

(3) The client must be homeless, in danger of becoming homeless or having the utilities at the home cut off due to a crisis situation beyond the client's control. The client must show that:

(a) The family is facing eviction or foreclosure because of past due rent or mortgage payments or unpaid utility bills which result from the crisis;

(b) A one-time EA payment will enable the family to obtain or maintain housing or prevent the utility shut off while they overcome the temporary crisis;

(c) Assistance with one month's rent or mortgage payment is enough to prevent the eviction, foreclosure or termination of utilities;

(d) The client has the ability to resolve past due

payments and pay future months' rent or mortgage payments and utility bills after resolution of the crisis; and

(e) The client has exhausted all other resources.

(4) Emergency assistance is available for only 30 consecutive days during a year to any client or that client's household. If, for example, a client receives an EA payment of \$450 for rent on April 1 and requests an additional EA payment of \$300 for utilities on or before April 30 of that same year, the request for an EA payment for utilities will be considered. If the request for an additional payment for utilities is made after April 30, it cannot be considered for payment. The client will not be eligible for another EA payment until April 1 of the following year. A year is defined as 365 days following the initial date of payment of EA.

(5) Payments will not exceed \$450 per family for one month's rent payment or \$700 per family for one month's mortgage payment, and \$300 for one month's utilities payment.

R986-200-220. Mentors.

(1) The Department will recruit and train volunteers to serve as mentors for parent clients. The Department may elect to contract for the recruitment and training of the volunteers.

(2) A mentor may advocate on behalf of a parent client and help a parent client:

(a) develop life skills;

(b) implement an employment plan; or

(c) obtain services and support from:

(i) the volunteer mentor;

(ii) the Department; or

(iii) civic organizations.

R986-200-221. Drug Testing Requirements.

(1) A parent client or specified relative who is counted in the household assistance unit under R986-200-205 must complete a substance abuse questionnaire. A substance abuse questionnaire is defined as a written screening questionnaire designed to accurately determine the reasonable likelihood of the client having a substance use disorder involving the misuse of a controlled substance. Individuals in the household who have been disqualified from the receipt of assistance because of an IPV are also required to complete a substance abuse questionnaire and otherwise comply with this section.

(2) If the results of the substance abuse questionnaire indicate a reasonable likelihood of a substance use disorder involving the misuse of a controlled substance, a drug test is required within a period of time as specified by the Department. The test will be administered with due regard to the privacy and dignity of the person being tested. Before or after taking the drug test, the client may advise the person administering the test of any prescription or any over the counter medication the client is taking.

(3) If the client tests positive for the unlawful use of a controlled substance on the drug test required under subsection (2), benefits may continue but only if the client agrees to receive treatment from a Department approved provider. The treatment will be for a minimum of 60 days and the client must also submit to drug tests during, and at the conclusion of, treatment. Each test must be negative. The length of treatment, if over 60 days, will be determined by the treatment provider and the Department. The client cannot change treatment providers unless the treatment provider and the Department agree to the change.

(4) The entire household unit will be denied financial assistance for a period of three months for the first occurrence and 12 months for any subsequent occurrence within a 12 month period if a client identified in subsection (1):

- (a) refuses to complete a substance abuse questionnaire;
 - (b) refuses to meet with a licensed clinical therapist if required by the Department;
 - (c) refuses to take a drug test as required in subsection (2) or (3) of this section,
 - (d) fails to enter and successfully complete treatment as required in subsection (3) of this section, or
 - (e) tests positive for the unlawful use of a controlled substance, on any subsequent drug test required by the Department, while in treatment or at the completion of treatment.
- (5) A client can be excused from complying with the requirements of this section if the necessary resources are not available through no fault of the client.
- (6) A client can be excused from complying with the requirements of this section in a timely manner if the client can show reasonable cause. Reasonable cause under this section means the client was prevented from complying in a timely manner through no fault of his or her own or failed to comply in a timely manner for reasons that are reasonable and compelling.
- (7) If a client disagrees with the results of a drug test performed under subsections (2) or (3) of this section, the client can provide the Department with the results of a second drug test. This second drug test will be performed:
- (i) at the client's expense,
 - (ii) at a testing facility approved by the Department,
 - (iii) in accordance with requirements of Utah Code Ann. Section 34-38-6, and
 - (iv) within seven days of the Department sending notice of the results of the original drug test.
- (c) If the results of the second drug test are negative, the Department will reimburse the client the actual and reasonable verified costs incurred in obtaining the second test.

R986-200-230. Assets Counted in Determining Eligibility.

- (1) All available assets, unless exempt, are counted in determining eligibility. An asset is available when the applicant or client owns it and has the ability and the legal right to sell it or dispose of it. An item is never counted as both income and an asset in the same month.
- (2) The value of an asset is determined by its equity value. Equity value is the current market value less any debts still owing on the asset. Current market value is the asset's selling price on the open market as set by current standards of appraisal.
- (3) Both real and personal property are considered assets. Real property is an item that is fixed, permanent, or immovable. This includes land, houses, buildings, mobile homes and trailer homes. Personal property is any item other than real property.
- (4) If an asset is potentially available, but a legal impediment to making it available exists, it is exempt until it can be made available. The applicant or client must take appropriate steps to make the asset available unless:
- (a) Reasonable action would not be successful in making the asset available; or
 - (b) The probable cost of making the asset available exceeds its value.
- (5) The value of countable real and personal property cannot exceed \$2,000.
- (6) If the household assets are below the limits on the first day of the month the household is eligible for the remainder of the month.

R986-200-231. Assets That Are Not Counted (Exempt) for Eligibility Purposes.

The following are not counted as an asset when determining eligibility for financial assistance:

- (1) the home in which the family lives, and its contents, unless any single item of personal property has a value over \$1,000, then only that item is counted toward the \$2,000 limit. If the family owns more than one home, only the primary residence is exempt and the equity value of the other home is counted;
- (2) the value of the lot on which the home stands is exempt if it does not exceed the average size of residential lots for the community in which it is located. The value of the property in excess of an average size lot is counted if marketable;
- (3) water rights attached to the home property are exempt;
- (4) motorized vehicles;
- (5) with the exception of real property, the value of income producing property necessary for employment;
- (6) the value of any reasonable assistance received for post-secondary education;
- (7) bona fide loans, including reverse equity loans;
- (8) per capita payments or any asset purchased with per capita payments made to tribal members by the Secretary of the Interior or the tribe. Any asset purchased with profit distributions or income to tribal members derived from tribal owned casinos and privately owned land is countable;
- (9) maintenance items essential to day-to-day living;
- (10) life estates;
- (11) an irrevocable trust where neither the corpus nor income can be used for basic living expenses;
- (12) for refugees, as defined under R986-300-303(1), assets that remain in the refugee's country of origin are not counted;
- (13) one burial plot per member of the household. A burial plot is a burial space and any item related to repositories used for the remains of the deceased. This includes caskets, concrete vaults, urns, crypts, grave markers, etc. If the individual owns a grave site, the value of which includes opening and closing, the opening and closing is also exempt;
- (14) a burial/funeral fund up to a maximum of \$1,500 per member of the household;
 - (a) The value of any irrevocable burial trust is subtracted from the \$1,500 burial/funeral fund exemption. If the irrevocable burial trust is valued at \$1,500 or more, it reduces the burial/funeral fund exemption to zero.
 - (b) After deducting any irrevocable burial trust, if there is still a balance in the burial/funeral fund exemption amount, the remaining exemption is reduced by the cash value of any burial contract, funeral plan, or funds set aside for burial up to a maximum of \$1,500. Any amount over \$1,500 is considered an asset;
- (15) any interest which is accrued on an exempt burial contract, funeral plan, or funds set aside for burial is exempt as income or assets. If an individual removes the principal or interest and uses the money for a purpose other than the individual's burial expenses, the amount withdrawn is countable income; and
- (16) any other property exempt under federal law.

R986-200-232. Considerations in Evaluating Real Property.

- (1) Any nonexempt real property that an applicant or client is making a bona fide effort to sell is exempt for a nine-month period provided the applicant or client agrees to repay, from the proceeds of the sale, the amount of financial and/or child care assistance received. Bona fide effort to sell means placing the property up for sale at a price no greater than the current market value. Additionally, to qualify for this exemption, the applicant or client must assign, to the state of Utah, a lien against the real property under consideration. If

the property is not sold during the period of time the client was receiving financial and/or child care assistance or if the client loses eligibility for any reason during the nine-month period, the lien will not be released until repayment of all financial and/or child care assistance is made.

(2) Payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days of receipt and the purchase is completed within 90 days. If more than 90 days is needed to complete the actual purchase, one 90-day extension may be granted. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal which is counted as income.

R986-200-233. Considerations in Evaluating Household Assets.

(1) The assets of a disqualified household member are counted.

(2) The assets of a ward that are controlled by a legal guardian are considered available to the ward.

(3) The assets of an ineligible child are exempt.

(4) When an ineligible alien is a parent, the assets of that alien parent are counted in determining eligibility for other family members.

(5) Certain aliens who have been legally admitted to the United States for permanent residence must have the income and assets of their sponsors considered in determining eligibility for financial assistance under applicable federal authority in accordance with R986-200-243.

R986-200-234. Income Counted in Determining Eligibility.

(1) The amount of financial assistance is based on the household's monthly income and size.

(2) Household income means the payment or receipt of countable income from any source to any member counted in the household assistance unit including:

(a) children; and

(b) people who are disqualified from being counted because of a prior determination of fraud (IPV) or because they are an ineligible alien.

(3) The income of SSI recipients is not counted.

(4) Countable income is gross income, whether earned or unearned, less allowable exclusions listed in section R986-200-239.

(5) Money is not counted as income and an asset in the same month.

(6) If an individual has elected to have a voluntary reduction or deduction taken from an entitlement to earned or unearned income, the voluntary reduction or deduction is counted as gross income. Voluntary reductions include insurance premiums, savings, and garnishments to pay an owed obligation.

R986-200-235. Unearned Income.

(1) Unearned income is income received by an individual for which the individual performs no service.

(2) Countable unearned income includes:

(a) pensions and annuities such as Railroad Retirement, Social Security, VA, Civil Service;

(b) disability benefits such as sick pay and workers' compensation payments unless considered as earned income;

(c) unemployment insurance, except, starting March 1, 2009 and continuing as long as it is authorized by Congress and not counted for SNAP, the \$25 supplemental weekly Unemployment Compensation payment authorized by the American Recovery and Reinvestment Act of 2009 (ARRA) will not be countable unearned income;

(d) strike or union benefits;

(e) VA allotment;

(f) income from the GI Bill;

(g) assigned support retained in violation of statute is counted when a request to do so has been generated by ORS;

(h) payments received from trusts made for basic living expenses;

(i) payments of interest from stocks, bonds, savings, loans, insurance, a sales contract, or mortgage. This applies even if the payments are from the sale of an exempt home. Payments made for the down payment or principal are counted as assets;

(j) inheritances;

(k) life insurance benefits;

(l) payments from an insurance company or other source for personal injury, interest, or destroyed, lost or stolen property unless the money is used to replace that property;

(m) cash contributions from any source including family, a church or other charitable organization;

(n) rental income if the rental property is managed by another individual or company for the owner. Income from rental property managed by someone in the household assistance unit is considered earned income;

(o) financial assistance payments received from another state or the Department from another type of financial assistance program including a diversion payment; and

(p) payments from Job Corps and Americorps living allowances.

(3) Unearned income which is not counted (exempt):

(a) cash gifts for special occasions which do not exceed \$30 per quarter for each person in the household assistance unit. The gift can be divided equally among all members of the household assistance unit;

(b) bona fide loans, including reverse equity loans on an exempt property. A bona fide loan means a loan which has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment;

(c) the value of SNAP, food donated from any source, and the value of vouchers issued under the Women Infants and Children program;

(d) any per capita payments made to individual tribal members by either the secretary of interior or the tribe are excluded. Profit distributions or income to tribal members derived from tribal owned casinos and privately owned land are countable income;

(e) any payments made to household members that are declared exempt under federal law;

(f) the value of governmental rent and housing subsidies, federal relocation assistance, or EA issued by the Department;

(g) money from a trust fund to provide for or reimburse the household for a specific item NOT related to basic living expenses. This includes medical expenses and educational expenses. Money from a trust fund to provide for or reimburse a household member for basic living expenses is counted;

(h) travel and training allowances and reimbursements if they are directly related to training, education, work, or volunteer activities;

(i) all unearned income in-kind. In-kind means something, such as goods or commodities, other than money;

(j) thirty dollars of the income received from rental income unless greater expenses can be proven. Expenses in excess of \$30 can be allowed for:

(i) taxes;

(ii) attorney fees expended to make the rental income available;

(iii) upkeep and repair costs necessary to maintain the current value of the property; and

(iv) interest paid on a loan or mortgage made for upkeep or repair. Payment on the principal of the loan or mortgage cannot be excluded;

(k) if meals are provided to a roomer/boarder, the value of a one-person SNAP allotment for each roomer/boarder;

(l) payments for energy assistance including H.E.A.T payments, assistance given by a supplier of home energy, and in-kind assistance given by a private non-profit agency;

(m) federal and state income tax refunds and earned income tax credit payments;

(n) payments made by the Department to reimburse the client for education or work expenses, or a CC subsidy;

(o) income of an SSI recipient. Neither the payment from SSI nor any other income, including earned income, of an SSI recipient is included;

(p) payments from a person living in the household who is not included in the household assistance unit, as defined in R986-200-205, when the payment is intended and used for that person's share of the living expenses;

(q) educational assistance and college work study except Veterans Education Assistance intended for family members of the student, living stipends and money earned from an assistantship program is counted as income; and

(r) for a refugee, as defined in R986-300-303(1), any grant or assistance, whether cash or in-kind, received directly or indirectly under the Reception and Placement Programs of Department of State or Department of Justice.

R986-200-236. Earned Income.

(1) All earned income is counted when it is received even if it is an advance on wages, salaries or commissions.

(2) Countable earned income includes:

(a) wages, except Americorps*Vista living allowances are not counted;

(b) salaries;

(c) commissions;

(d) tips;

(e) sick pay which is paid by the employer;

(f) temporary disability insurance or temporary workers' compensation payments which are employer funded and made to an individual who remains employed during recuperation from a temporary illness or injury pending the employee's return to the job;

(g) rental income only if managerial duties are performed by the owner to receive the income. The number of hours spent performing those duties is not a factor. If the property is managed by someone other than the individual, the income is counted as unearned income;

(h) net income from self-employment less allowable expenses, including income over a period of time for which settlement is made at one given time. The periodic payment is annualized prospectively. Examples include the sale of farm crops, livestock, and poultry. A client may deduct actual, allowable expenses, or may opt to deduct 40% of the gross income from self-employment to determine net income;

(i) training incentive payments and work allowances; and

(j) earned income of dependent children.

(3) Income that is not counted as earned income:

(a) income for an SSI recipient;

(b) reimbursements from an employer for any bona fide work expense;

(c) allowances from an employer for travel and training if the allowance is directly related to the travel or training and identifiable and separate from other countable income; or

(d) Earned Income Tax Credit (EITC) payments.

R986-200-237. Lump Sum Payments.

(1) Lump sum payments are one-time windfalls or

retroactive payments of earned or unearned income. Lump sums include but are not limited to, inheritances, insurance settlements, awards, winnings, gifts, and severance pay, including when a client cashes out vacation, holiday, and sick pay. They also include lump sum payments from Social Security, VA, UI, Worker's Compensation, and other one-time payments. Payments from SSA that are paid out in installments are not considered lump sum payments but as income, even if paid less often than monthly.

(2) The following lump sum payments are not counted as income or assets:

(a) any kind of lump sum payment of excluded earned or unearned income. If the income would have been excluded, the lump sum payment is also excluded. This includes SSI payments and any EITC; and

(b) insurance settlements for destroyed exempt property when used to replace that property.

(3) The net lump sum payment is counted as income for the month it is received. Any amount remaining after the end of that month is considered an asset.

(4) The net lump sum is the portion of the lump sum that is remaining after deducting:

(a) legal fees expended in the effort to make the lump sum available;

(b) payments for past medical bills if the lump sum was intended to cover those expenses; and

(c) funeral or burial expenses, if the lump sum was intended to cover funeral or burial expenses.

(5) A lump sum paid to an SSI recipient is not counted as income or an asset except for those recipients receiving financial assistance from GA or WTE.

R986-200-238. How to Calculate Income.

(1) To determine if a client is eligible for, and the amount of, a financial assistance payment, the Department estimates the anticipated income, assets and household size for each month in the certification period.

(2) The methods used for estimating income are:

(a) income averaging or annualizing which means using a history of past income that is representative of future income and averaging it to determine anticipated future monthly income. It may be necessary to evaluate the history of past income for a full year or more; and

(b) income anticipating which means using current facts such as rate of pay and hourly wage to anticipate future monthly income when no reliable history is available.

(3) Monthly income is calculated by multiplying the average weekly income by 4.3 weeks. If a client is paid every two weeks, the income for those two weeks is multiplied by 2.15 weeks to determine monthly income.

(4) The Department's estimate of income, when based on the best available information at the time it was made, will be determined to be an accurate reflection of the client's income. If it is later determined the actual income was different than the estimate, no adjustment will be made. If the client notifies the Department of a change in circumstances affecting income, the estimated income can be adjusted prospectively but not retrospectively.

R986-200-239. How to Determine the Amount of the Financial Assistance Payment.

(1) Once the household's size and income have been determined, the gross countable income must be less than or equal to 185% of the Standard Needs Budget (SNB) for the size of the household. This is referred to as the "gross test".

(2) If the gross countable income is less than or equal to 185% of the SNB, the following deductions are allowed:

(a) a work expense allowance of \$100 for each person in the household unit who is employed;

(b) fifty percent of the remaining earned income after deducting the work expense allowance as provided in paragraph (a) of this subsection, if the individual has received a financial assistance payment from the Department for one or more of the immediately preceding four months; and

(c) after deducting the amounts in paragraphs (a) and (b) of this subsection, if appropriate, the following deductions can be made:

(i) a dependent care deduction as described in subsection (3) of this section; and

(ii) child support paid by a household member if legally owed to someone not included in the household.

(3) The amount of the dependant care deduction is set by the Department and based on the number of hours worked by the parent and the age of the dependant needing care. It can only be deducted if the dependant care:

(a) is paid for the care of a child or adult member of the household assistance unit, or a child or adult who would be a member of the household assistance unit except that this person receives SSI. An adult's need for care must be verified by a doctor; and

(b) is not subsidized, in whole or in part, by a CC payment from the Department; and

(c) is not paid to an individual who is in the household assistance unit.

(4) After deducting the amounts allowed under paragraph (2) above, the resulting net income must be less than 100% of SNB for size of the household assistance unit. If the net income is equal to or greater than the SNB, the household is not eligible.

(5) If the net income is less than 100% of the SNB the following amounts are deducted:

(a) Fifty percent of earned countable income for all employed household assistance unit members if the household was not eligible for the 50% deduction under paragraph (2)(b) above; and/or

(b) All of the earned income of all children in the household assistance unit, if not previously deducted, who are:

(i) in school or training full-time, or

(ii) in part-time education or training if they are employed less than 100 hours per month. "Part-time education or training" means enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours per day, whichever is less.

(6) The resulting net countable income is compared to the full financial assistance payment for the household size. If the net countable income is more than the financial assistance payment, the household is not eligible. If it is less, the net countable income is deducted from the financial assistance payment and the household is paid the difference.

(7) The amount of the standard financial assistance payment is set by the Department. The current amount is in the table that follows:

| TABLE | |
|----------------|----------------|
| Household Size | Payment Amount |
| 1 | \$288 |
| 2 | \$399 |
| 3 | \$498 |
| 4 | \$583 |
| 5 | \$663 |
| 6 | \$731 |
| 7 | \$765 |
| 8 | \$801 |

Amounts for household sizes larger than 8 are available

at all Department offices.

R986-200-240. Additional Payments Available Under Certain Circumstances.

(1) Each parent eligible for financial assistance in the FEP or FEPTP programs who takes part in at least one enhanced participation activity may be eligible to receive a payment to help defray the costs of that activity in addition to the standard financial assistance payment. Approved enhanced participation activities and the payment amount are listed in Department policy.

(2) An additional payment of \$15 per month for a pregnant woman in the third month prior to the expected month of delivery. Eligibility for the allowance begins in the month the woman provides medical proof that she is in the third month prior to the expected month of delivery. The pregnancy allowance ends at the end of the month the pregnancy ends.

(3) A limited number of funds are available to individuals for work and training expenses. The funds can only be used to alleviate circumstances which impede the individual's ability to begin or continue employment, job search, training, or education. The payment of these funds is completely discretionary by the Department. The individual does not need to meet any eligibility requirements to request or receive these funds.

(4) Limited funds are available, up to a maximum of \$300, to pay for burial costs if the individual is not entitled to a burial paid for by the county.

(5) A Department Regional Director or designee may approve assistance, as funding allows, for the emergency needs of a non-resident who is transient, temporarily stranded in Utah, and who does not intend to stay in Utah.

(6) A limited number of funds are available for enhanced payments to parents who are eligible for financial assistance in the FEP program or who are eligible for TANF non-FEP training under R986-200-245 and who participate in the HS/GED Pilot Program. The payment of these funds is completely discretionary by the Department and may differ from region to region. The payments may continue until the client completes the HS/GED Pilot Program even if the client is no longer receiving FEP.

R986-200-241. Income Eligibility Calculation for a Specified Relative Who Wants to be Included in the Assistance Payment.

(1) The income calculation for a specified relative who wants to be included in the financial assistance payment is as follows:

(a) All earned and unearned countable income is counted, as determined by FEP rules, for the specified relative and his or her spouse, less the following allowable deductions:

(i) one hundred dollars for each employed person in the household. This deduction is only allowed for the specified relative and/or spouse and not anyone else in the household even if working; and

(ii) the child care expenses paid by the specified relative and necessary for employment up to the maximum allowable deduction as set by the Department.

(2) The household size is determined by counting the specified relative, his or her spouse if living in the home, and their dependent children living in the home who are not in the household assistance unit.

(3) If the income less deductions exceeds 100% of the SNB for a household of that size, the specified relative cannot be included in the financial assistance payment. If the income is less than 100% of the SNB, the total household income is divided by the household size calculated under subsection (2)

of this section. This amount is deemed available to the specified relative as countable unearned income. If that amount is less than the maximum financial assistance payment for the household assistance unit size, the specified relative may be included in the financial assistance payment.

R986-200-242. Income Calculation for a Minor Parent Living with His or Her Parent or Stepparent.

(1) All earned and unearned countable income of all parents, including stepparents living in the home, is counted when determining the eligibility of a minor parent residing in the home of the parent(s).

(2) From that income, the following deductions are allowed:

(a) one hundred dollars from income earned by each parent or stepparent living in the home, and

(b) an amount equal to 100% of the SNB for a group with the following members:

(i) the parents or stepparents living in the home;

(ii) any other person in the home who is not included in the financial assistance payment of the minor parent and who is a dependent of the parents or stepparents;

(c) amounts paid by the parents or stepparents living in the home to individuals not living at home but who could be claimed as dependents for Federal income tax purposes; and

(d) alimony and child support paid to someone outside the home by the parents or stepparents living in the home.

(3) The resulting amount is counted as unearned income to the minor parent.

(4) If a minor parent lives in a household already receiving financial assistance, the child of the minor parent is included in the larger household assistance unit.

R986-200-243. Counting the Income of Sponsors of Eligible Aliens.

(1) Certain aliens who have been legally admitted into the United States for permanent residence must have a portion of the earned and unearned countable income of their sponsors counted as unearned income in determining eligibility and financial assistance payment amounts for the alien.

(2) The following aliens are not subject to having the income of their sponsor counted:

(a) paroled or admitted into the United States as a refugee or asylee;

(b) granted political asylum;

(c) admitted as a Cuban or Haitian entrant;

(d) other conditional or paroled entrants;

(e) not sponsored or who have sponsors that are organizations or institutions;

(f) sponsored by persons who receive public assistance or SSI;

(g) permanent resident aliens who were admitted as refugees and have been in the United States for eight months or less.

(3) Except as provided in subsection (7) of this section, the income of the sponsor of an alien who applies for financial assistance after April 1, 1983 and who has been legally admitted into the United States for permanent residence must be counted for five years after the entry date into the United States. The entry date is the date the alien was admitted for permanent residence. The time spent, if any, in the United States other than as a permanent resident is not considered as part of the five year period.

(4) The amount of income deemed available for the alien is calculated by:

(a) deducting 20% from the total earned income of the sponsor and the sponsor's spouse up to a maximum of \$175 per month; then,

(b) adding to that figure all of the monthly unearned countable income of the sponsor and the sponsor's spouse; then the following deductions are allowed:

(i) an amount equal to 100% of the SNB amount for the number of people living in the sponsor's household who are or could be claimed as dependents under federal income tax policy; then,

(ii) actual payments made to people not living in the sponsor's household whom the sponsor claims or could claim as dependents under federal income tax policy; then,

(iii) actual payments of alimony and/or child support the sponsor makes to individuals not living in the sponsor's household.

(c) The remaining amount is counted as unearned income against the alien whether or not the income is actually made available to the alien.

(5) Actual payments by the sponsor to aliens will be counted as income only to the extent that the payment amount exceeds the amount of the sponsor's income already determined as countable.

(6) A sponsor can be held liable for an overpayment made to a sponsored alien if the sponsor was responsible for, or signed the documents which contained, the misinformation that resulted in the overpayment. The sponsor is not held liable for an overpayment if the alien fails to give accurate information to the Department or the sponsor is deceased, in prison, or can prove the request for information was incomplete or vague.

(7) In the case where the alien entered the United States after December 19, 1997, the sponsor's income does not count if:

(a) the alien becomes a United States citizen through naturalization;

(b) the alien has worked 40 qualifying quarters as determined by Social Security Administration; or

(c) the alien or the sponsor dies.

R986-200-244. TANF Needy Family (TNF).

(1) TNF is not a program but describes a population that can be served using TANF Surplus Funds.

(2) Eligible families must have a dependent child under the age of 18 residing in the home, and the total household income must not exceed 300% of the Federal poverty level. Income is determined as gross income without allowance for disregards.

(3) Services available vary throughout the state. Information on what is available in each region is available at each Employment Center. The Department may elect to contract out services.

(4) If TANF funded payments are made for basic needs such as housing, food, clothing, shelter, or utilities, each month a payment is received under TNF, counts as one month of assistance toward the 36 month lifetime limit. Basic needs also include transportation and child care if all adults in the household are unemployed and will count toward the 36 month lifetime limit.

(5) If a member of the household has used all 36 months of FEP assistance the household is not eligible for basic needs assistance under TNF but may be eligible for other TANF funded services.

(6) Assets are not counted when determining eligibility for TNF services.

R986-200-245. TANF Non-FEP Training (TNT).

(1) TNT is to provide skills and training to parents to help them become suitably employed and self-sufficient.

(2) The client must be unable to achieve self-sufficiency without training.

(3) Eligible families must have a dependent child under

the age of 18 residing in the home and the total household income must not exceed 200% of the Federal poverty level. If the only dependent child is 18 and expected to graduate from High School before their 19th birthday the family is eligible up through the month of graduation. Income is counted and calculated the same as for WIOA as found in rule R986-600.

(4) Assets are not counted when determining eligibility for TNT services.

(5) The client must show need and appropriateness of training.

(6) The client must negotiate an employment plan with the Department and participate to the maximum extent possible.

(7) The Department will not pay for supportive services such as child care, transportation or living expenses under TNT. The Department can pay for books, tools, work clothes and other needs associated with training.

R986-200-246. Transitional Cash Assistance.

(1) Transitional Cash Assistance, (TCA) is offered to help FEP and FEPTP customers stabilize employment and reduce recidivism.

(2) To be eligible for TCA a client must;

(a) have been eligible for and have received FEP or FEPTP during the month immediately preceding the month during which TCA is requested or granted. The FEP or FEPTP assistance must have been terminated due to earned or unearned income and not for nonparticipation under R986-200-212. If the immediately preceding month was during a diversion period, or the client has a termination pending due to non participation as provided in R986-200-212, the client is not eligible for TCA,

(b) be employed and

(i) have income greater than the FEP or FEP TP income guideline

(ii) the FEP or FEP TP assistance was terminated because of that income, and

(iii) the earned income exceeds the unearned income at the time the FEP or FEP TP was terminated, and

(c) continue to cooperate with the Office of Recovery Services, Child Support Enforcement.

(3) TCA is only available if the customer verifies income at the minimum required in subparagraph (2)(b) of this section.

(4) The TCA benefit is available for a maximum of three months in a 12 month period. The three months do not need to be consecutive.

(a) The assistance payment for the first two months of TCA is based on household size. All household income, earned and unearned, is disregarded.

(b) Payment for the third month is one half of the payment available in (4)(a) of this section.

(5) To receive the second and third month of the TCA benefit, the client must remain employed or have had an open FEP case that closed during the prior month due to income described in (2)(b) of this section.

(6) If initial verification is provided and a client is paid one month of TCA but the client is unable to provide documentation to support that initial verification, no further payments will be made under TCA but the one month payment will not result in an overpayment.

(7) TCA does not count toward the 36 month time limit found in R986-200-217.

R986-200-248. Wasatch Front North Service Area Pilot: FEP Subsidized Employment (FEP SE).

(1) FEP SE is a voluntary program providing short term subsidized employment for a maximum of three months to an eligible FEP recipient. FEP SE is a pilot program for

Wasatch Front North Service Area but may be expanded to other service areas if funding permits. To be eligible, a FEP recipient must:

(a) be currently receiving FEP benefits and have received at least one FEP payment;

(b) have a current employment plan. If the client is working less than 30 hours per week, the employment plan must provide additional activities,

(c) be legally eligible to work in the U.S. and be a U.S. citizen or meet the alienage requirements of R986-200-203;

(d) have not worked for the employer where the client is to be hired under this program more than 40 hours in the 60 days immediately preceding the date of hire under the FEP SE program; and

(e) have not previously participated in the FEP SE program.

(2) An employer eligible for a subsidy under this section is an employer that:

(a) is registered with the Department's UI division as an active employer in "good standing". For the purposes of this section, "good standing" means the employer has no delinquent UI contributions or reports;

(b) is a "qualified employer" which is defined as any employer other than the United States, any State, or any political subdivision or instrumentality thereof. A public institution of higher education is considered a "qualified employer" for purposes of this section. The employer cannot be a Temporary Help Company as defined in R994-202-102 or a Professional Employer Organization as defined in R994-202-106;

(c) pays a wage of at least \$8 per hour. Commission only jobs may qualify if the employer guarantees \$8 per hour or more;

(d) has not displaced or partially displaced existing workers by participating in this program;

(e) has at least one other employee;

(f) will provide the client with at least 20 hours work per week; and

(g) does not hire the client for temporary or seasonal work.

(3) Once it has been verified that a FEP recipient has been hired, a qualified employer will be paid a \$500 subsidy and an additional \$1,500 subsidy at the conclusion of the third month of employment provided the required DWS invoices have been provided.

(4) FEP SE will continue for as long as funding is available.

R986-200-249. Access to Assistance.

Financial assistance for FEP and FEPTP is provided through an electronic benefit transfer (EBT) card. The card, instructions on its use, and applicable fees will be provided to all clients. A method for obtaining assistance without a fee will be made available. In other circumstances, minimal fees or/or surcharges will apply. Information about obtaining assistance without a fee or surcharge, when fees or surcharges apply, and the amount of the fee or surcharge is available on the Department's website: jobs.utah.gov.

**KEY: family employment program, SNAP
September 14, 2016 35A-3-301 et seq.
Notice of Continuation September 2, 2015**

R986. Workforce Services, Employment Development.**R986-300. Refugee Resettlement Program.****R986-300-301. Authority for the Refugee Resettlement Program (RRP) and Other Applicable Rules.**

(1) The Department provides services to eligible refugees pursuant to 45 CFR 400 and 45 CFR 401 et seq., (2000) which are incorporated herein by reference.

(2) The Department has opted to operate a Publicly-Administered Refugee Cash Assistance Program as provided in 45 CFR 400.65 through 400.68.

(3) Rule R986-100 applies to RRP.

(4) Applicable provisions of R986-200 apply to RRP except as noted in this rule.

R986-300-302. Refugee Resettlement Program (RRP).

(1) RRP provides resettlement assistance to refugees to help them achieve economic self-sufficiency within the shortest possible time after entry into the state.

(2) Financial and medical assistance may be provided to eligible refugees who meet the time limit requirements of R986-300-306 as funding permits.

(3) Refugee Social Services as identified in 45 CFR 400.154, and 400.155 may be provided to eligible refugees who meet the eligibility requirements of 45 CFR 400.152.

(4) Refugee child welfare services will be provided to refugee unaccompanied minor children in accordance with 45 CFR 400 Subpart H.

(5) The following definitions apply to RRP:

(a) "Appropriate employment" means employment that pays a wage which meets or exceeds the applicable federal or state minimum wage law and has daily and weekly hours customary to the occupation. If the minimum wage laws do not apply, the wage must equal what is normally paid for similar work and in no case less than three-fourths of the minimum wage rate.

(b) "Good cause" for quitting or refusing work can be established if the client shows:

(i) the job is vacant due to a strike, lockout, or other genuine labor dispute;

(ii) the client is required to work contrary to his membership in the union governing that occupation;

(iii) the employment was deemed a risk to the health or safety of the worker;

(iv) the employment lacked Workers' Compensation Insurance; or

(v) the individual is unable to engage in employment for physical reasons or lack of child care or transportation.

R986-300-303. Eligibility, Income Standards, and Amount of Assistance.

(1) An applicant for RRP must provide proof, in the form of documentation issued by the USCIS, of being or having been:

(a) paroled as a refugee or asylee under Section 212(d)(5) of the INA;

(b) admitted as a refugee under Section 207 of the INA;

(c) granted asylum under Section 208 of the INA;

(d) a Cuban or Haitian entrant, in accordance with the requirements of 45 CFR Part 401;

(e) certain Amerasians from Vietnam who are admitted to the United States as immigrants pursuant to Public Law 100-202 and Public Law 100-461;

(f) a victim of trafficking;

(g) admitted for permanent residence, provided the individual previously held one of the statuses listed in (a) through (f) of this section; or

(h) admitted for permanent residence under Special Immigrant Visas and provided benefits under federal law and in accordance with that federal law.

(2) The following aliens are not eligible for assistance:

(a) an applicant for asylum unless otherwise provided by federal law;

(b) humanitarian parolees;

(c) public interest parolees; and

(d) conditional entrants admitted under Section 203(a)(7) of the INA.

(3) Refugees who are single parents, two parents with one parent who is incapacitated, or specified relatives with dependent children must meet the eligibility and participation requirements, including cooperating with ORS to establish paternity and establish and enforce child support, of FEP and will be paid financial assistance under that program. All other refugees, including refugee households with two able-bodied parents and at least one dependent child, will be paid financial assistance under the RRP and must meet the federal RRP participation requirements.

(4) An applicant for RRP who voluntarily quit or refused appropriate employment without good cause within 30 calendar days prior to the date of application is ineligible for financial assistance for 30 days from the date of the voluntarily quit or refusal of employment. If the applicant is living with a spouse who is ineligible, the income and assets of the ineligible refugee will be counted in determining eligibility but the amount of financial assistance payment will be made as if the household had one less member.

(5) Refugees who are 65 years of age or older will be referred to SSA to apply for assistance under the SSI program.

(6) Income and asset eligibility and the amount of financial assistance available is determined under FEP rules, R986-200-230 through R986-200-240.

(7) If an otherwise eligible client demonstrates an urgent and immediate need for financial assistance, payment will be made on an expedited basis.

R986-300-304. Participation Requirements.

(1) All refugee applicants must comply with the assessment and employment plan requirements in R986-200-207 and R986-200-209. If the assessment cannot be completed or an employment plan negotiated and signed within the time proscribed because of a lack of staff with language skills, the application shall be approved, the assessment completed, and employment plan negotiated and signed as soon as possible.

(2) The goal of participation is to promote family economic self-sufficiency and social adjustment within the shortest possible time after entrance to the state to enable the family to become self-supporting through the employment of one or more members of the family.

(3) If a refugee claims an inability to participate due to incapacity, medical proof is required. Acceptable proof is the same as for FEP found in R986-200-202(3).

(4) Refugees 65 years of age or older, blind, or disabled, are exempt from the work participation requirements of FEP or RRP.

(5) In addition to the requirements of an employment plan as found in R986-200-210, a refugee must, as a condition of receipt of financial assistance:

(a) unless already employed full time, register for work with the Department within 30 days of receipt of refugee financial assistance and participate in employment activities as required by the Department and other appropriate agency providing employment services;

(b) accept any and all offers of appropriate employment as determined by the Department or the local resettlement agency which was responsible for the initial resettlement of the refugee; and

(c) participate in any available social adjustment service

or targeted assistance activities determined to be appropriate by the Department or the local resettlement agency which was responsible for the initial resettlement of the refugee.

(6) Education and training cannot be approved for any program which cannot be completed within one year.

(7) English language instruction funded under RRP must be provided concurrently with employment or employment related services.

R986-300-305. Failure to Comply with an Employment Plan.

(1) If a client who is required to participate in an employment plan consistently fails to show good faith in complying with the employment plan, the client is required to participate in the conciliation process in R986-200-212 with the following exceptions:

(a) the client will be disqualified for a period of three months for the first occurrence and six months for the second occurrence. There is no reduction period as provided in R986-200-212(2),

(b) because the disqualification period for RRP is a time certain, there is no trial period as provided in R986-200-212(2), (3), and (5).

(2) If there are other household members included in the financial assistance payment, the other household members will continue to receive assistance provided those household members are eligible and complying with all of the requirements of RRP.

(3) If eligible, SNAP and medical assistance may be continued for the person who is disqualified for failure to comply with the requirements of an employment plan.

R986-300-306. Time Limits.

(1) Except as provided in paragraph (2) below, a refugee is eligible for financial assistance only during the first eight months after entry into the United States, regardless of when the refugee applies for financial assistance. Financial assistance cannot be paid for any months prior to the date of application.

(2) An asylee's entry date is determined to be the date that the individual was granted asylum in the United States.

(3) The date of entry for a victim of trafficking is established by the certification date.

**KEY: refugee resettlement program, SNAP
August 26, 2009
Notice of Continuation September 3, 2015**

35A-3-103

R986. Workforce Services, Employment Development.**R986-400. General Assistance.****R986-400-401. Authority for General Assistance (GA) and Applicable Rules.**

(1) The Department provides GA financial assistance pursuant to Section 35A-3-401, et seq. as funding permits.

(2) Rule R986-100 applies to GA, except as noted in this rule.

(3) Applicable provisions of R986-200 apply to GA except as noted in this rule.

(4) The citizenship and alienage requirements of SNAP apply to GA.

R986-400-402. General Provisions.

(1) GA provides temporary financial assistance to single persons and married couples who have no dependent children residing with them 50% or more of the time and who have a physical or mental health impairment that prevents basic work activities in any occupation. This means that the applicant or client is unable to work any number of hours at all in any occupation.

(2) The impairment must be expected to last at least 60 days after the date of application.

(3) Drug addiction and/or alcoholism alone is insufficient to meet the impairment requirement for GA as defined in Public Law 104-121.

(4) Married couples meet the impairment criteria and time limits on an individual basis. If the household includes an ineligible spouse, the income and assets of the ineligible spouse must be counted when determining the eligibility of the household and the ineligible spouse will not be included in the financial payment. The household can consist of any combination of impaired, non-impaired, short term disabled, or long term disabled as long as at least one spouse meets the eligibility requirements.

(5) GA is only available to a client who is at least 18 years old or legally or factually emancipated. Factual emancipation means the client has lived independently from his or her parents or guardians and has been economically self-supporting for a period of at least twelve consecutive months, and the client's parents have refused financial support.

(6) A client claiming factual emancipation must cooperate with the Department in locating his or her parents. The parents, once located, will be contacted by the Department. If the parents continue to refuse to support the client, a referral will be made to ORS to enforce the parents' child support obligations.

(7) A person eligible for Bureau of Indian Affairs assistance is not eligible for GA financial assistance.

(8) In addition to the residency requirements in R986-100-106, residents in a group home that is administered under a contract with a governmental unit or administered by a governmental unit are not eligible for financial assistance.

(9) An individual receiving SSI is not eligible for GA. This ineligibility includes persons whose SSI is in suspense status, has been terminated, or who is not eligible for SSI due to the imposition of a penalty as defined by 20 CFR Part 416.1320 through 416.1340. An individual whose SSI benefits are suspended because he or she has not attained U.S. citizenship, may be eligible for GA if the individual actively pursues U.S. citizenship to regain SSI eligibility. If SSI was terminated because the client's disability ended, the client may be eligible for GA if an unrelated physical or mental health condition develops and is verified.

R986-400-403. Proof of Impairment.

(1) An applicant must provide current medical evidence of an impairment that prevents basic work activities in any

occupation due to a physical or mental health condition and that the impairment is expected to last at least 60 days from the date of application. Evidence consists of a statement from a medical doctor, a doctor of osteopathy, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, a licensed Mental Health Therapist as defined in UCA 58-60-102. If an applicant has been approved for SSI/SSDI, and is waiting for the first check, no further medical evidence of impairment is necessary. Verification and evidence of social security approval must be included in the case record.

(2) An applicant must cooperate in the obtaining of a second opinion if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the client requests the second opinion.

R986-400-404. Participation Requirements.

(1) A GA client with an impairment that is expected to last 12 months or longer is required to sign the General Assistance Agreement Form within 30 days after the initial financial benefit has been issued. A GA client with an impairment that is expected to last at least 60 days, but less than 12 months, will not be required to sign the General Assistance Agreement Form.

(2) The requirement to sign the General Assistance Agreement form, complete an assessment and negotiate an employment plan is limited to clients with long term impairments expected to last 12 months or longer.

(3) If the impairment is expected to last 12 months or longer, the client must apply for SSI/SSDI benefits.

(4) A client must accept any and all offers of appropriate employment as determined by the Department. "Appropriate employment" means employment that pays a wage that meets or exceeds the applicable federal or state minimum wage law and has daily and weekly hours customary to the occupation. If the minimum wage laws do not apply, the wage must equal what is normally paid for similar work and in no case less than three-fourths of the minimum wage rate. The employment is not appropriate employment if the client is unable, due to physical or mental limitations, to perform the work.

(5) A client must cooperate in obtaining any and all other sources of income to which the client may be entitled including, SSI/SSDI, VA Benefits, and Workers' Compensation.

(6) A client who meets the eligible alien status requirements for GA but does not meet the eligible alien requirements for SSI can participate in activities that may help them to become eligible for SSI such as pursuing citizenship.

R986-400-405. Interim Aid for SSI Applicants.

(1) A client who has applied for SSI or SSDI benefits may be provided with GA financial assistance pending a determination on the application for SSI or SSDI. If the client is applying for SSI, he or she must sign an "Agreement to Repay Interim Assistance" form and agree to reimburse, or allow SSA to reimburse, the state of Utah for any and all GA financial assistance advanced pending a determination from SSA.

(2) Financial assistance will be immediately terminated without advance notice when SSA issues a payment or if the client fails to cooperate to the maximum extent possible in pursuing the application which includes cooperating fully with SSA and providing all necessary documentation to insure receipt of SSI or SSDI benefits.

(3) A client must fully cooperate in prosecuting an appeal of an SSI or SSDI denial at least to the Social Security

ALJ level. If the ALJ issues an unfavorable decision, the client is not eligible for financial assistance unless an unrelated physical or mental health condition develops and is verified.

(4) If a client's SSI or SSDI benefits have been terminated due to a physical or mental health condition, the client is ineligible unless an unrelated physical or mental health condition develops and is verified.

R986-400-406. Failure to Comply with the Requirements of an Employment Plan.

(1) If a client fails to comply with the requirements of the employment plan without reasonable cause, financial assistance will be terminated immediately. Reasonable cause under this section means the client was prevented from participating through no fault of his or her own or failed to participate for reasons that are reasonable and compelling and may include reasons like verified illness or extraordinary transportation problems.

(2) If a client's financial assistance has been terminated under this section, the client is not eligible for further assistance as follows:

(a) the first time financial assistance is terminated, the client must resolve the reason for the termination and participate to the maximum extent possible in all of the required activities of the employment plan. The client does not need to reapply if he or she resolves the reason for termination by the end of the month following the termination;

(b) the second time financial assistance is terminated, the client will be ineligible for financial assistance for a minimum of one month and can only become eligible again upon completing a new application and participating to the maximum extent possible in the required employment activity; and

(c) the third and subsequent time financial assistance is terminated, the client will be ineligible for a minimum of six months and can only become eligible again upon completing a new application and actively participating in the required employment activity.

R986-400-407. Income and Assets Limits, Amount of Assistance, and Assistance Start Date.

(1) The provisions of R986-200 are used for determining asset and income eligibility except;

(a) the income and assets of an SSI recipient living in the household are counted if that individual is legally responsible for the client;

(b) the total gross income of an alien's sponsor and the sponsor's spouse is counted as unearned income for the alien. If a person sponsors more than one alien, the total gross income of the sponsor and the sponsor's spouse is counted for each alien. Indigent aliens, as defined by 7 CFR 273.4(c)(3)(iv), are not exempt;

(c) one vehicle, with a maximum of \$8,000 equity value, is not counted. The entire equity value of one vehicle equipped to transport a disabled individual is exempt from the asset limit even if the vehicle has a value in excess of \$8,000. Beginning October 1, 2007, all motorized vehicles will be exempt.

(2) The financial assistance payment level is set by the Department and available for review at all Department local offices.

(3) If otherwise eligible, assistance will be paid effective the first day of the month following the month the application is received by the Department provided the application is completed within 30 days. If the application is not completed within 30 days, but is completed within 60 days, the first day the client can be eligible is the day all verification requested

by the Department is received by the Department. If the application is not completed within 60 days, a new application is required. An application is complete when all information and verification requested by the Department has been provided by the applicant.

R986-400-408. Time Limits.

(1) An individual cannot receive GA financial assistance for more than 12 months out of a rolling 60-month period. Any month in which a client received a full or partial GA financial assistance payment count toward the 12 month limit.

(a) A client with a short term impairment that prevents basic work activities in any occupation lasting at least 60 days from the date of application but less than 12 months can receive up to six months of GA financial benefits in a rolling 12 month period. Clients are limited to a total of 12 months of financial assistance within a rolling 60-month period.

(b) A client with a long term impairment that prevents basic work activities in any occupation and the impairment is expected to last 12 months or more, can receive a total of 12 months of GA financial benefits in a rolling 60 month period.

(2) There are no exceptions or extensions to the time limit.

(3) Advanced written notice for termination of GA financial assistance due to time limits is not required.

KEY: general assistance (GA), SNAP

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35A-3-402

R986. Workforce Services, Employment Development.**R986-600. Workforce Innovation and Opportunity Act.****R986-600-601. Authority for Workforce Innovation and Opportunity Act (WIOA) and Other Applicable Rules.**

(1) The Department provides services to eligible clients under the authority granted in the Workforce Innovation and Opportunity Act, (WIOA) 20 CFR 610 allowing states to select a one-stop operator through a sole source selection. Funding is provided by the federal government through the WIOA. Utah is required to file a State Plan to obtain the funding. A copy of the State Plan is available at Department administrative offices and on the Internet. The regulations contained in 20 CFR 603, 20 CFR 651 through 20 CFR 652, 20 CFR 676 through 20 CFR 678 (2016) are also applicable.

(2) The provisions of Rule R986-100 apply to WIOA unless expressly noted otherwise in these rules even though R986-100 refers to public assistance and WIOA funding does not meet the technical definition of public assistance. The residency requirements of R986-100-106 and the additional penalty under R986-100-118 do not apply.

R986-600-602. Workforce Innovation and Opportunity Act.

(1) The goal of WIOA is to increase a client's occupational skills, employment, retention and earnings; to decrease welfare dependency; support alignment of education and economic development; increase prosperity of clients, employers and community; and to improve the quality of the workforce and national productivity.

(2) WIOA is for clients who need assistance finding employment to achieve self-sufficiency.

(3) Services are available for the following groups: adults, dislocated workers, and youth.

R986-600-603. Youth Services.

(1) The goals of WIOA youth services are to reconnect out-of-school youth to education and employment, provide options for improving educational and skill competencies; to provide effective connections to employers; to ensure access to mentoring, training opportunities and support services; to provide incentives for achievement; and to provide opportunities for leadership, citizenship and community service.

(2) WIOA youth services may be available to;

(a) in School Youth, age 14 through 21, who are low income and who have one or more barriers including those that interfere with the ability to complete an educational program or to secure and hold employment,

(b) out of School Youth, age 16 through 24 and who have one or more barriers including: school dropout, attendance issues, offender, homeless, runaway, foster care, aged out of foster care, pregnant or parenting, or disabled, and

(c) out of School Youth, age 16 through 24, who are low income and who have one or more barriers including: Native American, child of incarcerated parent(s), substance abuse issues, victim of domestic violence, or refugee.

(3) An incentive may be paid to provide recognition of achievement to eligible youth.

R986-600-604. Adults, Youth, and Dislocated Workers.

The Department offers four levels of service for adults, youth and dislocated workers:

(1) basic career services;

(2) individualized career services;

(3) training services; and

(4) follow-up services that, if requested, may be provided after receiving individualized or training services for a minimum of 12 months for all youth; or for a maximum of 12 months following the adult's or dislocated worker's first

date of unsubsidized employment.

R986-600-605. Basic Career Services.

Basic career services include:

(1) registration for services;

(2) providing the following informational resources:

(a) outreach, intake, and orientation to, and information about, available services, including resource and referral services;

(b) local, regional and national labor market information including job vacancy listings and occupations in demand and the skills necessary to obtain those jobs and occupations;

(c) performance measures with respect to the one-stop delivery system and

(d) performance information and program cost for eligible training providers and programs.

(3) job development;

(4) rapid response services;

(5) bonding;

(6) assessment of skill levels, aptitudes, abilities, and supportive service needs;

(7) job search and placement assistance, and where appropriate, career counseling and workshops;

(8) Referral to and coordination of activities with other programs and services within the one-stop delivery system and other community programs, and

(9) determining if a client is eligible for, and assistance in, applying for: WIOA funded programs, unemployment insurance benefits, financial aid assistance available for training and educational programs not funded under WIOA, SNAP, other supportive services such as child care, medical services, and transportation.

R986-600-606. Individualized Career Services.

(1) Individualized career services available to clients consist of:

(a) an assessment as provided in R986-600-620;

(b) development of an employment plan as provided in R986-600-621;

(c) case management, career counseling and career planning;

(d) in depth testing and formal assessment;

(e) workforce preparation activities and prevocational services; and

(f) financial literacy services.

(2) The following individualized career services may be available to eligible adults, dislocated workers and youth:

(a) English language acquisition;

(b) out-of-area job search and relocation assistance;

(c) supportive services;

(d) unpaid internships; and

(e) employment internship opportunities.

(3) Additional individualized career services available to youth include:

(a) leadership development;

(b) mentoring;

(c) comprehensive guidance and counseling;

(d) entrepreneurial skills training;

(e) alternative school; and

(f) summer youth employment internship opportunities.

R986-600-607. Training Services.

Training services include basic education, employment related education and work site learning.

R986-600-608. Eligibility Requirements, General Definition.

(1) Basic career services are available to all clients. There are no eligibility requirements for basic career services

offered by the Department.

(2) Eligibility requirements for individualized career services, may be determined before an adult, youth, or dislocated worker can receive services.

(3) Eligibility requirements for training and follow-up services must be determined before an adult, youth or dislocated worker can receive services.

(4) A client is required to sign and date the training program agreement for the program in which he or she is enrolled.

R986-600-609. Citizenship and Employment Authorization Requirements.

A client seeking individualized career or training services must be a citizen of the United States or be employment eligible in the United States. Employment eligible is defined by the WIOA Act, section 188 (a)(5) as citizens and nationals of the US, lawfully admitted permanent resident aliens, refugees, asylees, parolees and other immigrants authorized by the U.S. Attorney General to work in the US.

R986-600-610. Selective Service Registration Requirements.

Male applicants and recipients who are 18 and older must be in compliance with Selective Service registration requirements to receive individualized career or training services.

R986-600-611. Factors Used for Determining Priority.

(1) Priority will be given to recipients of public assistance, other low income clients and individuals who are basic skills deficient for WIOA Adult individualized career and training services. Other criteria may be applied if funding is limited as determined by the Governor's State Workforce Development Board (SWDB).

(2) In the event WIOA Youth funds are limited, priority will be given to clients who have two or more barriers as determined by the SWDB.

(3) Veterans and covered persons, as determined by federal law, will receive priority over non-veterans.

R986-600-612. Eligibility for Individualized Career Services.

(1) Individualized career services are available to adults who:

(a) are unemployed and are determined by the Department to be in need of more individualized career services to obtain employment; or

(b) are employed and are determined by the Department to be in need of more individualized career services to obtain employment that leads to self-sufficiency. Self-sufficiency for WIOA Adult is defined as 100% of the Lower Living Standard Income Level (LLSIL) for the specified family size.

(2) Individualized career services are available to dislocated workers who are:

(a) unemployed and are determined by the Department to be in need of more individualized career services to obtain employment; or

(b) employed and are determined by the Department to be in need of more individualized career services to obtain employment that leads to self-sufficiency. Self-sufficiency for WIOA Dislocated Worker is defined as 80% of the client's layoff wage.

R986-600-613. Income Eligibility.

(1) Dislocated workers do not need to meet income eligibility requirements.

(2) Applicants for youth and adult programs must meet

income eligibility requirements.

(3) A client is deemed to have met the income eligibility requirements for youth services, and adult services, if the client is;

(a) receiving, has received, or has been determined eligible to receive SNAP at any time during the six months prior to the application date. This does not apply if the client only received expedited SNAP;

(b) currently receiving financial assistance from the Department or TANF funds from another state;

(c) homeless;

(d) currently receiving SSI;

(e) in foster care; or

(f) basic skills deficient.

(4) If a client is not eligible under paragraphs (1) or (2) above, the client must meet the low income eligibility guidelines in this rule.

(5) Up to 5% of the youth clients served do not need to meet the income eligibility requirements but must have barriers as determined by the Department. A list of current, eligible barriers is available at the Department.

R986-600-614. How to Determine Who Is Included in the Family.

(1) Family size must be determined to establish income eligibility for adult and youth services. Family size is determined by counting the maximum number of family members in a single residence during the six months prior to the date of application, not including the current month. Family members included in the income determination:

(a) a husband and wife and dependent children;

(b) parent(s) or legal guardian(s) and dependent children;

(c) a husband and wife, if there are no dependent children, and

(d) two people living in a single residence who are not married but have children in common.

(e) dependent is defined as the client's statement that the child is claimable as an IRS dependent.

(2) A client can be considered a "family" of one, if the client is living alone or with a family member and has a disability that substantially limits one or more major life activities.

(3) The income of the parent or guardian is not counted for a client who is over the age of 19 and the parents cannot claim him or her as an IRS dependent.

R986-600-615. Assets.

Assets are not counted when determining eligibility for WIOA services but will be considered in determining whether the client has a need for WIOA funding.

R986-600-616. Countable Income.

(1) Countable income is total gross income from all sources with the exceptions listed below under "Excludable Income". If income is not specifically excluded, it is counted. Countable income, for WIOA purposes includes:

(a) gross wages and salaries including severance pay and payment of accrued vacation leave;

(b) net receipts from self-employment, including farming;

(c) pensions and retirement income including railroad and military retirement;

(d) strike benefits from union funds;

(e) workers' compensation benefits;

(f) alimony;

(g) any insurance, annuity, or disability, payments other than SSI or veterans disability,

(h) merit-based scholarships, fellowships, and

assistantships;

- (i) dividends;
- (j) interest;
- (k) net rental income;
- (l) net royalties, including tribal payments from casino royalties;
- (m) periodic receipts from estates or trusts;
- (n) net gambling or lottery winnings;
- (o) tribal payments;
- (p) disaster relief employment wages;
- (q) on the job training wages reimbursed by the Department;

(r) Social Security Retirement Benefits and Social Security Disability Income which does not include old-age retirement or SSI; and

(s) all training stipends not listed in R986-600-616(2) as excludable income.

(2) Excludable Income. Income that is not counted in determining eligibility:

(a) cash payments under a Federal, state or local public assistance program, including FEP, FEPTP, GA, RRP payment, or EA,

(b) SSI, Old-Age Retirement Benefits, and Survivor's Benefits paid by the Social Security Administration;

(c) payments received from any governmental entity for adoption assistance,

(d) child support;

(e) unemployment compensation;

(f) capital gains;

(g) veterans disability payments other than retirement;

(h) educational financial assistance including Pell grants, work-study and needs-based scholarship assistance;

(i) foster care payments,

(j) tax refunds,

(k) gifts,

(l) loans,

(m) lump-sum inheritances,

(n) one-time insurance payments or compensation for injury,

(o) earned income credit from the IRS,

(p) military service member income, including military pay, military allowances and stipends and military reserve pay;

(q) reparation payments, including German reparation payments, Radiation Exposure Compensation Act payments, and Black Lung Compensation payments;

(r) guardianship subsidies as paid by a governmental entity;

(s) employment internship opportunity wages reimbursed to the employer by the Department;

(t) stipends received from VISTA, Peace Corps, Foster Grandparents Program, Retired Senior Volunteer Program, Youth Works, Americorps, and Job Corp;

(u) non-cash benefits such as employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, federal noncash benefits programs such as Medicare, Medicaid, SNAP, school lunches and housing assistance; and

(v) other amounts specifically excluded by federal statute.

R986-600-617. How to Calculate Income.

(1) To determine if a client meets the income eligibility standards, all income from all sources of all family members during the six months prior to the application date is counted. If necessary, the Department can make a year-to-date estimate based on available records.

(2) The family is income eligible if the annual income meets the higher of:

(a) the poverty line as determined by the U. S. Department of Human Services, or

(b) 70% of the LLSIL as determined by the U. S. Department of Labor and available at the Department of Workforce Services.

R986-600-618. Dislocated Worker.

(1) A dislocated worker is a client who meets one of the following criteria:

(a)(i) has been laid off through no fault of his or her own, and

(A) is eligible for or has exhausted unemployment compensation entitlement, or

(B) has been employed for a duration sufficient to demonstrate attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under unemployment compensation law, and

(ii) is unlikely to return to the client's previous industry or occupation. 'Unlikely to return' means the client lacks the skills to re-enter the industry or occupation, or declares that he or she will not return to that industry or occupation.

(b) has received a notice of layoff;

(c) Was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed as a result of general economic conditions in the community in which the client resides or because of natural disasters;

(d) Is a displaced homemaker. A WIOA displaced homemaker is a client who has been providing unpaid services to family members in the home and who:

(i) has been dependent on the income of another family member but is no longer supported by that income; and

(ii) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment;

(e) was laid off from military service and

(i) is eligible for or has exhausted unemployment compensation entitlement,

(ii) is unlikely to return to the previous industry or occupation, and

(iii) was discharged from the military service under conditions other than dishonorable; or

(f) is defined by the Department of Veteran Affairs as a covered person who left employment in order to relocate because of an assignment change of the military service member, and

(i) is eligible for or has exhausted unemployment compensation entitlement, or

(ii) has been employed for a duration sufficient to demonstrate attachment to the workforce but is not eligible for unemployment compensation due to insufficient earnings or having performed services not covered for unemployment compensation, and

(iii) is unlikely to return to the client's previous industry or occupations.

(2) The displacement must be no more than 24 months prior to the date of application.

(3) There are no income or asset requirements for dislocated worker eligibility.

(4) If the Department is providing services under a National Reserve Discretionary Grant, additional eligibility requirements must be met.

R986-600-619. Participation Requirements.

Payment of any and all financial assistance, individualized career and/or training services is contingent upon the client participating, to the maximum extent possible, in assessment and evaluation, and the completion of a negotiated employment plan.

R986-600-620. Participation in Obtaining an Assessment.

(1) When the Department determines that a client has a need for individualized career services, an employment counselor/case worker may be assigned to assess the needs of the client.

(2) When the Department determines a client has a need for training services an employment counselor will be assigned to assess the needs of the client.

(3) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

R986-600-621. Requirements of an Employment Plan.

(1) A client is required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan.

(2) The goal of the employment plan is obtaining employment.

(3) An employment plan consists of activities designed to help a client become employed.

(4) The employment plan may require that the client:

(a) search for employment.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(g) participate in rehabilitative services as prescribed by the state Office of Rehabilitation.

(5) The client must meet the performance expectations of each activity in the employment plan in order to remain eligible for certain individualized career or training services.

(6) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which may include providing ongoing information and or documentation relative to their progress and providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(7) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(8) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

R986-600-622. Additional Requirements of an Employment Plan for Youth.

(1) Employment plans for all youth must reflect intentions to assist with preparing for post-secondary education and/or employment; finding effective connections to the job market and employers, and understanding the links between academic and occupational learning.

(2) The goal of the youth program is to reconnect out-of-school youth to education and employment and assist in-school youth with completing education through:

(a) placement in employment or postsecondary education;

(b) attainment of a degree or certificate; and/or

(c) literacy and numeracy gains for out-of-school youth who are basic skill deficient.

R986-600-623. Individualized Career and Training Services as Part of an Employment Plan.

(1) A client's participation in training services is limited per exposure to the lesser of;

(a) 24 months which need not be continuous and which can be waived by a Department supervisor based on individual circumstances, or

(b) the completion of the education and training goals of the employment plan.

(2) Education and training will only be supported when the client meets appropriateness as provided in R986-600-624.

(3) Additional payments and/or services may be allowed under certain circumstances based on individual need provided they are necessary and appropriate to enable the client to participate in activities authorized under WIOA.

R986-600-624. Appropriateness for Training Services.

(1) To be eligible for training services, the client must:

(a) have met the funding priority requirements for individualized career services as listed in R986-600-611; and

(b) be deemed appropriate for training services by the Department. To be deemed appropriate, the client must:

(i) have been determined by the Department to be in need of training services,

(ii) have the skills and qualifications to successfully complete the selected training program,

(iii) select a program of training that is directly linked to employment opportunities in the area in which they plan to work, and

(iv) be unable to obtain grant assistance from other sources to pay the costs of such training or the other grant assistance is pending. If the client's PELL grant is pending when training services are provided, and later the PELL grant is awarded, the client must reimburse the Department for those training costs.

(2) A client who does not meet the requirements listed in subsection (1) of this section will be denied training services by the Department.

R986-600-625. Funding.

(1) When a client is approved for individualized career or training services, the Department will estimate the anticipated cost to the Department associated with those services and reserve that amount for accounting purposes. This amount may be revised and/or rescinded by the Department at any time without prior notice to the client.

(2) The Department issues an electronic benefit transfer card (card) to each eligible individualized career and/or training service client to pay for training, supportive services, and incentives.

(3) The client must prove that all funds received from the Department were spent as intended. Proof may require receipts. If a client is found to have been ineligible for funds, made unauthorized use of Department funds, or cannot prove how those funds were spent, the client will be responsible for repayment of the overpayment.

(4) Amounts remaining on the card after 30 days of inactivity are subject to expungement.

R986-600-626. The Right to Appeal a Denial of Services.

If an applicant or a client who is currently receiving services is denied services the client or applicant can request a hearing as provided in Rules R986-100-123 through R986-100-135.

R986-600-652. Initial Eligibility Requirements for Training Providers and Programs.

(1) Training providers must apply for a specific

program/s, and be found eligible, to be included on the Utah Eligible Training Provider List (ETPL).

(2) The following training providers can apply to be included in the ETPL;

- (a) post-secondary institutions,
- (b) registered apprenticeship programs,
- (c) other public or private providers of training services,

or

(d) providers of adult education and literacy activities including English as a Second Language.

(3) Training provider requirements.

(a) All training providers seeking initial eligibility must have been in business as a training provider and have provided training to students for at least two years.

(b) Training providers, with the exception of government entities and basic education providers, must be registered with the Utah Division of Consumer Protection as a Post-Secondary Proprietary School. The only acceptable reasons for exemption from registration as a post-secondary proprietary school are for those schools governed by an accrediting body which oversees program instruction.

(4) Training providers must apply for eligibility for each training program they wish to have included on the ETPL.

(5) Training programs are defined as one or more courses or classes, or a structured regimen that leads to;

- (a) an industry recognized post-secondary credential,
- (b) employment,
- (c) high school diploma or GED, or
- (d) a measurable skill gain toward credential or employment.

(6) Training programs can be delivered in-person, online or in a blended approach.

(a) Online training is only eligible if it;

(i) is part of a curriculum where lessons are assigned, completed and returned,

(ii) requires students to interact with instructors, and

(iii) requires students to take periodic tests.

(b) Self-directed online training that is not instructor-led is not eligible.

(7) Training programs must submit performance data that include data from at least one training class that has completed and/or graduated from the program and the students have been tracked for at least 3 months after completing the program. If a training program has not operated for at least three months after the first class has graduated, the provider must submit letters verifying the need for trained employees from at least three local businesses that hire employees that need the type of training offered.

(8) Out of state training providers that do not have a training location in Utah may apply to be on the Utah ETPL only if they maintain provider and program eligibility on the ETPL in the state where their main or corporate office is located.

(9) Utah may enter into reciprocal agreements with other states to utilize the ETPL from those states. The agreement allows Utah clients to select a training program from another state's ETPL.

(10) The Department will not pay for training costs that are incurred prior to the training program being found eligible.

(11) when applying and while on the ETPL, training providers must agree to abide by the Training Provider Terms and Conditions Agreement which is provided as part of the application process.

R986-600-653. Applying for Initial Training Provider and Program Eligibility.

(1) Training providers must submit the following information for each program for which they are seeking

eligibility:

- (a) training provider contact information,
- (b) training program description and requirements,
- (c) connection with in-demand industry sectors and occupations,
- (d) license or accreditation, if applicable,
- (e) equal opportunity grievance procedure,
- (f) aggregate performance data for every graduating class in the last full school year for every student, and
- (g) any other information, documentation and/or verification requested by the Department.

(2) The training provider will be notified once an eligibility decision is made. If an application is denied, the notification will include information on the appeals process as described in R986-600-659.

R986-600-654. Registered Apprenticeships.

(1) All U.S. Department of Labor (DOL) Registered Apprenticeships located in Utah are eligible to be included on the ETPL. In order to provide funding for classroom training, the registered apprenticeship sponsor must be listed on the ETPL.

(2) Registered apprenticeship program sponsors must request to be included on the list verbally, through email or hard copy.

(3) Registered apprenticeship sponsors must submit information on the sponsor, program and training provider. Registered apprenticeship sponsors are not required to submit performance standards.

(4) Any registered apprenticeship will be removed from the ETPL if it loses its registration voluntarily or involuntarily.

(5) If a registered apprenticeship program sponsor is determined to have provided inaccurate information or to have substantially violated any provision of WIOA, they will be removed from the ETPL.

R986-600-655. Informed Client Choice.

The ETPL contains information for a client to make an informed choice based on performance data, the connections the training has with in-demand occupations, and cost.

R986-600-656. Continued Eligibility Requirements for Training Providers and Programs.

(1) Training programs receive initial eligibility for up to one year. To remain on the ETPL, the training provider must complete an application for continued eligibility and submit it before the expiration of the last month of eligibility.

(2) Training providers must renew eligibility annually or more often as instructed by the Department.

(3) If a training provider already on the list adds a new program, it must apply for approval of that program. The renewal date for the new program will be coordinated with the provider's other program or programs so all programs for that provider renew at the same time.

(4) If any of the information provided in R986-600-653 changes, the provider must notify the Department.

R986-600-657. Applying for Continued Eligibility Training Provider and Program Eligibility.

(1) Training providers must certify that all the information previously provided for each program for which they are seeking continued eligibility is current and correct.

(2) As part of continued eligibility the provider must submit performance data by program for the last school year for every WIOA student enrolled in the program.

(3) The Department will also consider the provider's past compliance with the Training Provider Terms and Conditions Agreement when determining continued

eligibility.

(4) Programs that do not meet the minimum standards or provide the required information by the renewal date will be removed from the ETPL. If a provider is unable to complete the renewal requirements, an extension may be granted if the delay is due to exceptional circumstances or circumstances that are beyond the provider's control. The request for an extension must be submitted 30 days before the renewal deadline or as soon as possible.

(5) Training provider will be notified of the decision on continued eligibility. If an application is denied, the notification will include information on the appeals process as described in R986-600-659

R986-600-658. Training Provider Terms and Conditions, Noncompliance.

(1) Training providers must agree to comply with the Training Provider Terms and Conditions Agreement. If a training provider does not follow the Terms and Conditions Agreement, the provider and all of its programs will be removed from the ETPL.

(2) If a training provider reports false or inaccurate information during the initial or continued eligibility process or substantially violates a provision of Title I of WIOA or its implementing regulations, including Equal Opportunity (EO) regulations, the training provider and all of its programs will be removed from the ETPL. The Department may also do an onsite visit to ensure compliance with WIOA and EO regulations.

(3) If a provider has been removed from the ETPL the Department will not pay for any additional training costs for any current or future clients until the training provider is eligible to reapply for ETPL initial eligibility.

(4) If a training provider has been removed from the ETPL, they will be notified if they will be eligible to reapply for initial eligibility and when they can submit a new application.

R986-600-659. Training Provider Right to Appeal.

(1) If a Training Provider or Program is denied eligibility; or the training provider and/or program has been removed from the ETPL due to non-compliance, they have the right to appeal the decision.

(3) Training providers must provide a written appeal to the Department within 30 days from the decision date.

(4) The SWDB will review the appeal and make a final decision.

(5) EO findings are reviewed by the Department executive director for a final decision.

(6) Training providers will be notified of the final decision.

**KEY: Workforce Innovation and Opportunity Act, (WIOA), SNAP
May 1, 2017
Notice of Continuation September 3, 2015**

35A-5

R986. Workforce Services, Employment Development.**R986-900. Supplemental Nutrition Assistance Program (SNAP).****R986-900-901. Authority for SNAP and Applicable Rules.**

(1) SNAP provides assistance to eligible individuals in accordance with the requirements found in: The Food Stamp Act of 1977 as amended (7 USC 2011 et seq); 7 CFR 271 through 7 CFR 283; and PRWORA and its amendments. The complete text of all applicable federal laws and regulations can be found at the United States Department of Agriculture web site at: <http://www.fns.usda.gov/fsp/>. Federal regulations are also available at most public libraries, on the Internet at: http://access.gpo.gov/nara/cfr/waisidx_00/7cfrv4_00.html, at the Department of Workforce Services, Division of Employment Development, Appeals Division 2nd Floor, 140 E 300 S, Salt Lake City UT, 84145; or at the Division of Administrative Rules, 4120 State Office Building, Salt Lake City UT, 84114. The state maintains a policy manual describing the benefits and eligibility requirements for receipt of SNAP. The policy manual is available on the Department's Internet web site. The provisions of 7 CFR 271 through 7 CFR 283 (2000) are incorporated herein by reference.

(2) The provisions of R986-100 apply to SNAP except where specifically noted otherwise.

R986-900-902. Options and Waivers.

The Department administers SNAP in compliance with federal law with the following exceptions or clarifications:

(1) The following options not otherwise found in R986-100 have been adopted by the Department where allowed by the applicable federal law or regulation:

(a) The Department has opted to hold hearings at the state level and not at the local level.

(b) The Department does not offer a workfare program for ABAWDs (Able Bodied Adults Without Dependents).

(c) An applicant is required to apply.

(d) The Department has opted to use the Simplified Standard Utility Allowance found in 7 USC 2014(e)(7)(C)(iii) as amended by 2002 H.R. 2646 known as Section 4104 of the Farm Bill. The Department has a mandatory standard utility allowance. This means the customer is eligible for an appropriate utility allowance at the time of application and eligibility for the appropriate allowance is re-determined at recertification or if the household moves to a different place of residence. The customer does not have the choice of using "actual" utility expenses. The Department has three utility standards that are updated annually and are available upon request. This Farm Bill option allows households in subsidized housing and households in shared living arrangements to receive the full appropriate utility allowance.

(e) The Department does not use photo ID cards. ID cards are available upon request to homeless, disabled, and elderly clients so that the client is able to use SNAP benefits at a participating restaurant.

(f) The state has opted to provide SNAP benefits through the use of an electronic benefit transfer system (EBT).

(g) The Department counts diversion payments in the SNAP allotment calculation.

(h) The Department has opted to use Utah's TANF vehicle allowance rules in conjunction with the SNAP vehicle allowance regulations at 7 CFR 273.8, as authorized by Pub. L. No. 106-387 of the Agriculture Appropriations Act 2001, Food Stamp Act of 1977, 7 USC 2014, as amended.

(i) The Department has opted to count all of an ineligible alien's resources and all but a pro rata share of the ineligible alien's income and deductible expenses as provided in 7 CFR 273.11(c)(3)(ii)(A).

(j) A client may waive his or her right to an

administrative disqualification hearing.

(k) A client may deduct actual, allowable expenses from self employment, or may opt to deduct 40% of the gross income from self employment to determine net income.

(l) The Department has opted to align SNAP with FEP in determining how to count educational assistance income. That income is counted for SNAP as provided in R986-200-235(3)(q).

(m) The Department has opted to do simplified reporting as provided in 7 CFR 273.12(a)(1)(vii).

(n) The Department has opted to operate a Mini Simplified Food Stamp Program under 7 CFR 273.25. Under this option, a client receiving SNAP and FEP or FEPT, must participate as required in R986-200-210. A client found ineligible due to non-compliance under R986-200-212 will also be subject to the SNAP sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under SNAP regulations.

(o) Effective July 1, 2010, the Department will count the full income of an ineligible alien household member for both the gross and net income tests and for determining the level of benefits. The deductible expenses of the ineligible alien household member will no longer be prorated and the full value of all assets will continue to be counted. This also applies to ineligible aliens who are unable or unwilling to provide documentation of their alien status. This does not apply to the following ineligible aliens:

(i) An alien who is lawfully admitted as a permanent resident.

(ii) An alien who is granted asylum under Section 208 of the INA.

(iii) An alien who is admitted as a refugee under Section 207 of the INA.

(iv) An alien who is paroled in accordance with Section 212(d)(5) of the INA.

(v) An alien whose deportation or removal has been withheld in accordance with Section 243 of the INA.

(vi) An alien who is aged, blind or disabled and is admitted for temporary or permanent residency under Section 245A(b)(1) of the INA.

(vi) An alien who is a special agricultural worker admitted for temporary residence under Section 210 (a) of the INA.

For an ineligible alien listed in this subparagraphs (i) through (vi), a prorated share of the ineligible alien's income and expenses will be counted for purposes of applying the gross and net income tests and to determine the level of benefits. The full amount of the ineligible alien's assets will count.

(p) The Department allows the following exemptions from the Employment and Training (E and T) program for individuals who:

(i) are Refugee Cash Assistance (RCA) participants;

(ii) are on a temporary layoff from their place of employment;

(iii) live more than 35 miles from an employment center;

(iv) lack child care, either because it is not available or the customer is not eligible for child care assistance;

(v) are not appropriate for E and T as determined by a manager or designee;

(vi) are age 47 through the month of their 60th birthday;

(vii) are low functioning/have developmental disabilities/are socially dysfunctional and who have obvious functional limitations that are a substantial handicap to employment;

(viii) have current domestic violence issues;

(ix) have limited language skills or individuals whose primary language is other than English;

- (x) lack public and/or private transportation;
- (xi) are in the application or appeals process for SSI;
- (xii) have earned income, regardless of the amount earned;
- (xiii) have no fixed address;
- (xiv) are pregnant regardless of trimester;
- (xv) are on probation or parole who are required to complete court ordered activities such as work release and drug court; or
- (xvi) are participating in a program with a Department partner such as case management by Vocational Rehabilitation, or are participating in a Title V or Choose to Work program.

(q) Beginning July 1, 2012, individuals who meet the requirements of an exemption will no longer be allowed to receive services on a voluntary basis or receive a work reimbursement.

(2) The Department has been granted the following applicable waivers from the Food and Nutrition Service:

(a) The Department requires that a household need only report changes in earned income if there is a change in source, the hourly rate or salary, or if there is a change in full-time or part-time status. A client is required to report any change in unearned income over \$25 or a change in the source of unearned income.

(b) The Department uses a combined Notice of Expiration and Shortened Recertification Form. Notice of Expiration is required in 7 CFR 273.14(b)(1)(i). The Recertification Form is found under 7 CFR 273.14(b)(2)(i).

(c) The Department conducts the Family Nutrition Education Program for individuals even if they are otherwise ineligible for SNAP.

(d) The Department may deduct overpayments that resulted from an IPV from a household's monthly entitlement.

(e) If the application was received before the 15th of the month and the client has earned income, the certification period can be no longer than six months. The initial certification period may be as long as seven months if the application was received after the 15th of the month.

(f) A household which had its SNAP terminated can be reinstated during the calendar month following the month assistance was terminated without completing a new application if the reason for the termination is fully resolved. The reason for the termination does not matter. Assistance will be prorated to the date on which the client reported that the disqualifying condition was resolved if verification is received within ten days of the report. Assistance is reinstated for the remaining months of the certification period and the certification period must not be changed.

(g) If the Department is unable to obtain proper documentary evidence from an employer, the Department may use Utah quarterly wage data as the primary verification of income when calculating overpayments.

(h) The Department will hold disqualification hearings by telephone.

(i) All initial interviews, and recertification interviews for households certified for 12 months or less, will have their initial or recertification interviews conducted by telephone, rather than in person, unless the household requests an in-person interview or the Department determines that an in-person interview is necessary to resolve issues that would be better facilitated face-to-face.

(j) The federal regulation that requires all interviews be scheduled for a specific date and time is waived for initial telephone interviews. This allows clients to call anytime Monday through Friday from 8 a.m. to 5 p.m. to complete the required initial interview. Households selected for the "Assessment of the Contributions of an Interview to the Supplemental Nutrition Assistance Program (SNAP)

Eligibility and Benefits Determinations" study, also known as the No Interview Pilot, will be exempt from the interview requirement. Customer contact may be needed to complete the application and/or recertification process. This waiver will be in place September 1, 2012 - November 30, 2013.

(k) To meet the student work exemption, a student enrolled in post-secondary education half-time or more must work an average of 20 hours per week. The work hours must be averaged over the 30 days immediately prior to the date of application or recertification.

(l) Certain Utah counties have been granted a waiver which exempts ABAWDs from the work requirements of Section 824 of PRWORA. The counties granted this waiver change each year based on Department of Labor statistics. A list of counties granted this waiver is available from the Department.

**KEY: public assistance, SNAP
October 1, 2015
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35A-3-103

R994. Workforce Services, Unemployment Insurance.**R994-403. Claim for Benefits.****R994-403-101a. Filing a New Claim.**

(1) A new claim for unemployment benefits is made by filing with the Department of Workforce Services Claims Center. A new claim can be filed by telephone, completing an application at the Department's web site, or as otherwise instructed by the Department.

(2) The effective date of a new claim for benefits is the Sunday of the week in which the claim is filed, provided the claimant did not work full-time during that week, or is not entitled to earnings equal to or in excess of the WBA for that week. A claim for benefits can only be made effective for a prior week if the claimant can establish good cause for late filing in accordance with R994-403-106a.

(3) When a claimant files a new claim during the last week of a quarter and has worked less than full-time for that week, the Department will make the claim effective that week if it is advantageous to the claimant, even if the claimant has earnings for that week that are equal to or in excess of the WBA.

(4) Wages used to establish eligibility for a claim cannot be used on a subsequent claim.

R994-403-102a. Cancellation of Claim.

(1) Once a weekly claim has been filed and the claimant has been deemed monetarily eligible, the claim is considered to have been established, even if no payment has been made or waiting week credit granted. The claim then remains established for 52 weeks during which time another regular claim may not be filed against the state of Utah unless the claim is canceled.

(2) A claim may be canceled if the claimant requests that the claim be canceled and one of the following circumstances can be shown:

- (a) no weekly claims have been filed;
- (b) cancellation is requested prior to the issuance of the monetary determination;
- (c) the request is made within the same time period permitted for an appeal of the monetary determination and the claimant returns any benefits that have been paid;
- (d) the claimant had earnings, severance, or vacation payments equal to or greater than the WBA applicable to all weeks for which claims were filed;
- (e) the claimant meets the eligibility requirements for filing a new claim following a disqualification due to a strike in accordance with the requalifying provisions of Subsection 35A-4-405(4)(c);
- (f) the claimant meets the requirements for cancellation established under the provisions for combined wage claims in R994-106-107; or
- (g) the claimant has filed an unemployment compensation for ex-military (UCX) claim, and it is determined the claimant does not have wage credits under Title 5, chapter 85, U.S. Code.

(3) If a claimant is disqualified from the receipt of unemployment benefits because he or she was discharged for a crime in connection with work under R994-405-210, whether the claimant was deemed monetarily eligible or not, the claim will be established for 52 weeks and cannot be canceled even if the requirements of subsection (2) have been satisfied.

R994-403-103a. Reopening a Claim.

(1) A claim for benefits is considered "closed" when a claimant reports four consecutive weeks of earnings equal to or in excess of the WBA or does not file a weekly claim within 27 days from the last week filed. In those circumstances, the claimant must reopen the claim before

benefits can be paid.

(2) A claimant may reopen the claim any time during the 52-week period after first filing by contacting the Claims Center. The effective date of the reopened claim will be the Sunday of the week in which the claimant requests reopening unless good cause is established for failure to request reopening during a prior week in accordance with R994-403-106a.

R994-403-104g. Using Unused Wages for a Subsequent Claim.

(1) A claimant may have sufficient wage credits to monetarily qualify for a subsequent claim without intervening employment.

(2) With the exception of subsection (3), benefits will not be paid under Subsection 35A-4-403(1)(g) from the effective date of the claim and continuing until the week the claimant provides proof of covered employment equal to at least six times the WBA. Each of the following elements must be satisfied:

(a) the claimant must have performed work in covered employment after the effective date of the original claim, but not necessarily during the benefit year of the original claim;

(b) actual services must have been performed. Vacation, severance pay, or a bonus cannot be used to requalify; and

(c) the claimant must have earnings from covered employment, as defined in R994-201-101(9), equal to at least six times the WBA of the original or subsequent claim, whichever is lower.

(3) Intervening covered employment is not required if the claimant did not receive benefits during the preceding benefit year.

R994-403-105a. Filing Weekly Claims.

(1) Claims must be filed on a weekly basis. For unemployment benefit purposes, the week begins at 12:01 a.m. on Sunday and ends at midnight on Saturday. The claimant is the only person who is authorized to file weekly claims. The responsibility for filing weekly claims cannot be delegated to another person.

(2) Each weekly claim should be filed as soon as possible after the Saturday week ending date. If the claim has not been closed, the Department will allow 20 days after the week ending date to file a timely claim. A weekly claim filed 21 or more calendar days after the week ending date will be denied unless good cause for late filing is established in accordance with R994-403-106a.

R994-403-106a. Good Cause for Late Filing.

(1) Claims must be filed timely to insure prompt, accurate payment of benefits. Untimely claims are susceptible to errors and deprive the Department of its responsibility to monitor eligibility. Benefits may be paid if it is determined that the claimant had good cause for not filing in a timely manner.

(2) The claimant has the burden to establish good cause by competent evidence. Good cause is limited to circumstances where it is shown that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable. Some reasons for good cause for late filing may raise other eligibility issues. Some examples that may establish good cause for late filing are:

(a) a crisis of several days duration that interrupts the normal routine during the time the claim should be filed;

(b) hospitalization or incarceration; or

(c) coercion or intimidation exercised by the employer to prevent the prompt filing of a claim.

(3) The Department is the only acceptable source of information about unemployment benefits. Relying on inaccurate advice from friends, relatives, other claimants or similar sources does not constitute good cause.

(4) Good cause for late filing cannot extend beyond 65 weeks from the filing date of the initial claim.

R994-403-107b. Registration, Workshops, Deferrals - General Definition.

(1) A claimant must register for work with the Department, unless, at the discretion of the Department, registration is waived or deferred.

(2) The Department may require attendance at workshops designed to assist claimants in obtaining employment.

(3) Failure, without good cause, to comply with the requirements of Subsections (1) and (2) of this section may result in a denial of benefits. The claimant has the burden to establish good cause through competent evidence. Good cause is limited to circumstances where it is shown that the failure to comply was due to circumstances beyond the control of the claimant or which were compelling and reasonable. The proof of inability to register or report may raise an able or available issue.

(4) The denial of benefits begins with the Sunday of the week the claimant failed to comply and will continue through the Saturday prior to the week the claimant contacts the Department and complies by either registering for work, reporting as required, or scheduling an appointment to attend the next available workshop or conference. The denial can be waived if the Department determines the claimant complied within 7 calendar days of the decision date.

R994-403-108b. Deferral of Work Registration and Work Search.

(1) The Department may elect to defer the work registration and work search requirements. A claimant placed in a deferred status is not required to actively seek work but must meet all other availability requirements of the act. Deferrals are generally limited to the following circumstances:

(a) Labor Disputes.

A claimant who is unemployed due to a labor dispute may be deferred while an eligibility determination under Subsection 35A-4-405(4) is pending. If benefits are allowed, the claimant must register for work immediately.

(b) Union Attachment.

(i) A claimant who is a union member in good standing, is on the out-of-work list, or is otherwise eligible for a job referral by the union, and has earned at least half of his or her base period earnings through the union, may be eligible for a deferral. If a deferral is granted to a union member, it shall not be extended beyond the mid-point of the claim unless the claimant can demonstrate a reasonable expectation of obtaining employment through the union.

(ii) If the claimant is not in deferred status because the claimant did not earn at least 50 percent of his or her base period wage credits in employment as a union member, or the deferral has ended, the claimant must meet the requirements of an active, good faith work search by contacting employers in addition to contacts with the union. This work search is required even though unions may have regulations and rules which penalize members for making independent contacts to try to find work or for accepting nonunion employment.

(c) Employer Attachment.

A claimant who has an attachment to a prior employer and reasonable assurance of returning to full-time employment within ten weeks of filing or reopening a claim may have the work registration requirement deferred to the expected date of recall. A claimant is presumed to have

reasonable assurance of employment if he or she previously worked for the employer and there has been no change in the conditions of his or her employment which would indicate severance of the employment relationship. The deferral should generally not extend longer than ten weeks. To extend beyond ten weeks, the claimant must have earned at least half of his or her base period earnings with the employer in question and the employer must submit a request to the department.

(d) Three Week Deferral.

A claimant who accepts a definite offer of full-time work to begin within three weeks, shall be deferred for that period.

(e) Seasonal.

A claimant may be deferred when, due to seasonal factors, work is not available in the claimant's primary base period occupation and other suitable work is not available in the area.

(f) Department approval.

If Department approval is granted under the elements of R994-403-202, the claimant will be placed in deferred status once the training begins and will not be required to register for work or to seek and accept work. The deferral also applies to break periods between successive terms as long as the break period is four weeks or less. A claimant must make a work search prior to the onset of training, even if the claimant has been advised that the training has been approved.

(2) Deferrals cannot be granted if prohibited by state or federal law for certain benefit programs.

R994-403-109b. Profiled Claimants.

(1) The Department will identify individuals who are likely to exhaust unemployment benefits through a profiling system and require that they participate in reemployment services. These services may include job search workshops, job placement services, counseling, testing, and assessment.

(2) In order to avoid disqualification for failure to participate in reemployment services, the claimant must show good cause for nonparticipation. Good cause is limited to circumstances where the claimant can show that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable.

(3) Failure to participate in reemployment services without good cause will result in a denial of benefits beginning with the week the claimant refuses or fails to attend scheduled services and continuing until the week the claimant contacts the Employment Center to arrange participation in the required reemployment service.

(4) Some reasons for good cause for nonparticipation may raise other eligibility issues.

R994-403-110c. Able and Available - General Definition.

(1) The primary obligation of the claimant is to become reemployed. A claimant may meet all of the other eligibility criteria but, if the claimant cannot demonstrate ability, availability, and an active good faith effort to obtain work, benefits cannot be allowed.

(2) A claimant must be attached to the labor force, which means the claimant can have no encumbrances to the immediate acceptance of full-time work. The claimant must:

(a) be actively engaged in a good faith effort to obtain employment; and

(b) have the necessary means to become employed including tools, transportation, licenses, and childcare if necessary.

(3) The continued unemployment must be due to the lack of suitable job opportunities.

(4) The only exception to the requirement that a claimant actively seek work is if the Department has approved

schooling under Section 35A-4-403(2) and the claimant meets the requirements of R994-403-107b.

(5) The only exception to the requirements that the claimant be able to work and actively seeking full-time work are that the claimant meets the requirements of R994-403-111c(6).

R994-403-111c. Able.

(1) The claimant must have no physical or mental health limitation which would preclude immediate acceptance of full-time work. A recent history of employment is one indication of a claimant's ability to work. If there has been a change in the claimant's physical or mental capacity since his or her last employment, there is a presumption of inability to work which the claimant must overcome by competent evidence. The claimant must show that there is a reasonable likelihood that jobs exist which the claimant is capable of performing before unemployment insurance benefits can be allowed. Pregnancy is treated the same as other physical limitations.

(2) For purposes of determining weekly eligibility for benefits, it is presumed a claimant who is not able to work more than one-half the normal workweek will be considered not able to perform full-time work. The normal workweek means the normal workweek in the claimant's occupation. A claimant will be denied under this section for any week in which the claimant refuses suitable work due to an inability to work, regardless of the length of time the claimant is unable to work.

(a) Past Work History.

Benefits will not be denied solely on the basis of a physical or mental health limitation if the claimant earned base period wages while working with the limitation and is:

- (i) willing to accept any work within his or her ability;
- (ii) actively seeking work consistent with the limitation;

and

(iii) otherwise eligible.

Under these circumstances, the unemployment is considered to be due to a lack of employment opportunities and not due to an inability to work.

(b) Medical Verification.

When an individual has a physical or mental health limitation, medical information from a competent health care provider is one form of evidence used to determine the claimant's ability to work. The provider's opinion is presumed to be an accurate reflection of the claimant's ability to work, however, the provider's opinion may be overcome by other competent evidence. The Department will determine if medical verification is required.

(3) Temporary Disability.

(a) Employer Attached.

A claimant is not eligible for benefits if the claimant is not able to work at his or her regular job due to a temporary disability and the employer has agreed to allow the claimant to return to the job when he or she is able to work. In this case, the claimant's unemployment is due to an inability to work rather than lack of available work. The claimant is not eligible for benefits even if there is other work the claimant is capable of performing with the disability. If a claimant is precluded from working due to Federal Aviation Administration regulations because of pregnancy, and the employer has agreed to allow the claimant to return to the job, the claimant is considered to be on a medical leave of absence and is not eligible for benefits.

(b) No Employer Attachment.

If the claimant has been separated from employment with no expectation of being allowed to return when he or she is again able to work, or the temporary disability occurred after becoming unemployed, benefits may be allowed even though

the claimant cannot work in his or her regular occupation if the claimant can show there is work the claimant is capable of performing and for which the claimant reasonably could be hired. The claimant must also meet other eligibility requirements including making an active work search.

(4) Hospitalization.

A claimant is unable to work if hospitalized unless the hospitalization is on an out-patient basis or the claimant is in a rehabilitation center or care facility and there is independent verification that the claimant is not restricted from immediately working full-time. Immediately following hospitalization, a rebuttable presumption of physical inability continues to exist for the period of time needed for recuperation.

(5) Workers' Compensation.

(a) Compensation for Lost Wages.

A claimant is not eligible for unemployment benefits while receiving temporary total disability workers' compensation benefits.

(b) Subsequent Awards.

The Department may require that a claimant who is receiving permanent partial disability benefits from workers' compensation show that he or she is able and available for full-time work and can reasonably expect to obtain full-time work even with the disability.

(c) Workers' compensation disability payments are not reportable as wages.

(6) Physical or Mental Health Limitation.

(a) A claimant who is not able to work full-time due to a physical or mental health limitation, may be considered eligible under this rule if:

(i) the claimant's base period employment was limited to part-time because of the claimant's physical or mental health limitations;

(ii) the claimant's prior part-time work was substantial. Substantial is defined as at least 50 percent of the hours customarily worked in the claimant's occupation;

(iii) the claimant is able to work at least as many hours as he or she worked prior to becoming unemployed;

(iv) there is work available which the claimant is capable of performing; and

(v) the claimant is making an active work search.

(b) The Department may require that the claimant establish ability by competent evidence.

R994-403-112c. Available.

(1) General Requirement.

The claimant must be available for full-time work. Any restrictions on availability, such as lack of transportation, domestic problems, school attendance, military obligations, church or civic activities, whether self-imposed or beyond the control of the claimant, lessen the claimant's opportunities to obtain suitable full-time work.

(2) Activities Which Affect Availability.

It is not the intent of the act to subsidize activities which interfere with immediate reemployment. A claimant is not considered available for work if the claimant is involved in any activity which cannot be immediately abandoned or interrupted so that the claimant can seek and accept full-time work.

(a) Activities Which May Result in a Denial of Benefits.

For purposes of establishing weekly eligibility for benefits, a claimant who is engaged in an activity for more than half the normal workweek that would prevent the claimant from working, is presumed to be unavailable and therefore ineligible for benefits. The normal workweek means the normal workweek in the claimant's occupation. This presumption can be overcome by a showing that the activity did not preclude the immediate acceptance of full-

time work, referrals to work, contacts from the Department, or an active search for work. When a claimant is away from his or her residence but has made arrangements to be contacted and can return quickly enough to respond to any opportunity for work, the presumption of unavailability may be overcome. The conclusion of unavailability can also be overcome in the following circumstances:

(i) Definite Offer of Work or Recall.

If the claimant has accepted a definite offer of full-time employment or has a date of recall to begin within three weeks, the claimant does not have to demonstrate further availability except as provided in subparagraphs (B) and (C) of this section and is not required to seek other work. Because the statute requires that a claimant be able to work, if a claimant is unable to work for more than one-half of any week due to illness or hospitalization, benefits will be denied.

(ii) Jury Duty or Court Attendance.

Jury duty or court attendance is a public duty required by law and a claimant will not be denied benefits if he or she is unavailable because of a lawfully issued summons to appear as a witness or to serve on a jury unless the claimant:

(A) is a party to the action;

(B) had employment which he or she was unable to continue or accept because of the court service; or

(C) refused or delayed an offer of suitable employment because of the court service.

The time spent in court service is not a personal service performed under a contract of hire and therefore is not considered employment.

(b) Activities Which Will Result in a Denial of Benefits.

(i) Refusal of Work.

When a claimant refuses any suitable work, the claimant is considered unavailable. Even though the claimant had valid reasons for not accepting the work, benefits will not be allowed for the week or weeks in which the work was available. Benefits are also denied when a claimant fails to be available for job referrals or a call to return to work under reasonable conditions consistent with a previously established work relationship. This includes referral attempts from a temporary employment service, a school district for substitute teaching, or any other employer for which work is "on-call."

(ii) Failure to Perform All Work During the Week of Separation.

(A) Benefits will be denied for the week in which separation from employment occurs if the claimant's unemployment was caused because the claimant was not able or available to do his or her work. In this circumstance, there is a presumption of continued inability or unavailability and an indefinite disqualification will be assessed until there is proof of a change in the conditions or circumstances.

(B) If the claimant was absent from work during the last week of employment and the claimant was not paid for the day or days of absence, benefits will be denied for that week. The claimant will be denied benefits under this section regardless of the length of the absence.

(3) Hours of Availability.

(a) Full-Time.

Except as provided in R994-403-111c(5), in order to meet the availability requirement, a claimant must be ready and willing to immediately accept full-time work. Full-time work generally means 40 hours a week but may vary due to customary practices in an occupation. If the claimant was last employed less than full-time, there is a rebuttable presumption that the claimant continues to be available for only part-time work.

(b) Other Than Normal Work Hours.

If the claimant worked other than normal work hours and the work schedule was adjusted to accommodate the claimant, the claimant cannot continue to limit his or her hours of

availability even if the claimant was working 40 hours or more. The claimant must be available for full-time work during normal work hours as is customary for the industry.

(4) Type of Work and Wage Restrictions.

(a) The claimant must be available for work that is considered suitable based on the length of time he or she has been unemployed as provided in R994-405-306.

(b) Contract Obligation.

If a claimant is restricted due to a contractual obligation from competing with a former employer or accepting employment in the claimant's regular occupation, the claimant is not eligible for benefits unless the claimant can show that he or she:

(i) is actively seeking work outside the restrictions of the noncompetitor contract;

(ii) has the skills and/or training necessary to obtain that work; and

(iii) can reasonably expect to obtain that employment.

(5) Employer/Occupational Requirements.

If the claimant does not have the license or special equipment required for the type of work the claimant wants to obtain, the claimant cannot be considered available for work unless the claimant is actively seeking other types of work and has a reasonable expectation of obtaining that work.

(6) Temporary Availability.

When an individual is limited to temporary work because of anticipated military service, school attendance, travel, church service, relocation, a reasonable expectation of recall to a former employer for which the claimant is not in deferral status, or any other anticipated restriction on the claimant's future availability, availability is only established if the claimant is willing to accept and is actively seeking temporary work. The claimant must also show there is a realistic expectation that there is temporary work in the claimant's occupation, otherwise the claimant may be required to accept temporary work in another occupation. Evidence of a genuine desire to obtain temporary work may be shown by registration with and willingness to accept work with temporary employment services.

(7) Distance to Work.

(a) Customary Commuting Patterns.

A claimant must show reasonable access to public or private transportation, and a willingness to commute within customary commuting patterns for the occupation and community.

(b) Removal to a Locality of Limited Work Opportunities.

A claimant who moves from an area where there are substantial work opportunities to an area of limited work opportunities must demonstrate that the new locale has work for which the claimant is qualified and which the claimant is willing to perform. If the work is so limited in the new locale that there is little expectation the claimant will become reemployed, the continued unemployment is the result of the move and not the failure of the labor market to provide employment opportunities. In that case, the claimant is considered to have removed himself or herself from the labor market and is no longer eligible for benefits.

(8) School.

(a) A claimant attending school who has not been granted Department approval for a deferral must still meet all requirements of being able and available for work and be actively seeking work. Areas that need to be examined when making an eligibility determination with respect to a student include reviewing a claimant's work history while attending school, coupled with his or her efforts to secure full-time work. If the hours of school attendance conflict with the claimant's established work schedule or with the customary work schedule for the occupation in which the claimant is

seeking work, a rebuttable presumption is established that the claimant is not available for full-time work and benefits will generally be denied. An announced willingness on the part of a claimant to discontinue school attendance or change his or her school schedule, if necessary, to accept work must be weighed against the time already spent in school as well as the financial loss the claimant may incur if he or she were to withdraw.

(b) A presumption of unavailability may also be raised if a claimant moves, for the purpose of attending school, from an area with substantial labor market to a labor market with more limited opportunities. In order to overcome this presumption, the claimant must demonstrate there is full-time work available in the new area which the claimant could reasonably expect to obtain.

(9) Employment of Youth.

Title 34, Chapter 23 of the Utah Code imposes limitations on the number of hours youth under the age of 16 may work. The following limitations do not apply if the individual has received a high school diploma or is married. Claimants under the age of 16 who do not provide proof of meeting one of these exceptions are under the following limitations whether or not in student status because they have a legal obligation to attend school. Youth under the age of 16 may not work:

(a) during school hours except as authorized by the proper school authorities;

(b) before or after school in excess of 4 hours a day;

(c) before 5:00 a.m. or after 9:30 p.m. on days preceding school days;

(d) in excess of 8 hours in any 24-hour period; or

(e) more than 40 hours in any week.

(10) Domestic Obligations.

When a claimant has an obligation to care for children or other dependents, the claimant must show that arrangements for the care of those individuals have been made for all hours that are normally worked in the claimant's occupation and must show a good faith, active work search effort.

R994-403-113c. Work Search.

(1) General Requirements.

Unless the claimant qualifies for a work search deferral pursuant to R994-403-108b, a claimant must make an active, good faith effort to secure employment each and every week for which benefits are claimed. Efforts to find work must be judged by the standards of the occupation and the community.

(2) Active.

An active effort to look for work means that the claimant must make a minimum of four new job contacts each week unless the claimant is otherwise directed by the unemployment division. Those contacts should be made with employers that hire people in the claimant's occupation or occupations for which the claimant has work experience or would otherwise be qualified and willing to accept employment. If the claimant fails to make four new job contacts during the first week filed, involvement in job development activities that are likely to result in employment will be accepted as reasonable, active job search efforts.

(3) Good Faith.

Good faith efforts are defined as those methods which a reasonable person, anxious to return to work, would make if desirous of obtaining employment. A good faith effort extends beyond simply making a specific number of contacts to satisfy the Department requirement.

R994-403-114c. Claimant's Obligation to Prove Weekly Eligibility.

The claimant:

(1) has the burden of proving that he or she is able,

available, and actively seeking full-time work:

(2) must report any information that might affect eligibility;

(3) must provide any information requested by the Department which is required to establish eligibility;

(4) must immediately notify the Department if the claimant is incarcerated; and

(5) must keep a detailed record of his or her weekly job contacts so that the Department can verify the contact at any time for an audit or eligibility review. A detailed record includes the following information:

(a) the date of the contact,

(b) the name of the employer or other identifying information such as a job reference number,

(c) employer contact information such as the employer's mailing address, phone number, email address, or website address, and name of the person contacted if available,

(d) details of the position for which the claimant applied,

(e) method of contact, and

(f) results of the contact.

R994-403-115c. Period of Ineligibility.

(1) Eligibility for benefits is established on a weekly basis. If the Department has determined that the claimant is not able or available for work, and it appears the circumstances will likely continue, an indefinite disqualification will be assessed, and the claimant must requalify by showing that he or she is able and available for work.

(2) If the Department has reason to believe a claimant has not made a good faith effort to seek work, or the Department is performing a routine audit of a claim, the Department can only require that the claimant provide proof of work search activities for the four weeks immediately preceding the Department's request. However, if the claimant admits he or she did not complete the work search activities required under this rule, the Department can disqualify a claimant for more than four weeks. The claimant will be disqualified for any week during which he or she fails to provide the information required under R994-403-114c(5).

(3) If the Department seeks verification of a job contact from an employer, the claimant will only be disqualified if the employer provides clear and convincing evidence that there was no contact.

(4) The claimant will be disqualified for all weeks in which it is discovered that the claimant was not able or available to accept work without regard to the four-week limitation.

R994-403-116e. Eligibility Determinations: Obligation to Provide Information.

(1) The Department cannot make proper determinations regarding eligibility unless the claimant and the employer provide correct information in a timely manner. Claimants and employers therefore have a continuing obligation to provide any and all information and verification which may affect eligibility.

(2) Providing incomplete or incorrect information will be treated the same as a failure to provide information if the incorrect or insufficient information results in an improper decision with regard to the claimant's eligibility.

R994-403-117e. Claimant's Responsibility.

(1) The claimant must provide all of the following:

(a) his or her correct name, social security number, citizenship or alien status, address and date of birth;

(b) the correct business name and address for each base period employer and for each employer subsequent to the

base period;

(c) information necessary to determine eligibility or continuing eligibility as requested on the initial claim form, or on any other Department form including work search information. This includes information requested through the use of an interactive voice response system or the Internet;

(d) the reasons for the job separation from base period and subsequent employers when filing a new claim, requalifying for a claim, or any time the claimant is separated from employment during the benefit year. The Department may require a complete statement of the circumstances precipitating the separation; and

(e) any other information requested by the Department. The Claimant is required to return telephone calls and respond to requests that are made electronically, verbally, or by U.S. Mail. Generally, claimants will be given 48 hours, excluding hours during weekends or legal holidays, to respond to requests made verbally or electronically and five (5) full business days to respond to requests mailed through the U. S. Mail.

(2) Claimants are also required to report, at the time and place designated, for an in-person interview with a Department representative if so requested.

(3) By filing a claim for benefits, the claimant has given consent to the employer to release to the Department all information necessary to determine eligibility even if the information is confidential.

R994-403-118e. Disqualification Periods if a Claimant Fails to Provide Information.

(1) A claimant is not eligible for benefits if the Department does not have sufficient information to determine eligibility. Except as provided in subsection (5) of this section, a claimant who fails to provide necessary information without good cause is disqualified from the receipt of unemployment benefits until the information is received by the Department. Good cause is limited to circumstances where the claimant can show that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable.

(2) If insufficient or incorrect information is provided when the initial claim is filed, the disqualification will begin with the effective date of the claim.

(3) If a potentially disqualifying issue is identified as part of the weekly certification process and the claimant fails to provide the information requested by the Department, the disqualification will begin with the Sunday of the week for which eligibility could not be determined.

(4) If insufficient or incorrect information is provided as part of a review of payments already made, the disqualification will begin with the week in which the response to the Department's request for information is due.

(5) The disqualification will continue through the Saturday prior to the week in which the claimant provides the information. The denial can be waived if the Department determines the claimant complied within 7 calendar days of the date the decision was issued.

R994-403-119e. Overpayments Resulting from a Failure to Provide Information.

(1) Any overpayment resulting from the claimant's failure to provide information, or based on incorrect information provided by the claimant, will be assessed as a fault overpayment in accordance with Subsection 35A-4-406(4) or as a fraud overpayment in accordance with Subsection 35A-4-405(5).

(2) Any overpayment resulting from the employer's failure to provide information will be assessed as a nonfault overpayment in accordance with Subsection 35A-4-406(5).

(3) If more than one party was at fault in the creation of an overpayment, the overpayment will be assessed as:

(a) a fraud or fault overpayment if the claimant was more at fault than the other parties; or

(b) a nonfault overpayment if the employer and/or the Department was more at fault, or if the parties were equally at fault.

R994-403-120e. Employer's Responsibility.

Employers must provide wage, employment, and separation information and complete all forms and reports as requested by the Department. The employer also must return telephone calls from Department employees in a timely manner and answer all questions regarding wages, employment, and separations.

R994-403-121e. Penalty for the Employer's Failure to Comply.

(1) A claimant has the right to have a claim for benefits resolved quickly and accurately. An employer's failure to provide information in a timely manner results in additional expense and unnecessary delay.

(2) If an employer or agent fails to provide adequate information in a timely manner without good cause, the ALJ will determine on appeal that the employer has relinquished its rights with regard to the affected claim and is no longer a party in interest. The employer's appeal will be dismissed and the employer is liable for benefits paid.

(3) The ALJ may, in his or her discretion, choose to exercise continuing jurisdiction with respect to the case and subpoena or call the employer and claimant as witnesses to determine the claimant's eligibility. If, after reaching the merits, the ALJ determines to reverse the initial decision and deny benefits, the employer is not eligible for relief of charges resulting from benefits overpaid to the claimant prior to the date of the ALJ's decision.

(4) In determining whether to exercise discretion and reach the merits, the ALJ may take into consideration:

(a) the flagrancy of the refusal or failure to provide complete and accurate information. An employer's or agent's refusal to provide information at the time of the initial Department determination on the grounds that it wants to wait and present its case before an ALJ, for instance, will be subject to the most severe penalty;

(b) whether or not the employer or agent has failed to provide complete and accurate information in the past or on more than one case; and

(c) whether the employer is represented by counsel or a professional representative. Counsel and professional representatives are responsible for knowing Department rules and are therefore held to a higher standard.

R994-403-122e. Good Cause for Failure to Comply.

If the employer or claimant has good cause for failing to provide the information in the time frame requested, no disqualification or penalty will be assessed. Good cause is limited to circumstances where the claimant or employer can show that the reasons for the delay in filing were due to circumstances that were compelling and reasonable or beyond the party's control.

R994-403-123. Obligation of Department Employees.

Employees of the Department are obligated, regardless of when the information is discovered, to bring to the attention of the proper Department representatives any information that may affect a claimant's eligibility for unemployment insurance benefits or information affecting the employer's contributions.

R994-403-201. Department Approval for School Attendance - General Definition.

(1) Unemployment insurance is not intended to subsidize schooling. However, it is recognized that training may be a practical way to reduce chronic and persistent unemployment due to a lack of work skills, job obsolescence or foreign competition. Even though the claimant is granted Department approval, the claimant must still be able to work. With Department approval, a claimant meets the availability requirement based on his or her school attendance and successful performance. With the exception of very short-term training, Department approval is intended for classroom training as opposed to on-the-job training. Department approval is to be used selectively and judiciously. It is not to be used as a substitute for selective placement, job development, on-the-job training, or other available programs.

(2) If a claimant is ineligible under 35A-4-403(1)(c) due to school attendance, Department approval will be considered.

(3) Department approval will be granted when required by state or federal law for specific training programs.

R994-403-202. Qualifying Elements for Approval of Training.

All of the following nine elements must be satisfied for a claimant to qualify for Department approval of training. Some of these elements will be waived or modified when required by state or federal law for specific training programs.

(1) The claimant's unemployment is chronic or persistent, or likely to be chronic or persistent, due to any one of the following three circumstances:

(a) A lack of basic work skills. A lack of basic work skills may not be established unless a claimant:

(i)(A) has a history of repeated unemployment attributable to lack of skills and has no recent history of employment earning a wage substantially above the federal minimum wage or

(B) qualifies for Department sponsored training because the claimant meets the eligibility requirements for public assistance;

(ii) has had no formal training in occupational skills;

(iii) does not have skills developed over an extended period of time by training or experience; and

(iv) does not have a marketable degree from an institution of higher learning; or

(b) a change in the marketability of the claimant's skills has resulted due to new technology, or major reductions within an industry; or

(c) inability to continue working in occupations using the claimant's skills due to a verifiable, permanent physical or emotional disability,

(2) a claimant must have a reasonable expectation for success as demonstrated by:

(a) an aptitude for and interest in the work the claimant is being trained to perform, or course of study the claimant is pursuing; and

(b) sufficient time and financial resources to complete the training.

(3) The training is provided by an institution approved by the Department.

(4) The training is not available except in school. For example, on-the-job training is not available to the claimant.

(5) The length of time required to complete the training should generally not extend beyond 24 months.

(6) The training should generally be vocationally oriented unless the claimant has no more than two terms, quarters, semesters, or similar periods of academic training necessary to obtain a degree.

(7) There is a reasonable expectation of employment following completion of the training. Reasonable expectation

means the claimant will find a job using the skills and education acquired while in training pursuant to a fair and objective projection of job market conditions expected to exist at the time of completion of the training.

(8) A claimant did not leave work to attend school even if the employer required the training for advancement or as a condition of continuing employment.

(9) The schooling is full-time, as defined by the training facility.

R994-403-203. Extensions of Department Approval.

Initial approval shall be granted, for the school term beginning with the week in which the attendance began, or the effective date of the claim, whichever is later. The Department may extend the approval if the claimant establishes proof of:

(1) satisfactory attendance;

(2) passing grades;

(3) continuance of the same course of study and classes originally approved; and

(4) compliance with all other qualifying elements.

R994-403-204. Availability Requirements When Approval is Granted.

(1) The work search and registration requirements for a claimant who is granted Department approval are found in R994-403-108b(1)(f). Once the claimant is actually in training, benefits will not be denied when work is refused as satisfactory attendance and progress in school serves as a substitute for the availability requirements of the act.

(2) Absences from school will not necessarily result in a denial of benefits during those weeks the claimant can demonstrate he or she is making up any missed school work and is still making satisfactory progress in school. Satisfactory progress is defined as passing all classes with a grade level sufficient to qualify for graduation, licensing, or certification, as appropriate.

(3) A disqualification will be effective with the week the claimant knew or should have known he or she was not going to receive a passing grade in any of his or her classes or was otherwise not making satisfactory progress in school. It is the claimant's responsibility to immediately report any information that may indicate a failure to maintain satisfactory progress.

(4) The claimant must attend school full-time as defined by the educational institution. If a claimant discontinues school attendance, drops or changes any classes before the end of the term, Department approval may be terminated immediately. However, discontinuing a class that does not reduce the school credits below full-time status will not result in the termination of Department approval. Department approval may be reinstated during any week a claimant demonstrates, through appropriate verification, the claimant is again attending class regularly and making satisfactory progress.

(5) Notwithstanding any other provisions of this section, if the claimant was absent from school for more than one-half of the workweek due to illness or hospitalization, the claimant is considered to be unable to work and unemployment benefits will be denied for that week. A claimant has the responsibility to report any sickness, injury, or other circumstances that prevented him or her from attending school.

(6) A claimant is ineligible for Department approval if the claimant is retaking a class that was originally taken while receiving benefits under Department approval. However, if Department approval was denied during the time the course was originally in progress, approval may be reinstated to cover that portion of the course not previously subsidized if

the claimant can demonstrate satisfactory progress.

R994-403-205. Short-Term Training.

Department approval may be granted even though a claimant has marketable skills and does not meet the requirements for Department approval as defined in R994-403-202 if the entire course of training is no longer than eight weeks and will enhance the claimant's employment prospects. A claimant will not be granted a waiver for training that is longer than eight weeks even if the claimant needs only eight weeks or less to complete the training. This is intended as a one-time approval per benefit year and may not be extended beyond eight weeks.

R994-403-301. Requirements for Special Benefits.

Some benefit programs, including Extended Benefits, have different availability and work search requirements. The rule governing work search for Extended Benefits is R994-402. Other special programs are governed by the act or federal law.

R994-403-302. Foreign Travel.

(1) Benefits will not be denied if the claimant is required to travel to seek, apply for, or accept work within the United States or in a foreign country where the claimant has authorization to work and where there is a reciprocal agreement. The trip itself must be for the purpose of obtaining work. There is a rebuttable presumption that the claimant is not available for work when the trip is extended to accommodate the claimant's personal needs or interests, and the extension is for more than one-half of the workweek.

(2) Unemployment benefits cannot be paid to a claimant located in a foreign country unless the claimant has authorization to work there and there is a reciprocal agreement concerning the payment of unemployment benefits with that foreign country.

(3) Unemployment benefits are intended, in part, to stimulate the economy of Utah and the United States and thus are expected to be spent in this country. A claimant who travels to a foreign country must report to the Department that he or she is out of the country, even if it is for a temporary purpose and regardless of whether the claimant intends to return to the United States if work becomes available. Failure to inform the Department will result in a fraud overpayment for the weeks benefits were paid while the claimant was in a foreign country. The claimant may be eligible if the travel is to Canada but must notify the Department of that travel. Canada is the only country with which Utah has a reciprocal agreement. If the claimant travels to, but is not eligible to work in, Canada and fails to notify the Department of the travel, it will result in a fraud overpayment for the weeks benefits were paid while the claimant was in Canada.

KEY: filing deadlines, registration, student eligibility, unemployment compensation

May 30, 2017

35A-4-403(1)

Notice of Continuation May 16, 2013

**R994. Workforce Services, Unemployment Insurance.
R994-404. Payments Following Workers' Compensation.
R994-404-101. Claimants Who Qualify for an Adjustment
to the Base Period.**

(1) A claimant who was off work due to a work related illness or injury may qualify for an adjusted base period if all of the following elements are satisfied:

(a) the claimant must have received temporary total disability (TTD) compensation for the illness or injury under the workers' compensation or occupational disease laws of this state or under federal law;

(b) the claimant must have received TTD for at least seven full weeks during the base period immediately preceding the effective date of the claim. This can be either the first four of the last five completed calendar quarters or the last four completed calendar quarters as provided in R994-404-104. The weeks need not be consecutive;

(c) the initial claim for unemployment insurance benefits must have been filed no later than 90 calendar days after the claimant was released by his or her health care provider to return to full-time work. This does not include release to limited or light duty work. The effective date of the eligible claim must be within the 90 days regardless of the date on which the claimant contacts the Department to file a claim. For example, if the 90th day falls on Wednesday and the claimant files a claim on Thursday, the effective date of the claim would be Sunday of that calendar week and would fall within the 90 day time limitation;

(d) the initial claim for unemployment insurance benefits must have been filed within 36 months of the week the covered injury or illness occurred. The covered injury can be the initial injury or an event such as a re-injury that caused the claimant to go back on TTD.

(2) Wages previously used to establish a benefit year cannot be re-used.

R994-404-102. Good Cause for Late Filing.

(1) Good cause for not filing within the 90 day period can be established if:

(a) the claimant contested the release to work date by filing for a hearing with the appropriate administrative agency and there was no substantial delay between the date of the decision of the agency and the filing of the claim;

(b) the delay in filing was due to circumstances beyond the claimant's control;

(c) the claimant delayed filing due to circumstances which were compelling and reasonable; or

(d) the claimant returned to work immediately after receiving a release from his health care provider and there was no substantial delay between the time the employment ended and the filing of the claim.

(2) A lack of knowledge about the wage freeze provisions due to the claimant's failure to inquire or the employer's failure to provide information does not establish good cause for failure to file within the 90 day period.

R994-404-103. The Effective Date of the Claim.

The effective date of the claim for benefits shall be the Sunday of the week in which the claimant makes application for benefits. Although the Act provides for the use of an alternate benefit year, it does not extend coverage to the weeks that were not filed timely in accordance with provisions of Subsection 35A-4-403(1)(a).

R994-404-104. Adjustment of the Base Period.

(1) The claimant can file a claim using wages paid during the first four of the last five completed calendar quarters immediately preceding the effective date of the claim or the first four of the last five completed calendar quarters

prior to the date the claimant left work due to the illness or injury.

(2) If a claimant does not qualify under either base period described in paragraph (1) above, and the claim is effective on or after January 2, 2011, the claimant can use the four completed calendar quarters immediately preceding the effective date of the claim or the four completed calendar quarters immediately prior to the date the claimant left work due to the illness or injury.

**KEY: unemployment compensation, workers' compensation
December 9, 2010
Notice of Continuation May 19, 2017**

35A-4-404

R994. Workforce Services, Unemployment Insurance.**R994-406. Fraud, Fault and Nonfault Overpayments.****R994-406-101. Claimant Responsible for Providing Complete, Correct Information.**

(1) The claimant is responsible for providing all of the information requested in written documents as well as any verbal request from a Department representative. The claimant is also responsible for following all Department instructions.

(2) The claimant can not shift responsibility for providing correct information to another person such as a spouse, parent, or friend. The claimant is responsible for all information required on his or her claim.

R994-406-201. Nonfault Overpayments.

(1) If the claimant followed all instructions and provided complete and correct information as required in R994-406-101(1) and then received benefits to which he or she was not entitled due to an error made by the Department or an employer, the claimant is not at fault in the creation of the overpayment.

(2) The claimant is not liable to repay overpayments created through no fault of the claimant except that the sum will be deducted from any future benefits.

R994-406-202. Method of Repayment of Nonfault Overpayments.

Even though the claimant is without fault in the creation of the overpayment, 50% of the claimant's weekly benefit amount will be deducted from any future benefits payable to him or her until the overpayment is repaid. No billings will be made and no collection procedures will be initiated.

R994-406-203. Waiver of Recovery of Nonfault Overpayments.

(1) The Department may waive recovery of a nonfault overpayment if the claimant:

(a) is currently eligible to receive unemployment benefits from the state of Utah and has filed a weekly claim against Utah within the last 27 days,

(b) requests a waiver within 10 days of notification of the opportunity to request a waiver, within 10 days of the first offset of benefits following a reopening, or upon a showing of a significant change in the claimant's financial circumstances. Good cause will be considered if the claimant can show the failure to request a waiver within these time limitations was due to circumstances which were beyond the claimant's control or were compelling and reasonable; and

(c) can show that recovery of the 50% offset as provided in R994-406-202 would render the claimant unable to pay for the basic needs of survival for his or her immediate family, dependents and other household members.

(i) The claimant must provide verification of financial resources and the social security numbers of family members, dependents and household members.

(ii) Before granting the waiver, the Department must consider all potential financial resources of the claimant, the claimant's family, dependents and other household members.

(iii) "Unable to pay for the basic needs of survival" means "economically disadvantaged" and is defined as 70% of the Lower Living Standard Income Level (LLSIL). Therefore, if the claimant's total family resources in relation to family size are not in excess of 70% of the LLSIL, the waiver will be granted provided the economic circumstances are not expected to change within the next 90 days. Individual expenses will not be considered. Available financial resources, current income, and anticipated income will be included and averaged for the three months.

(2) Any nonfault overpayment outstanding at the time

the request is granted is forgiven and the claimant has no further repayment obligation.

(3) A waiver cannot be granted retroactively for any payments made against an overpayment or any of the overpayment which has already been offset except if the offset was made pending a decision on a timely waiver request which is ultimately granted.

(4) A claimant with an outstanding nonfault overpayment can also apply for an offer in compromise as provided in R944-305-1201.

R994-406-301. Claimant Fault.

(1) Elements of Fault.

Fault is established if all three of the following elements are present, or as provided in subsection (3) and (4) of this section. If one or more elements cannot be established, the overpayment does not fall under the provisions of Subsection 35A-4-405(5).

(a) Materiality.

Benefits were paid to which the claimant was not entitled.

(b) Control.

Benefits were paid based on incorrect information or an absence of information which the claimant reasonably could have provided.

(c) Knowledge.

The claimant had sufficient notice that the information might be reportable.

(2) Claimant Responsibility.

The claimant is responsible for providing all of the information requested by the Department regarding his or her Unemployment Insurance claim. If the claimant has any questions about his or her eligibility for unemployment benefits, or the Department's instructions, the claimant must ask the Department for clarification before certifying to eligibility. If the claimant fails to obtain clarification, he or she will be at fault in any resulting overpayment.

(3) Receipt of Settlement or Back-Pay.

(a) A claimant is "at fault" for the resulting overpayment if he or she fails to advise the Department that grievance procedures are being pursued which may result in payment of wages for weeks during which he or she claims benefits.

(b) If the claimant advises the Department prior to receiving a settlement that he or she has filed a grievance with the employer and makes an assignment directing the employer to pay to the Department that portion of the settlement equivalent to the amount of unemployment compensation received, the claimant will not be "at fault" if an overpayment is created due to payment of wages attributable to weeks for which the claimant received benefits. If the grievance is resolved in favor of the claimant and the employer was properly notified of the wage assignment, the employer is liable to immediately reimburse the Department upon settlement of the grievance. If reimbursement is not made to the Department consistent with the provisions of the assignment, collection procedures will be initiated against the employer.

(c) If the claimant refuses to make an assignment of the wages claimed in a grievance proceeding, benefits will be withheld on the basis that the claimant is not unemployed because of anticipated receipt of wages. In this case, the claimant should file weekly claims and if back wages are not received when the grievance is resolved, benefits will be paid for weeks properly claimed provided the claimant is otherwise eligible.

(4) Receipt of Retirement Income.

Notwithstanding any other provision of this section, a claimant who could be eligible for retirement income but does not apply until after unemployment benefits have been paid,

is "at fault" for any overpayment resulting from a retroactive payment of retirement benefits. See R994-401-203(1)(d) and (2)

(5) Correcting Earlier Weekly Claims.

If a claimant reports incorrect information about his or her income or earnings, the claimant must immediately contact the Department to correct the information. A claimant who contacts the Department to correct reported income is considered to be "at fault" and is responsible for repaying any resulting overpayment even if at the time the claimant filed the weekly claim for benefits he or she was unaware of the correct income or earnings. A claimant who fails to contact the Department to correct inaccurately reported earnings may be subject to fraud penalties under subsection R994-406-401.

R994-406-302. Repayment and Collection of Fault Overpayments.

(1) When the claimant has been determined to be "at fault" in the creation of an overpayment, the overpayment must be repaid. If the claimant is otherwise eligible and files for additional benefits during the same or any subsequent benefit year, 100% of the benefit payment to which the claimant is entitled will be used to reduce the overpayment.

(2) Discretion for Repayment.

(a) Full restitution is required for all fault overpayments except as provided in R994-305-1201. However, legal collection proceedings may be held in abeyance at the Department's discretion and the overpayment will be deducted from future benefits payable during the current or subsequent benefit years. Discretion will only be exercised if the Department or the employer share fault in the creation of the overpayment but it is determined the claimant was more at fault under the provisions of rule R994-403-119e.

(3) Collection Procedures.

(a) The Department will send an initial overpayment notice on all outstanding fault or fraud overpayments. If, after 15 days, the claimant does not either make payment in full or enter into an installment payment agreement as provided in subsection (4) below the account is considered delinquent and the claimant is notified that a warrant will be filed unless a payment is received or an installment agreement entered into within 15 days. However, there may be other circumstances under which a warrant may be filed on any outstanding overpayment. A warrant attaches a lien to any personal or real property and establishes a judgment that is collectible under Utah Rules of Civil Procedure.

(b) All outstanding overpayments on which a lien has been filed are reported to the State Division of Finance for collection whereby any refunds due to the claimant from State income tax or any such rebates, refunds, or other amounts owed by the state and subject to legal attachment may be applied against the overpayment.

(c) All overpayments that are past due, legally enforceable, and attributable to fraud or the claimant's failure to report earnings shall be submitted to the Treasury Offset Program whereby the Secretary of the Treasury can offset Federal tax refund payments to be applied against the approved overpayment. Only overpayments where a valid warrant has been filed for failure to repay, that lack an installment agreement or are not current on approved installment agreement payments will be subject to the Treasury Offset Program.

(d) No warrant will be issued on fault overpayments provided the claimant entered into an installment agreement within 30 days of the issuance of the initial overpayment notice and all payments are made in a timely manner in accordance with the installment agreement.

(4) Installment Payments.

(a) If repayment in full has not been made within 30

days of the initial overpayment notice or the claimant has not voluntarily entered into an installment agreement or offer in compromise as provided in R994-305-1201, the Department will allow the claimant to pay in installments by notifying the claimant in writing of the minimum installment payment which the claimant is required to make. If the claimant is unable to make the minimum installment payments, the claimant may request a review within ten days of the date written notice is mailed.

(b) Whether voluntarily or involuntary, installment payments will be established as follows:

If the entire overpayment is:

(i) \$3,000 or less, the monthly installment payment is equal to 50% of claimant's weekly benefit entitlement

(ii) \$3,001 to 5,000, the monthly installment payment is equal to 100% of claimant's weekly benefit entitlement

(iii) \$5,001 to 10,000 the monthly installment payment is equal to 125% of claimant's weekly benefit entitlement

(iv) \$10,001 or more the monthly installment payment is equal to 150% of claimant's weekly benefit entitlement

(c) Installment agreements will not be approved in amounts less than those established above except in cases where the claimant meets the requirements of economically disadvantaged as defined in R994-406-203(1)(b)(iii). On a periodic basis the Department may send notice to the claimant requesting verification of his or her disadvantaged status. If the claimant fails to provide the verification as requested, or no longer qualifies for a lesser installment payment, the Department will send the claimant a new monthly payment amount. The new installment payment amount may be in accordance with the percentages in subparagraph (b) or a lesser amount depending on the information received from the claimant.

(d) Minimum monthly installment agreement payments must be received by the Department by the last day of each month. Payments not made timely are considered delinquent.

(5) Offsetting overpayments with subsequent eligible weeks.

If an overpayment is set up under Section R994-406-201 or R994-406-301 for weeks paid on a claim, the claimant may repay the overpayment by filing for open weeks in the same benefit year after the claim has been exhausted, provided the claimant is otherwise eligible. 100% of the compensation amount for each eligible week claimed will be credited to the established overpayment(s) up to the total amount of the outstanding overpayment balance owed to the Department.

R994-406-401. Claimant Fraud.

(1) All three elements of fraud must be proved to establish an intentional misrepresentation sufficient to constitute fraud. See section 35A-4-405(5). The three elements are:

(a) Materiality.

(i) Materiality is established when a claimant makes false statements or fails to provide accurate information for the purpose of obtaining;

(A) any benefit payment to which the claimant is not entitled, or

(B) waiting week credit which results in a benefit payment to which the claimant is not entitled.

(ii) A benefit payment received by fraud may include an amount as small as one dollar over the amount a claimant was entitled to receive.

(b) Knowledge.

A claimant must have known or should have known the information submitted to the Department was incorrect or that he or she failed to provide information required by the Department. The claimant does NOT have to know that the information will result in a denial of benefits or a reduction of

the benefit amount. Knowledge can also be established when a claimant recklessly makes representations knowing he or she has insufficient information upon which to base such representations. A claimant has an obligation to read material provided by the Department and to ask a Department representative if he or she has a question about what information to report.

(c) Willfulness.

Willfulness is established when a claimant files claims or other documents containing false statements, responses or deliberate omissions. If a claimant delegates the responsibility to personally provide information or allows access to his or her Personal Identification Number (PIN) so that someone else may file a claim, the claimant is responsible for the information provided or omitted by the other person, even if the claimant had no advance knowledge that the information provided was false or important information was omitted. The claimant is responsible for securing the debit card (card) issued by the Department. Securing the card means that the card and the PIN are never kept together, the card is kept in a secure location, and the PIN is not known by anyone but the claimant. If a claimant loses his or her card, the claimant must report the loss of the card to the Department and change his or her PIN immediately even if the claimant is not currently filing weekly claims for benefits. If the claimant fails to report the loss of the card and change the PIN immediately, or fails to secure the card, the claimant will be liable for claims made and money removed from the card.

(2) The Department relies primarily on information provided by the claimant when paying unemployment insurance benefits. Fraud penalties do not apply if the overpayment was the result of an inadvertent error. Fraud requires a willful misrepresentation or concealment of information for the purpose of obtaining unemployment benefits.

(3) The absence of an admission or direct proof of intent to defraud does not prevent a finding of fraud.

(4) A claimant is required, under R994-403-114c, to immediately notify the Department if the claimant is incarcerated. Upon notification, the Department will stop all unemployment benefits to the claimant until the claimant notifies the Department of his or her release from incarceration. If a claimant fails to notify the Department of his or her incarceration, any claims made during the incarceration period will be considered fraudulent.

R994-406-402. Burden and Standard of Proof in Fraud Cases.

(1) The Department has the burden of proving each element of fraud.

(2) The elements of fraud must be established by clear and convincing evidence. There does not have to be an admission or direct proof of intent.

R994-406-403. Fraud Disqualification and Penalty.

(1) Penalty Cannot be Modified.

The Department has no authority to reduce or otherwise modify the period of disqualification or the monetary penalties imposed by statute. The Department cannot exercise repayment discretion for fraud overpayments and these amounts are subject to all collection procedures.

(2) Week of Fraud.

(a) A "week of fraud" shall include each week any benefits were received due to fraud. The only exception to this is if the fraud occurred during the waiting week causing the next eligible week to become the new waiting week. In that case, the new waiting week will not be considered as a week of fraud for disqualification purposes. However, because the new waiting week is a non-payable week, any

benefits received during that week will be assessed as an overpayment and because the overpayment was as a result of fraud, a fraud penalty will also be assessed.

(b) If a claimant commits a fraudulent act during one week, and benefits are paid in later weeks which would not have been paid but for the original fraud, each week wherein benefits were paid is a week of fraud subject to an overpayment determination, a penalty and a disqualification period.

(c) If the only week of fraud was the waiting week and no benefit payments were made, there will be no disqualification period.

(3) Disqualification Period.

(a) The claimant is ineligible for benefits for a period of 13 weeks for the first week of fraud. For each additional week of fraud, the claimant will be ineligible for benefits for an additional six weeks. The total number of weeks of disqualification will not exceed 49 weeks for each fraud determination. The Department will issue a fraud determination on all weeks of fraud the Department knows about at the time of the determination.

(b) The disqualification period begins the Sunday of the week the fraud determination is made.

(4) Overpayment and Penalty.

(a) For any fraud decision where the initial fraud determination was issued on or before June 30, 2004, the claimant shall repay to the division an overpayment which is equal to the amount of the benefits actually received. In addition, a claimant shall be required to repay, as a civil penalty, the amount of benefits received as a direct result of fraud. "Benefits actually received" means the benefits paid or constructively paid by the Department. Constructively paid refers to benefits used to reduce or off-set an overpayment, deducted at the request of the claimant to pay income taxes, or used as a payment to the Office of Recovery Services for child support obligations or other payments as required by law. For example: The claimant has a weekly benefit amount of \$100 and reports no earnings during a week when he or she actually had \$50 in reportable earnings. Because a claimant may earn up to 30% of his or her weekly benefit amount with no deduction, the claimant was entitled to receive \$80 for that week and was thus overpaid the amount of \$20. If the elements of fraud are established, the claimant is disqualified during that week of fraud and all benefits paid for that week are considered an overpayment. The claimant would also be liable to repay, as a civil penalty, the \$20 received by direct reason of fraud. Therefore, in this example, the claimant would be liable for a total overpayment and penalty of \$120, an amount that would have to be repaid in its entirety before the claimant would be eligible for any further waiting week credit or unemployment benefits. The claimant would also be subject to a 13-week penalty period.

(b) For all fraud decisions where the initial department determination is issued on or after July 1, 2004, the claimant shall repay to the division the overpayment and, as a civil penalty, an amount equal to the overpayment. The overpayment in this subparagraph is the amount of benefits the claimant received by direct reason of fraud. In the example in subsection (3)(a) of this section, the overpayment would be \$20 and the penalty would be \$20 for a total due of \$40. The overpayment and penalty would have to be repaid in its entirety before the claimant would be eligible for any further waiting week credit or unemployment benefits. The claimant would also be subject to a 13-week penalty period.

(5) Additional Penalties. Criminal prosecution of fraud may be pursued as provided by Subsection 35A-4-104(1) in addition to the administrative penalties.

R994-406-404. Repayment and Collection of Fraud

Overpayments and Penalties.

Fraud overpayments and penalties will be collected in accordance with rule R994-406-302 except that a warrant will always issue in fraud overpayments even if the claimant enters into an installment agreement and is current in the monthly payments. Fraud overpayments and penalties may also be collected by civil action or warrant as provided by Subsections 35A-4-305(3) and 35A-4-305(5), respectively. The Department may use unemployment insurance benefits payable for weeks prior to the penalty period to reduce overpayments and penalties.

R994-406-405. Future Eligibility in Fraud Cases.

A claimant is ineligible for unemployment benefits or waiting week credit after a disqualification for fraud until any overpayment and penalty established in conjunction with the disqualification has been satisfied in full. Wage credits earned by the claimant cannot be used to pay benefits or transferred to another state until the overpayment and penalty are satisfied. An outstanding overpayment or penalty may NOT be satisfied by deductions from benefit payments for weeks claimed after the disqualification period ends, as a claimant is precluded from receiving any future benefits or waiting week credit as long as there is an outstanding fraud overpayment. However, a claimant may be permitted to file a new claim to preserve a particular benefit year. An overpayment is considered satisfied as of the beginning of the week during which payment is received by the Department. Benefits will be allowed as of the effective date of the new claim if a claimant repays the overpayment and penalty within seven days of the date the notice of the outstanding overpayment and penalty is mailed.

R994-406-406. Agency Error in Determining Disqualification Periods.

If the division has sufficient evidence to assess a disqualification prior to paying benefits, but fails to take action, a fraud disqualification will not be assessed even if the claimant provided false or information or deliberate omissions. The resulting overpayment will be assessed under the provisions of Subsections 35A-4-406(4)(b) or 35A-4-406(5)(a).

KEY: overpayments, unemployment compensation

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|--|---------------------|
| June 12, 2013 | 35A-4-406(2) |
| Notice of Continuation May 19, 2017 | 35A-4-406(3) |
| | 35A-4-406(4) |
| | 35A-4-406(5) |

R994. Workforce Services, Unemployment Insurance.**R994-508. Appeal Procedures.****R994-508-101. Right to Appeal an Initial Department Determination.**

(1) An interested party has the right to appeal an initial Department determination on unemployment benefits or unemployment tax liability (contributions) by filing an appeal with the Appeals Unit or at any DWS Employment Center.

(2) The appeal must be in writing and either sent through the U.S. Mail, faxed, or delivered to the Appeals Unit, or submitted electronically through the Department's website.

(3) The appeal must be signed by an interested party unless it can be shown that the interested party has conveyed, in writing, the authority to another person or is physically or mentally incapable of acting on his or her own behalf. Providing the correct Personal Identification Number (PIN) when filing an appeal through the Department's website will be considered a signed appeal.

(4) The appeal should give the date of the determination being appealed, the social security number of any claimant involved, the employer number, a statement of the reason for the appeal, and any and all information which supports the appeal. The failure of an appellant to provide the information in this subsection will not preclude the acceptance of an appeal.

(5) The scope of the appeal is not limited to the issues stated in the appeal.

(6) If the claimant is receiving benefits at the time the appeal is filed, payments will continue pending the written decision of the ALJ even if the claimant is willing to waive payment. If benefits are denied as a result of the appeal, an overpayment will be established.

R994-508-102. Time Limits for Filing an Appeal from an Initial Department Determination.

(1) The time permitted for an appeal is fifteen calendar days from the date on the Department decision unless otherwise specified on the decision.

(2) In computing the period of time allowed for filing an appeal, the date as it appears in the determination is not included. The last day of the appeal period is included in the computation unless it is a Saturday, Sunday, or legal holiday when Department offices are closed. If the last day permitted for filing an appeal falls on a Saturday, Sunday, or legal holiday, the time permitted for filing a timely appeal will be extended to the next day when Department offices are open.

(3) An appeal sent through the U.S. Mail is considered filed on the date shown by the postmark. If the postmark date cannot be established because it is illegible, erroneous, or omitted, the appeal will be considered filed on the date it was mailed if the sender can establish that date by competent evidence and can show that it was mailed prior to the date of actual receipt. If the date of mailing cannot be established by competent evidence, the appeal will be considered filed on the date it is actually received by the Appeals Unit as shown by the Appeals Unit's date stamp on the document or other credible evidence such as a written notation of the date of receipt. "Mailed" in this subsection means taken to the post office or placed in a receptacle which is designated for pick up by an employee who has the responsibility of delivering it to the post office.

R994-508-103. Untimely Appeal.

If it appears that an appeal was not filed in a timely manner, the appellant will be notified and given an opportunity to show that the appeal was timely or that it was delayed for good cause. If it is found that the appeal was not timely and the delay was without good cause, the ALJ or the

Board will not have jurisdiction to consider the merits unless jurisdiction is established in accordance with provisions of Subsection 35A-4-406(2). Any decision with regard to jurisdictional issues will be issued in writing and delivered or mailed to all interested parties with a clear statement of the right of further appeal or judicial review.

R994-508-104. Good Cause for Not Filing Within Time Limitations.

A late appeal may be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause is limited to circumstances where it is shown that:

(1) the appellant received the decision after the expiration of the time limit for filing the appeal, the appeal was filed within ten days of actual receipt of the decision and the delay was not the result of willful neglect;

(2) the delay in filing the appeal was due to circumstances beyond the appellant's control; or

(3) the appellant delayed filing the appeal for circumstances which were compelling and reasonable.

R994-508-105. Response to an Appeal.

A respondent is not required to file a written response to an appeal. A respondent may file a response if it does not delay the proceedings.

R994-508-106. Notice of the Hearing.

(1) All interested parties will be notified by mail, at least seven days prior to the hearing, of:

(a) the time and place of the hearing;

(b) the right to be represented at the hearing;

(c) the legal issues to be considered at the hearing;

(d) the procedure for submitting written documents;

(e) the consequences of not participating;

(f) the procedures and limitations for requesting a continuance or rescheduling; and

(g) the procedure for requesting an interpreter for the hearing, if necessary.

(2) When a new issue arises during the hearing, advance written notice may be waived by the parties after a full explanation by the ALJ of the issues and potential consequences.

(3) It is the responsibility of a party to notify and make arrangements for the participation of the party's representative and/or witnesses, if any.

(4) If a party has designated a person or professional organization as its agent, notice will be sent to the agent which will satisfy the requirement to give notice to the party.

R994-508-107. Department to Provide Documents.

The Appeals Unit will obtain the information which the Department used to make its initial determination and the reasoning upon which that decision was based and will send all of the Department's relevant documentary information to the parties with the notice of hearing.

R994-508-108. Discovery.

(1) Discovery is a legal process to obtain information which is necessary to prepare for a hearing. In most unemployment insurance hearings, informal methods of discovery are sufficient. Informal discovery is the voluntary exchange of information regarding evidence to be presented at the hearing, and witnesses who will testify at the hearing. Usually a telephone call to the other party requesting the needed information is adequate. Parties are encouraged to cooperate in providing information. If this information is not provided voluntarily, the party requesting the information may request that the ALJ compel a party to produce the information through a verbal or written order or issuance of a

subpoena. In considering the requests, the ALJ will balance the need for the information with the burden the requests place upon the opposing party and the need to promptly decide the appeal.

(2) The use of formal discovery procedures in unemployment insurance appeals proceedings are rarely necessary and tend to increase costs while delaying decisions. Formal discovery may be allowed for unemployment insurance hearings only if so directed by the ALJ and when each of the following elements is present:

- (a) informal discovery is inadequate to obtain the information required;
 - (b) there is no other available alternative that would be less costly or less intimidating;
 - (c) it is not unduly burdensome;
 - (d) it is necessary for the parties to properly prepare for the hearing; and
 - (e) it does not cause unreasonable delays.
- (3) Formal discovery includes requests for admissions, interrogatories, and other methods of discovery as provided by the Utah Rules of Civil Procedure.

R994-508-109. Hearing Procedure.

(1) All hearings will be conducted before an ALJ in such manner as to provide due process and protect the rights of the parties.

(2) The hearing will be recorded.

(3) The ALJ will regulate the course of the hearing to obtain full disclosure of relevant facts and to afford the parties a reasonable opportunity to present their positions.

(4) The decision of the ALJ will be based solely on the testimony and evidence presented at the hearing.

(5) All testimony of the parties and witnesses will be given under oath or affirmation.

(6) All parties will be given the opportunity to provide testimony, present relevant evidence which has probative value, cross-examine any other party and/or other party's witnesses, examine or be provided with a copy of all exhibits, respond, argue, submit rebuttal evidence and/or provide statements orally or in writing, and/or comment on the issues.

(7) The evidentiary standard for ALJ decisions, except in cases of fraud, is a preponderance of the evidence. Preponderance means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. The evidentiary standard for determining claimant fraud is clear and convincing evidence. Clear and convincing is a higher standard than preponderance of the evidence and means that the allegations of fraud are highly probable.

(8) The ALJ will direct the order of testimony and rule on the admissibility of evidence. The ALJ may, on the ALJ's own motion or the motion of a party, exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(9) Oral or written evidence of any nature, whether or not conforming to the rules of evidence, may be accepted and will be given its proper weight. A party has the responsibility to present all relevant evidence in its possession. When a party is in possession of evidence but fails to introduce the evidence, an inference may be drawn that the evidence does not support the party's position.

(10) Official Department records, including reports submitted in connection with the administration of the Employment Security Act, may be considered at any time in the appeals process including after the hearing.

(11) Parties may introduce relevant documents into evidence. Parties must mail, fax, or deliver copies of those documents to the ALJ assigned to hear the case and all other interested parties so that the documents are received three

days prior to the hearing. Failure to prefile documents may result in a delay of the proceedings. If a party has good cause for not submitting the documents three days prior to the hearing or if a party does not receive the documents sent by the Appeals Unit or another party prior to the hearing, the documents will be admitted after provisions are made to insure due process is satisfied. At his or her discretion, the ALJ can either:

- (a) reschedule the hearing to another time;
- (b) allow the parties time to review the documents at an in-person hearing;
- (c) request that the documents be faxed during the hearing, if possible, or read the material into the record in case of telephone hearing; or
- (d) leave the record of the hearing open, send the documents to the party or parties who did not receive them, and give the party or parties an opportunity to submit additional evidence after they are received and reviewed.

(12) The ALJ may, on his or her own motion, take additional evidence as is deemed necessary.

(13) With the consent of the ALJ, the parties to an appeal may stipulate to the facts involved. The ALJ may decide the appeal on the basis of those facts, or may set the matter for hearing and take further evidence as deemed necessary to decide the appeal.

(14) The ALJ may require portions of the testimony be transcribed as necessary for rendering a decision.

(15) All initial determinations made by the Department are exempt from the provisions of the Utah Administrative Procedures Act (UAPA). Appeals from initial determinations will be conducted as formal adjudicative proceedings under UAPA.

R994-508-110. Telephone Hearings.

(1) Hearings are scheduled as telephonic hearings. Every party wishing to participate in the telephone hearing must call the Appeals Unit before the hearing and provide a telephone number where the party can be reached at the time of the hearing. If the party that filed the appeal fails to call in advance as required by the notice of hearing, the appeal will be dismissed and an order of default will be issued.

(2) If a party requires an in-person hearing, the party must contact an ALJ and request that the hearing be scheduled as an in-person hearing. The request should be made sufficiently in advance of the hearing so that all other parties may be given notice of the change in hearing type and the opportunity to appear in person also. Requests will only be granted if the party can show that an in-person hearing is necessary to accommodate a special need or if the ALJ deems an in-person hearing is necessary to ensure an orderly and fair hearing which meets due process requirements. If the ALJ grants the request, all parties will be informed that the hearing will be conducted in person. Even if the hearing is scheduled as an in-person hearing, a party may elect to participate by telephone. In-person hearings are held in the office of the Appeals Unit unless the ALJ determines that another location is more appropriate. The Department is not responsible for any travel costs incurred by attending an in-person hearing.

(3) The Appeals Unit will provide a toll-free telephone number that parties and their witnesses can call for confirming and participating in telephone hearings.

R994-508-111. Evidence, Including Hearsay Evidence.

(1) The failure of one party to provide information either to the Department initially or at the appeals hearing severely limits the facts available upon which to base a good decision. Therefore, it is necessary for all parties to actively participate in the hearing by providing accurate and complete information in a timely manner to assure the protection of the

interests of each party and preserve the integrity of the unemployment insurance system.

(2) Hearsay, which is information provided by a source whose credibility cannot be tested through cross-examination, has inherent infirmities which make it unreliable.

(3) Evidence will not be excluded solely because it is hearsay. Hearsay, including information provided to the Department through telephone conversations and written statements will be considered, but greater weight will be given to credible sworn testimony from a party or a witness with personal knowledge of the facts.

(4) Findings of fact cannot be based exclusively on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence. All findings must be supported by a residuum of legal evidence competent in a court of law.

R994-508-112. Procedure For Use of an Interpreter at the Hearing.

(1) If a party notifies the Appeals Unit that an interpreter is needed, the Unit will arrange for an interpreter at no cost to the party.

(2) The ALJ must be assured that the interpreter understands the English language and understands the language of the person for whom the interpreter will interpret.

(3) The ALJ will instruct the interpreter to interpret, word for word, and not summarize, add, change, or delete any of the testimony or questions.

(4) The interpreter will be sworn to truthfully and accurately translate all statements made, all questions asked, and all answers given.

R994-508-113. Department a Party to Proceedings.

As a party to the hearing, the Department or its representatives have the same rights and responsibilities as other interested parties to present evidence, bring witnesses, cross-examine witnesses, give rebuttal evidence, and appeal decisions. The ALJ cannot act as the agent for the Department and therefore is limited to including in the record only that relevant evidence which is in the Department files, including electronically kept records or records submitted by Department representatives. The ALJ will, on his or her own motion, call witnesses for the Department when the testimony is necessary and the need for such witnesses or evidence could not have been reasonably anticipated by the Department prior to the hearing. If the witness is not available, the ALJ will, on his or her own motion, continue the hearing until the witness is available.

R994-508-114. Ex Parte Communications.

Parties are not permitted to discuss the merits or facts of any pending case with the ALJ assigned to that case or with a member of the Board prior to the issuance of the decision, unless all other parties to the case have been given notice and opportunity to be present. Any ex parte discussions between a party and the ALJ or a Board member will be reported to the parties at the time of the hearing and made a part of the record. Discussions with Department employees who are not designated to represent the Department on the issue and are not expected to participate in the hearing of the case are not ex parte communications and do not need to be made a part of the record.

R994-508-115. Requests for Removal of an ALJ from a Case.

A party may request that an ALJ be removed from a case on the basis of partiality, interest, or prejudice. The request for removal must be made to the ALJ assigned to hear the case. The request must be made prior to the hearing unless the reason for the request was not, or could not have been

known prior to the hearing. The request must state specific facts which are alleged to establish cause for removal. If the ALJ agrees to the removal, the case will be assigned to a different ALJ. If the ALJ finds no legitimate grounds for the removal, the request will be denied and the ALJ will explain the reasons for the denial during the hearing. Appeals pertaining to the partiality, interest, or prejudice of the ALJ may be filed consistent with the time limitations for appealing any other decision.

R994-508-116. Rescheduling or Continuance of Hearing.

(1) The ALJ may adjourn, reschedule, continue, or reopen a hearing on the ALJ's own motion or on the motion of a party.

(2) If a party knows in advance of the hearing that they will be unable to proceed with or participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time.

(a) The request must be received prior to the hearing.

(b) The request must be made orally by calling the Appeals Unit. If the request is not received prior to the hearing, the party must show cause for failing to make a timely request.

(c) The party making the request must provide evidence of good cause for the request.

(3) Unless compelling reasons exist, a party will not normally be granted more than one request for a continuance.

R994-508-117. Failure to Participate in the Hearing and Reopening the Hearing After the Hearing Has Been Concluded.

(1) If a party fails to appear for or participate in the hearing, either personally or through a representative, the ALJ may take evidence from participating parties and will issue a decision based on the best available evidence.

(2) Any party failing to participate, personally or through a representative, may request that the hearing be reopened.

(3) The request must be in writing, must set forth the reason for the request, and must be mailed, faxed, or delivered to the Appeals Unit within ten days of the issuance of the decision issued under Subsection (1). Intermediate Saturdays, Sundays and legal holidays are excluded from the computation of the ten days in accordance with Rule 6 of the Utah Rules of Civil Procedure. If the request is made after the expiration of the ten-day time limit, but within 30 days, the party requesting reopening must show cause for not making the request within ten days. If no decision has yet been issued, the request should be made without unnecessary delay. If the request is received more than 30 days after the decision is issued, the Department will have lost jurisdiction and the party requesting reopening must show good cause for not making a timely request.

(4) If a request to reopen is not granted, the ALJ will issue a decision denying the request. A party may appeal a denial of the request to reopen to the Board within 30 days of the date of issuance of the decision. The appeal must be in writing and set forth the reason or reasons for the appeal. The appeal can only contest the denial of the request to set aside the default and not the underlying merits of the case except as provided in R994-508-118(2)(f).

(5) The ALJ may reopen a hearing on his or her own motion if it appears necessary to take continuing jurisdiction or if the failure to reopen would be an affront to fairness.

(6) If the request to reopen is made more than 30 days after the issuance of the ALJ's decision, the ALJ may consider the request or refer it to the Board to be treated as an appeal to the Board.

R994-508-118. What Constitutes Grounds to Reopen a Hearing.

(1) The request to reopen will be granted if the party was prevented from appearing at the hearing due to circumstances beyond the party's control.

(2) The request may be granted upon such terms as are just for any of the following reasons: mistake, inadvertence, surprise, excusable neglect, or any other reason justifying relief from the operation of the decision. The determination of what sorts of neglect will be considered excusable is an equitable one, taking into account all of the relevant circumstances including:

(a) the danger that the party not requesting reopening will be harmed by reopening;

(b) the length of the delay caused by the party's failure to participate including the length of time to request reopening;

(c) the reason for the request including whether it was within the reasonable control of the party requesting reopening;

(d) whether the party requesting reopening acted in good faith;

(e) whether the party was represented at the time of the hearing. Attorneys and professional representatives are expected to have greater knowledge of Department procedures and rules and are therefore held to a higher standard; and

(f) whether based on the evidence of record and the parties' arguments or statements, taking additional evidence might affect the outcome of the case.

(3) Requests to reopen are remedial in nature and thus must be liberally construed in favor of providing parties with an opportunity to be heard and present their case. Any doubt must be resolved in favor of granting reopening.

(4) Excusable neglect is not limited to cases where the failure to act was due to circumstances beyond the party's control.

(5) The ALJ has the discretion to schedule a hearing to determine if a party requesting reopening satisfied the requirements of this rule or may, after giving the other parties an opportunity to respond to the request, grant or deny the request on the basis of the record in the case.

R994-508-119. Withdrawal of Appeal.

A party who has filed an appeal with the Appeals Unit may request that the appeal be withdrawn. The request must explain the reasons for the withdrawal and be made to the ALJ assigned to hear the case, or the supervising ALJ if no ALJ has yet been assigned. The ALJ may deny the request if the withdrawal of the appeal would jeopardize the due process rights of any party. If the ALJ grants the request, the ALJ will issue a decision dismissing the appeal and the initial Department determination will remain in effect. The decision will inform the parties of the right to reinstate the appeal and the procedure for reinstating the appeal. A request to reinstate an appeal must be made within ten calendar days of the decision dismissing the appeal, must be in writing, and must show cause for the request. A request to reinstate made more than ten days after the dismissal will be treated as a late appeal.

R994-508-120. Prompt Notification of Decision.

Any decision by an ALJ or the Board which affects the rights of any party with regard to benefits, tax liability, or jurisdictional issues will be mailed to the last known address of the parties or delivered in person. Each decision issued will be in writing with a complete statement of the findings of fact, reasoning and conclusions of law, and will include or be accompanied by a notice specifying the further appeal rights

of the parties. The notice of appeal rights shall state clearly the place and manner for filing an appeal from the decision and the period within which a timely appeal may be filed.

R994-508-122. Finality of Decision.

The ALJ's decision is binding on all parties and is the final decision of the Department unless appealed within 30 days of date the decision was issued.

R994-508-201. Non-Attorney Representative Fees.

(1) An authorized representative who is not an attorney may not charge or receive a fee for representing a claimant in an action before the Department without prior approval by an ALJ or the Board. The Department is not responsible for the payment of the fee, only the regulation and approval of the fee. The Department does not regulate fees charged to employers or attorney's fees.

(2) Fees will not be approved in excess of 25 percent of the claimant's maximum potential regular benefit entitlement.

R994-508-202. Petition for Approval of Fee.

(1) If a fee is to be charged, a written petition for approval must be submitted by the claimant's representative to the ALJ before whom the representative appeared, or to the supervising ALJ if no hearing was scheduled. An approval form can be obtained through the Appeals Unit. Prior to approving the fee, a copy of the petition will be sent to the claimant and the claimant will be allowed ten days from the date of mailing to object to the fee. At the discretion of the ALJ, the fee may be approved as requested, adjusted to a lower amount, or disallowed in its entirety.

(2) If the case is appealed to the Board level, the claimant's representative must file a new petition with the Board if additional fees are requested.

R994-508-203. Criteria for Evaluation of Fee Petition.

The appropriateness of the fee will be determined using the following criteria:

- (1) the complexity of the issues involved;
- (2) the amount of time actually spent in;
 - (a) preparation of the case;
 - (b) attending the hearing;
 - (c) preparation of a brief, if required. Unless an appeal is taken to the Court of Appeals, fees charged for preparation of briefs or memoranda will not ordinarily be approved unless the ALJ requested or preapproved the filing of the brief or memoranda; and

(d) further appeal to the Board, the Court of Appeals, and/or the Supreme Court.

- (3) The quality of service rendered including;
 - (a) preparedness of the representative;
 - (b) organization and presentation of the case;
 - (c) avoidance of undue delays. A representative should make every effort to go forward with the hearing when it is originally scheduled to avoid leaving the claimant without income or an unnecessary overpayment; and,

(d) the necessity of representation. If the ALJ or the Board determines that the claimant was not in need of representation because of the simplicity of the case or the lack of preparation on the part of the representative, only a minimal fee may be approved or, in unusual circumstances, a fee may be disallowed.

(4) The prevailing fee in the community. The prevailing fee is the rate charged by peers for the same type of service. In determining the prevailing fee for the service rendered, the Department may consider information obtained from the Utah State Bar Association, Lawyer's Referral Service, or other similar organizations as well as similar cases before the Appeals Unit.

R994-508-204. Appeal of Fee.

The claimant or the authorized representative may appeal the fee award to the Board within 30 days of the date of issuance of the ALJ's decision. The appeal must be in writing and set forth the reason or reasons for the appeal.

R994-508-301. Appeal From a Decision of an ALJ.

If the ALJ's decision did not affirm the initial Department determination, the Board will accept a timely appeal from that decision if filed by an interested party. If the decision of the ALJ affirmed the initial Department determination, the Board has the discretion to refuse to accept the appeal or request a review of the record by an individual designated by the Board. If the Board refuses to accept the appeal or requests a review of the record as provided in statute, the Board will issue a written decision declining the appeal and containing appeal rights.

R994-508-302. Time Limit for Filing an Appeal to the Board.

(1) The appeal from a decision of an ALJ must be filed within 30 calendar days from the date the decision was issued by the ALJ. This time limit applies regardless of whether the decision of the ALJ was sent through the U.S. Mail or personally delivered to the party. "Delivered to the party" means personally handed, faxed, or sent electronically to the party. No additional time for mailing is allowed.

(2) In computing the period of time allowed for filing a timely appeal, the date as it appears in the ALJ's decision is not included. The last day of the appeal period is included in the computation unless it is a Saturday, Sunday, or legal holiday when the offices of the Department are closed. If the last day permitted for filing an appeal falls on a Saturday, Sunday, or legal holiday, the time permitted for filing a timely appeal will be extended to the next day when the Department offices are open.

(3) The date of receipt of an appeal to the Board is the date the appeal is actually received by the Board, as shown by the Department's date stamp on the document or other credible evidence such as a written or electronic notation of the date of receipt, and not the post mark date from the post office. If the appeal is faxed to the Board, the date of receipt is the date recorded on the fax.

(4) Appeals to the Board which appear to be untimely will be handled in the same way as untimely appeals to the ALJ in rules R994-508-103 and R994-508-104.

R994-508-303. Procedure for Filing an Appeal to the Board.

(1) An appeal to the Board from a decision of an ALJ must be in writing and include:

(a) the name and signature of the party filing the appeal. Accessing the Department's website for the purpose of filing an appeal and providing a correct PIN will be considered a signed appeal;

(b) the name and social security number of the claimant in cases involving claims for unemployment benefits;

(c) the grounds for appeal; and

(d) the date when the appeal was mailed or sent to the Board.

(2) The appeal must be mailed, faxed, delivered to, or filed electronically with the Board.

(3) An appeal which does not state adequate grounds, or specify alleged errors in the decision of the ALJ, may be summarily dismissed.

R994-508-304. Response to an Appeal to the Board.

Interested parties will receive notice that an appeal has been filed and a copy of the appeal and will be given 15 days

from the date the appeal was mailed to the party to file a response. Parties are not required to file a response. A party filing a response should mail a copy to all other parties and the Board.

R994-508-305. Decisions of the Board.

(1) The Board has the discretion to consider and render a decision on any issue in the case even if it was not presented at the hearing or raised by the parties on appeal.

(2) Absent a showing of unusual or extraordinary circumstances, the Board will not consider new evidence on appeal if the evidence was reasonably available and accessible at the time of the hearing before the ALJ.

(3) The Board has the authority to request additional information or evidence, if necessary.

(4) The Board may remand the case to the Department or the ALJ when appropriate.

(5) A copy of the decision of the Board, including an explanation of the right to judicial review, will be delivered or mailed to the interested parties.

R994-508-307. Withdrawal of Appeal to the Board.

A party who has filed an appeal from a decision of an ALJ may request that the appeal be withdrawn. The request must explain the reasons for the withdrawal by making a written statement to the Board explaining the reasons for the withdrawal. The Board may deny such a request if the withdrawal of the appeal jeopardizes the due process rights of any party. If the Board grants the request, a decision dismissing the appeal will be issued and the underlying decision will remain in effect. The decision will inform the party of the right to reinstate the appeal and the procedure for reinstating the appeal. A request to reinstate an appeal under this subsection must be made within ten days of the decision dismissing the appeal, must be in writing, and must show cause for the request. A request to reinstate made more than 30 days after the dismissal will be treated as a late appeal.

R994-508-401. Jurisdiction and Reconsideration of Decisions.

(1) An initial Department determination or a decision of an ALJ or the Board is not final until the time permitted for the filing of an appeal has elapsed. There are no limitations on the review of decisions until the appeal time has elapsed.

(2) After a determination or decision has become final, the Department may, on its own initiative or upon the request of any interested party, review a determination or decision and issue a new decision or determination, if appropriate, if there has been a change of conditions or a mistake as to facts. The reconsideration must be made at, or with the approval of, the level where the last decision on the case was made or is currently pending.

(a) A change in conditions may include a change in the law which would make reconsideration necessary in fairness to the parties who were adversely affected by the law change. A change in conditions may also include an unforeseeable change in the personal circumstances of the claimant or employer which would have made it reasonable not to file a timely appeal.

(b) A mistake as to facts is limited to material information which was the basis for the decision. A mistake as to facts may include information which is misunderstood or misinterpreted, but does not include an error in the application of the act or the rules provided the decision is made under the correct section of the act. A mistake as to facts can only be found if it was inadvertent. If the party alleging the mistake intentionally provided the wrong information or intentionally withheld information, the Department will not exercise jurisdiction under this

paragraph.

(3) The Department is not required to take jurisdiction in all cases where there is a change in conditions or a mistake as to facts. The Department will weigh the administrative burden of making a redetermination against the requirements of fairness and the opportunities of the parties affected to file an appeal. The Department may decline to take jurisdiction if the redetermination would have little or no effect.

(4) Any time a decision or determination is reconsidered, all interested parties will be notified of the new information and provided with an opportunity to participate in the hearing, if any, held in conjunction with the review. All interested parties will receive notification of the redetermination and be given the right to appeal.

(5) A review cannot be made after one year from the date of the original determination except in cases of fraud or claimant fault. In cases of fault or fraud, the Department has continuing jurisdiction as to overpayments. In cases of fraud, the Department only has jurisdiction to assess the penalty provided in Utah Code Subsection 35A-4-405(5) for a period of one year after the discovery of the fraud.

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