R13. Administrative Services, Administration.
R13-3. Americans with Disabilities Act Grievance Procedures.
R13-3-1. Authority and Purpose.

(1) This rule is made under authority of Section 63A-1-105.5 and Subsection 63G-3-201(3). As required by 28 CFR 35.107, the Utah Department of Administrative Services, as a public entity that employs more than 50 persons, adopts and publishes the grievance procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act, as amended.

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

R13-3-2. Definitions.

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

(2) "Department" means the Department of Administrative Services created by Section 63A-1-104.

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

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

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

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

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

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

R13-3-3. Filing of Complaints.

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

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

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

(4) Each complaint shall:

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

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

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

(d) describe the action and accommodation desired; and

(e) be signed by the complainant or by his 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) If the complaint is not in writing, the ADA coordinator or designee shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

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

R13-3-4. Investigation of Complaints.

(1) The ADA coordinator or designee shall investigate complaints to the extent necessary to assure all relevant facts are collected and documented. This may include gathering all information listed in Subsection R13-3-3(4) and (7) of this rule if it is not made available by the complainant.

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

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

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

(b) require facility modifications; or

(c) require reassignment to a different position.

R13-3-5. Recommendation and Decision.

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

(2) If the ADA coordinator or designee is unable to make a recommendation within the 15 working day period, the

complainant shall be notified in writing, or in another accessible format suitable to the complainant, stating why the recommendation is delayed and what additional time is needed.

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

R13-3-6. Appeals.

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

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

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

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

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

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

(b) require facility modifications; or

(c) require reassignment to a different position.

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

(7) If the executive director or designee is unable to reach a final decision within the 15 working day period, the complainant shall be notified in writing, or by another accessible format suitable to the complainant, why the final decision is being delayed and the additional time needed to reach a final decision.

R13-3-7. Record Classification.

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

(2) After issuing a decision under Section R13-3-5 or a final decision upon appeal under Section R13-3-6, portions of the record pertaining to the complainant's medical condition shall be classified as "private" under Subsection 63G-2-302(1)(b) or "controlled" under Section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. 12112(d)(3)(B) and (C), at the option of the ADA coordinator.

(a) The written decision of the division director or executive director shall be classified as "public," and all other records, except controlled records under Subsection R13-3-7(2), classified as "private."

R13-3-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under:

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

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

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

KEY: grievance procedures, disabled persons
March 10, 2011 63A-1-105.5
Notice of Continuation October 10, 2017 63G-3-201(3)
28 CFR 35.107

R17. Administrative Services, Archives and Records Service.
R17-5. Definitions for Rules in Title R17.
R17-5-1. Definitions.

In addition to terms defined in Section 63G-2-103, Utah Code, the following terms apply to rules in Title R17.

(1) "AIIM" means the Association for Information and Image Management.

(2) "ANSI" means American National Standards Institute.

(3) "Certification" means the confirmation that images recorded on microfilm are accurate, complete, and unaltered reproductions of original records.

(4) "Official Custody" means the responsibility for and implementing policy for the care and access of records.

KEY: records retention, public information, access to information
August 20, 2008 63A-12-104
Notice of Continuation October 27, 2017

R17. Administrative Services, Archives and Records Service.
R17-6. Records Storage and Disposal at the State Records Center.
R17-6-1. Authority and Purpose.

In accordance with Subsection 63A-12-104(1), this rule establishes a procedure for the storage and disposal of records at the State Records Center.

R17-6-2. Records Storage and Disposal -- Agency Responsibility.

(1) An agency may transfer semi-active records to the Records Center for storage.

(2) Prior to transfer, the agency must verify that records have a State Archives record series number, an approved retention schedule, and have met all in office retention requirements.

(3) Records stored in the State Records Center remain in the official custody of the agency that transferred them.

(4) In the event that an agency has not transferred records to the Records Center, it is the agency's responsibility to manage, maintain, and destroy records in its custody in accordance with the records series' approved retention schedule and to document the records destruction.

R17-6-3. Records Storage and Disposal -- Archives Responsibility.

(1) The State Archives stores semi-active records at the State Records Center in accordance with the approved retention schedule. The State Records Center may accept records for which a proposed retention has been presented to the State Records Committee with the provision that if the committee does not approve the retention, the records will be returned to the agency.

(2) The State Archives destroys records stored at the Records Center in accordance with the approved retention schedule and upon authorization from the creating agency. If the creating agency does not respond to the second request for authorized destruction within ninety (90) days, the records may be returned to the agency.

(3) In the event that a record has met its scheduled retention requirements and the Records Center is unable to locate an authorized agency to provide destruction approval or the agency is obsolete, the records will become the official custody of the Utah State Archives and the State Archivist will determine the disposition of the records.

KEY: records retention, public information, access to information
December 31, 2013 63A-12-104
Notice of Continuation October 27, 2017

R17. Administrative Services, Archives and Records Service.
R17-7. Archival Records Care and Access at the State Archives.
R17-7-1. Authority and Purpose.

In accordance with Subsection 63A-12-104(1), this rule establishes a procedure for the care and access of records in the custody of the State Archives, including classification or reclassification.

R17-7-2. Custody of Records, Care and Access.

(1) The State Archives accepts records which are placed in the official custody of the State Archivist in accordance with Sections 63G-2-604, 63A-12-102, 63A-12-103, and 63A-12-105.

(2) Records in the State Archives are available for public use in the State Archives insofar as use of the records is not restricted by law.

(3) Except as otherwise provided by law, records may not be removed or loaned for research use outside the State Archives.

R17-7-3. Access to Records.

(1) Records are made available for public use in the State Archives Research Center. Patrons must observe Research Center procedures for the protection and control of the records.

(2) Patrons are required to register to use the Research Center and Research Center staff may require patrons to provide photographic identification.

(3) Patrons shall only use a pencil when making personal notes, shall not mark public records, and shall maintain the original order of the public records consulted.

(4) Persons may not smoke, drink, or eat in the Research Center.

(5) Patrons may take only paper and research materials into the Research Center. Patrons must check brief cases, purses, backpacks, or similar items at the desk before entering the research area.

(6) Patrons shall use care in handling fragile materials. Patrons shall not alter, mutilate, or otherwise deface public records and are required to adhere to the instructions of reference staff.

(7) Patrons may not remove government records from the Research Center.

(8) Patrons may only use equipment and resources in the Research Center for the purposes of research associated with the Utah State Archives or Utah State History.

R17-7-4. Enforcement.

(1) If a patron violates R17-7-3, Research Center staff may issue a verbal warning.

(2) If, after an unheeded warning, or if there is risk of immediate or severe damage to records, staff may request the patron to leave immediately.

(3) If a patron fails to promptly comply with staff request to leave, staff may request assistance from building security personnel and from city police.

(4) These enforcement subsections do not limit the State Archives from performing its duties and enforcing these rules as otherwise allowed by law.

KEY: records retention, public information, access to information
August 15, 2013 63A-12-104
Notice of Continuation October 27, 2017

R17. Administrative Services, Archives and Records Service.
R17-8. Application of Microfilm Standards.
R17-8-1. Authority and Purpose.

In accordance with Subsection 63A-12-104(1), this rule establishes a procedure for the microfilming standards of permanent and long-term records.

R17-8-2. Micrographic Standards.

(1) Anyone microfilming Utah state and local government documents for retention purposes shall microfilm these records in conformity with the ANSI/AIIM Imaging Guidelines 2004, which are incorporated by reference.

(2) The State Archives must certify that each roll of microfilm complies with these Imaging Guidelines prior to the destruction of the original records.

(3) The State Archives is the official custodian of all master microfilm.

(4) Access to microfilmed records is permitted in accordance with the approved retention and classification for the records series.

KEY: records retention, public information, access to information
December 31, 2013 63A-12-104
Notice of Continuation October 27, 2017

R27. Administrative Services, Fleet Operations.
R27-7. Safety and Loss Prevention of State Vehicles.
R27-7-1. Authority.

(1) This rule is established pursuant to Subsection 63A-9-401(1)(d)(iii) which requires the division to make rules establishing requirements for fleet safety and loss prevention programs.

R27-7-2. Reporting Accidents and Violations of Motor Vehicle Laws.

(1) In the event of an accident involving a state vehicle, either the driver of the vehicle or the employing agency shall notify the division, the Division of Risk Management, and the agency's management, within 24 hours of the occurrence of the accident.

(2) Authorized drivers shall also follow Section R27-3-14 regarding reporting of violations of motor vehicle laws.

R27-7-3. Driver Eligibility to Operate a State Vehicle.

(1) The authority to operate a state vehicle is subject to withdrawal, suspension or revocation.

(2) The authority to operate a state vehicle shall be automatically withdrawn, suspended or revoked in the event that an authorized driver's license is not in a valid status.

(a) The authority to operate a state vehicle shall, at a minimum, be withdrawn, suspended or revoked for the period of denial, cancellation, disqualification, suspension or revocation of the authorized driver's license.

(b) The authority to operate a state vehicle shall not be reinstated until such time as the individual provides proof that his or her driver license has been reinstated or the division verifies the license has been reinstated.

(3) The authority to operate a state vehicle may be suspended or revoked for up to three years by the Driver Safety Committee or the Driver Eligibility Board for any of the following reasons:

(a) The authorized driver, while acting within the scope of employment, has been involved in three or more preventable accidents during a three- year period; or

(b) The authorized driver has three or more moving violations while driving a state vehicle within a 12-month period; or

(c) The authorized driver has been convicted of any of the following:

(i) Alcohol related driving violations;

(ii) reckless, careless, or negligent driving (including excessive speed violations);

(iii) driving violations that have resulted in injury or death;

(iv) felony related driving violations;

(v) hit and run violations;

(vi) impaired driving;

(vii) using a handheld wireless communication device while operating a moving motor vehicle; or

(viii) any other driving violation determined by the Driver Safety Committee or the Driver Eligibility Board as posing a significant risk to the safety or loss prevention of state vehicles.

(d) An authorized driver uses a vehicle in an unauthorized way or misuses, abuses or neglects a state vehicle as validated by the driver's agency;

(e) As provided in Section 63A-9-501, an authorized driver misuses or illegally operates a vehicle; or

(f) An authorized driver violates any major threshold as defined by the division or in policy by the employing agency.

(4) The withdrawal of authority to operate a state vehicle imposed by the Driver Safety Committee or the Driver Eligibility Board shall be in addition to agency-imposed disciplinary, corrective, or remedial action; except when the withdrawal of authority conflicts with an internal review and disciplinary process approved by the division and substantially meets the requirements outlined in rule.

(5) Pursuant to procedures outlined in Rule R27-2, a driver declared ineligible to operate a state vehicle by the Driver Safety Committee may appeal that determination to the Driver Eligibility Board. An appeal to the Driver Eligibility Board must be made in writing within 30 days from the date the Driver Safety Committee issues its decision.

(6) Effective Date

(a) Phase in - current state employees shall be subjected to R27-7-3(3) as of the effective date of the rules as published by the Division of Administrative Rules.

(b) State employees hired after the effective date of this administrative rule may be subject to a review of their driving record for three years previous to the hire date, and employment offers may be made conditional upon a favorable review.

R27-7-4. Driver Safety Committee.

(1) Each agency using a state vehicle shall establish and maintain a Driver Safety Committee or an internal review and disciplinary process that is approved by the division and substantially meets the requirements outlined in rule for the Driver Safety Committee.

(2) The purpose of the Driver Safety Committee is to increase the safety of the driver and reduce losses associated with the state vehicles. The Driver Safety Committee shall review any accident involving state vehicles in the possession or under the control of the agency. The Driver Safety Committee also reviews eligibility of a driver to operate a state vehicle based on the provisions of Section R27-7-3.

(3) After the Division of Risk Management has made an initial determination regarding the preventability of an accident, the agency Driver Safety Committee shall determine whether it agrees with the initial determination of preventability. The Driver Safety Committee shall use standards published by the National Safety Council.

(4) Each agency Driver Safety Committee shall meet monthly, except in cases when there are not items to review. The items to review are the preventability determination of any accidents and any major threshold violations committed in the previous month. The Driver Safety Committee shall report to the division its accident and major threshold determination and any actions taken.

(5) If an agency Driver Safety Committee does not send the monthly Driver Safety Committee report as specified in R27-7-4(4), the initial preventability determination of any accidents will stand. Any major threshold violations will receive the minimum driver eligibility suspension as outlined in Subsection R27-7-5(6). A driver may appeal this accident determination to the Driver Eligibility Board pursuant to Section R27-2.

(6) The Driver Eligibility Board may recommend disciplinary actions for agency drivers to the agency when it is acting on behalf of the agency Driver Safety Committee.

(7) If an agency has fewer than five employees, the agency head may perform the duties of the Driver Safety Committee outlined in rule. In the event the agency head is the driver to be reviewed, the review may be done by the Driver Eligibility Board. Appeals from the affected agency head will be heard by the Executive Director of the Department of Administrative Services, or designee and shall follow the appeal process outlined in rule.

R27-7-5. Driver Safety Committee Standards.

(1) The Driver Safety Committee shall have no less than three voting members. The members shall consist of, at a minimum, a risk coordinator, human resource representative and a fleet manager. In the absence of the fleet manager the employee's supervisor may fill the position.

(2) The Driver Safety Committee shall review the initial

accident preventability determination, moving violations committed in the state vehicle, moving violations outlined in Subsection R27-7-3(c), validity of citizen complaints and any other major threshold violations.

(3) An accident may be classified as preventable if any of the following factors are involved:

(a) Driving too fast for conditions;

(b) Failure to observe clearance;

(c) Failure to yield;

(d) Failure to properly lock the vehicle;

(e) Following too closely;

(f) Improper care of the vehicle;

(g) Improper backing;

(h) Improper parking;

(i) Improper turn or lane change;

(j) Reckless Driving as defined in Section 41-6a-528;

(k) Unsafe driving practices, including but not limited to: the use of electronic equipment or cellular phone while driving, smoking while driving, personal grooming, u-turn, driving with an animal(s) loose in the vehicle.

(4) An accident shall be classified as non-preventable when:

(a) The state vehicle is struck while properly parked;

(b) The state vehicle is vandalized while parked at an authorized location;

(c) The state vehicle is an emergency vehicle, and

(i) At the time of the accident the operator was in the line of duty and operating the vehicle in accordance with their respective agency's applicable policies, guidelines or regulations; and

(ii) Damage to the vehicle occurred during the chase or apprehension of people engaged in or potentially engaged in unlawful activities; or

(iii) Damage to the vehicle occurred in the course of responding to an emergency in order to save or protect the lives, property, health, welfare and safety of the public.

(5) Major threshold violations shall be determined as follows:

(a) Preventable Accidents:

(i) Three preventable accidents as determined by the Driver Safety Committee or the Driver Eligibility Board in a three year period; or

(ii) any single preventable accident as determined by the Driver Safety Committee or Driver Eligibility Board using aggravating factors outlined in Subsection R27-7-5(8).

(b) Moving violations:

(i) Three moving violations in a state vehicle within a 12-month period, not specifically outlined in Subsection R27-7-3(3)(c); or

(ii) Any moving violation outlined in Subsection R27-7-3(3)(c).

(c) Validated Citizen complaints: Validated citizen complaints may be considered a major threshold violation at the discretion of the Driver Safety Committee or Driver Eligibility Board using aggravating factors outlined in Subsection R27-7-5(8).

(d) Telematics Threshold violations:

(i) Three telematics threshold violations within a 12-month period; or

(ii) Any single telematics threshold violation as determined by the Driver Safety Committee or Driver Eligibility Board using aggravating factors outlined in Subsection R27-7-5(8).

(6) Major threshold violations will result, at a minimum, in the following state vehicle driving privilege suspensions:

(a) First major threshold violation shall receive a minimum of two-working day driving suspension.

(b) Second major threshold violation within 12 months of the first major threshold violation shall receive a minimum 14-calendar day driving suspension. If the second major threshold violation is not within a 12-month period of the first, then it is at the discretion of the Driver Safety Committee as to whether it is considered the first or second major threshold violation. The aggravating factors outlined in rule should be considered.

(c) Third major threshold violation within 12 months of the second major threshold violation shall receive a minimum of 30-calendar day driving suspension. If the third major threshold violation is not within a 12-month period of the second, then it is at the discretion of the Driver Safety Committee as to whether it is considered the first or third major threshold violation. The aggravating factors outlined in rule should be considered.

(d) Fourth major threshold violation within 12 months of the third major threshold violation shall receive a minimum of 60-calendar day driving suspension. If the fourth major threshold violation is not within a 12-month period of the third, then it is at the discretion of the Drier Safety Committee as to whether it is considered the first or fourth major threshold violation. The aggravating factors outlined in rule should be considered.

(7) The members of the Driver Safety Committee shall act on the following matters:

(a) The preventability of an accident in accordance with the standards in rule and the facts surrounding the accident and as to whether the single accident should be classified as a major threshold violation. The aggravating factors outlined in Subsection R27-7-5(8) should be considered.

(b) Any other item brought before the Driver Safety Committee that is allowed the discretion of the Driver Safety Committee, including driving suspension longer than the minimums outlined in rule.

(c) The Driver Safety Committee may impose a driving suspension for a period less than what is in rule, but only after the recommended period of driving suspension has been reviewed by and approved by the Driver Eligibility Board prior to the suspension taking effect.

(d) The Driver Safety Committee shall recommend appropriate disciplinary action to the employing agency.

(8) Aggravating Factors to Consider

(a) The following list are items to be considered when reviewing the driver eligibility suspension to be imposed or whether a single event outlined in Subsection R27-7-5 should be considered a major threshold violation.

(b) The event resulted in bodily harm.

(c) The event had a high likelihood of causing bodily harm.

(d) The amount of damage caused as a result of the event.

(e) The event had a high likelihood of causing damage.

(f) The event damaged the reputation of the state or agency.

(g) The event had a high likelihood of damaging the reputation of the state or agency.

(h) The frequency of the events under consideration.

(9) State vehicle driving eligibility suspensions should begin within two weeks of the Driver Safety Committee meeting, unless a differing timeline is outlined in rule.

R27-7-6. Effects of Driver Safety Committee Accident Preventability Classification.

(1) In the event that an accident is determined by the Driver Safety Committee to be preventable, the Driver Safety Committee shall require the following:

(a) as a result of the first preventable accident, the authorized driver shall be required to attend a Division of Risk Management-approved driver safety program;

(b) as a result of the second preventable accident, the driver shall be required to attend, at their own expense, a state certified or nationally recognized defensive driving course;

(c) as a result of the third preventable accident within a

three-year period, the driver shall receive a major threshold violation and be subject to the standards of the Driver Safety Committee.

R27-7-7. Driver Eligibility Board.

(1) The Driver Eligibility Board shall have at least four voting members. Members of the Board shall include a representative from the division, the Division of Risk Management, the Department of Human Resource Management and, a representative of the employee's agency. Each member of the Board will be assigned by the Executive Director of the Department of Administrative Services.

(2) The Driver Eligibility Board shall meet within 30-calendar days of an appeal to the Driver Eligibility Board.

(3) The employing agency supervisor and the state driver being reviewed shall be notified of the Driver Eligibility Board's meeting place, date and time. Each state employee reviewed by the Driver Eligibility Board will be given the opportunity to speak to the Board and/or answer questions during the meeting if he or she chooses to attend the Board meeting.

(4) The Driver Eligibility Board or the Driver Safety Committee may suspend state vehicle driving privilege according to the provisions of Rule 27-7 for up to three years.

KEY: accidents, incidents, tickets, Driver Safety Committee
July 11, 2017 63A-9-401(1)(d)(iii)
Notice of Continuation November 6, 2015

R33. Administrative Services, Purchasing and General Services.
R33-26. State Surplus Property.
R33-26-101. State-Owned Surplus Property -- General.

This rule sets forth policies and procedures which govern the acquisition and disposition of State-owned and federal surplus property items, and vehicles. It applies to all State and local public agencies and eligible non-profit educational and health institutions when dealing with federal surplus property. It also applies to all state agencies unless specifically exempted by law and to the general public when dealing with the State Surplus Property agency.

R33-26-102. Requirements.

Under the provisions of Section 63A-2-103, the Division of Purchasing and General Services shall manage and administer the State's surplus property program, including:

(1) The federal surplus property program as the Utah State Agency for Surplus Property and in compliance with 41 CFR 102-37 and Public Law 94-519 through a State Plan of Operation. The standards and procedures governing the contract between the state and the federal government are contained in the Plan of Operation.

(2) The disposition of state-owned surplus property items, including vehicles and non-vehicle surplus property.

(3) Information technology equipment.

R33-26-103. Definitions.

All definitions in Section 63A-2-101.5 shall apply to Rule R33-26. In addition the following definitions shall apply to Rule R33-26:

(1) "All-terrain type I vehicle" means any motor vehicle 52 inches or less in width, having an unladen dry weight of 1,500 pounds or less, traveling on three or more low pressure tires, having a seat designed to be straddled by the operator, and designed for or capable of travel over unimproved terrain;

(2) "All-terrain type II vehicle" means any other motor vehicle, not defined in Section 103 designed for or capable of travel over unimproved terrain and includes a class A side-by-side vehicle. "All-terrain type II vehicle" does not include golf carts, any vehicle designed to carry a person with a disability, any vehicle not specifically designed for recreational use, or farm tractors as defined under Section 41-1a-102.

(3) "Aircraft" means any contrivance now known or in the future invented, used, or designed for navigation of or flight in the air.

(4) "Bundled sale" means the act of packaging or grouping multiple State-owned surplus property items together for the purpose of offering those items for sale in a single transaction in which the buyer receives all surplus property items bundled together and sold in the transaction.

(5) "Camper" means any structure designed, used, and maintained primarily to be mounted on or affixed to a motor vehicle that contains a floor and is designed to provide a mobile dwelling, sleeping place, commercial space, or facilities for human habitation or for camping.

(6) "Disposition" means the act of selling, disposing, or transferring state-owned vehicle and non-vehicle property, declared to be surplus property, to the care, custody, or possession of another person.

(7) "Division" means the Division of Purchasing and General Services within the Department of Administrative Services created under Section 63A-2-101.

(8) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(9) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion.

(10) "Motorcycle" means a motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

(11) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways.

(12) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle, all-terrain type II vehicle, or motorcycle.

(13) As used in this section "Personal handheld electronic device":

(a) means an electronic device that is designed for personal handheld use and permits the user to store or access information, the primary value of which is specific to the user of the device; and,

(b) includes a mobile phone, pocket personal computer, personal digital assistant, wireless, or similar device.

(14) "Personal Watercraft" means a motorboat that is:

(a) less than 16 feet in length;

(b) propelled by a water jet pump; and

(c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

(15)(a) "Pickup truck" means a two-axle motor vehicle with motive power manufactured, remanufactured, or materially altered to provide an open cargo area.

(b) "Pickup truck" includes motor vehicles with the open cargo area covered with a camper, camper shell, tarp, removable tarp, or similar structure.

(16) "Reconstructed vehicle" means every vehicle type required to be registered in this state that is materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

(17)(a) "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is either self-propelled or pulled by another vehicle.

(b) "Recreational vehicle" includes:

(i) a travel trailer;

(ii) a camping trailer;

(iii) a motor home;

(iv) a fifth wheel trailer; and

(v) a van.

(18) "Road tractor" means every motor vehicle designed and used for drawing other vehicles and constructed so it does not carry and load either independently or any part of the weight of a vehicle or load this is drawn.

(19) "Sailboat" means any vessel having one or more sails and propelled by wind.

(20) "Semitrailer" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that some part of its weight and its load rests or is carried by another vehicle.

(21)(a) "Special mobile equipment" means every vehicle:

(i) not designed or used primarily for the transportation of persons or property;

(ii) not designed to operate in traffic; and

(iii) only incidentally operated or moved over the highways.

(b) "special mobile equipment" includes:

(i) farm tractors;

(ii) on or off-road motorized construction or maintenance equipment including backhoes, bulldozers, compactors, graders, loaders, road rollers, tractors, and trenchers;

(iii) ditch-digging apparatus; and

(iv) forklifts, warehouse equipment, golf carts, electric carts, etc.

(22) "State agency" means any executive branch department, division, or other agency of the state.

(23) "State-owned surplus property item":

(a) means state-owned property as defined in Section 63A-

2-101.5 and Section R33-26-103 whether acquired by purchase, seizure, donation, or otherwise:

(i) that is no longer being used by the state or no longer usable by the state;

(ii) that is out of date;

(iii) that is damaged and cannot be repaired or cannot be repaired at a cost that is less than the property's value;

(iv) whose useful life span has expired; or

(v) that the state agency possessing the property determines is not required to meet the needs or responsibilities of the state agency;

(b) includes:

(i) a motor vehicle as defined in Section R33-26-103;

(ii) equipment;

(iii) furniture;

(iv) information technology equipment; and

(v) supplies; and

(c) does not include:

(i) real property;

(ii) an asset of the School and Institutional Trust Lands Administration, established in Section 53C-1-201;

(iii) a firearm or ammunition; or

(iv) an office or household item made of aluminum, paper, plastic, cardboard, or other recyclable material, without any meaningful value except for recycling purposes.

(24) "Trailer" means a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(25) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable vehicle without motive power, designed as a temporary dwelling for travel, recreational, or vacation use that does not require a special highway movement permit when drawn by a self-propelled motor vehicle.

(26) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load that is drawn.

(27) "Vehicle" means:

(a) all-terrain vehicle type I and II,

(b) aircraft,

(c) camper,

(d) farm tractor,

(e) motor boat,

(f) motorcycle,

(g) motor vehicle,

(h) off highway vehicle,

(i) personal watercraft,

(j) pickup truck,

(k) reconstructed vehicle,

(l) recreational vehicle,

(m) road tractor,

(n) sailboat,

(o) semitrailer,

(p) special mobile equipment,

(q) trailer,

(r) travel trailer,

(s) truck tractor,

(t) vessel; and

(28) "Vessel" means every type of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

R33-26-200. Disposition of State-Owned Surplus Property Items.

(1) The State surplus property program shall be administered by the Department of Administrative Services, Division of Purchasing and General Services.

(2) Disposition of State-owned surplus property items shall be through the following methods:

(a) Online auction;

(b) Live auction;

(c) Pick up, sale, and disposal;

(d) Disposal;

(e) Destruction;

(f) Direct sale to the public;

(g) Donation to a public school or state administered program; or

(h) Another method approved by the director of the divisions.

(3) State agencies shall complete Form SP-1 and electronically transmit it to the State Surplus Property agency.

(a) Completion of Form SP-1 meets the requirements set forth in Subsection 63A-2-401(7) for a state agency to declare State property as surplus.

(i) Form SP-1 may be accessed at: surplus.utah.gov;

(ii) The following information must be included on Form SP-1:

(A) a minimum of two digital photographs for each State-owned surplus property item being listed for sale;

(B) a brief description of the State-owned surplus property item detailing its condition;

(C) an estimate of the Sate-owned surplus property item's value;

(D) the location of the State-owned surplus property item; and

(E) the contact information of the person assigned by the state agency to assist the public with the transaction.

(4) Online auction shall be the primary method used for the disposition of non-vehicle State-owned surplus property items.

(a) Online auctions shall be administered by the State Surplus Property agency.

(b) Each state agency will be responsible for:

(i) Storing State-owned surplus property items on site until the online auction has been completed and each State-owned surplus property item is:

(A) picked up by the person to whom the item has been sold to via online auction;

(B) disposed of or donated by the state agency;

(C) picked up by the vendor under contract with the division; or

(D) picked up by a local vendor under contract with the state agency;

(ii) Assigning an employee of the agency to assist the public with the online auction including:

(A) answering questions about the State-owned surplus property item;

(B) providing directions;

(C) scheduling the pickup;

(D) other miscellaneous tasks; and

(iii) Developing internal policies regarding employees:

(A) assisting the public with lifting and transporting State-owned surplus property items;

(B) transporting State-owned surplus property items with a minimal value of less than $100 to charities for donation;

(C) receiving State-owned surplus property items with a minimal value of less than $100 as a donation by the state agency.

(c) A state agency may seek an exception from the requirement to dispose of State-owned surplus property items through online auction in accordance with Subsection 63A-2-401(3).

(i) State agencies that are granted an exception must:

(A) complete Form SP-1 and transmit it to the State Surplus Property agency; and

(B) coordinate with the State Surplus Property agency to schedule a date and time for State-owned surplus property items

to be delivered.

(ii) State agencies may contract with the State Surplus Property agency to have items identified in subsection (4)(c)(i) picked up and delivered to the State Surplus Property agency in accordance with the authorized fee schedule.

(iii) State agencies may contract with a vendor to have items identified in subsection (4)(c)(i) picked up and delivered to the State Surplus Property agency.

(5) The State Surplus Property agency shall administer the disposition of State-owned surplus vehicles.

(a) State-owned surplus vehicles may be sold at the agency location or delivered to the State Surplus Property agency for disposition.

(6) State-owned surplus electronic data devices shall be disposed of in accordance with Rule R33-26-202.

(7)(a) State-owned surplus property items with a minimal value may be disposed of as waste by a state agency in accordance with Subsection 63A-2-411.

(b) State-owned surplus property items that do not appreciate in value that had an initial purchase price of less than $100 or deemed to be valued at less than $100 by the State Surplus Property agency:

(i) may be disposed of as waste by a state agency by the means described in Subsection 63A-2-411(3); or

(ii) may be packaged together and sold as a bundled sale.

(8) The State Surplus Property agency is not authorized to accept or dispose of hazardous waste or any item containing hazardous waste. State agencies must dispose of hazardous waste and items containing hazardous waste in accordance with applicable laws.

(9) State agencies that cannot or elect not to dispose of a surplus item having a minimal value of less than $100 as waste in the trash, donate the item to a charity, or donate the item to an employee of the state agency, may contract with a vendor to dispose of the item, recycle the item, or repurpose the item.

(a) State agencies may contract with the State Surplus Property agency to have items identified in Subsection (9) picked up and delivered to the State Surplus Property agency in accordance with the authorized fee schedule.

(b) State agencies may contract with a private sector vendor to have items identified in Subsection (9) picked up and delivered to the State Surplus Property agency.

R33-26-201. Non-vehicle Disposition Procedures.

(1) State-owned, non-vehicle personal property shall not be destroyed, sold, transferred, traded-in, traded, discarded, donated or otherwise disposed of unless the procedures set forth in this Rule are followed.

(2) This rule applies to and includes any residue that may be remaining from agency cannibalization of property.

(3) When a department state agency determines that state-owned non-vehicle personal property is in excess of current needs, it will:

(a) transfer the state-owned, non-vehicle surplus property items directly to another department or agency of the state without involvement of the division; or

(b) notify the State Surplus Property agency that the agency has a State-owned surplus property item.

R33-26-202. Disposal of State-Owned Surplus Electronic Data Devices.

(1) For the purpose of this rule, Electronic Data Device means an electronic device capable of downloading, storing or transferring State-owned data. Electronic Data Devices include:

(a) Computers;

(b) Tablets (iPad, Surface Pro, Google Nexus, Samsung Galaxy, etc.);

(c) Smart phones;

(d) Personal Digital Assistants (PDAs);

(e) Digital copiers and multifunction printers;

(f) Flash drives and other portable data storage devices; and

(g) Other similar devices.

(2) The State has determined that the security risk of a potential data breach resulting from the improper disposal or sale of an electronic data device, as defined in this rule, outweigh the potential revenue that may be received by the State from the sale of an electronic data device deemed surplus property. Therefore, the State has adopted this Administrative Rule regarding the proper disposal of State-owned surplus electronic data devices:

(a) Each State agency shall ensure that all surplus State-owned electronic data devices are disposed of in accordance with the following procedures.

(b) Surplus State-owned electronic devices defined under this Rule may not be sold or gifted via on-line auction or any other means.

(i) An exception for directors and other State officials may be granted by the Director of the Division of Purchasing after receiving documentation from:

(A) the Executive Director of the Department of Technology Services certifying that all connectivity to sensitive, confidential, protected, and classified State data has been removed from the State-owned electronic data device and that the State-owned electronic data device no longer has access to the State's network; and

(B) the State Surplus Property agency regarding the market value of the State-owned electronic data device.

(c) Surplus State-owned electronic data devices must be disposed of through the vendor under contract with the State, unless a separate contractual agreement has been entered into with the manufacturer or supplier of the device for proper destruction and disposal.

(d) The Division of Purchasing shall enter into a contract with a vendor for the destruction and proper disposal of all State-owned surplus electronic data devices.

(e) Proper disposal includes:

(i) Recycling components and parts after the State-owned electronic data device has been destroyed to the point that State-owned data cannot be retrieved;

(ii) Disposal in a landfill approved for electronic waste after the State-owned electronic data device has been destroyed to the point that State-owned data cannot be retrieved; or

(iii) Resale by the contractor of computers, digital copiers and multifunction printers that have had the hard drive destroyed.

(f) State agencies shall request assistance from the Department of Technology Services (DTS) to destroy the hard drives of computers and other State-owned surplus electronic data devices purchased through DTS prior to the agency transferring the devices to the vendor under contract with the State.

(g) State agencies shall contact the vendor under contract with the State to destroy and properly dispose of all other State-owned surplus electronic data communication devices.

(3) Subject to Subsections (1) and (2), except as it relates to a vehicle or federal surplus property items, the transfer of surplus property items from one state agency directly another does not require approval by the division, the director of the division, or any other person.

R33-26-204. Federal Surplus Property.

(1) Federal surplus property items are not available for sale to the general public. Donation of federal surplus property shall be administered in accordance with the procedures identified in the State Plan of Operation for the Federal Property Assistance Program.

(2) Public auctions of federal surplus property are

authorized under certain circumstances and conditions. The division shall coordinate such auctions when deemed necessary or appropriate. Federal surplus property auctions are primarily conducted online, but are regulated and accomplished by the U.S. General Services Administration.

R33-26-205. Related Party Transactions.

(1) The division has a duty to the public to ensure that State-owned surplus property is disposed of in accordance with Title 63A, Chapter 2. A conflict of interest may exist or appear to exist when a related party attempts to purchase a State-owned surplus property item.

(2) A related party is defined as someone who may fit into any of the following categories pertaining to the State-owned surplus property item in question:

(a) has purchasing authority;

(b) has maintenance authority;

(c) has disposition or signature authority;

(d) has authority regarding the disposal price;

(e) has access to restricted information; and

(f) may be perceived to be a related party using other criteria which may prohibit independence.

R33-26-206. Priorities.

(1) Public agencies are given priority for the purchase of State-owned surplus property items.

(2) Property that is determined by the Division to be unique, in short supply or in high demand by public agencies may be held for a period of up to 30 days before being offered for sale to the general public by Surplus Property.

(3) For this rule, the entities listed below, in priority order, are considered to be public agencies:

(a) state agencies;

(b) state universities, colleges, and community colleges;

(c) other tax supported educational agencies or political subdivisions in the State of Utah including cities, towns, counties and local law enforcement agencies;

(d) other tax-supported educational entities; then

(e) non-profit health and educational institutions.

(4) State-owned surplus property items that are not purchased by or transferred to public agencies may be offered for public sale.

(5) The division shall make the determination as to whether property is subject to hold period. The decision shall consider the following:

(a) the cost to the State;

(b) the potential liability to the State;

(c) the overall best interest of the State.

R33-26-301. Accounting and Reimbursement Procedures.

(1) The division will record and maintain records of all transactions related to the acquisition and sale of all State and federal surplus property items.

(2) The division may maintain a federal working capital reserve not to exceed one year's operating expenses. In the event the division accumulates funds in excess of the allowable working capital reserve, they will reduce the Retained Earnings balance accordingly. The only exception is where the division is accumulating excess funds in anticipation of the purchase of new facilities or capital items. Prior to the accumulation of excess funds, the division must obtain the written approval of the Executive Director of the Department of Administrative Services.

R33-26-302. Reimbursement.

(1) Reimbursement to state agencies from the sale of their vehicles and non-vehicle items will be made through the Division of Finance via interagency transfers or warrant requests. The division is authorized to deduct operating costs from the selling price of all vehicles and non-vehicle items. In all cases property will be priced to sell for fair market value. Items that are not marketable for whatever reason may be discounted in price or disposed of by abandonment, donation, or sold as scrap.

(2) Payment for vehicles, non-vehicle items, information technology equipment, federal surplus property, and personal handheld devices shall be as follows:

(a) Payment received from public purchasers may be in the form of cash and/or certified funds, authorized bank financial cards, and personal checks. Personal checks may not be accepted for amounts exceeding $100. Two-party checks shall not be accepted;

(b) Payment received from governmental entities, school districts, special districts, and higher education institutions shall be in the form of agency or subdivision check or purchasing card;

(c) Payment made by governmental entities, school districts, special districts, and higher education institutions shall be at the time of purchase and prior to removal of the property purchased; or

(d) The division director or designee may make exceptions to the payment provisions of this rule for good cause. A good cause exception requires a weighing of:

(i) the cost to the State;

(ii) the potential liability to the State; and

(iii) the overall best interest of the State.

(3) The division shall initiate formal collection procedures in the event that a check from the general public, state subdivisions, or other agencies is returned to the division for "insufficient funds".

(a) In the event that a check is returned to the division for "insufficient funds," the division may:

(i) prohibit the debtor from making any future purchases from the division until the debt is paid in full; and

(ii) have the division accountant send a certified letter to the debtor stating that the debtor has 15 days to pay the full amount owed with cash or certified funds, including any and all additional fees associated with the collection process, such as returned check fees; and if the balance is not paid within the 15 day period, the matter will be referred to the Office of State Debt Collection for formal collection proceedings.

(b) Debts for which payments have not been received in full within the 15 day period referred to above shall be assigned to the Office of State Debt Collection in accordance with statute.

R33-26-401. Public Sale of State-Owned Vehicles.

(1) State-owned excess vehicles may be purchased at any time by the general public, subject to any holding period that may be assigned by the division and subject to the division's operating days and hours.

(2) Federal surplus property auctions to the general public may be accomplished on occasions and subject to the limitations as indicated previously.

(3) The frequency of public auctions, for either State-owned vehicles or federal surplus property will be regulated by current law as applicable, the volume of items held in inventory by the division, and the profitability of conducting auctions versus other approaches to disposing of surplus property.

(4) State-owned vehicles available for sale may not have any ancillary or component parts or equipment removed, destroyed, or detached, from the vehicle prior to sale without the approval of the division.

(5) State agencies are prohibited from removing ancillary or component parts or equipment from vehicles intended for surplus unless:

(a) the state agency intends on using the ancillary or component parts or equipment on other agency vehicles;

(b) the state agency in possession of the vehicle intends to transfer the ancillary or component parts or equipment to another state agency; or

(c) the state agency has obtained prior approval from the division to remove ancillary or component parts or equipment from the vehicle intended for surplus.

R33-26-601. Utah State Agency for Surplus Property Adjudicative Proceedings.

As required by the Utah Administrative Procedures Act, this Rule provides the procedures for adjudicating disputes brought before the division under the authority granted by Section 63A-2-401 and Title 63G, Chapter 4, et seq.

R33-26-602. Proceedings to Be Informal.

All matters over which the division has jurisdiction including bid validity determination and sales issues, which are subject to Title 63G, Chapter 4, will be informal in nature for purposes of adjudication. The Director of the Division of Purchasing and General Services or his designee will be the presiding officer.

R33-26-603. Procedures Governing Informal Adjudicatory Proceedings.

(1) No response needs to be filed to the notice of agency action or request for agency action.

(2) The division may hold a hearing at the discretion of the director of the Division of Purchasing and General Services or his designee unless a hearing is required by statute. A request for hearing must be made within ten days after receipt of the notice of agency action or request for agency action.

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

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

(5) No discovery, either compulsory or voluntary, will be permitted except that all parties to the action shall have access to information and materials not restricted by law.

(6) No person may intervene in an agency action unless federal statute or rule requires the agency to permit intervention.

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

(8) Within thirty days after the close of any hearing, the director of the Division of Purchasing and General Services or his designee shall issue a written decision stating the decision, the reasons for the decision, time limits for filing an appeal with the director of the superior agency, notice of right of judicial review, and the time limits for filing an appeal to the appropriate district court.

(9) The decision rendered by the Director of the Division of Purchasing and General Services or his designee shall be based on the facts in the division file and if a hearing is held, the facts based on evidence presented at the hearing.

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

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

R33-26-900. Charges and Fees Assessed for State Surplus Property Agency Services.

(1) In accordance with Section 63A-2-405, the State Surplus Property agency will charge rates and fees, as approved by the Rate Setting Committee as set forth in Sections 63J-1-410 and 504, for services associated with the disposition of surplus property items.

(2) The current approved rate and fee schedule is available at: surplus.utah.gov.

KEY: government purchasing, procurement rules, state surplus property, general procurement provisions
October 3, 2017 63A-2

R58. Agriculture and Food, Animal Industry.
R58-1. Admission, Identification, and Inspection of Livestock, Poultry, and Other Animals.
R58-1-1. Authority.

(1) Promulgated under the authority of Title 4, Chapter 31 and Subsections 4-2-103(c)(i), and 4-2-103(1)(i).

(2) It is the intent of these rules to eliminate or reduce the spread of diseases among animals by providing standards to be met in the movement of animals within the State of Utah (INTRASTATE) and the importation of animals into the state (INTERSTATE).

R58-1-2. Definitions.

(1) "Accredited Veterinarian" means a veterinarian approved by the Deputy Administrator of Veterinary Services (VS), Animal and Plant Health Inspection Services (APHIS), United States Department of Agriculture (USDA), in accordance with the provisions of 9 CFR 161 to perform functions required by cooperative State-Federal disease control and eradication programs.

(2) "Animal identification number (AIN)" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal. The AIN consists of 15 digits, with the first 3 being the country code (840 for the United States or a unique country code for any U.S. territory that has such a code and elects to use it in place of the 840 code).

(3) "Animals" means all vertebrates, except humans.

(4) "Approved livestock facility" means a stockyard, livestock market, buying station, concentration point, or any other premises under State or Federal veterinary inspection where livestock are assembled and that has been approved by the Department.

(5) "Approved Livestock Market" means a livestock market that is licensed by the Department under Title 4, Chapter 30, Livestock Markets.

(6) "Approved Slaughter Establishment" means a State or Federally inspected slaughter establishment at which ante-mortem and post-mortem inspection is conducted by State or Federal inspectors.

(7) "Approved tagging site" means a premises, authorized by Department, where livestock may be officially identified on behalf of their owner or the person in possession, care, or control of the animals when they are brought to the premises.

(8) "Brand Inspection Certificate" means an official form, issued by a government agency or other agency responsible for animal identification in the state of origin, used to transfer title of livestock; listing the identification marks of the animals(s) as well as the consignor and consignee contact information.

(9) "Camelidae" means a term referring to members of the family of animals which for the purposes of these rules includes camels (Camelus dromedarius and Camelus bactrianus), llamas (Lama glama), alpacas (Vicugna pacos) , guanacos (Lama guanicoe), and vicunas (Vicugna vicugna).

(10) "Captive Cervidae" means a term referring to members of the family of animals which for the purposes of these rules includes captive bred Caribou (Reindeer (Rangifer tarandus)), captive bred Elk (Cervus canadensis nelsoni), and captive bred Fallow deer (Dama dama) or any other captive bred cervidae allowed with permission from the State Veterinarian and the Utah Division of Wildlife Resources.

(11) "Certificate of Veterinary Inspection" means an official paper or electronic form completed by an accredited veterinarian that has examined the animal or animals listed on the certificate and has completed all disease testing or vaccinations as required.

(12) "Commuter herd" means a herd of cattle located in two or more states that is documented as a valid ranching operation by those states in which the herd is located and which requires movement of cattle interstate from a farm of origin or returned interstate to a farm of origin in the course of normal ranching operations, without change of ownership, directly to or from another premise owned, leased, or rented by the same individual.

(13) "Commuter herd agreement" means a written agreement between the owner(s) of a herd of cattle and the animal health officials for the States or Tribes of origin and destination specifying the conditions required for the interstate movement from one premises to another in the course of normal livestock management operations and specifying the time period, up to 1 year, that the agreement is effective. A commuter herd agreement may be renewed annually.

(14) "Dairy cattle" means all cattle, regardless of age or sex or current use, that are of a breed(s) used to produce milk or other dairy products for human consumption, including, but not limited to, Ayrshire, Brown Swiss, Holstein, Jersey, Guernsey, Milking Shorthorn, and Red and Whites.

(15) "Department" means the Utah Department of Agriculture and Food.

(16) "Designated brucellosis surveillance area" means an area within a state that has been designated by the animal health official of that state as an area of increased disease risk for bovine brucellosis.

(17) "Direct Movement" means the movement in which the animals are not unloaded enroute to their final destination, except for stops of less than 24 hours to feed, water, or rest the animals being moved, and not commingled with another producer's animals.

(18) "Exotic animal" means a rare or unusual animal pet or an animal, not commonly thought of as a pet, kept within a human household. For this chapter, rodents, reptiles, and amphibians are considered exotic animals.

(19) "Exposed Animal" means an animal that has been in contact with or on the same premises of or within a quarantine zone where animals with a contagious or communicable disease are present.

(20) "Farm of Origin" means the farm where the animal was born and remain prior to importation into the state.

(21) "Flock-based number system" means the flock-based number system that combines a flock identification number (FIN) with a producer's unique livestock production numbering system to provide a nationally unique identification number for an animal.

(22) "Flock identification number (FIN)" means a nationally unique number assigned by a State, Tribal, or Federal animal health authority to a group of animals that are managed as a unit on one or more premises and are under the same ownership.

(23) "Group/lot identification number (GIN)" means the identification number used to uniquely identify a "unit of animals" of the same species that is managed together as one group throughout the preharvest production chain.

(24) "Import Permit" means a number given by the Department to the issuing veterinarian that is recorded on the certificate of veterinary inspection and is required before movement of the animals into the state.

(25) "Interstate movement" means movement of animals from one State into or through any other State.

(26) "Livestock Market Veterinarian" means a Utah licensed and USDA accredited veterinarian appointed by the Utah Department of Agriculture and Food to work at approved livestock markets.

(27) "Location identification (LID) number" means a nationally unique number issued by a State, Tribal, and/or Federal animal health authority to a location as determined by the State or Tribe in which it is issued. The LID number may be used in conjunction with a producer's own unique livestock production numbering system to provide a nationally unique

and herd-unique identification number for an animal. It may also be used as a component of a group/lot identification number (GIN).

(28) "National Uniform Eartagging System (NUES)" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal.

(29) "Official Calfhood Vaccinate" means female bison or cattle vaccinated by a USDA Veterinary Services representative, State certified technician, or accredited veterinarian with an approved dose of RB51 vaccine or other USDA approved agent while from 4 to 12 months of age in accordance with its labeling. These cattle must be properly identified by official tattoos and ear tag or registration tattoo and be reported on an official vaccination certificate (VS Form 4-24) within 30 days to the State Veterinarian.

(30) "Official eartag" means an identification tag approved by the Department that bears an official identification number for individual animals. The official eartag must be tamper-resistant and have a high retention rate in the animal.

(31) "Official eartag shield" means the shield shaped graphic of the U.S. Route Shield with "U.S." or the State postal abbreviation or Tribal alpha code imprinted within the shield.

(32) "Official identification device or method" means a means approved by the Department of applying an official identification number to an animal of a specific species or associating an official identification number with an animal or group of animals of a specific species or otherwise officially identifying an animal or group of animals.

(33) "Official identification number" means a nationally unique number that is permanently associated with an animal or group of animals.

(34) "Officially identified" means identified by means of an official identification device or method approved by the Department.

(35) "Poultry" means domestic fowl (chickens, turkeys, ducks, geese, and guinea and pea fowl), pigeons and doves, pheasants and other gamebirds, and ratites.

(36) "Premises identification number (PIN)" means a nationally unique number assigned by a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health authority a geographically distinct location from other premises.

(37) "Qualified Feedlot" means a feedlot approved by the Utah Department of Agriculture and Food to handle heifers, cows or bulls which are either official calfhood vaccinated, or brucellosis unvaccinated animals confined to a drylot area which is used to upgrade or finish feeding animals going only to slaughter or another qualified feedlot. All such animals must be kept separate from other animals not destined for slaughter.

(38) "Quarantine" means a verbal or written restriction of movement of animals into or out of an area or premise, issued by a State Animal Health Official.

(39) "Reactor" means any animal that has been determined by a designated brucellosis epidemiologist to be infected with brucellosis based on test results, herd/flock history, and/or culture results.

(40) "Suspect" means any animal that may be infected with a contagious, infectious, or communicable disease based on test results and/or herd/flock history.

(41) "Test Eligible Cattle and Bison" means all cattle or bison six months of age or older, except:

1. Steers, spayed heifers;

2. Official calfhood vaccinates of any breed under 24 months of age which are not parturient, springers, or post parturient.

(42) "United States Department of Agriculture (USDA) approved backtag" means a backtag issued by APHIS that provides a temporary unique identification for each animal.

(43) "Zoological animal" means an animal kept at a zoological garden (zoo) or other exhibition that is inspected on a regular basis by the United States Department of Agriculture.

R58-1-3. Official Identification Devices and Methods.

(1) Any State, Tribe, accredited veterinarian, or other person or entity who distributes official identification devices must maintain for 5 years a record of the names and addresses of anyone to whom the devices were distributed.

(2) An official identification number is a nationally unique number that is permanently associated with an animal or group of animals and that adheres to one of the following systems:

(a) National Uniform Eartagging System (NUES).

(b) Animal identification number (AIN).

(c) Location-based number system.

(d) Flock-based number system.

(e) Any other numbering system approved by the animal health official of the state of origin for the official identification of animals.

(3) The Department has approved the following official identification devices or methods for the species listed.

(a) The Department may authorize the use of additional devices or methods for a specific species if the Department determines that such additional devices or methods will provide for adequate traceability.

(4) Cattle and bison that are required to be officially identified for interstate movement must be identified by means of:

(a) An official eartag; or

(b) Brands registered with a recognized brand inspection authority and accompanied by an official brand inspection certificate, when agreed to by the shipping and receiving State or Tribal animal health authorities; or

(c) Tattoos and other identification methods acceptable to a breed association for registration purposes, accompanied by a breed registration certificate, when agreed to by the shipping and receiving State or/Tribal animal health authorities; or

(d) Group/lot identification when a group/lot identification number (GIN) may be used.

(5) Horses and other equine species that are required to be officially identified for interstate movement must be identified by one of the following methods:

(a) A description sufficient to identify the individual equine including, but not limited to, name, age, breed, color, gender, distinctive markings, and unique and permanent forms of identification when present (e.g., brands, tattoos, scars, cowlicks, blemishes or biometric measurements); or

(b) Electronic identification that complies with ISO 11784/11785; or

(c) Non-ISO electronic identification injected to the equine on or before June 30, 2013; or

(d) Digital photographs sufficient to identify the individual equine.

(6) Poultry that are required to be officially identified for interstate movement must be identified by one of the following methods:

(a) Sealed and numbered leg bands; or

(b) Group/lot identification when a group/lot identification number (GIN) may be used.

(7) Sheep and goats that are required to be officially identified for interstate movement must be identified by one of the following methods:

(a) Electronic implants when accompanied by a certificate or owner statement that includes the electronic implant numbers and the name of the chip manufacturer; or

(b) Official eartags, including tags approved for use in the Scrapie Flock Certification Program or APHIS-approved premises identification number eartags when combined with a unique animal identification number; or

(c) United States Department of Agriculture backtags or official premises identification backtags that include a unique animal identification number, when used on sheep or goats moving directly to slaughter and when applied within 3 inches of the poll on the dorsal surface of the head or neck; or

(d) Legible official registry tattoos that have been recorded in the book of record of a sheep or goat registry association when the animal is accompanied by either a registration certificate or a certificate of veterinary inspection.

(i) These tattoos may also be used as premises identification if they contain a unique premises prefix that has been linked in the National Scrapie Database with the assigned premises identification number of the flock of origin; or

(e) Premises identification eartags or tattoos, if the premises identification method includes a unique animal number or is combined with a flock eartag that has a unique animal number and the animal is accompanied by an owner statement; or

(f) Premises identification when premises identification is allowed and the animal is accompanied by an owner statement; or

(g) Any other official identification method or device approved by the animal health official of the state of origin.

(8) Swine that are required to be officially identified for interstate movement must be identified by one of the following methods:

(a) Official eartags; or

(b) United States Department of Agriculture backtags, when used on swine moving to slaughter; or

(c) Official swine tattoos, when used on swine moving to slaughter; or

(d) Ear notching when used on any swine, if the ear notching has been recorded in the book of record of a purebred registry association; or

(e) Tattoos on the ear or inner flank of any swine, if the tattoos have been recorded in the book of record of a swine registry association;

(f) For slaughter swine and feeder swine, an eartag or tattoo bearing the premises identification number assigned by the State animal health official to the premises on which the swine originated; or

(g) Any other official identification device or method that is approved by the animal health official of the state of origin; or

(h) Group/lot identification when a group/lot identification number (GIN) may be used.

(9) Captive cervids that are required to be officially identified for interstate movement must be identified by one of the following methods:

(a) Official eartag; and

(b) A tattoo that is placed peri-anally or inside the right ear and consist of a number assigned by the animal health official of the state of origin; or

(c) A microchip that has been placed in the right ear.

R58-1-4. Intrastate Cattle Movement - Rules - Brucellosis.

(1) The State Veterinarian may require brucellosis testing of cattle, bison, and elk, moving intrastate as necessary to protect against potential disease threat or outbreak.

(2) Utah Department of Agriculture and Food Livestock Inspectors will help regulate intrastate movement of cattle according to Brucellosis rules at the time of change of ownership inspection.

R58-1-5. Interstate Importation Standards.

(1) No animal, poultry or bird of any species or other animal including wildlife, that is known to be affected with or has been exposed to a contagious, infectious or communicable disease, or that originates from a quarantined area, shall be shipped, transported or moved into the State of Utah until written permission for such entry is first obtained from the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services Division, and the Utah Department of Agriculture and Food, State Veterinarian or Commissioner of Agriculture.

(a) Failure to obtain written permission may result in a citation.

(2) An official Certificate of Veterinary Inspection issued by an accredited veterinarian is required for importation of all animals.

(3) A copy of the certificate shall be immediately forwarded to the Utah Department of Agriculture and Food by the issuing veterinarian or the animal health official of the state of origin within 7 calendar days from date on which the Certificate of Veterinary Inspection or other document is received or issued.

(4) Import permits for livestock, poultry and other animals may be obtained by telephone or via the internet to the accredited veterinarian responsible for issuing a Certificate of Veterinary Inspection.

(5) Certificates of Veterinary Inspection are considered valid for 30 days from the date of inspection.

R58-1-6. Cattle and Bison.

(1) A Certificate of Veterinary Inspection and an import permit must accompany all cattle and bison imported into the state.

(2) All cattle and bison must carry some form of individual identification as listed in R58-1-3(4).

(a) Individual identification must be listed on the Certificate of Veterinary Inspection.

(i) Official individual identification used for testing purposes must be shown on the Certificate of Veterinary Inspection; or

(ii) A copy of the official brucellosis or tuberculosis test sheets must be stapled to each copy of the Certificate of Veterinary Inspection.

(b) All cattle and bison imported into Utah from Canada, except those imported directly to slaughter, must be permanently branded with the letters CAN, not less than two (2) inches high nor more than three (3) inches high, placed high on the right hip.

(3) The import permit number must be listed on the Certificate of Veterinary Inspection.

(4) The following cattle are exempted from (1) above:

(a) Cattle consigned directly to slaughter at an approved slaughter establishment; or

(b) Cattle consigned directly to a State or Federal approved Auction Market.

(c) Movements under Subsections R58-1-5(4)(a), and R58-1-5(4)(b) must be in compliance with state and federal laws and regulations and must be accompanied by a weighbill, brand certificate, or similar document showing some form of positive identification, signed by the owner or shipper stating the origin, destination, number and description of animals and purpose of movement.

(d) Commuter cattle are exempt as outlined in Subsection R58-1-5(6).

(5) A brand inspection certificate or proof of ownership, which indicates the intended destination, is required for cattle entering the state.

(6) Commuter cattle may enter Utah or return to Utah after grazing if the following conditions are met.

(a) A commuter permit approved by the import state and the State of Utah must be obtained prior to movement into Utah. This will allow movements for grazing for the current season if the following conditions are met:

(i) All cattle shall meet testing requirements as to State

classification for interstate movements as outlined in 9 CFR 1-78, which is incorporated by reference; USDA, Animal and Plant Health Inspection Services, Brucellosis Eradication, Uniform Methods and Rules, October 1, 2003, and approved by cooperating States.

(ii) Commuter cattle shall not be mixed with quarantined, exposed, or suspect cattle nor change ownership during the grazing period.

(iii) All bulls used in the commuter herd must be tested annually for trichomoniasis as required by the State of Utah.

(b) No quarantined, exposed or reactor cattle shall enter Utah.

(7) Prior to importation of cattle or bison into Utah the following health restrictions must be met.

(a) Bison and cattle heifers of vaccination age between four and 12 months must be officially calfhood vaccinated for brucellosis prior to entering Utah, unless;

(i) going directly to slaughter, or

(ii) qualified feedlot to be sold for slaughter, or

(iii) to an approved livestock market to be sold for slaughter or for vaccination.

(iv) Bison and cattle heifers of vaccination age may be vaccinated upon arrival by special permit from the State Veterinarian.

(b) All female bison and cattle over 12 months of age imported to Utah must have evidence of a brucellosis calfhood vaccination tattoo to be imported or sold into the State of Utah, unless;

(i) going directly to slaughter, or

(ii) qualified feedlot to be sold for slaughter, or

(iii) to an approved livestock market to be sold for slaughter, or

(iv) tested negative for Brucella abortus within 30 days prior to entry.

(c) Test eligible cattle imported from states designated as brucellosis free, but are coming from a designated brucellosis surveillance area within that state, must be tested negative for brucellosis within 30 days prior to entry.

(i) Test eligible cattle may enter the state prior to testing with approval from the State Veterinarian but must be tested immediately upon arrival and the cattle must be kept isolated away from other cattle until tested negative.

(d) All test eligible cattle imported from states that have not been designated as brucellosis free must test negative for brucellosis within 30 days before movement into Utah.

(e) Exceptions to the above testing requirements include exhibition animals and test eligible cattle imported to Utah and moving directly to:

(i) an approved livestock market, or

(ii) to a "qualified feedlot", or

(iii) for immediate slaughter to an approved slaughter establishment.

(f) No reactor cattle, or cattle from herds under quarantine for brucellosis will be allowed to enter the state except when consigned to an approved slaughter establishment. An import permit and a Veterinary Services Form 1-27 prior to shipment are also required.

(g) Entry of cattle which have been retattooed is not permitted unless they are moved for immediate slaughter to an approved slaughter establishment or to not more than one state or federal approved market for sale to a qualified feedlot or slaughtering establishment.

(h) A negative tuberculosis test is required within 60 days prior to shipment for all dairy cattle 2 months of age and older and bison 6 months of age and older.

(i) Breeding cattle originating within a quarantined area or from reactor or exposed herds and all cattle from an area which is not classified as Tuberculosis Free are required to be tested for tuberculosis within 60 days prior to entry to Utah.

(j) Rodeo bulls and roping steers must be tested annually during the calendar year for tuberculosis prior to entry to Utah.

(k) No cattle infested with, or exposed to scabies shall be moved into Utah. Cattle from a county where scabies has been diagnosed during the past 12 months must be officially treated within 10 days prior to shipment into Utah. The date of treating and products used must be shown on the Certificate of Veterinary Inspection.

(l) No cattle infested with ticks that can transmit splenic or tick fever, or exposed to tick infestations shall be imported into the State of Utah for any purpose.

(m) All bulls imported to Utah shall be in compliance with R58-21-3(A), which requires testing of all bulls over twelve months of age for trichomoniasis prior to entry, with some exceptions which are for slaughter, rodeo, exhibition, and bulls kept in confinement.

R58-1-7. Horses, Mules, Asses, and Other Equidae.

(1) Equidae may be imported into the State of Utah when accompanied by an official Certificate of Veterinary Inspection.

(2) The Certificate of Veterinary Inspection must show a negative Equine Infectious Anemia (EIA)(Coggins - AGID or ELISA) test within one year previous to the time the certificate was issued.

(a) Entry of equidae into Utah shall not be allowed until the EIA test has been completed and reported negative.

(b) Equidae which test positive to the EIA test shall not be permitted entry into Utah, except by special written permission from the State Veterinarian.

(c) A nursing foal less than six (6) months of age accompanied by its EIA negative dam and equidae moving directly to an approved livestock market are exempt from the test requirements.

(3) Utah horses returning to Utah as part of a commuter livestock shipment are exempted from the Certificate of Veterinary Inspection requirements; however, a valid Utah horse travel permit as outlined under Sections 4-24-405 or 4-24-406 and Section R58-9-4 is required for re-entering Utah.

(4) An import permit issued by the Department must accompany all stallions or semen.

(5) All stallions used for breeding that enter Utah or stallions whose semen will be shipped to Utah shall be tested for Equine Viral Arteritis (EVA) by an accredited veterinarian within 30 days prior to entry.

(a) Exceptions are stallions that have proof of negative EVA status prior to vaccination and proof of subsequent yearly vaccination.

(b) The EVA test or vaccination status must be recorded on the Certificate of Veterinary Inspection.

(c) Breeding stallions and semen infected with Equine Arteritis Virus must be handled only on an approved facility as required by R58-23.

R58-1-8. Swine.

(1) Swine may be shipped into the state if the following requirements are met:

(a) All swine must be accompanied by an approved Certificate of Veterinary Inspection stating they have not been fed raw garbage.

(i) The Certificate of Veterinary Inspection must show individual identification, ear tags, tattoos, registration numbers, microchips or other permanent means.

(b) An import permit issued by the Department must accompany all swine imported into the state.

(c) All breeding and exhibition swine over the age of three months shipped into Utah shall be tested negative for brucellosis within 30 days prior to movement into the state or originate from a validated brucellosis free herd or brucellosis free state.

(i) A validated brucellosis free herd number and date of

last test is required to be listed on the Certificate of Veterinary Inspection.

(ii) Swine from states with serious disease occurrences or known populations of feral or wild hogs may be required to be tested for Brucellosis prior to entry to Utah.

(d) All breeding, feeding and exhibition swine shall be tested negative for pseudorabies within thirty days unless they originate from a recognized qualified pseudorabies free herd or pseudorabies Stage V state.

(i) Swine that have been vaccinated with any pseudorabies vaccine shall not enter the state.

(ii) Swine which are infected or exposed to pseudorabies may not enter the state, except swine consigned to a slaughterhouse for immediate slaughter and must be moved in compliance with 9 CFR 71, which is incorporated by reference.

(iii) Swine from states with known populations of feral or wild hogs may be required to be tested for Pseudorabies prior to entry to Utah.

(2) Prohibition of Non-domestic and Non-native Suidae and Tayassuidae

(a) Javelina or Peccary, and feral or wild hogs such as Eurasian or Russian wild hogs (Sus scrofa) are considered invasive species in Utah, capable of establishing wild reservoirs of disease such as brucellosis and pseudorabies.

(b) These animals are prohibited from entry to Utah except when approved by special application only for purposes of exhibition and after meeting the above testing requirements.

(c) Any person who imports Javelina, Peccary or feral or wild hogs such as Eurasian or Russian wild hogs (Sus scrofa) into Utah without prior approval by the Department shall be subject to citation and fines as prescribed by the Department or may be called to appear before an administrative proceeding by the department.

R58-1-9. Sheep.

(1) All sheep imported must be accompanied by a Certificate of Veterinary Inspection and an import permit.

(a) No sheep exhibiting clinical signs of blue tongue may enter Utah.

(b) Sheep must be thoroughly examined for evidence of foot rot and verified that they are free from foot rot.

(c) Sheep entering Utah must comply with federal Scrapie identification requirements as listed in 9 CFR 79, which is incorporated by reference.

(d) Sheep from scrapie infected, exposed, quarantined or source flocks may not be permitted to enter the state unless an official post-exposure flock eradication and control plan has been implemented.

(e) Breeding rams six months of age or older shall test negative for Brucella ovis within 30 days of entry or originate from a certified brucellosis free flock.

(i) Rams entering Utah for exhibition purposes only and returning immediately to their home state are exempt from the testing requirement.

R58-1-10. Poultry.

(1) All poultry and hatching eggs being imported into Utah must meet the following requirements:

(a) All poultry and hatching eggs must have an import permit from the Department.

(b) All poultry and hatching eggs entering Utah must have a Certificate of Veterinary Inspection or a National Poultry Improvement Plan VS Form 9-3.

(c) All poultry and hatching eggs shall originate from flocks or hatcheries that have a Pullorum-Typhoid Clean rating given by the official state agency of the National Poultry Improvement Plan (NPIP) of the state, or

(d) All poultry entering Utah from a flock or hatchery which does not have a clean rating through NPIP certification must have been tested negative for Pullorum-Typhoid within the last 30 days.

R58-1-11. Goats and Camelids.

(1) Goats being imported into Utah must meet the following requirements:

(a) Dairy goats must have an import permit from the Department and an official Certificate of Veterinary Inspection showing a negative tuberculosis test within 60 days, and a negative brucellosis test within 30 days prior to entry or be from a certified brucellosis free herd and accredited tuberculosis free herd. Thereto; there must be no evidence of caseous lymphadenitis (abscesses).

(b) Meat type goats must have an import permit from the Department and an official Certificate of Veterinary Inspection indicating they are free from any communicable diseases or exposure and that there is no evidence of caseous lymphadenitis (abscesses).

(c) Goats entering Utah must comply with Federal Scrapie identification requirements as listed in 9 CFR 79, which is incorporated by reference.

(d) Goats for slaughter may be shipped into Utah directly to an approved slaughter establishment or to an approved auction market without an official Certificate of Veterinary Inspection and an import permit but must comply with Federal Scrapie identification requirements as listed in 9 CFR 79, which is incorporated by reference.

(2) Camelids being imported into Utah must have an import permit from the Department and an official Certificate of Veterinary Inspection showing a negative tuberculosis test within 60 days, and a negative brucellosis test within 30 days prior to entry or be from a certified brucellosis free herd and accredited tuberculosis free herd.

(3) Test eligible age for both brucellosis and tuberculosis shall be 6 months of age or older for both goats and camelids.

(4) Dairy goats and camelids entering Utah for exhibition purposes only and returning immediately to their home state are exempt from the testing requirement.

R58-1-12. Psittacine and Passerine Birds and Raptors.

(1) No psittacine or passerine birds or raptors shall be shipped into the State of Utah unless an official Certificate of Veterinary Inspection accompanies the birds.

(2) The number and kinds of birds to be shipped into Utah, their origin, date to be shipped and destination must be listed on the Certificate of Veterinary Inspection.

R58-1-13. Dogs, Cats, and Ferrets.

(1) All dogs, cats and ferrets shall be accompanied by an official Certificate of Veterinary Inspection.

(2) All dogs, cats and ferrets over three months of age must be currently vaccinated against rabies before entering Utah.

(a) The date of vaccination, name of product used, and expiration date must be written on the Certificate of Veterinary Inspection.

(3) No puppies or kittens less than 8 weeks of age shall be imported into the state unless accompanied by the mother.

R58-1-14. Exotic Animals.

(1) It is unlawful for any person to import into the State of Utah any species of exotic animal that is prohibited for importation or possession as listed in Utah Administrative Code R657-3.

(2) All exotic animals (birds, mammals, and reptiles) must be accompanied by an official Certificate of Veterinary Inspection.

(3) All aquatic animals (fish, mollusk, crustacean, or amphibians) must fulfill all requirements of Utah Administrative

Code R58-17 prior to importation into the State of Utah.

R58-1-15. Game and Fur-Bearing Animals.

(1) No game or fur bearing animals will be imported into Utah without an import permit being obtained from the Department.

(2) Each shipment shall be accompanied by an official Certificate of Veterinary Inspection.

(3) All mink entering Utah shall have originated on ranches where mink viral enteritis has not been diagnosed or exposed to within the past three years.

R58-1-16. Captive Cervidae.

(1) All captive cervidae entering Utah must meet the following requirements:

(a) No captive elk will be imported into Utah unless the destination premises is licensed with the Utah Department of Agriculture and Food.

(b) No captive caribou or fallow deer will be imported into Utah unless a Certificate of Registration (COR) has been obtained from the Utah Division of Wildlife Resources.

(c) No captive cervidae will be allowed to be imported into Utah that have originated from or have ever been east of the 100 degree meridian.

(d) All captive elk imported into Utah must meet the genetic purity requirement as referenced in Title 4, Chapter 39, Section 301, Utah Code Unannotated.

(e) All captive elk must meet the following Chronic Wasting Disease (CWD) requirements:

(i) Elk must come from a state with a USDA approved herd certification program.

(ii) Elk must originate from a herd that is not affected with or is a trace back or forward herd for CWD.

(iii) Elk must originate from a herd that has had a CWD herd surveillance program for 5 years prior to movement.

(f) All captive cervidae must be permanently identified using either a microchip or tattoo.

(g) All captive cervidae must have an import permit from the Department.

(h) All captive cervidae must have an official Certificate of Veterinary Inspection showing the following:

(i) A negative tuberculosis test within 60 days of import.

(ii) Negative Brucella abortus test results from a single sample that has been tested by two USDA approved tests.

(iii) Two forms of individual animal identification.

(iv) A statement the that animals listed on the certificate are not known to be infected with Johne's Disease (Paratuberculosis)or Malignant Catarrhal Fever and have never been east of the 100 degree meridian.

R58-1-17. Zoological Animals.

(1) The entry of zoological animals to be kept in zoological gardens, or shown at exhibitions is authorized when an import permit, subject to requirements established by the State Veterinarian, has been obtained from the Department and the animals are accompanied by an official Certificate of Veterinary Inspection.

(2) Movement of these animals must also be in compliance with the Federal Animal Welfare Act, 7 USC 2131-2159.

R58-1-18. Wildlife.

(1) It is unlawful for any person to import into the State of Utah any species of live native or exotic wildlife except as provided in Title 23, Chapter 13 and Utah Administrative Code R657-3.

(2) All wildlife imports shall meet the same Department requirements as required for the importation of domestic animals.

R58-1-19. Duties of Carriers.

Owners and operators of railroads, trucks, airplanes, and other conveyances are forbidden to move any livestock, poultry, or other animals into or within the State of Utah or through the State except in compliance with the provisions set forth in these rules.

(1) Sanitation. All railway cars, trucks, airplanes, and other conveyances used in the transportation of livestock, poultry or other animals shall be maintained in a clean, sanitary condition.

(2) Movement of Infected Animals. Owners and operators of railway cars, trucks, airplanes, and other conveyances that have been used for movement of any livestock, poultry, or other animals infected with or exposed to any infectious, contagious, or communicable disease as determined by the Department, shall be required to have cars, trucks, airplanes, and other conveyances thoroughly cleaned and disinfected under official supervision before further use is permissible for the transportation of livestock, poultry or other animals.

(3) Compliance with Laws and Rules. Owners and operators of railroad, trucks, airplanes, or other conveyances used for the transportation of livestock, poultry, or other animals are responsible to see that each consignment is prepared for shipment in keeping with the State and Federal laws and regulations. Certificate of Veterinary Inspection, brand certificates, and permits should be attached to the waybill accompanying the attendant in charge of the animals.

KEY: disease control, import requirements
August 12, 2015 4-31
Notice of Continuation January 12, 2017 4-2-2(1)(I)

R68. Agriculture and Food, Plant Industry.
R68-7. Utah Pesticide Control Rule.
R68-7-1. Authority.

Promulgated under authority of Section 4-14-106.

R68-7-2. Registration of Products.

All pesticide products distributed in Utah shall be officially registered annually with the Utah Department of Agriculture and Food.

(1) Application for registration shall be made to the Department on forms prescribed and provided by them and shall include the following information:

(a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant.

(b) The name of the pesticide.

(c) A complete copy of the label which will appear on the pesticide.

(2) The Department may require submission of the complete formula of any pesticide if it is deemed necessary for administration of the Utah Pesticide Control Act. If it appears to the Department that the composition of the product is such as to warrant the proposed claims for it, and if the product and its labeling and any other information which may be required to be submitted comply with the requirements of the act, the product shall be registered.

(3) The registrant is responsible for the accuracy and completeness of all information submitted concerning application for registration of a pesticide.

(4) Once a pesticide is registered under the Act, no further registration is required: Provided that,

(a) the product remains in the manufacturer's or registrant's original container; and

(b) the claims made for it, the directions for its use, and other labeling information do not differ in substance from the representations made in connection with the registration.

(5) Whenever the name of a pesticide product is changed or there are changes in the product ingredients, a new registration shall be required. Other labeling changes shall not require re-registration, but the registrant shall submit copies of all changes to the Department as soon as they are effective.

(6) Whenever a registered pesticide product is to be discontinued for any reason, except when suspended or canceled by the U.S. Environmental Protection Agency (EPA), the Utah Department of Agriculture and Food requires said product to be registered for two years from date of the notice of discontinuation. When a product is found in commercial trade after the discontinuation period, the Department will require that the registrant register said product as outlined in Chapter 14, Utah Pesticide Control Act, 4-14-103.

(7) The Department may exempt any pesticide that is determined either (1) to be adequately regulated by another federal agency, or (2) be of a character which is unnecessary to subject to Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

(8) A registrant who desires to register a pesticide to meet special local needs pursuant to Section 24(c) of FIFRA shall comply with Section 4-14-103 of the Utah Pesticide Control Act.

(9) No registration is required for a pesticide distributed in Utah pursuant to an experimental use permit issued by the EPA or under Section 4-14-105 of the Utah Pesticide Control Act.

(10) A registration fee determined by the Department, pursuant to Subsection 4-2-103(2), shall be paid annually for each product, regardless of the number of products registered per applicant.

(11) Each registration is renewed for a period of one year upon payment of the annual renewal fee determined by the Department, pursuant to Subsection 4-2-103(2). It shall be paid on or before June 30 of each year. If the renewal of a pesticide registration is not received prior to July 1 of that year, an additional fee determined by the Department pursuant to Subsection 4-2-103(2), shall be assessed and added to the original registration fee and shall be paid by the applicant before the registration renewal for that pesticide shall be issued.

R68-7-3. Product Labeling.

(A) Each container of pesticide distributed in Utah shall bear a label showing the information set forth in Section 4-14-104.

(B) All pesticide labels shall contain statements, words, graphic material, and any other information required by the EPA.

R68-7-4. Classification of Pesticides.

The commissioner shall classify all pesticide products registered in Utah for "restricted-use" or "general-use" according to standards consistent with Section 3 of FIFRA. The commissioner shall consider all pesticides and uses classified as restricted by the EPA to be restricted in the State of Utah. The Commissioner may also restrict the use of additional pesticides if it is found that the characteristics of such pesticides require that their uses be restricted to prevent damage to property other than the property to which they are directly applied or to persons, animals, crops or vegetation other than the pests which they are intended to destroy. Individuals not appropriately certified are prohibited from using restricted-use pesticides, with the exception of those competent individuals working under the direct supervision of a certified private applicator.

R68-7-5. Classification of Pesticide Applicators.

Pesticide applicators shall be classified as commercial, non-commercial, or private applicators according to the following criteria:

(1) Commercial Applicator - any person who uses any pesticide for hire or compensation.

(2) Non-commercial Applicator - any person working as an individual or an employee of a firm, entity or government agency who uses or demonstrates the use of any restricted-use pesticide and who does not qualify as a private applicator, nor require a commercial applicator's license.

(3) Private Applicator - any person or his/her employer who uses or supervises the use of any restricted-use pesticide for the purpose of producing any agricultural commodity on property owned or rented by the employer or (if applied without compensation other than trading of services between producers of agricultural commodities) on the property of another person.

R68-7-6. Categorization of Pesticide Applicators.

Commercial and Non-commercial applicators shall be categorized in one or more of the categories defined below, based on the application site and the type of work they perform.

(1) Agricultural Pest Control.

(a) Plant. This category includes applicators using pesticides to control pests in the production of agricultural crops including, but not limited to, field crops, vegetables, fruits, pasture, rangelands, and non-crop agricultural lands.

(b) Animal. This category includes applicators using pesticides on animals including, but not limited to, beef and dairy cattle, swine, sheep, horses, goats, poultry, and to places on or in which animals inhabit. Doctors of veterinary medicine or their employees engaged in the business of applying pesticides for hire, publicly representing themselves as pesticide applicators or engaged in large-scale use of pesticides, are included in this category.

(2) Forest Pest Control. This category includes applicators using pesticides in forests, forest nurseries, and forest seed-producing areas.

(3) Ornamental and Turf Pest Control. This category includes applicators using pesticides to control ornamental and turf pests in the maintenance and production of ornamental trees, shrubs, flowers and turf. This includes controlling pests on sidewalks, driveways, and other similar locations.

(4) Seed Treatment. This category includes applicators using pesticides on seeds.

(5) Aquatic Pest Control.

(a) Surface Water: This category includes applicators applying pesticides to standing or running water, excluding applicators engaged in public health-related activities included in R68-7-6(8).

(b) Sewer Root Control: This category includes applicators using pesticides to control roots in sewers or in related systems.

(6) Right-of-Way Pest Control. This category includes applicators using pesticides in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, or other similar areas.

(7) Structural and Health-related Pest Control. This category excludes any fumigation pesticide application and is limited to applicators using pesticides in, on, or around food handling establishments; human dwellings; institutions, such as schools and hospitals; industrial establishments, including warehouses, storage units and any other structures and immediately adjacent areas, public or private; to control household pests, fabric pests, and stored-product pests and to protect stored, processed and manufactured products. This category includes vertebrate pest control in and immediately adjacent to buildings. "Immediately adjacent to a structure" means not further than three (3) feet from the structure. If the labeling for the structural pesticide permits structural use on structural pests and calls for application beyond three feet the application can be made, but cannot exceed the maximum distance prescribed by the label.

(8) Public Health Pest Control. This category includes applicators applying the use of pesticides for the management and control of pests having medical and public-health importance.

(9) Regulatory Pest Control.

(a) This category is limited to state and federal employees or persons under their direct supervision, who apply pesticides in a mechanical ejection device, or other methods to control regulated pests.

(b) This category is limited to state and federal employees or persons under their direct supervision, who apply pesticides in a protective collar, or other methods to control regulated pests.

(10) Demonstration, Consultation and Research Pest Control. This category includes individuals who demonstrate or provide instruction to the public in the proper use, techniques, benefits and methods of applying restricted-use pesticides. This category includes, but is not limited to agricultural compliance specialists, extension personnel, commercial representatives, consultants and advisors, and persons conducting field research with restricted-use pesticides. In addition, they shall meet the specific standards that may be applicable to their particular activity.

(11) Aerial Application Pest Control. This category includes applicators applying pesticides by aircraft. Aerial applicators are required to be certified in the Aerial-Application Pest-Control Category and any other categories of intended application.

(12) Vertebrate Animal Pest Control. This category includes applicators applying pesticides in the control of vertebrate pests outdoors, such as rodents, birds, bats, predators or domestic animals.

(13) Fumigation/Stored-Commodities Pest Control. This category includes applicators using fumigants to control pests in, on, or around soils, structures, railroad cars, stored grains, manufactured products, grain elevators, flour mills, and similar areas and items.

(14) Wood-Preservation Pest Control. This category includes applicators who apply wood-preservative pesticides to wood products, such as fence posts, electrical poles, railroad ties, or any other form of wood products.

(15) Wood-Destroying Organisms Pest Control. This category includes applicators using pesticides to control termites, carpenter ants, wood-boring or tunneling insects, bees, wasps, wood-decaying fungi and any other pests destroying wood products.

R68-7-7. Standards of Competence for Certification of Applicators.

Applicators must be at least 16 years of age and demonstrate competence in the use and handling of pesticides according to the hazards involved in their particular classification by passing the tests and becoming certified as outlined in R68-7-8. Upon their becoming certified, the department will issue a license which will qualify an applicator to purchase and apply pesticides in the appropriate classification. Standards for certification of applicators as classified in R68-7-8 have been established by the EPA and such standards shall be a minimum for certification of applicators in the State of Utah.

(1) Commercial and Non-Commercial Applicators.

Commercial and non-commercial applicators shall demonstrate practical knowledge by written examination(s) of the principles and practices of pest control and safe use, storage and transportation of pesticides, to include the general standards applicable to all categories and the standards specifically identified for each category or subcategory designated by the applicant, as set forth in 40 CFR, Section 171.4 and the EPA approved Utah State Plan for certification of pesticide applicators. In addition, applicators applying pesticides by aircraft shall be examined on the additional standards specifically identified for this method of application as set forth herein.

(a) Exemptions. The standards for commercial and non-commercial applicators do not apply to the following persons for purposes of these rules:

(i) Persons conducting laboratory-type research involving pesticides; and

(ii) Doctors of medicine and doctors of veterinary medicine applying pesticides or drugs or medication during the course of their normal practice and who do not publicly represent themselves as pesticide applicators.

(2) Aerial Application. Additional Standards.

Applicators shall demonstrate by examination practical knowledge of pest control in a wide variety of environments. These may include, but are not limited to, agricultural properties, rangelands, forestlands, and marshlands. Applicators must have the knowledge of the significance of drift and of the potential for non-target injury and the environmental contamination. Applicators shall demonstrate competency as required by the general standards for all categories of certified commercial and non-commercial applicators. They shall comply with all standards set forth by the Federal Aviation Administration (FAA) and submit proof of current registration by that agency as a requirement for licensing as an aerial applicator.

(3) Private Applicators. Private applicators shall demonstrate practical knowledge of the principles and practices of pest control and the safe use of pesticides, to include the standards for certification of private applicators as set forth in 40 CFR Section 171.5. In addition, private applicators applying restricted-use pesticides by aircraft shall show practical knowledge of the additional standards specifically identified for that method of application in R68-7-6(11) of these rules.

(4) Supervision of Non-Certified Applicators by Certified Private Applicators.

(a) A certified private applicator that functions in a supervisory role shall be responsible for the actions of any non-certified applicators under his/her instruction and control.

(b) A certified private applicator shall provide written or oral instruction for the application of a restricted-use pesticide applied by a non-certified applicator under his/her supervision when the certified applicator is not required to be physically present. If an applicator cannot read, instructions shall be given in a language understood by the applicator. The instructions shall include procedures for contacting the certified applicator in the event he/she is needed.

(5) The certified applicator shall be physically present to supervise the application of a restricted-use pesticide by a non-certified applicator if such presence is required by the label of the pesticide being applied.

R68-7-8. Certification Procedures.

(A) Commercial Applicators.

(1) License Required. No person shall apply, advertise for, solicit, or hold oneself out as willing to engage in the business of applying any pesticide for hire or compensation to the lands of another at any time without becoming certified and obtaining a commercial applicator's license and a pesticide business license as described in 4-14-111 issued by the department, or working for a company which has already attained such business license.

(2) The pesticide applicator business license fee will be determined by the number of commercial pesticide applicators employed by the business. The fee ranges are 1-4 commercial pesticide applicators, 5-9 commercial pesticide applicators and 10 or more commercial pesticide applicators.

(a) Application for such licenses shall be made in writing on an approved form obtained from the Department and shall include such information as prescribed by the Department. Each individual performing the physical act of applying pesticides for hire or compensation must be licensed as a commercial applicator. An applicator and business license fee determined by the Department, pursuant to Subsection 4-2-103(2), shall be assessed at the time of certification and recertification.

(b) A commercial pesticide applicator operating under more than one business identity or name from a single business location shall be licensed separately for each business identity or name.

(c) A commercial pesticide applicator with a single business identity or name but operating from more than one business location shall be licensed at each separate business location.

(d) If the name selected by an applicant for a license to act, operate, or do business or advertise as a commercial or noncommercial applicator in the State of Utah is the same or so near the same as that of another licensee already doing business in the state as to cause confusion in the minds of the people or is likely to deceive the public, the Department may require the applicant to apply for a license under a different name that is distinguishable from the names of existing licensees. Any determination made pursuant to this rule shall be at the sole discretion of the Department.

(e) Each business location licensed shall have a minimum of one certified applicator at that location who is certified in each licensed category for which applications are made.

(f) A franchised business shall have a separate license and a separate certified applicator at each business location.

(3) Written Examination. An applicant for a commercial pesticide license shall demonstrate competency and knowledge of pesticide applications by passing the appropriate written examinations. Examination and educational-material fees determined by the Department, pursuant to Subsection 4-2-103(2), shall be assessed at the time of certification and recertification. Any person applying to become certified or recertified must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate competency and knowledge of mixing and applying pesticides in a safe way. All applicants for a commercial applicator license must pass the general examination and the examination(s) pertaining to the category(s) for which they desire to be licensed. Certification examinations shall be conducted by representatives of the commissioner by appointment. A score of 70 or above is required to pass any written examination. A score of less than 70 on the general standards or category examinations shall result in denial of certification of that test. A person must pass the general and at least one category examination before becoming certified. An applicant scoring less than 65% on any examination must wait three days before retesting on that examination. A person scoring from 65% to 69% may retake the test again the same day, schedule permitting. After paying the certification fee a person may attempt to pass any of the required exams up to three times. If any exam is not passed within three attempts, a person must wait fourteen (14) calendar days and pay a retest fee for each exam failed and he/she will be allowed up to two additional attempts to pass an exam. If any exam is again not passed, a person must wait another fourteen (14) calendar days and again pay a retest fee for each exam failed and he/she will again be allowed up to two additional attempts to pass an exam. If all required exams are not passed after seven attempts, a person must again pay the certification fee and the testing process will begin again; the original certification fee and any retesting fees will not be refunded.

(4) License Issuance. If the Department finds the applicant qualified to apply pesticides in the classifications applied for and for which the prescribed fee(s) have been paid, the Department shall issue a commercial applicator's license. The license shall expire December 31 of the third calendar year unless it has been revoked or suspended by the commissioner for cause, which may include any of the unlawful acts given in R68-7-14. If an application for a commercial license is denied the applicant shall be informed of the reason. The applicator is required to have their license in their immediate possession at all times when making a pesticide application. If the applicator requests a duplicate license from the Department of Agriculture and Food, a fee determined by the Department pursuant to Subsection 4-2-103(2), must be paid before a replacement license will be issued. A pesticide applicator business license shall be required for each pesticide business location with applicators working in the state.

(5) Any new applicator or applicator business license licensing after November 1 will be licensed for the remainder of that year and the following three calendar years.

(6) License Recertification.

(a) Each license shall expire on December 31 of the third calendar year of its issuance. Commercial applicators must recertify every three years, and be subject to re-examination at any time. Information that may be required to insure a continuing level of competence and ability to use pesticides safely and properly due to changing technology, and to satisfy certification requirements as described herein, or meet any other requirements specified by the commissioner shall be added to this rule as often as necessary.

(b) Recertification options:

(i) Complete the original certification process of taking the required general and category test(s) and passing each required test with a score of 70% or above or;

(ii) Attend approved recertification courses and pass the required category examinations with a score of 70% or above or;

(iii) Participate in approved continuing education courses and accumulate 24 credits during the valid three years of certification.

(7) Records Maintained. Commercial applicators shall keep and maintain records of each pesticide application. These records must be recorded within 24 hours after the pesticide application is made. These application records must include the following information:

(a) Name and address of property owner;

(b) Location of treatment site, if different from (a);

(c) The month, day and year when the pesticide was applied;

(d) Brand name of pesticide, EPA registration number, rate of formulation (undiluted pesticide product as sold by the manufacturer) applied per unit area and total amount of diluted pesticide used;

(e) Purpose of application (target site and pest to be treated);

(f) The name, business address and license number of the certified applicator who applied the pesticide.

Such records shall be kept for a period of two years from the date of application of the pesticide and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee shall, upon request, be furnished a copy of such records by the commercial applicator.

(8) Exemption.

The provisions of this section relating to pesticide licenses and requirements for their issuance do not apply to private pesticide applicators using pesticides in the production of any agricultural commodity and applying pesticides for his/her neighbors provided he/she operates and maintains pesticide application equipment for his/her own use, is not engaged in the business of applying pesticides for hire or compensation in any form other than trading of services between producers of agricultural commodities, does not publicly represent himself/herself as a pesticide applicator, and operates his/her pesticide application equipment only in the vicinity of his/her owned or rented property; provided, however, that when he/she applies a restricted-use pesticide, he/she shall comply with the certification requirements specified herein.

(B) Non-Commercial Applicators.

(1) License Required. No non-commercial applicator shall use or demonstrate the use of any restricted-use pesticide without becoming certified and obtaining a non-commercial applicator's license issued by the Department. Application for such license shall be made in writing on an approved form obtained from the Department and shall include such information as prescribed by the Department. Each individual performing the physical act of applying restricted-use pesticides must be licensed.

(2) Written Examination. An applicant for a non-commercial pesticide license shall demonstrate to the Department competency and knowledge of pesticides and their applications by passing the appropriate written examinations. Examination and educational-material fees determined by the Department pursuant to Subsection 4-2-103(2), shall be assessed at the time an individual takes the general and category tests. All applicants for a non-commercial applicator license must successfully pass a general examination based upon standards applicable to all categories. After passing the general examination, applicants must pass the examination(s) pertaining to the category(s) for which they desire to be licensed. Certification examinations shall be conducted by representatives of the commissioner by appointment. A score of 70 percent or above is required for passing any written examination. A score of less than 70 percent on the general or category examinations shall result in denial of certification in that category. A person must pass the general and at least one category examination before becoming certified. An applicator scoring less than 65 percent on any examination must wait three days before retesting on that examination. A person scoring from 65% to 69% may retake the test again the same day, schedule permitting. Any person applying to become certified or recertified must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate competency and knowledge of mixing and applying pesticides in a safe way. After paying the certification fee a person may attempt to pass any of the required exams up to three times. If any exam is not passed within three attempts, a person must wait fourteen (14) calendar days and pay a retest fee for each exam failed and he or she will be allowed up to two additional attempts to pass an exam. If any exam is again not passed, a person must wait another fourteen (14) calendar days and again pay a retest fee for each exam failed and he/she will again be allowed up to two additional attempts to pass an exam. If all required exams are not passed after seven attempts, a person must again pay the certification fee and the testing process will begin again. The original certification fee and any retesting fees will not be refunded.

(3) License Issuance. If the Department finds the applicant qualified to apply pesticides in the classification(s) applied for, the Department shall issue a non-commercial applicator's license limited to such activities and classifications applied for. The applicator is required to have his/her license in his/her immediate possession at all times when making a pesticide application. If the applicator requests a duplicate license from the Department of Agriculture and Food, a fee as determined by the Department pursuant to Subsection 4-2-103(2), must be paid before a replacement license will be issued. The license shall expire December 31, three calendar years after the issuance of the certification, unless it has been suspended or revoked by the commissioner for cause, which may include any of the unlawful acts given in R68-7-14. If an application for a non-commercial license is denied the applicant shall be informed of the reason.

(4) Any new applicator licensing after November 1 will be licensed for the remainder of that year and the following calendar year.

(5) License Recertification. Non-commercial applicators must recertify every three years, and be subject to re-examination at any time. Information may be required to insure a continuing level of competence and ability to use pesticides safely and properly due to changing technology, and to satisfy certification requirements as described herein, or any other requirements specified by the commissioner shall be added to this rule as often as necessary.

Recertification options are:

(a) Complete the original certification process of taking the required general and category test(s) and passing each required test with a score of 70% or above or;

(b) Attend approved recertification courses and pass the required category test(s) with a score of 70% or above or;

(c) Participate in approved continuing education courses and accumulate 24 credits during the valid three years of certification.

(6) Records Maintained. Non-commercial applicators shall keep and maintain records of each application of any restricted-use pesticide. These application records must be recorded within 24 hours after the pesticide application is made. These records must include the following information:

(a) Name and address of property owner;

(b) Location of treatment site, if different from (a);

(c) The month, day and year when the pesticide was applied;

(d) Brand name of pesticide, EPA registration number, rate of formulation (undiluted pesticide concentrate product as sold by the manufacturer) applied per unit area, and total

amount of diluted pesticide used;

(e) Purpose of application (target site and pest to be treated);

(f) The name, address, and license number of the certified applicator who applied the pesticide.

Such records shall be kept for a period of two years from the date of application of the pesticide and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee shall, upon request, be furnished a copy of such records by the non-commercial applicator.

(7) Exemption. The provisions of this section shall not apply to persons conducting laboratory research involving restricted-use pesticides as drugs or medication during the course of their normal practice. Non-Commercial applicators engaged in public-health related activities are exempt from recording the name and address of property owners, but are required to document a detailed description of treatment areas by using such means as GPS coordinates or other locality descriptions for record keeping purposes.

(C) Private Applicators.

(1) License Required. No private applicator shall purchase, use or supervise the use of any restricted-use pesticide without a private applicator's license issued by the Department. Issuance of such license shall be conditioned upon the applicator's complying with the certification requirements determined by the Department as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons. Application for a license shall be made in writing on a designated form obtained from the Department.

(2) Certification Methods. Any person applying to become licensed must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate competency and knowledge of mixing and applying pesticides in a safe way. All first-time Private Applicators must successfully pass a written test. A score of 70 percent or above is required for passing any written test. A score of less than 70 percent will result in the denial of certification. An applicator scoring less than 65% on any examination must wait three days before retesting on that examination. A person scoring from 65% to 69% may retake the test again the same day, schedule permitting.

(3) Emergency-Use Permit. A single restricted-use pesticide may be purchased and used by a non-certified person on a one-time-only basis if an emergency control situation is shown to exist. Before purchasing the product, the applicant shall participate in a discussion concerning safe use of the specific product with a representative of the Utah Department of Agriculture and Food. Following an adequate discussion of same, the Department of Agriculture and Food may issue the applicant a permit to purchase and use the product on a specific site on a one-time-only basis. The applicant shall be required to become certified before being authorized to further purchase and use restricted-use pesticides.

(4) License Issuance. If the Department finds the applicant qualified to apply pesticides, the applicant shall be issued a private applicator's license. Examination and educational-material fees determined by the Department pursuant to Subsection 4-2-103(2), shall be assessed at the time of certification and recertification. The license issued by the commissioner shall expire on December 31, three calendar years after issuance, unless the license has been revoked or suspended by the commissioner. If an application for a private license is denied, the applicant shall be informed of the reason. If the applicator requests a duplicate license from the Department of Agriculture and Food, a fee determined by the Department pursuant to Subsection 4-2-103(2), must be paid before a replacement license will be issued.

(5) Any new applicator licensing after November 1 will be licensed for the remainder of that year and the following calendar year.

(6) License Renewal, Recertification. A person applying to recertify must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate the mixing and application of pesticides in a safe way. All certified private applicators must recertify every three years, or more frequently if determined necessary by the Department, by satisfying any of the following procedures or any other requirements specified by the Department.

(a) Completion of a recertification course approved by the Utah Department of Agriculture and Food and passing a written test with a score of 70% or above or;

(b) Complete the original certification process of taking the required written test(s). A score of 70 percent or above is required to pass or;

(c) Accumulate six credits of approved continuing education during the valid three years of certification.

(d) Records Maintained. Private applicators must keep and maintain records according to United States Department of Agriculture (USDA) requirements.

(D) Employees of Federal Agencies. Federal Government Employees wishing to be certified in Utah shall be required to qualify as non-commercial applicators by passing the appropriate examinations, unless such requirement is waived upon presentation of adequate evidence of certification in the appropriate categories from another state with comparable certification requirements. In the event a federal agency develops an applicator certification plan which meets the Utah certification standards, employees of that agency who become certified under that plan may qualify for certification in the State of Utah.

(E) Certification of Out-of-State Applicants.

When a pesticide applicator is certified under an approved state plan of another state and desires to apply pesticides in Utah, he/she shall make application to the Department and shall include, along with the proper fee and any other details required by the Act or these rules, a true copy of his/her credentials as proof of certification in the person's state of residence and a letter from that state's department of agriculture stating that he/she has not been convicted of a violation of any pesticide law and is currently licensed as a pesticide applicator in that state. The Department may upon review of the credentials, issue a Utah certification to the applicator in accordance with the use situations for which the applicator is certified in another state without requiring determination of competency; provided that the state having certified the applicator will similarly certify holders of Utah licenses or certificates and has entered into a reciprocal agreement with the State of Utah. Out-of-state pesticide applicators who operate in Utah will be subject to all Utah laws and rules.

(F) Change of Licensee Information

(1) Every certified commercial, non-commercial, and private applicator shall notify the Department of any change in, but not limited to applicator's name, address, and phone number and/or change of employer within 30 calendar days of the change.

(2) Every commercial pesticide business licensee shall notify the Department of any changes in, including but not limited to, ownership, company name, owner or manager's name company address, and phone number within 30 calendar days of the change.

(a) Business licenses are nontransferable, and in case of a change in business ownership, a new application and fee are required.

R68-7-9. Dealer Licensing.

(A) In order to facilitate rules of the distribution and sale of restricted-use pesticides, it is necessary to license dealers who dispense such materials.

(1) License Required.

It shall be unlawful for any person to act in the capacity of a restricted-use pesticide dealer, or advertise as, or presume to act as such a dealer at any time without first having obtained a license from the Department. A license shall be required for each location or outlet located within this state from which such pesticides are distributed; provided, that any manufacturer, registrant or distributor who has no pesticide dealer outlet licensed within this state and who distributes a restricted-use pesticide directly into Utah shall obtain a pesticide dealer's license for his/her principal out-of-state location or outlet; provided further, that any manufacturer, registrant or distributor who sells only through or to a pesticide dealer is not required to obtain a pesticide dealer's license.

(2) License Issuance. Application for a pesticide dealer's license shall be on a form prescribed by the Department and shall be accompanied by a license fee determined by the Department pursuant to subsection 4-2-103(2). If the Department finds the applicant qualified to sell or distribute restricted-use pesticides and the applicant has paid the prescribed license fee, the Department shall issue a restricted-use pesticides dealer's license. This license shall expire December 31 of the third calendar year, unless it has been previously revoked or suspended by the commissioner for causes which may include any of the unlawful acts included in R68-7-14.

(3) License Renewal. License-renewal fees are payable triennially before January 1. If the renewal of a pesticide dealer's license is not received prior to January 1 of the renewal year, an additional fee determined by the Department pursuant to Subsection 4-2-103(2), shall be assessed and added to the original license fee and shall be paid by the applicant before the license renewal shall be issued.

(4) Records Maintained. Each dealer outlet licensed to sell restricted-use pesticides is required by the Department to maintain a restricted-use pesticide sales register by entering all restricted-use pesticide sales into the register at the time of sale. The restricted-use pesticide sales register must be available in an electronic format approved by the Department. The electronic register form, shall include the following information:

(a) The Corporate or Company Name.

(b) The name of the branch store that made the sale.

(c) The store's complete Restricted-Use Pesticide dealer license number, including the prefix.

(d) The complete sale date including the month, day and year.

(e) The first and last name of the salesperson that made the sale.

(f) The first and last name of the buyer.

(g) The buyer's complete Pesticide Applicator License number, including the prefix.

(h) If the buyer was authorized by letter, the authorization letter must be kept on file.

(i) If the buyer used a temporary permit, a copy of the permit must be kept on file.

(j) The buyer's complete street address, city, state and zip code.

(k) The brand name of the product sold, its EPA Registration Number and the quantity sold.

(l) The product container size and its unit of measure (i.e. gallons, liters, etc.). Such records shall be kept for a period of two years from the date of restricted-use pesticide sale and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee, upon request, shall be furnished a copy of such records by the restricted-use pesticide dealer.

(5) Submission of Electronic records. On July 1 of each year, Dealers are required to submit their Restricted-Use Pesticide sales records for the period starting the previous July 1 through June 30 of the current year. The due date for submission is July 31 of the current year.

(6) Exemption. Provisions of this section shall not apply to: (a) a licensed pesticide applicator who sells restricted-use pesticides only as an integral part of his/her pesticide application service when such pesticides are dispensed only through equipment used for such pesticide application (b) Federal, state, county, or municipal agency which provides restricted-use pesticides only for its own programs shall be exempt from the license fee but must meet all other requirements of a pesticide dealer.

(7) Responsible for Acts of Employees. Each pesticide dealer shall be responsible for the acts of each person employed by him/her in the solicitation and sale of restricted-use pesticides and all claims and recommendations for use of restricted-use pesticides. A dealer's license shall be subject to denial, suspension or revocation for any violation of the Pesticide Control Act or rules promulgated thereunder, whether committed by the dealer or by the dealer's officer, agent, or employee.

R68-7-10. Responsibilities of Business and Applicator.

(A) Business Licensee Duties and Responsibilities

(1) A business licensee shall ensure that a qualifying party (licensed applicator) of the business licensee receives the training that the applicator requires to comply fully with the Utah Pesticide statutes and rules and label and labeling directions.

(B) Responsibility for business and employee(s)

(1) A business licensee, qualifying party and/or applicator may be held responsible for the acts or omissions of another person who is employed by the business licensee. It is the business' responsibility to properly train, equip, and prepare the other person(s) and maintain records of proper training and equipping.

(2) Failure to fully respond to requests by the commissioners designated agent, in a stated time, for information relating to training and equipping will be evidence for a failure to properly train or equip. The supervising licensee has the burden of proof by a preponderance of the evidence that the business licensee, qualifying party or applicator has fulfilled the required duties as prescribed by this chapter, rules adopted pursuant to this chapter or a written order of the commissioner.

(C) Use of business name and license number.

(1) A business licensee must prominently display the license issued by the Department at the primary business office and each branch office.

(2) A business licensee shall prominently display the business name and license number, as recorded on the license issued by the Department, on:

(a) Customer proposals or contracts for pest management services;

(b) Service records and service notifications;

(c) Service vehicles and trailers used in providing pest management services. The business licensee shall ensure that the business name and license number is displayed on a service vehicle or trailer used in providing pest management services conforms to the following:

(i) Is affixed to the service vehicle or trailer used in providing pest management services within 30 days after the Department issues the license or issues a business license change or after the service vehicle or trailer is acquired, whichever is sooner.

(ii) Is in a color that contrasts with the color of the service vehicle and trailer;

(iii) Is prominently displayed on both sides of the service

vehicle or trailer;

(iv) Uses at least two-inch letters for the principal words in the business name and at least one and one-half inch letters for other words in the business name; and

(v) Uses at least two-inch numbers for the license number.

(vi) Letters and numbers must be weatherproof.

(3) A business licensee that always uses a service vehicle and trailer together is required to mark only the service vehicle or trailer as described in subsection (2)(c). A business licensee that uses a vehicle only for sales, solicitations, or solely for inspections and does not carry a pesticide, and does not otherwise use the vehicle to provide a pest management service, is not required to mark the vehicle as described in subsection (2)(c).

(4) When complying with subsection (2), a business licensee may use a slogan, trade name, or trade mark in addition to the business name and license number. When complying with subsection (2), a business licensee may use a word or phrase to indicate its former licensed business name if it had a previously licensed business name.

(D) Customer Notification.

(1) Prior to the time of each application of a restricted-use pesticide with a Danger/Danger-Poison signal word, the licensed commercial applicator or an employee of the licensed pesticide business shall provide the customer with a written statement containing the following information:

(a) Business name and telephone number of the licensed business.

(b) Name and license number of the licensed applicator who made the application

(c) Date and time of application.

(d) Type of pesticide application service and brand name of pesticide(s) applied.

(e) Instructions to the customer to contact the business telephone number if more specific information is desired regarding the pesticide product applied.

(2) The written statement required in subsection (1) shall be provided to the customer by any of the following means:

(a) Leave at the residence.

(b) In the case of a multiunit residence leave with the property manager or his/her authorized representative, or

(c) Mail to the property manager or his/her authorized representative if management is located at a location other than the pesticide application site, within seven (7) calendar days prior to the date of the pesticide application.

R68-7-11. Termiticide Record Keeping. Additional Standards.

(A) In addition to the recordkeeping requirements contained in R68-7-8, the applicator will keep as records a diagram/graph of the structure treated that includes dimensions of the structure, including depth to footer.

(B) For post construction treatments the diagram/graph will also illustrate the area(s) where termites and/or termite activity was found.

(C) All records of applications for every individual structure must be kept together.

R68-7-12. Minimum Standards for Fumigant Applications.

(A) Application of fumigant products require strict adherence to the label and when required by the label, a verified and written Fumigation Management Plan (FMP) must be prepared in advance of treatment. A FMP must detail the information prescribed by the label. State standards for fumigation treatments of any space that can be occupied by a person, or non-target species, require the following:

(1) Persons present at the time of releasing the fumigant and during the initial ventilation.

(a) There shall be at least two persons, one of whom must be a certified applicator in the fumigation category, present at the time of the releasing of the fumigant and during the initial ventilation. During the interim, the premises shall be adequately safeguarded against entry by any person(s).

(2) Notification of local fire department and/or first responders.

(a) Prior to fumigation of any building or enclosed space, other than a fumigating vault, the certified applicator shall notify and provide the local fire department with the address of the fumigation job, time of gas release, kind of gas to be used, and beginning time of the aeration of the premises.

(3) Premises sealed.

(a) Premises to be fumigated shall be sealed in a manner that confines the fumigant to the space intended to be fumigated.

(4) Inspection of premises prior to releasing fumigant

(a) Immediately before releasing the fumigant, the fumigator shall conduct a thorough inspection of the premises to verify that no person(s) or non-target animals remain, and that effective precautions have been taken to safeguard occupants of neighboring buildings as set forth below.

(5) Fumigation of apartments within a multiple unit apartment building.

(a) Fumigation of apartments within a multiple unit apartment building may be fumigated only after proper sealing of the area being fumigated and after all apartments are vacated.

(b) All the adjacent units shall be properly ventilated during the entire exposure period.

(6) Notification of all dwellings or places of business within 100 feet of building being fumigated.

(a) All dwellings or places of business within 100 feet of the building being fumigated must be notified in writing in advance of the fumigation.

(b) All premises within 10 feet must be vacated during the fumigation and aeration periods.

(7) Warning signs.

(a) Warning signs shall be posted conspicuously at all entrances of the premise to be fumigated and at the entrances of all adjacent multiple units and structures within 10 feet and kept there during the entire fumigation and ventilation period. Signs shall be a minimum size of 8 1/2 inches by 11 inches and color to be conspicuous and bearing the word "poison" and display the skull and cross-bones, the name of the fumigant used, and the name, address and telephone number of the fumigator.

(b) Before the fumigant is released, all entrances leading directly to the fumigated space shall be closed, sealed, and locked except exits to be used by fumigating crew. These exits shall be closed, sealed, and locked promptly after the fumigant has been released.

(8) Masks worn.

(a) All members of the fumigating crew must be equipped with a serviceable mask of a type approved by the U.S. Mines, Safety, and Health Administration with correct canister for the type of gas used.

(b) Masks shall be worn while in the enclosed space during and after release of the gas, and until initial ventilation is completed.

(9) Re-entering fumigated premises

(a) No one other than the fumigator shall be permitted to re-enter the fumigated premises until the fumigator has ascertained by personal inspection, with gas mask and with a chemical appropriate test, that the premises are safe for occupancy.

(b) Aeration must be conducted according to the product labeling and re-entry allowed according to levels specified on the label.

(10) Exceptions

(a) The subparts 1 through 9 may not apply to fumigants used to control insects or other pests outside of buildings, or for

spot fumigations, or restrictive treatments inside a building, such as grain bins.

(i) Strict adherence to the label instructions must be adhered to during these applications.

(ii) During the ventilation period of a spot or restrictive fumigation, the premises shall not be occupied by anyone except the fumigator.

(iii) A warning gas is recommended where the fumigant is comparatively odorless.

(B) Fumigation of Burrowing Rodents require strict adherence to the label as well as a Fumigation Management Plan (FMP) that must contain the following information.

(1) Purpose of the application, indicate the exact pest to be controlled and the type of burrow system to be treated.

(2) Pesticide used. State the name of the pesticide, the EPA registration number, and dosage used.

(3) Property treated information. Record the property or facilities name and address. Verify the manager's name, and contact information.

(4) Licensed applicator information. Record licensed applicator's name, company, license number, phone numbers.

(5) Emergency Information. Note the phone number for the nearest hospital, fire department, police department, poison control center and the registrant of the fumigant.

(6) Instructions to personnel. Verify by signatures that all personnel has been instructed to:

(a) Report any accident or incident related to exposure, provide a telephone number for emergency response reporting.

(b) Report to proper authorities any theft of fumigant and/or equipment related to fumigation.

(7) Follow label directions. Monitoring, Notification, Sealing, Application Procedures, Fumigation Period, and Use Restrictions are to be followed per label instructions.

(8) Burrowing Rodent Fumigation Record Keeping. Additional Standards.

(a) In addition to the recordkeeping requirements contained in R68-7-8, the applicator will keep as part of the record a diagram/graph (to scale) of the property treated that includes dimensions of the property, any structure present, and mark each burrow treated on the diagram or graph.

R68-7-13. Transportation, Storage, Handling, Using and Disposal of Pesticides and Pesticide Containers.

All pesticide applying entities shall provide a secure pesticide and device storage area that complies with all federal, state, and local laws. The storage area may include an area on a service vehicle.

(1) No person shall transport, store, or dispose of any pesticide or pesticide containers in such a manner as to cause injury to humans, other nontarget species, or the environment.

(2) Pesticide containers shall be secured during transport by use of side or end racks, bracing, chocks, tie downs, or other means to prevent their sliding, falling, tipping, rolling, or falling off the vehicle with normal vehicle acceleration, deceleration, or change in direction.

(3) Portable tanks shall be secured to prevent their sliding, falling, tipping, or rolling with normal vehicle acceleration, deceleration, or change in direction. Stacking or wedging against ends, sidewalls, or doors of van bodies shall not be relied upon for securement.

(4) Pesticides in leaking, broken, corroded, or otherwise damaged containers shall not be displayed, offered for sale, or transported and shall be handled or disposed of in a manner that would not injure humans, other nontarget species, or the environment. Pesticides with obscured, illegible or damaged labels shall not be displayed, offered for sale, or sold.

(5) No person shall distribute or sell any pesticide unless it is in the registrant's or manufacturer's unopened, original container and the registered pesticide label is affixed to the container

(6) No person shall transport, handle, store, load, apply, or dispose of any pesticide, pesticide container, apparatus, or rinsate in such a manner as to pollute water supplies or waterways, or cause damage or injury to land, humans, desirable plants and animals, or wildlife. Provided that a pesticide labeled for aquatic use and used as directed shall not be considered a violation of this subsection. Disposing of pesticides at disposal sites approved by the appropriate agency complies with the requirements of this subsection. Toxicity, volatility, and mobility of pesticides shall be considered in complying with this subsection.

(7) No person shall pollute streams, lakes, or other water supplies during pesticide loading, mixing, and application. Adequate, functioning devices and procedures to prevent back siphoning shall be used.

(8) No pesticides shall be applied by aircraft or air blast sprayers to property abutting and/or adjacent to occupied schools in session, hospitals, nursing homes or other similar establishments under conditions that may result in contamination of these establishments or their premises.

(9) No person shall apply pesticides if weather conditions are such that physical drift or volatilization may cause damage to adjacent land, injure humans, other nontarget species, or the environment.

(10) Requirements for unattended pesticides and their containers:

(a) Generally accepted good housekeeping practices shall be maintained for all pesticides and their containers.

(b) The provisions of (d) and (e) of this subsection and subsection (11) of this section shall not apply to empty pesticide containers when adequately decontaminated (e.g., appropriate triple rinsing or other label approved cleaning techniques).

(c) For the purposes of (d) and (e) of this subsection and subsection (11) of this section, pesticides and their containers at the loading area shall not be considered unattended during the spraying operation if the operator maintains either visual control or repeatedly returns at closely spaced intervals as to ensure safe monitoring of the pesticides and containers.

(d) Pesticides labeled with the signal word "danger/poison" and their containers shall be stored in a way which, when unattended, shall be so constructed and locked to prevent children, unauthorized persons, livestock, or other animals from gaining entry.

(e) Pesticides labeled with the signal word "danger" when not accompanied by the signal word "poison," pesticides labeled with the signal word "warning" and pesticides labeled with the signal word "caution" and their containers shall be stored in secured storage out of the reach of children in an enclosure as described in (d) of this subsection: Provided that metal containers, twenty-eight gallons and larger, with tight screw-type bungs and/or secured or locked valves shall be considered secured storage.

(11) Requirements for posting of storage area for pesticides and their containers labeled with the signal words "danger/poison":

(a) For purposes of this subsection, warning signs shall show the skull and crossbones symbol and the words: "Danger/Poison (Pesticide or Chemical) Storage Area/Keep Out" in at least two inch letters.

(b) Warning signs shall be posted:

(i) At each entrance or exit from a storage area and on each exterior wall, so that a sign is visible from any direction;

(ii) If the pesticide storage area is contained in a larger, multipurpose structure, warning signs shall be clearly visible on each entrance of the storage area.

(12) In accordance with State of Utah Agricultural Code, the Utah Department of Agriculture and Food hereby adopts the applicable portions of 40 CFR Part 152 Subpart A Section

152.3 and Part 165, Subparts A through E.

R68-7-14. Unlawful Acts.

Any person who has committed any of the following acts is in violation of the Utah Pesticide Control Act or rules promulgated thereunder and is subject to penalties provided for in Sections 4-2-301through 4-2-305:

(1) Made false, fictitious, or fraudulent claims, written or spoken misrepresenting the use, effect of pesticides, certification of applicator, or methods to be utilized;

(2) Applied known ineffective or improper pesticides;

(3) Operated in a faulty, careless or negligent manner;

(4) Neglected or, after notice, refused to comply with the provisions of the Act, these rules or of any lawful order of the department;

(5) Refused or neglected to keep and maintain records required by these rules, or to make reports when and as required;

(6) Made false or fraudulent records, invoices or reports;

(7) Engaged in the business of, advertised for, or held self out as applying a pesticide for hire or compensation on the lands of another without having a valid commercial applicator's license;

(8) Purchased, Used, or supervised the use of, a pesticide which is restricted to use by "certified applicators" without having qualified as a certified applicator or designated as a certified private applicators agent;

(9) Used fraud or misrepresentation in making application for, or renewal of, a registration, license, permit or certification;

(10) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;

(11) Used or caused to be used any pesticide in a manner inconsistent with its labeling or rules of the department if those rules further restrict the uses provided on the labeling;

(12) Aided or abetted a licensed or an unlicensed person to evade the provisions of the Act; conspired with such a licensed or an unlicensed person to evade the provisions of the Act; or allowed one's license or permit to be used by another person;

(13) Impersonated any federal, state, county, or other government official;

(14) Distributed any pesticide labeled for restricted use to any person unless such person or his/her agent has a valid license, or permit to use, supervise the use, or distribute restricted-use pesticide;

(15) Applied pesticides onto any land without the consent of the owner or person in possession thereof; except, for governmental agencies which must abate a public health problem.

(16) For an applicator to apply a termiticide at less than label rate.

(17) For an employer of a commercial or non-commercial applicator to allow an employee to apply pesticide(s) before that individual has successfully completed the prescribed pesticide certification procedures.

(18) For a pesticide applicator not to have his/her current license in his/her immediate possession at all times when making a pesticide application.

(19) To allow an application of pesticide to run off, or drift from the target area to cause plant, animal, human or property damage.

(20) Refused or neglected to register a pesticide applicator business with the Utah Department of Agriculture and Food or follow the rules set forth in section R68-7-8 for licensing of a commercial business.

(21) To handle or apply any registered pesticide for which the person does not have an appropriate, complete, or legible label at hand.

(22) Refused or neglected to comply with the Federal Container and Containment regulations.

(23) Failure to perform fumigation applications according to the standards required by this rule.

(24) Failed to display business license numbers in accordance with this rule.

(25) Refused or neglected to notify the customer of the application of a restricted-use pesticide and the information detailed in R68-7-10.

(26) Failure of a qualifying party of the business licensee to train or prepare the applicator to comply fully with the Utah Pesticide statutes and rules and label and labeling directions.

(27) Failure to timely and fully respond to requests by the commissioners designated agent for information relating to training and equipping of applicators.

(28) Transported, stored, handled, used, or disposed of a pesticide or pesticides container inconsistent with rules specified in section R68-7-13.

R68-7-15. Penalty Matrix.

In the disposition of administrative cases, the Department shall use a penalty matrix to determine appropriate penalties. The Department shall calculate penalties based on the level of violation and the adverse effect(s) or potential adverse effects at the time of the incident(s) giving rise to the violation. The median penalty shall be assessed unless a proportionate adjustment is warranted and/or there are aggravating or mitigating factors present.

(1) The Department may consider circumstances enhancing or reducing the penalty based on the seriousness of the violation. Aggravating and mitigating factors include, but are not limited to, the following:

(a) The number of separate alleged violations contained within a single notice of intent.

(b) The magnitude of the harm, or potential harm, including quantity and/or degree, to humans, nontarget species, property, or the environment caused by the violation(s).

(c) The similarity of the current alleged violation to violations committed by the pesticide applicator and/or business during previous years.

(d) The extent to which the alleged violation is part of a pattern of the same or substantially similar conduct.

(2) The Department will annually review past violation trends and update the penalty matrix based on compliance history.

(a) A copy of the penalty matrix will be made available from the Department upon request.

KEY: inspections, pesticides
June 21, 2011 4-14-6
Notice of Continuation February 29, 2016

R123. Auditor, Administration.
R123-5. Audit Requirements for Audits of Political Subdivisions and Governmental Nonprofit Corporations.
R123-5-1. Authority.

1. As required by Section 51-2a-301, this rule provides the guidelines, qualifications criteria, and procurement procedures for audits required to be made by Section 51-2a-201.

R123-5-2. Definitions.

1. "Auditor" means a certified public accountant licensed to conduct audits in the state and includes any certified public accounting firm as defined by Section 58-26a-102.

2. "Political subdivision" means all municipalities, counties, school districts, local and special service districts, interlocal organizations, and any other entity established by a local governmental unit that receives tax exempt status for bonding or taxing purposes.

3. "Governmental nonprofit corporation" means any governmental nonprofit corporation as that term is defined by Section 11-13a-102.

R123-5-3. Audit Standards and Requirements.

1. The audits of all entities required to have an audit made by Section 51-2a-201 shall be performed in accordance with Government Auditing Standards most recently published and issued by the Comptroller General of the United States.

2. The State Auditor shall adopt and maintain a compliance audit guide containing those fiscal laws and compliance requirements for state funds distributed to, and expended by, political subdivisions and governmental nonprofit corporations. This compliance audit guide may specify:

a. the general compliance requirements applicable to all political subdivisions and governmental nonprofit corporations, and the audit requirements applicable to general compliance requirements,

b. the format for the auditor's statement expressing positive assurance with state fiscal laws identified by the State Auditor, and

c. those items related to internal controls and other financial issues which shall be included in the auditor's letter to management that must be filed with the Independent Auditor's Report in accordance with the State Compliance Audit Guide.

3. The audits of all entities required to have an audit made by Section 51-2a-201 shall be performed in accordance with the compliance audit guide maintained by the State Auditor.

R123-5-4. Audit Procurement.

The decision to retain an entity's auditor rests with the governing body of the entity. However, the auditor performing the audit must meet the peer review and continuing education requirements of Government Auditing Standards issued by the Comptroller General of the United States. If the governing body rebids the audit of its financial statements, it shall comply with the following audit procurement requirements:

a. Proposals will be obtained from any interested and qualified certified public accountant licensed to perform audits in the state, which may include the auditor currently performing the entity's audit. Notice may be given to potential auditors either through invitation or by notice published in a newspaper of general circulation. To promote competition it is recommended that at least three auditors be invited to participate in bidding for the audit.

b. The entity shall distribute a "request for proposal" to all auditors who meet the qualification criteria set by the procuring organization interested in bidding for the audit. As a minimum, the request for proposal shall contain the following:

(i) the name and address of the entity requesting the audit and its designated contact person,

(ii) the entity to be audited, the scope of services to be provided, and specific reports, etc. to be delivered,

(iii) the period to be audited,

(iv) the format in which the proposals should be prepared,

(v) the date and time proposals are due, and

(vi) the criteria to be used in evaluating the bid.

c. The entity may select the auditor or audit firm that the governing body desires to perform its audit and may reject any bid.

R123-5-5. Responsibility for Audit Quality.

1. The governing body of each political subdivision or governmental nonprofit corporation is responsible to ensure that the political subdivision or governmental nonprofit corporation obtains a quality audit of its financial records.

2. The governing body may appoint an audit committee with the responsibility of making recommendations to the governing body for selection of an auditor, ensuring that the auditor meets qualification requirements, and ensuring that the auditor complies with professional standards.

3. If the governing body appoints a separate audit committee, then the governing body shall review the recommendations of the audit committee and make the selection of the auditor.

4. The audit committee will report its assessment of the auditor's compliance with professional standards to the governing body.

5. The auditor shall report the results of the audit to the governing body.

6. The governing body shall respond to the specific recommendations included in the auditor's letter to management. This response shall be remitted with the audited financial statements to the state auditor.

KEY: auditing, governmental nonprofit corporations
November 1, 2017 51-2a-201
Notice of Continuation June 7, 2017

R156. Commerce, Occupational and Professional Licensing.
R156-5a. Podiatric Physician Licensing Act Rule.
R156-5a-101. Title.

This rule is known as the "Podiatric Physician Licensing Act Rule".

R156-5a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 5a, as used in Title 58, Chapters 1 and 5a or this rule:

(1) "CPME" means the Council on Podiatric Medical Education.

(2) "Recognized school" as used in Subsection 58-5a-306(2) means a school that is accredited by the Council on Podiatric Medical Education.

R156-5a-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 5a.

R156-5a-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.

R156-5a-302a. Qualifications for Licensure - Education Requirements.

In accordance with Subsections 58-5a-302(5)(b)(ii) and (iii), an applicant shall complete and sign the affidavit of current Utah post-graduate resident training contained in the Division's podiatric physician license application, to satisfy the Division and board that the applicant:

(1) has been accepted in and is successfully participating in a CPME-approved progressive resident training program within Utah; and

(2) has agreed to the required automatic revocation and surrender of the applicant's license if the applicant fails to continue in good standing in that program.

R156-5a-302b. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1) and 58-5a-302(6), the examinations required to be passed for licensure are Part I, Part II written, Part II CSPE, and Part III of the American Podiatric Medical Licensing Examination (APMLE), developed by the National Board of Podiatric Medical Examiners examination (NBPME).

R156-5a-302c. Qualifications for Licensure - Training Requirements.

(1) In accordance with Subsection 58-5a-103(3)(b)(iii), acceptable documentation that the podiatric physician has completed training and experience in standard or advanced midfoot, rearfoot, and ankle procedures, shall consist of verification from the American Board of Foot and Ankle Surgery that the applicant is currently board qualified.

(2) In accordance with Subsection 58-5a-103(3)(c)(iii), acceptable documentation that the podiatric physician has completed training and experience in standard or advanced midfoot, rearfoot, and ankle procedures, shall consist of verification of a fellowship in foot and ankle surgery from a program approved, at the time of completion, by the Council on Podiatric Medical Education.

R156-5a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1)(a), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 5a is established by rule in Section R156-1-308a.

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

R156-5a-304. Continuing Education.

(1) In accordance with Section 58-5a-304, a continuing professional education requirement is established for all individuals licensed under Title 58, Chapter 5a.

(2) During each two-year period commencing on September 30 of each even-numbered year, a licensee shall be required to complete not less than 40 hours of qualified professional education directly related to the licensee's professional clinical practice.

(3) 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 license date.

(4) Qualified professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the program directly related to the practice of a podiatric physician;

(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;

(e) have a competent method of registration of individuals who completed the program with records of registration and completion available for review; and

(f) be sponsored or approved by a combination of the following:

(i) one of the organizations listed in Subsection 58-5a-304(3);

(ii) the American Podiatric Medical Association; or

(iii) the Division of Occupational and Professional Licensing.

(5) Credit for 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 40 hours per two-year period may be recognized for teaching in a college or university or teaching qualified professional education courses in the field of podiatry;

(c) a maximum of ten hours per two-year period may be recognized for clinical readings directly related to practice as a podiatric physician;

(d) a maximum of six hours per two-year period may come from the Division of Occupational and Professional Licensing; and

(e) per Section 58-13-3 concerning charity health care, a maximum of 15% of the required hours per two-year period may come from providing volunteer services within the scope of license at a qualified location, with one hour of credit earned for every four hours of volunteer service.

(6) A licensee shall be responsible for maintaining competent records of completed qualified 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 demonstrate the professional education meets the requirements of this section.

(7) If a licensee properly documents that the licensee is engaged in full-time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section, the licensee may be excused from the requirement for a period of up to three years.

R156-5a-305. Radiology Course for Unlicensed Podiatric Assistants.

In accordance with Subsection 58-54-306(3), radiology courses for an unlicensed person performing services under the supervision of a podiatric physician shall include radiology theory consisting of the following:

(1) orientation of radiation technology;

(2) terminology;

(3) radiographic podiatric anatomy and pathology (cursory);

(4) radiation physics (basic);

(5) radiation protection to patient and operator;

(6) radiation biology including interaction of ionizing radiation on cells, tissues and matter;

(7) factors influencing biological response to cells and tissues to ionizing radiation and cumulative effects of x-radiation;

(8) external radiographic techniques;

(9) processing techniques including proper disposal of chemicals; and

(10) infection control in podiatric radiology.

KEY: licensing, podiatrists, podiatric physician
October 10, 2017 58-1-106(1)(a)
Notice of Continuation September 16, 2013 58-1-202(1)(a)
58-5a-101

R156. Commerce, Occupational and Professional Licensing.
R156-11a. Cosmetology and Associated Professions Licensing Act Rule.
R156-11a-101. Title.

This rule is known as the "Cosmetology and Associated Professions Licensing Act Rule."

R156-11a-102. Definitions.

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

(1) "Acrylic nail", as used in Section 15A-3-402 and Subsection R156-11a-102(25), means an extension for natural nails molded out of a polymer powder and a liquid monomer buffed to a shine.

(2) "Advanced pedicures", as used in Subsection 58-11a-102(39)(a)(i)(D), means any of the following while caring for the nails, cuticles or calluses of the feet:

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

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

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

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

(4) "BCA acid" means bicloroacetic acid.

(5) "Body wraps", as used in Subsection 58-11a-102(39)(a)(i)(A), means body treatments utilizing products or equipment to enhance and maintain the texture, contour, integrity and health of the skin and body.

(6) "Chemical exfoliation", as defined in Subsections 58-11a-102(39)(a)(i)(C) and R156-11a-610(4), means a resurfacing procedure performed with a chemical solution or product for the purpose of removing superficial layers of the epidermis to a point no deeper than the stratum corneum.

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

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

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

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

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

(i) theory - 1 credit hour - 30 clock hours;

(ii) practice - 1 credit hour - 30 clock hours; and

(iii) clinical experience - 1 credit hour - 45 clock hours; and

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

(i) theory - 1 credit hour - 20 clock hours;

(ii) practice - 1 credit hour - 20 clock hours; and

(iii) clinical experience - 1 credit hour - 30 clock hours.

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

(12) "Extraction" means the following:

(a) "Advanced extraction", as used in Subsections 58-11a-102(39)(a)(i)(F) and R156-11a-611(2)(b), means to perform extraction with a lancet or device that removes impurities from the skin.

(b) "Manual extraction", as used in Subsection 58-11a-102(31)(a), means to remove impurities from the skin with protected fingertips, cotton swabs or a loop comedone extractor.

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

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

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

(16) "Hydrotherapy", as used in Subsection 58-11a-102(39)(a)(i)(B), means the use of water for cosmetic purposes or beautification of the body.

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

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

(19) "Lymphatic massage", as used in Subsections 58-11a-102(39)(a)(ii) and 58-11a-302(11)(e), means a method using a light rhythmic pressure applied by manual or other means to the skin using specific lymphatic maneuvers to promote drainage of the lymphatic fluid through the tissue.

(20) "Manipulating", as used in Subsection 58-11a-102(31)(a), means applying a light pressure by the hands to the skin.

(21) "Microdermabrasion", as used in Subsection 58-11a-102(39)(a)(i)(E), means a gentle, progressive, superficial, mechanical exfoliation of the uppermost layers of the stratum corneum using a closed-loop vacuum system.

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

(a) dermal needling;

(b) Collagen Induction Therapy (CIT);

(c) dermal rolling;

(d) cosmetic dry needling;

(e) multitrepannic collagen actuation; or

(f) percutaneous collagen induction.

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

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

(a) cleaning, trimming, softening, or caring for the nails, cuticles, or calluses of the feet;

(b) the use of manual instruments or implements on the nails, cuticles, or calluses of the feet;

(c) callus removal by sanding, buffing, or filing; or

(d) massaging of the feet or lower portion of the leg.

(25) "Source capture system", as used in Section 15A-3-402 and Subsection 58-11a-502(7), means an air filtration and recirculation system that shall be:

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

(b) capable of:

(i) filtering and recirculating air to inside space not less than 50 cubic feet per minute (cfm) per acrylic nail station; or

(ii) exhausting not less than 50 cubic feet per minute (cfm) per acrylic nail station.

(26) "TCA acid" means trichloroacetic acid.

(27) "Unprofessional conduct" is further defined, in accordance with Section 58-1-501, in Section R156-11a-502.

R156-11a-103. Authority - Purpose.

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

R156-11a-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

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

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

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

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

(a) a criminal conviction for a sex offense as defined in Title 76, Chapter 5, Part 4 and Chapter 5a, and Title 76, Chapter 10, Part 12 and 13, may disqualify an applicant from becoming licensed; and

(b) a criminal conviction for the following crimes may disqualify an applicant from becoming licensed:

(i) crimes against a person as defined in Title 76, Chapter 5, Parts 1, 2 and 3;

(ii) crimes against property as defined in Title 76, Chapter 6, Parts 1 through 6;

(iii) any offense involving controlled dangerous substances; or

(iv) conspiracy to commit or any attempt to commit any of the above offenses.

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

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

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

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

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

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

(1) Except as otherwise provided in Section 58-1-308 and R156-11a-308 for individuals reinstating a license, applicants for each classification listed below shall pass within one year prior to the date of application, or within other reasonable timeframe as approved by the Division upon review of applicable extenuating circumstances, the respective examination with a passing score of at least 75% as determined by the examination provider.

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

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

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

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

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

(f) Applicants for licensure as a hair designer shall pass the NIC Hair Design Theory and Practical Examinations.

(g) Applicants for licensure as a barber instructor, cosmetologist/barber instructor, electrology instructor, esthetician instructor, hair designer instructor, or nail technology instructor shall pass the NIC Instructor Examinations.

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

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

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

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

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

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

(a) Josef Silny and Associates Incorporated, International Education Consultants; or

(b) Educational Credential Evaluators Incorporated.

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

In accordance with Subsection 58-11a-302(21), a licensed school shall accept credit hours toward graduation as follows:

(1) The school shall accept credit hours toward the curriculum set forth in Sections R156-11a-700, R156-11a-701, R156-11a-702, R156-11a-703, R156-11a-704, R156-11a-705, and R156-11a-706.

(2) The credit hours accepted shall not exceed the number of hours required in Subsections 58-11a-302(1)(d)(i), 58-11a-302(4)(d)(i), 58-11a-302(7)(d), 58-11a-302(10)(d)(i), 58-11a-302(11)(d)(i), 58-11a-302(14)(d)(i), and 58-11a-302(17)(d)(i) for that professional license in Utah.

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

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

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

R156-11a-308. Reinstatement of License.

In accordance with Subsection 58-1-308(5)(a), an individual may apply for reinstatement of license between two years and five years from the date of license expiration without being required to pass the exams provided in Section R156-11a-302a.

R156-11a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

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

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

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

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

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

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

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

(8) failing to comply with the standards for curriculums applicable to barber, cosmetology/barber, esthetics, electrology, hair design, or nail technology schools as set forth in Sections R156-11a-700 through R156-11a-707;

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

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

(11) failing as a supervisor to provide the appropriate level of supervision while a basic esthetician, an electrologist or a master esthetician under supervision is performing service within the scope of practice as set forth in Subsections 58-11a-102(31), 58-11a-102(34) and 58-11a-102(39);

(12) performing services within the scope of practice as a basic esthetician, a master esthetician or an electrologist without having the appropriate level of supervision as required by Subsection 58-11a-102(31), 58-11a-102(34) and 58-11a-102(39);

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

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

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

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

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

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

First Offense: $500

Second Offense: $1,000;

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

First Offense: $800

Second Offense: $1,600;

(c)(i) Using a solution composed of at least 10% methyl methacrylete (MMA) on a client in violation of Subsection 58-11a-502(4):

First Offense: $500

Second Offense: $1,000;

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

First Offense: $500

Second Offense: $1,000;

(d) Performing an ablative procedure as defined in Section 58-67-102 in violation of Subsection 58-11a-502(5):

First Offense: $1,000

Second Offense: $2,000;

(e) When acting as an instructor regarding a service requiring licensure under Title 58, Chapter 11a, for a class or education program where attendees are not licensed under Title 58, Chapter 11a, violating Subsection 58-11a-502(6) by failing to inform each attendee in writing that:

(i) taking the class or program without completing the requirements for licensure under this chapter is insufficient to certify or qualify the attendee to perform a service for compensation that requires licensure under this chapter; and

(ii) the attendee is required to obtain licensure under this chapter before performing the service for compensation:

First Offense: $500

Second Offense: $1,000;

(f) Failing, as a salon or school where nail technology is practiced or taught, to maintain a source capture system as required under Title 15A, State Construction and Fire Codes Act, including failing to maintain and clean a source capture system's air filter according to the manufacturer's instructions, in violation of Subsection 58-11a-502(7):

First Offense: $500

Second Offense: $1,000.

(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 58-11a-503(4)(h).

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

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

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-11a-601. Standards for Accreditation.

In accordance with Subsections 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(9)(c)(iv), 58-11a-302(13)(c)(iv), 58-11a-302(16)(c)(iv), and 58-11a-302(19)(c)(iv), the accreditation standards for a barber school, a cosmetology/barber school, an electrology school, an esthetics school, a hair design school, and a nail technology school include:

(1) Each school shall be accredited by:

(a) the National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS); or

(b) other accrediting bodies recognized by the U.S. Department of Education.

(2) Each school shall maintain and keep the accreditation current.

(3) A newly licensed school shall pursue accreditation under this section using the following procedure:

(a) A new school shall:

(i) within one month of the date the school was licensed as a school by the Division, submit to an accrediting commission an application for candidate status;

(ii) within 18 months of the date the school was licensed by the Division, provide the Division evidence of receiving candidate status from the accrediting commission;

(iii) file with the Utah Department of Commerce's Division of Consumer Protection a "Request for Exemption pursuant to the Postsecondary Proprietary School Act" application, pursuant to Section 13-34-105 and Section R152-34-5;

(iv) during the pendency of its application for accreditation status, comply with all applicable accreditation standards; and

(v) receive approval for accreditation within 24 months following the date it achieved candidate status.

(b) The Division shall determine whether a newly-licensed school entity has succeeded a previously-licensed school entity for the purposes of achieving accreditation.

(c) If a newly-licensed school is determined by the Division to be a new entity, then the newly-licensed school shall comply with the accreditation deadlines specified in Subsection R156-11a-601(3)(a) above.

(d) If a newly-licensed school is determined by the Division not to be a new entity, then the newly-licensed school shall meet the accreditation deadlines previously set by its accrediting commission.

(4) The Division's determination shall be based upon whether the newly-licensed school:

(a) operates on essentially the same premises as the previously-licensed school;

(b) uses essentially the same staff;

(c) operates under essentially the same ownership; and

(d) maintains the previously-licensed school's accreditation status with the applicable governing accreditation commission.

(5) A licensee whose accreditation has been withdrawn shall immediately notify the Division.

(6) A licensee who fails to obtain or maintain accreditation status, as required herein, shall immediately surrender to the Division its license as a school. Failure to do so shall constitute a basis for immediate revocation of licensure in accordance with Section 63G-4-502.

R156-11a-602. Standards for the Physical Facility.

In accordance with Subsections 58-11a-302(3)(c)(iii), 58-11a-302(6)(c)(iii), 58-11a-302(9)(c)(iii), 58-11a-302(13)(c)(iii), 58-11a-302(16)(c)(iii), and 58-11a-302(19)(c)(iii), the standards for the physical facilities of a barber, cosmetology/barber, electrology, esthetics, hair design, or nail technology school shall include:

(1) the governing standards established by the accreditation commission; and

(2) whether or not addressed in the governing standards:

(a) enough of each type of training equipment so that each student has an equal opportunity to be properly trained;

(b) laundry facilities to maintain sanitation and sterilization; and

(c) appropriate amounts of clean towels, sheets, linen, sponges, headbands, compresses, robes, drapes and other necessary linens for each student's and client's use.

R156-11a-603. Standards for a Student Kit.

(1) In accordance with Subsections 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(9)(c)(iv), 58-11a-302(13)(c)(iv), 58-11a-302(16)(c)(iv), and 58-11a-302(19)(c)(iii), barber, cosmetology/barber, electrology, esthetics, hair design, and nail technology schools shall provide to each student a list of all basic kit supplies needed by that student.

(2) The basic kit may be supplied by the school or purchased independently by the student.

R156-11a-604. Standards for Prohibition Against Operation as a Barbershop, Salon or Spa.

(1) In accordance with Subsections 58-11a-302(3)(c)(iii), 58-11a-302(6)(c)(iii), 58-11a-302(9)(c)(iv), 58-11a-302(13)(c)(iii), 58-11a-302(16)(c)(iii), and 58-11a-302(19)(c)(iii), when a barbershop, salon, or spa is under the same ownership or is otherwise associated with a school, the barbershop, salon, or spa shall maintain separate operations from the school.

(2) If the barbershop, salon, or spa is located in the same building as a school, separate entrances and visitor reception areas are required. The barbershop, salon, or spa shall also use separate public information releases, advertisements, and names than that used by the school.

R156-11a-605. Standards for Protection of Students.

In accordance with Subsections 58-11a-302(3)(c)(iii) and (iv), 58-11a-302(6)(c)(iii) and (iv), 58-11a-302(9)(c)(iii) and (iv), 58-11a-302(13)(c)(iii) and (iv), 58-11a-302(16)(c)(iii) and (iv), and 58-11a-302(19)(c)(iii) and (iv), standards for the protection of students shall include the following:

(1) If a school ceases to operate for any reason, the school shall:

(a) notify the Division within 15 days by registered or certified mail; and

(b) name a trustee who shall be responsible for:

(i) maintaining the student records for a minimum period of ten years; and

(ii) providing student information, such as accumulated hours and dates of attendance.

(2) Schools shall provide a copy of the written contract prepared in accordance with Section R156-11a-607 to each student.

(3) Schools shall not use students to perform maintenance, janitorial, or remodeling work such as scrubbing floors, walls or toilets, cleaning windows, waxing floors, painting, decorating, or performing any outside work on the grounds or building. Students may be required to clean up after themselves and to perform or participate in daily cleanup of work areas, including the floor space, shampoo bowls, laundering of towels and linen, and other general cleanup duties that are related to the performance of client services.

(4) Schools shall not require students to sell products applicable to their industry as a condition to graduate, but may provide instruction in product sales techniques as part of their curriculums.

(5) Schools shall keep a daily written record of student attendance.

(6) Schools shall not be permitted to remove hours earned by a student. If a student is late for class, the school may

require the student to retake the class before giving credit for the class. Schools may require a student to take a refresher course or retake a class toward graduation based upon an evaluation of the student's level of competency.

(7) In accordance with Subsection 58-11a-502(3)(a), schools shall not require students to participate in hair removal training that pertains to the genitals or anus of a client.

R156-11a-606. Standards for Protection of Schools.

In accordance with Subsections 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(9)(c)(iv), 58-11a-302(13)(c)(iv), 58-11a-302(16)(c)(iv), and 58-11a-302(17)(c)(iv), standards for the protection of barber, cosmetology/barber, electrology, esthetics, hair design, and nail technology schools shall include the following:

(1) Schools shall not be required to release documentation of hours earned to a student until the student has paid the tuition or fees owed to the school as provided in the terms of the contract.

(2) Schools may accept transfer students. Schools shall determine the number of hours to be accepted toward graduation based upon an evaluation of the student's level of training in accordance with Section R156-11a-302c.

(3) Hours obtained by a student who is enrolled in an apprenticeship may not be used to satisfy any of the required hours of school instruction.

R156-11a-607. Standards for a Written Contract.

(1) In accordance with Subsections 58-11a-302(3)(c)(iv, 58-11a-302(6)(c)(iv), 58-11a-302(9)(c)(iv), 58-11a-302(13)(c)(iv), 58-11a-302(16)(c)(iv), and 58-11a-302(17)(c)(iv), barber, cosmetology/barber, electrology, esthetics, hair design and nail technology schools shall complete a written contract with each student prior to admission.

(2) Each contract shall include specifically, or by reference to the school's catalogue or handbook, or both, the following:

(a) the current status of the school's accreditation;

(b) rules of conduct;

(c) attendance requirements;

(d) provisions for make-up work;

(e) grounds for probation, suspension or dismissal; and

(f) a detailed fee schedule which shall include the student's financial responsibility upon voluntarily leaving the school or upon being suspended from the school.

(3) The school shall maintain on file a copy of the contract and of any referenced catalogue or handbook, for each student, and shall provide a copy of the contract and any catalogue or handbook to the Division upon request.

R156-11a-608. Standards for Staff Requirements of Schools.

In accordance with Subsections 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(9)(c)(iv), 58-11a-302(13)(c)(iv), 58-11a-302(16)(c)(iv), and 58-11a-302(17)(c)(iv), the staff requirements for barber, cosmetology/barber, electrology, esthetics, hair design, and nail technology schools shall include:

(1) Schools shall have a minimum of one licensed instructor for every 20 students, or fraction thereof, attending a practical session, and one licensed instructor for any group attending a theory session. Special guest speakers shall not reduce the required number of licensed instructors.

(2) Schools may give credit for special workshops, training seminars, and competitions, or may invite special guest speakers who are not licensed in accordance with Section 58-11a-302, to provide instruction or give practical demonstrations to supplement the curriculum as long as a licensed instructor from the school is present.

(3) Student instructors shall not be counted as part of the instructor staff.

R156-11a-609. Standards for Instructors.

(1) In accordance with Subsections 58-11a-302(2)(e) and (f), 58-11a-302(5)(e) and (f), 58-11a-302(8)(e) and (f), 58-11a-302(12)(e) and (f), 58-11a-302(15)(e) and (f), and 58-11a-302(18)(e) and (f), barber, cosmetology/barber, electrology, esthetics, hair design, and nail technology instructors may only teach in those areas for which they have received training and are qualified to teach.

(2) In accordance with Subsection 58-11a-102(11), an individual licensed as a cosmetology/barbering instructor may teach:

(a) barbering, basic esthetics, and hair design as part of the cosmetology/barbering or nail technology curriculums in a licensed barber school, a licensed cosmetology/barber school, a licensed hair design school, or a licensed nail technology school; and

(b) barbering and basic esthetics in an approved barber, cosmetology/barber, or nail technology apprenticeship, provided the individual can demonstrate the same experience as required in Subsection(1).

(3) An instructor may only teach the use of a mechanical or electrical apparatus for which the instructor is trained and qualified.

R156-11a-610 Standards for the Use of Acids.

In accordance with Subsections 58-11a-102(25)(b), 58-11a-102(31)(a)(i)(C), and 58-11a-501(17), the standards for the use of any acid or concentration of acids, shall be:

(1) The use of any acid or acid solution which would exfoliate the skin below the stratum corneum, including those listed in Subsections (3) and (4), is prohibited unless used under the supervision of a licensed health care practitioner.

(2) The following acids are prohibited unless used under the supervision of a licensed health care practitioner:

(a) phenol;

(b) bichloroacetic acid;

(c) resorcinol, except as provided in Subsection (4)(b); and

(d) any acid in any concentration level that requires a prescription.

(3) Limited chemical exfoliation for a basic esthetician does not include the mixing, combining, or layering of skin exfoliation products or services, but does include:

(a) alpha hydroxy acids of 30% or less, with a pH of not less than 3.0; and

(b) salicylic acid of 15% or less.

(4) Chemical exfoliation for a master esthetician includes:

(a) acids allowed for a basic esthetician;

(b) modified jessner solution on the face and the tissue immediately adjacent to the jaw line;

(c) alpha hydroxy acids with a pH of not less than 1.0 and at a concentration of 50% must include partially neutralized acids, and any acid above the concentration of 50% is prohibited;

(d) beta hydroxy acids with a concentration of not more than 30%;

(e) trichloroacetic acid, in accordance with Subsection 58-11a-501(17)(c), in a concentration of not more than 15%, but no manual, mechanical, or acid exfoliation can be used prior to treatment unless under the general supervision of a licensed health care practitioner; and

(f) vitamin-based acids.

(5) A licensee may not apply any exfoliating acid to a client's skin that has undergone microdermabrasion or microneedling within the previous seven days, unless under the general supervision of a licensed health care practitioner.

(6)(a) A licensee shall prepare and maintain current documentation of the licensee's cumulative experience in chemical exfoliation, including:

(i) courses of instruction;

(ii) specialized training;
(iii) on-the-job experience; and
(iv) the approximate percentage that chemical exfoliation represents in the licensee's overall business.
(b) A licensee shall provide the documentation required by Subsection (6)(a) to the Division upon request.
(7) A licensee may not use an acid or perform a chemical exfoliation that the licensee is not competent to use or perform through training and experience, and as documented in accordance with Subsection (6).
(8) Only commercially available products utilized in accordance with manufacturers' instructions may be used for chemical exfoliation purposes.
(9) A patch test shall be administered to each client prior to beginning any chemical exfoliation series.

R156-11a-611. Standards for Approval of Mechanical or Electrical Apparatus.

In accordance with Subsections 58-11a-102(39)(a)(i)(G)(II) and (H), the standards for approval of mechanical or electrical apparatus are:
(1) No mechanical or electrical apparatus that is considered a prescription medical device by the FDA may be used by a licensee, unless such use is completed under the appropriate level of supervision by a licensed health care practitioner acting within the licensed health care practitioner's scope of practice.
(2) Dermaplane procedures, dermabrasion procedures, blades, knives, and lancets are prohibited except for:
(a) advanced pedicures;
(b) advanced extraction of impurities from the skin; and
(c) dermaplane procedures for advanced exfoliation as defined in Subsection R156-11a-102(7) by a master esthetician under direct supervision of a health care practitioner.
(3) The use of any procedure in which human tissue is cut or altered by laser energy or ionizing radiation is prohibited for all individuals licensed under this chapter unless it is within the scope of practice for the licensee and under the appropriate level of supervision by a licensed health care practitioner acting within the licensed health care practitioner's scope of practice.
(4) To be approved, a microdermabrasion machine must:
(a) be specifically labeled for cosmetic or esthetic purposes;
(b) be a closed-loop vacuum system that uses a tissue retention device; and
(c) the normal and customary use of the machine does not result in the removal of the epidermis beyond the stratum corneum.
(5) To be approved, a microneedling device shall:
(a) be used only by a master esthetician:
(i) without supervision if needle penetration does not exceed 1.5 mm; or
(ii) with general supervision by a licensed health care practitioner if needle penetration exceeds 1.5 mm; and
(b) be used specifically for cosmetic or esthetic purposes.

R156-11a-612. Standards for Disclosure.

(1) In accordance with Subsections 58-11a-102(31)(b) and (39)(a)(i)(C), a licensee acting within the licensee's scope of practice shall inform a client of the following before applying a chemical exfoliant, using a microneedling device, or using a microdermabrasion machine:
(a) the procedure may only be performed for cosmetic and not medical purposes, unless the licensee is working under the supervision of a licensed health care practitioner, who is working within the scope of the practitioner's license; and
(b) the benefits and risks of the procedure.

R156-11a-700. Curriculum for Barber Schools.

In accordance with Subsection 58-11a-302(3)(c)(iv), the curriculum for a barber school shall consist of 1,000 hours of instruction in the following subject areas:
(1) introduction consisting of:
(a) history of barbering,
(b) an overview of the barber curriculum;
(2) personal, client, and shop safety including:
(a) aseptic techniques and sanitary procedures;
(b) disinfection and sterilization methods and procedures;
(c) health risks to the barber;
(3) business and shop management including:
(a) developing a clientele;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) public relations;
(f) advertising;
(4) legal issues including:
(a) malpractice liability;
(b) regulatory agencies;
(c) tax laws;
(5) human immune system;
(6) diseases and disorders of the hair and scalp including:
(a) bacteriology;
(b) sanitation;
(c) sterilization;
(d) decontamination;
(e) infection control;
(7) implements, tools, and equipment for barbering;
(8) first aid;
(9) anatomy;
(10) science of barbering;
(11) chemistry for barbering;
(12) analysis of the hair and scalp;
(13) properties of the hair, skin, and scalp;
(14) basic hairstyling and hair cutting including:
(a) draping;
(b) clipper variations;
(c) scissor cutting; and
(d) wet and thermal styling;
(15) shaving and razor cutting;
(16) mustache and beard design;
(17) elective topics; and
(18) Barber Examination review.

R156-11a-701. Curriculum for Electrology Schools.

In accordance with Subsection 58-11a-302(9)(c)(iv), the curriculum for an electrology school shall consist of 600 hours of instruction in the following subject areas:
(1) introduction consisting of:
(a) the history of electrology; and
(b) an overview of the curriculum;
(2) personal, client, and salon safety including:
(a) aseptic techniques and sanitary procedures;
(b) disinfection and sterilization methods and procedures; and
(c) health risks to the electrologist;
(3) business and salon management including:
(a) developing a clientele;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) public relations; and
(f) advertising;
(4) legal issues including:
(a) malpractice and liability;
(b) regulatory agencies; and
(c) tax laws;
(5) human immune system;

(6) diseases and disorders of hair and skin;
(7) implements, tools, and equipment for electrology;
(8) first aid;
(9) anatomy;
(10) science of electrology;
(11) analysis of the skin;
(12) physiology of hair and skin;
(13) medical definitions including:
(a) dermatology;
(b) endocrinology;
(c) angiology; and
(d) neurology;
(14) evaluating the characteristics of skin;
(15) evaluating the characteristics of hair;
(16) medications affecting hair growth including:
(a) over-the-counter preparations;
(b) anesthetics; and
(c) prescription medications;
(17) contraindications;
(18) disease and blood-borne pathogens control including:
(a) pathogenic bacteria and non-bacterial causes; and
(b) American Electrology Association (AEA) infection control standards;
(19) principles of electricity and equipment including:
(a) types of electrical currents, their measurements and classifications;
(b) Food and Drug Administration (FDA) approved needle type epilation equipment;
(c) FDA approved hair removal devices; and
(d) epilator operation and care;
(20) modalities for need type electrolysis including:
(a) needle/probe types, features, and selection;
(b) insertions, considerations, and accuracy;
(c) galvanic multi needle technique;
(d) thermolysis manual and flash technique;
(e) blend and progressive epilation technique; and
(f) one and two handed techniques;
(21) clinical procedures including:
(a) consultation;
(b) health/medical history;
(c) pre and post treatment skin care;
(d) normal healing skin effects;
(e) tissue injury and complications;
(f) treating ingrown hairs;
(g) face and body treatment;
(h) cosmetic electrology; and
(i) positioning and draping;
(22) elective topics; and
(23) Electrology Examination review.

R156-11a-702. Curriculum for Esthetics School - Basic Esthetician Programs.

In accordance with Subsection 58-11a-302(13)(c)(iv), the curriculum for an esthetics school basic esthetician program shall consist of 600 hours of instruction in the following subject areas:
(1) introduction consisting of:
(a) history of esthetics; and
(b) an overview of the curriculum;
(2) personal, client, and salon safety including:
(a) aseptic techniques and sanitary procedures;
(b) disinfection and sterilization methods and procedures; and
(c) health risks to the basic esthetician;
(3) business and salon management including:
(a) developing a clientele;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) public relations; and
(f) advertising.
(4) legal issues including:
(a) malpractice liability;
(b) regulatory agencies; and
(c) tax laws;
(5) human immune system;
(6) diseases and disorders of the skin including:
(a) bacteriology;
(b) sanitation;
(c) sterilization;
(d) decontamination; and
(e) infection control;
(7) implements, tools, and equipment for basic esthetics including;
(a) high frequency or galvanic current; and
(b) heat lamps;
(8) first aid;
(9) anatomy;
(10) science of basic esthetics;
(11) analysis of the skin;
(12) physiology of the skin;
(13) facials, manual and mechanical;
(14) limited chemical exfoliation including:
(a) pre-exfoliation consultation;
(b) post-exfoliation treatments; and
(c) chemical reactions;
(15) chemistry for basic esthetics;
(16) temporary removal of superfluous hair by waxing;
(17) treatment of the skin;
(18) packs and masks;
(19) aroma therapy;
(20) application of makeup including:
(a) application of artificial eyelashes;
(b) arching of the eyebrows; and
(c) tinting of the eyelashes and eyebrows;
(21) medical devices;
(22) cardiopulmonary resuscitation (CPR);
(23) basic facials;
(24) chemistry of cosmetics;
(25) skin treatments, manual and mechanical;
(26) massage of the face and neck;
(27) natural nail manicures and pedicures;
(28) elective topics; and
(29) Esthetic Examination review.

R156-11a-703. Curriculum for Esthetics School - Master Esthetician Programs.

In accordance with Subsection 58-11a-302(13)(c)(iv), the curriculum for an esthetics school master esthetician program shall consist of 1,200 hours of instruction, 600 of which consist of the curriculum for a basic esthetician program, the remaining 600 of which shall be in the following subject areas:
(1) introduction consisting of:
(a) history of esthetics and master esthetics; and
(b) an overview of the curriculum;
(2) personal, client, and salon safety including:
(a) aseptic techniques and sanitary procedures;
(b) disinfection and sterilization methods and procedures; and
(c) health risks to the master esthetician;
(3) business and salon management consisting of:
(a) developing clients;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) advertising; and
(f) public relations;
(4) legal issues including:

(a) malpractice liability;
(b) regulatory agencies; and
(c) tax laws;
(5) the human immune system;
(6) diseases and disorders of the skin including:
(a) bacteriology;
(b) sanitation;
(c) sterilization;
(d) contamination; and
(e) infection controls;
(7) implements, tools, and equipment for master esthetics;
(8) first aid;
(9) anatomy;
(10) science of master esthetics;
(11) analysis of the skin;
(12) physiology of the skin;
(13) advanced facials, manual and mechanical;
(14) chemistry for master esthetics;
(15) advanced chemical exfoliation, including:
(a) pre-exfoliation consultation;
(b) post-exfoliation treatments; and
(c) reactions;
(16) temporary removal of superfluous hair by waxing and advanced waxing;
(17) advanced pedicures;
(18) advanced aroma therapy;
(19) the aging process and its damage to the skin;
(20) medical devices;
(21) cardiopulmonary resuscitation (CPR) training;
(22) hydrotherapy;
(23) advanced mechanical and electrical devices including instruction in using:
(a) sanding and microdermabrasion techniques;
(b) galvanic or high-frequency current for treatment of the skin;
(c) devices equipped with a brush to cleanse the skin;
(d) devices that apply a mixture of steam and ozone to the skin;
(e) devices that spray water and other liquids on the skin; and
(f) any other mechanical devices, esthetic preparations, or procedures approved by the Division in collaboration with the Board for the care and treatment of the skin;
(24) elective topics;
(25) for schools teaching lymphatic massage, in accordance with Subsections 58-11a-102(39)(a)(ii) and 58-11a-302(11)(e), 200 hours of instruction is required and shall consist of:
(a) 40 hours of training in anatomy and physiology of the lymphatic system;
(b) 70 applications of one hour each in manual lymphatic massage of the full body; and
(c) 90 hours of training in lymphatic massage by other means, including but not limited to energy, mechanical devices, suction-assisted massage with or without rollers, compression therapy with equipment, or garment therapy; and
(26) Master Esthetician Examination review.

R156-11a-704. Curriculum for Nail Technology Schools.

In accordance with Subsection 58-11a-302(19)(c)(iv), the curriculum for a nail technology school shall consist of 300 hours of instruction in the following subject areas:
(1) introduction consisting of:
(a) history of nail technology; and
(b) an overview of the curriculum;
(2) personal, client, and salon safety including:
(a) aseptic techniques and sanitary procedures;
(b) disinfection and sterilization methods and procedures; and
(c) health risks to the nail technician;
(3) business and salon management including:
(a) developing clientele;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) public relations; and
(f) advertising;
(4) legal issues including:
(a) malpractice liability;
(b) regulatory agencies; and
(c) tax laws;
(5) human immune system;
(6) diseases and disorders of the nails and skin including:
(a) bacteriology;
(b) sanitation;
(c) sterilization;
(d) decontamination; and
(e) infection control;
(7) implements, tools, and equipment for nail technology;
(8) first aid;
(9) anatomy;
(10) science for nail technology;
(11) theory of basic manicuring including hand and arm massage;
(12) physiology of the skin and nails;
(13) chemistry for nail technology;
(14) artificial nail techniques consisting of:
(a) wraps;
(b) nail tips;
(c) gel nails;
(d) sculptured and other acrylic nails; and
(e) nail art;
(15) pedicures and massaging the lower leg and foot;
(16) elective topics; and
(17) Nail Technology Examination review.

R156-11a-705. Curriculum for Cosmetology/Barber Schools.

In accordance with Subsection 58-11a-302(6)(c)(iv), the curriculum for a cosmetology/barber school shall consist of 1,600 hours of instruction in all of the following subject areas:
(1) introduction consisting of:
(a) history of barbering, cosmetology/barbering, esthetics, nail technology; and
(b) overview of the curriculum;
(2) personal, client, and salon safety including:
(a) aseptic techniques and sanitary procedures;
(b) disinfection and sterilization methods and procedures;
(c) health risks to the cosmetologist/barber;
(3) business and salon management including:
(a) developing clientele;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) public relations; and
(f) advertising;
(4) legal issues including:
(a) malpractice liability;
(b) regulatory agencies; and
(c) tax laws;
(5) human immune system;
(6) diseases and disorders of skin, nails, hair, and scalp including:
(a) bacteriology;
(b) sanitation;
(c) sterilization;
(d) decontamination; and
(e) infection control;

(7) implements, tools, and equipment for cosmetology, barbering, basic esthetics, and nail technology, including:
(a) high frequency or galvanic current; and
(b) heat lamps;
(8) first aid;
(9) anatomy;
(10) science of cosmetology/barbering, basic esthetics, and nail technology;
(11) analysis of the skin, hair, and scalp;
(12) physiology of the human body including skin and nails;
(13) electricity and light therapy;
(14) limited chemical exfoliation including:
(a) pre-exfoliation consultation;
(b) post-exfoliation treatments; and
(c) chemical reactions;
(15) chemistry for cosmetology/barbering, basic esthetics, and nail technology;
(16) temporary removal of superfluous hair including by waxing;
(17) properties of the hair, skin, and scalp;
(18) basic hairstyling including:
(a) wet and thermal styling;
(b) permanent waving;
(c) hair coloring;
(d) chemical hair relaxing; and
(e) thermal hair straightening;
(19) haircuts including:
(a) draping;
(b) clipper variations;
(c) scissor cutting;
(d) shaving; and
(e) wigs and artificial hair;
(20) razor cutting;
(21) mustache and beard design;
(22) basic esthetics including:
(a) treatment of the skin, manual and mechanical;
(b) packs and masks;
(c) aroma therapy;
(d) chemistry of cosmetics;
(e) application of makeup including:
(i) application of artificial eyelashes;
(ii) arching of the eyebrows;
(iii) tinting of the eyelashes and eyebrows;
(f) massage of the face and neck; and
(g) natural manicures and pedicures;
(23) medical devices;
(24) cardiopulmonary resuscitation (CPR);
(25) artificial nail techniques consisting of:
(a) wraps;
(b) nail tips;
(c) gel nails;
(d) sculptured and other acrylic nails; and
(e) nail art;
(26) pedicures and massaging of the lower leg and foot;
(27) elective topics; and
(28) Cosmetology/Barber Examination review.

R156-11a-706. Curriculum for Hair Design Schools.

In accordance with Subsection 58-11a-302(16)(c)(iv), the curriculum for a hair design school shall consist of 1,200 hours of instruction in the following subject areas:
(1) introduction, consisting of:
(a) history of hair design; and
(b) overview of the curriculum;
(2) personal, client, and salon safety, including:
(a) aseptic techniques and sanitary procedures;
(b) disinfection and sterilization methods and procedures;
(c) health risks to the hair designer;
(3) business and salon management, including:
(a) developing clientele;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) public relations; and
(f) advertising;
(4) legal issues, including:
(a) malpractice liability;
(b) regulatory agencies; and
(c) tax laws;
(5) human immune system;
(6) diseases and disorders of hair and scalp, including:
(a) bacteriology;
(b) sanitation;
(c) sterilization;
(d) decontamination; and
(e) infection control;
(7) implements, tools, and equipment for hair design, including:
(a) high frequency current; and
(b) heat lamps;
(8) first aid;
(9) anatomy;
(10) science of hair design;
(11) analysis of the hair and scalp;
(12) physiology of the human body;
(13) electricity and light therapy;
(14) chemical reactions;
(15) chemistry for hair design;
(16) properties of the hair and scalp;
(17) basic hairstyling including:
(a) wet and thermal styling;
(b) permanent waving;
(c) hair coloring;
(d) chemical hair relaxing; and
(e) thermal hair straightening;
(18) haircuts, including:
(a) draping;
(b) clipper variations;
(c) scissor cutting;
(d) shaving; and
(e) wigs and artificial hair;
(19) razor cutting;
(20) mustache and beard design;
(21) cardio-pulmonary resuscitation(CPR);
(22) elective topics; and
(23) Hair Designer Examination review.

R156-11a-707. Curriculum for Instructor Schools.

In accordance with Subsections 58-11a-302(2)(e)(i), 58-11a-302(5)(e)(i), 58-11a-302(8)(e)(i), 58-11a-302(12)(e)(i), 58-11a-302(15)(e)(i), and 58-11a-302(18)(e)(i), the curriculum for an approved instructor school shall consist of instructor training in the following subjects:
(1) motivation and the learning process;
(2) teacher preparation;
(3) teaching methods;
(4) classroom management;
(5) testing;
(6) instructional evaluation;
(7) laws, rules, and regulations; and
(8) Barber, Cosmetology/Barber, Esthetics (Master level), Electrology, Hair Designer, and Nail Technology Instructors Examination review.

R156-11a-800. Approved Barber Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(1), the

requirements for an approved barber apprenticeship shall include the following:

(1) The instructor shall have only one apprentice at a time.

(2) The apprentice shall register with the Division by submitting a form prescribed by the Division.

(3) The instructor must be approved by the Division for the apprenticeship.

(4) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training".

(5) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services which will document the total number of hours of training. The record shall be available to the Division upon request.

(6) A complete set of barber texts shall be available to the apprentice.

(7) An apprentice may be compensated for services performed.

(8) The instructor shall provide training and technical instruction of 1,250 hours using the curriculum defined in Section R156-11a-700.

(9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(10) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-700.

(11) Any hours obtained while enrolled in a barber school or a cosmetology/barber school shall not be used to satisfy the required 1,250 hours of apprentice training.

(12) An instructor may not begin a new apprenticeship until:

(a) the current apprentice passes the National Interstate Council of State Boards of Cosmetology (NIC) Barber Theory and Practical Examinations and becomes licensed as a barber; or

(b) the Division receives a Notice of Disassociation Form by the apprentice or instructor.

(13) If an apprentice completes the apprenticeship and fails NIC Barber Theory Examination or NIC Barber Practical Examination three times, the apprentice and instructor must:

(a) meet with the Board at the next appropriate Board meeting;

(b) explain to the Board why the apprentice is not able to pass the examination; and

(c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination.

R156-11a-801. Approved Cosmetologist/Barber Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(1), the requirements for an approved cosmetologist/barber apprenticeship include:

(1) The instructor shall have only one apprentice at a time.

(2) The apprentice shall be registered with the Division by submitting a form prescribed by the Division.

(3) The instructor must be approved by the Division for the apprenticeship.

(4) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training".

(5) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services which will document the total number of hours of training. The record shall be available to the Division upon request.

(6) A complete set of cosmetology/barber texts shall be available to the apprentice.

(7) An apprentice may be compensated for services performed.

(8) The instructor shall provide training and technical instruction of 2,500 hours using the curriculum defined in Section R156-11a-705.

(9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(10) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-705.

(11) Hours obtained while enrolled in a cosmetology/barber school shall not be used to satisfy the required 2,500 hours of apprentice training.

(12) An instructor may not begin a new apprenticeship until:

(a) the current apprentice passes the National Interstate Council of State Boards of Cosmetology (NIC) Cosmetology/Barber Theory and Practical Examinations and becomes licensed as a cosmetologist/barber; or

(b) the Division receives a Notice of Disassociation Form by the apprentice or instructor.

(13) If an apprentice completes the apprenticeship and fails the NIC Barber/Cosmetology Theory Examination or NIC Barber/Cosmetology Practical Examination three times, the apprentice and instructor must:

(a) meet with the Board at the next appropriate Board meeting;

(b) explain to the Board why the apprentice is not able to pass the examination; and

(c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination.

R156-11a-802. Approved Basic Esthetician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(2), the requirements for an approved basic esthetician apprenticeship include:

(1) The instructor shall have no more than one apprentice at a time.

(2) The apprentice shall be registered with the Division by submitting a form prescribed by the Division.

(3) The instructor must be approved by the Division for the apprenticeship.

(4) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training".

(5) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the Division upon request.

(6) A complete set of esthetics texts shall be available to the apprentice.

(7) An apprentice may be compensated for services performed.

(8) The instructor shall provide training and technical instruction of 800 hours using the curriculum defined in Section R156-11a-702.

(9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(10) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours required in technical training, with at least a portion of that time

devoted to each of the subjects specified in Section R156-11a-702.

(11) Hours obtained while enrolled in an esthetics school or a cosmetology/barber school shall not be used to satisfy the required 800 hours of apprentice training.

(12) An instructor may not begin a new apprenticeship until:

(a) the current apprentice passes the National Interstate Council of State Boards of Cosmetology (NIC) Esthetics Theory and Practical Examinations and becomes licensed as an esthetician; or

(b) the Division receives a Notice of Disassociation Form by the apprentice or instructor.

(13) If an apprentice completes the apprenticeship and fails the NIC Esthetics Theory Examination or NIC Esthetics Practical Examination three times, the apprentice and instructor must:

(a) meet with the Board at the next appropriate Board meeting;

(b) explain to the Board why the apprentice is not able to pass the examination; and

(c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination.

R156-11a-803. Approved Master Esthetician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(3), the requirements for an approved master esthetician apprenticeship include:

(1) The instructor shall have no more than one apprentice at a time.

(2) The apprentice shall be registered with the Division by submitting a form prescribed by the Division.

(3) The instructor must be approved by the Division for the apprenticeship.

(4) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(5) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the Division upon request.

(6) A complete set of esthetics texts shall be available to the apprentice.

(7) An apprentice may be compensated for services performed.

(8) The instructor shall provide training and technical instruction of 1,500 hours using the curriculum defined in Section R156-11a-703.

(9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(10) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the required hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Subsection R156-11a-703.

(11) Hours obtained while enrolled in an esthetics school or a cosmetology/barber school shall not be used to satisfy the required 1,500 hours of apprentice training.

(12) An instructor may not begin a new apprenticeship until:

(a) the current apprentice passes the National Interstate Council of State Boards of Cosmetology (NIC) Master Esthetics Theory and Practical Examinations and becomes licensed as a master esthetician; or

(b) the Division receives a Notice of Disassociation Form by the apprentice or instructor.

(13) If an apprentice completes the apprenticeship and fails the NIC Master Esthetics Theory Examination or NIC Master Esthetics Practical Examination three times, the apprentice and instructor must:

(a) meet with the Board at the next appropriate Board meeting;

(b) explain to the Board why the apprentice is not able to pass the examination; and

(c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination.

R156-11a-804. Approved Nail Technician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(4), the requirements for an approved nail technician apprenticeship include:

(1) The instructor shall have no more than two apprentices at a time.

(2) The apprentice shall be registered with the Division by submitting a form prescribed by the Division.

(3) The instructor must be approved by the Division for the apprenticeship.

(4) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(5) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the Division upon request.

(6) A complete set of nail technician texts shall be available to the apprentice.

(7) An apprentice may be compensated for services performed.

(8) The instructor shall provide training and technical instruction of 375 hours using the curriculum defined in Section R156-11a-704.

(9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(10) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Subsection R156-11a-704.

(11) Hours obtained while enrolled in a nail technology school or a cosmetology/barber school shall not be used to satisfy the required 375 hours of apprentice training.

(12) An instructor may not begin a new apprenticeship until:

(a) the current apprentice passes the National-Interstate Council of State Boards of Cosmetology (NIC) Nail Technology Theory and Practical Examinations and becomes licensed as a nail technician; or

(b) the Division receives a Notice of Disassociation Form by the apprentice or instructor.

(13) If an apprentice completes the apprenticeship and fails the NIC Nail Technology Theory Examination or NIC Nail Technology Practical Examination three times, the apprentice and instructor must:

(a) meet with the Board at the next appropriate Board meeting;

(b) explain to the Board why the apprentice is not able to pass the examination; and

(c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination.

R156-11a-805. Conflicts of Interest.

An apprentice instructor may not be an employee of an apprentice or be involved in any relationship with an apprentice or others that would interfere with the instructor's ability to teach and train the apprentice.

R156-11a-901. Standards for an On-the-Job Training Internship.

In accordance with Subsection 58-11a-304(8), students enrolled in a licensed cosmetology/barber school may participate in an on-the-job training internship if they meet the following requirements:

(1) The on-the-job training intern shall have completed at least 1,000 hours of the training contracted with a cosmetology/barber school, of which 400 hours shall be clinical hours.

(2) There shall be a conspicuous sign near the work station of the on-the-job training intern stating "Intern in Training".

(3) A licensed "on-site" cosmetology/barber shall supervise only one on-the-job training intern at a time.

(4) An on-the-job training intern, while working under the direct supervision of an "on-site" licensed cosmetologist/barber, may perform the following procedures:

(a) draping;
(b) shampooing;
(c) roller setting;
(d) blow drying styling;
(e) applying color;
(f) removing color by rinsing and shampooing;
(g) removing permanent chemicals;
(h) removing permanent rods;
(i) removing rollers;
(j) applying temporary rinses, reconditioners, and rebuilders;
(k) acting as receptionists;
(l) doing retail sales;
(m) sanitizing the salon;
(o) doing inventory and ordering supplies; and
(p) handing equipment to the cosmetologist/barber supervisor.

(5) The "on-site" cosmetologist/barber supervisor shall have in the supervisor's possession a letter, which must be updated on a quarterly basis, from the school where the on-the-job training intern is enrolled stating that the on-the-job training intern is currently in good standing at the school and is complying with school requirements.

(6) Hours of training spent while performing on-the-job training as an intern shall not apply towards credits required for graduation.

R156-11a-902. Standards for an On-the-Job Instructor Training.

(1) In accordance with Subsections 58-11a-302(2)(e)(ii), 58-11a-302(5)(e)(ii), 58-11a-302(8)(e)(ii), 58-11a-302(12)(e)(ii), 58-11a-302(15)(e)(ii), and 58-11a-302(18)(e)(ii), an employee of a licensed barber, cosmetology/barber, electrology, esthetics, hair design or nail technology school may obtain on-the-job training to become a licensed instructor if they meet the following requirements of this section.

(2) The on-the-job instructor training shall be under the supervision of an instructor licensed as an instructor in the same category as the trainee, except that an instructor providing on-the-job instructor training supervision for basic esthetics instruction shall be licensed as a master esthetician.

(3) The instructor trainee shall have an active license in the same category for which the instructor trainee is seeking licensure to instruct, except an instructor trainee receiving on-the-job training to instruct basic esthetics shall be licensed as a master esthetician.

(4) The on-the-job instructor training shall include all of the following categories:

(a) motivation and the learning process;
(b) teacher preparation;
(c) teaching methods;
(d) classroom management;
(e) testing;
(f) instructional evaluation;
(g) laws, rules, and regulations; and
(h) Barber, Cosmetology/Barber, Esthetics (Master level), Electrology, Hair Design and Nail Technology Instructors Examination review.

(5) The instructor trainee shall not count toward the instructor-to-student ratio.

(6) The on-the-job instructor training shall be completed within one year, unless the instructor trainee provides documentation of extenuating circumstances justifying an extension.

KEY: cosmetologists/barbers, estheticians, electrologists, nail technicians

October 10, 2017	**58-11a-101**
Notice of Continuation January 19, 2017	**58-1-106(1)(a)**
	58-1-202(1)(a)

R277. Education, Administration.
R277 113. LEA Fiscal and Auditing Policies.
R277-113-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;

(c) Subsection 53A-1-402(1)(e)(i), which directs the Board to establish rules and minimum standards for school productivity and cost effectiveness measures;

(d) Subsection 53A-1-402(1)(e)(iv),which allows the Board to adopt rules regarding financial, statistical, and student accounting requirements;

(e) Section 53A-1-404, which allows the Board to approve auditing standards for school boards; and

(f) Section 53A-1-405, which requires the Board to verify accounting procedures of school board for the purpose of determining the allocation of Uniform School Funds.

(2) The purpose of this rule is to:

(a) require LEAs to formally adopt and implement policies regarding the management and use of public funds;

(b) provide minimum standards, procedures and definitions for LEA policies;

(c) direct that LEAs make policies, procedures and training materials available to the public and readily accessible on LEA or public school websites, to the extent of resources available;

(d) require LEAs to train employees in:

(i) appropriate financial practices;

(ii) necessary accounting procedures; and

(iii) ethical financial practices; and

(e) specify uniform budgeting, accounting, and auditing procedures for LEAs consistent with GAAP and GAAS.

R277-113-2. Definitions.

(1) "Accrual basis of accounting" means a basis of accounting that records:

(a) revenue when earned and expenses when incurred; and

(b) transactions irrespective of the dates on which any associated cash flows occur.

(2) "Arm's length transaction" means a transaction between two unrelated, independent, and unaffiliated parties or a transaction between two parties acting in their own self interest that is conducted as if the parties were strangers so that no conflict of interest exists.

(3) "Exclusive contract or arrangement" means an agreement requiring a buyer to purchase or exchange all needed goods or services from one seller.

(4) "FASB" means the Financial Accounting Standards Board whose purpose is to establish GAAP for nongovernmental entities within the United States.

(5) "GAAP" means Generally Accepted Accounting Principles or a common framework of accounting rules and standards for financial reporting promulgated by either FASB or GASB, as applicable to the reporting entity.

(6) "GAAS" means Generally Accepted Auditing Standards or a set of auditing standards and guidelines promulgated by the Auditing Standards Board of the American Institute of Certified Public Accountants.

(7) "GASB" means the Governmental Accounting Standards Board whose purpose is to establish GAAP for state and local governments within the United States.

(8) "Internal controls" means a process, implemented by an entity's governing body, management, or other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

(a) Effectiveness and efficiency of operations;

(b) Reliability of reporting for internal and external use; and

(c) Compliance with applicable laws and regulations.

(9) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(10) "Management" means:

(a) an LEA superintendent or director;

(b) deputy or associate;

(c) business administrator or manager; or

(d) other educational administrator or designated staff.

(11) "Modified accrual basis of accounting" means a basis of accounting, commonly used by government agencies, that recognizes revenues when they become available and measurable and recognizes expenditures when liabilities are incurred.

(12) "Non-operating LEA" means an LEA that has not received minimum school program funds or federal funds and is not providing educational services during a fiscal year, such as an LEA in a start-up period.

(13) "Operating LEA" means an LEA that has received state minimum school program funds or federal funds and is providing educational services during a fiscal year.

(14) "Public funds" has the same meaning as that terms is defined in Subsection 51-7-3(26).

(15) "School sponsored" means an activity, fundraising event, club, camp, clinic, or other event or activity that is authorized by a specific LEA or public school, according to local board policy, and satisfies at least one of the following conditions:

(a) the activity is managed or supervised by an LEA or public school, or LEA or public school employee;

(b) the activity uses the LEA or public school's facilities, equipment, or other school resources; or

(c) the activity is supported or subsidized, more than inconsequentially, by public funds, including the public school's activity funds or minimum school program dollars.

(16) "Title IX" refers to that portion of the United States Education Amendments of 1972 codified as 20 U.S.C. 1681 through 20 U.S.C. 1688.

(17) "Utah Public Officers' and Employees' Ethics Act," Title 67, Chapter 16, means an act that provides standards of conduct for officers and employees of the state of Utah and its political subdivisions in areas where there are actual or potential conflicts of interest between public duties and private interests.

R277-113-3. Superintendent Responsibilities.

(1) The Superintendent shall provide training, informational materials, and model policies for use by LEAs in developing LEA and public school-specific financial policies.

(2) The Superintendent shall provide online training and resources for LEAs regarding the use and management of public funds and ethical practices for licensed Utah educators who manage, control, participate in fundraising, or expend public funds.

(3) The Superintendent shall provide and establish a cycle for state review of LEA fiscal policies and standards.

(4) The Superintendent shall work with and provide information upon request to the Utah State Auditor's Office, the Legislative Fiscal Auditors, and other state agencies with the right to information from the Board.

R277-113-4. LEA Fiscal Responsibilities.

(1)(a) An LEA shall develop and implement written fiscal policies, subject to approval by the LEA's board, as required by R277-113-5.

(b) An LEA shall review the LEA's fiscal policies annually.

(2) An LEA shall develop a plan for annual training of LEA and public school employees on policies enacted by the

LEA specific to job function.

(3) LEA policies shall be available at each LEA main office, at individual public schools, and on the LEA's website.

(4) LEA fiscal policies and training may have different components, specificity, and levels of complexity for public elementary and secondary schools.

(5) An LEA may have one or more policies to satisfy the minimum requirements of this R277-113.

(6) An LEA policy may reference specific training manuals or other resources that provide detailed descriptions of business practices which are too lengthy or detailed to include in the LEA policy.

(7) An LEA governing board shall have the following responsibilities:

(a) ensure that LEA management properly develops and adheres to a sound system of documented internal controls consistent with R277-113-6.

(b) develop a process to regularly review:

(i) LEA management's budget and financial reporting practices;

(ii) financial statements;

(iii) LEA financial position; and

(iv) LEA and individuals school records;

(c) make monthly reports on the fiscal position of the LEA to the LEA board;

(d) monitor LEA contract services by:

(i) determining the appropriate scope of contracts with management companies that provide business services and student services;

(ii) managing the procurement process in compliance with Title 63G, Chapter 6a;

(iii) making recommendations to the LEA board on the results of the procurement process;

(iv) assessing the performance of management companies; and

(v) ensuring management implements sufficient internal controls over the functions of management companies;

(e) monitor procurement and use of systems and software applications for compliance with financial and student privacy laws; and

(f) monitor LEA expenditure of restricted funds to ensure compliance with applicable laws and grant terms and conditions.

(8) A public education foundation established by an LEA shall follow the requirements set forth in Section 53A-4-205.

R277-113-5. LEA Audit Responsibilities.

(1) An LEA governing board shall designate board members to serve on an audit committee, consistent with Section 53A-30-102(1).

(2) An LEA audit committee shall:

(a) if required by Section 53A-30-103, establish an internal audit program that provides internal audit services for the programs administered by the LEA;

(b) receive a report of the risk assessment process undertaken by the LEA management in collaboration with the internal audit department;

(c) monitor the internal and external audit process by:

(i) determining the appropriate scope of the independent external audit;

(ii) determining the appropriate scope of non-audit services to be performed by the independent auditor;

(iii) managing the audit procurement process in compliance with Title 63G, Chapter 6a, State Procurement Code;

(iv) making recommendations to the LEA board on the results of the procurement process;

(v) facilitating regular direct communication with independent external auditors;

(vi) receiving independent external audit report and financial statements;

(vii) ensuring management implements corrective actions;

(viii) assessing performance of the independent auditors;

(ix) reviewing disagreements between independent auditors and management;

(x) prioritizing the internal audit plan based on risk;

(xi) receiving audit reports from internal auditors, contractors providing internal audit services, and other regulatory bodies; and

(xii) providing an independent forum for internal auditors, internal audit contractors, and other regulatory bodies to report findings of fraud, waste, abuse, non-compliance, or control weaknesses, particularly if management is involved;

(d) conduct or advise the LEA board in an annual evaluation of internal audit personnel or contractors providing internal audit services;

(e) ensure that issues and exceptions reported by internal auditors, or other regulatory bodies are resolved in a timely manner;

(f) present the audit reports of external auditors, internal auditors or other regulatory bodies to the LEA board;

(g) receive reports of reviews or audits conducted by the Superintendent and ensure appropriate corrective actions is taken in a timely manner; and

(h) advise the local LEA board in the appointment of an audit director or in contracting services for internal audit services in accordance with Subsection 53A-30-103(3).

(3)(a) An LEA shall follow the internal auditing requirements of Title 53A, Chapter 30, Internal Audits.

(b) An LEA internal audit director may not have responsibilities for management or operations of the LEA.

(c) If an LEA internal audit director contracts with a consultant, any contractual agreement with the consultant shall comply with the LEA's procurement policy.

(4) An LEA shall obtain all audits and financial reports required by Section 51-2a-201.

R277-113-6. Required LEA Fiscal Policies.

(1)(a) An LEA shall ensure that the LEA's fiscal policies address all applicable Utah Code references or Board Rules.

(b) The requirements set forth in this Section R277-113-6 are minimum requirements.

(c) An LEA may include other related items, provide LEA specific policy and guidance, and set polices that are more restrictive and inclusive than the minimum provisions established by Board rule.

(2) LEA fiscal policies shall include the following:

(a) a cash handling policy, which shall address cash receipts (cash, checks, credit cards, and other items) collected at the LEA and individual public schools and shall include:

(i) establishment of internal controls and procedures over the collection, deposit, and reconciliation of cash receipts received; and

(ii) compliance with Utah Code 51-4-2(2) regarding deposits.

(b) an expenditure policy, which shall address all expenditures made by the LEA and individual public schools and shall include:

(i) establishment of internal controls and procedures over the initiation, approval and monitoring of expenditures, including:

(A) credit, debit, or purchase card transactions;

(B) employee reimbursements;

(C) travel; and

(D) payroll;

(ii) establishment of internal controls and procedures to record transactions when they occur in the proper program utilizing the following codes as established by the Board approved chart of accounts:

(A) fund;
(B) function;
(C) location;
(D) program; and
(E) object or revenue code as applicable;
(iii) directives regarding the appropriate use of the LEA's tax exempt status number;
(iv) compliance with Section 63G-6a-1204 regarding length of multi-year contracts;
(v) compliance with:
(A) Title 63G, Chapter 6a;
(B) Board rule regarding construction and improvements; and
(C) Title IX;
(vi) requirements for LEA contracts, including:
(A) inclusion of specific scope of work language;
(B) inclusion of federal requirements;
(C) inclusion of language regarding data privacy and use, where appropriate; and
(D) legal review prior to LEA approval; and
(vii) procedures and documentation maintained by the LEA if the LEA chooses to enter into exclusive contracts or arrangements consistent with state procurement law and the LEA procurement policy.
(c) a fundraising policy that:
(i) establishes procedures for LEA and public school fundraising in general;
(ii) establishes an approval process for fundraising activities for school sponsored activities;
(iii) provides for compliance with school fee and fee waiver provisions; and
(iv) includes:
(A) specific designation of employees by title or job description who are authorized to approve fundraising, school sponsored activities, and grant fee waivers with appropriate attention to student and family confidentiality;
(B) establishment of internal controls and procedures over the approval of fundraising and school sponsored activities and compliance with associated cash handling and expenditure policies;
(C) directives regarding the appropriate use of the LEA's tax exempt status number and issuance of charitable donation receipts;
(D) procedures governing LEA or public school employee interaction with parents, donors, and nonschool sponsored organizations;
(E) disclosure requirements for LEA and public school employees approving, managing, or overseeing fundraising activities, who also have a financial or controlling interest or access to bank accounts in the fundraising organization or company;
(F) Provisions establishing compliance with:
(I) Utah Constitution, Article X, Section 2, establishing a free public education system;
(II) R277-407; and
(III) Title IX;
(v) An LEA may include procedures governing:
(A) student participation and incentives offered to students;
(B) allowable types of fundraising activities; and
(C) participation in school sponsored activities by volunteer or outside organizations;
(d) an LEA donation and gift policy that includes:
(i) an acceptance and approval process for:
(A) monetary donations;
(B) donations and gifts with donor restrictions;
(C) donations of gifts, goods, materials, or equipment; and
(D) donation of funds or items designated for construction or improvements of facilities;
(ii) establishment of internal controls and procedures over the acceptance and approval of donations and gifts and compliance with associated cash handling and expenditure policies;
(iii) directives regarding the appropriate use of the LEA's tax exempt status number, and issuance of charitable donation receipts;
(iv) procedures regarding the objective valuation of donations or gifts if advertising or other services are offered to the donor in exchange for a donation or gift;
(v) procedures governing LEA or public school employee conduct with parents, donors, and nonschool sponsored organizations;
(vi) procedures establishing provisions for direct donations or gifts to the LEA or LEA programs, individual public school or public school programs;
(vii) provisions restricting donations from being directed at specific LEA employees, individual students, vendors, or brand name goods or services;
(viii) compliance with:
(A)Title 63G, Chapter 6a;
(B) state law and Board rule regarding construction and improvements;
(C) IRS regulations and tax deductible directives; and
(D) Title IX;
(ix) procedures for:
(A) accepting donations and gifts through an LEA's legally organized foundation, if applicable;
(B) recognition of donors; or
(C) granting naming rights; and
(e) an LEA Financial Reporting policy, which shall include the following:
(i) a requirement that the LEA shall ensure financial reporting in accordance with GAAP and audits of LEA financial reporting in accordance with GAAS;
(ii)(A) a requirement that the LEA shall provide financial reporting in a manner consistent with the basis of accounting as required by GAAP, as applicable to the entity; and
(B) if an LEA follows FASB standards, a requirement that the LEA shall provide reconciliation between the accrual basis of accounting and modified accrual basis of accounting; and
(iii) a requirement that the LEA shall provide data and information consistent with budgeting, accounting, including the uniform chart of accounts for LEAs, and auditing standards for Utah LEAs provided online annually by the Superintendent.
(3) The Superintendent shall maintain a School Finance website with applicable Utah statutes, Board rules, and uniform rules for:
(a) budgeting;
(b) financial accounting, including a chart of accounts required for an LEA;
(c) student membership and attendance accounting;
(d) indirect costs and proration;
(e) financial audits;
(f) statistical audits; and
(g) compliance and performance audits.

R277-113-7. School Sponsored Activities.
(1)(a) If an activity, fundraising event, clinic, club, camp, or activity does not meet the definition of school sponsored and is organized by a third party, then the requirements of Subsection R277-113-4(11) do not apply.
(b) All transactions pertaining to nonschool sponsored events shall be conducted at arm's length.
(c) Revenues and expenditures from nonschool sponsored events may not be commingled with public funds.
(2) For nonschool sponsored events, funds may only be managed or held by a public school employee consistent with R277-107.

(3) The definition of school sponsored and requirements of R277-113-4(11) do not apply to non-curricular clubs specifically authorized and meeting all criteria of Sections 53A-11-1205 through 53A-11-1208.

(4) An LEA or individual public school shall comply with the following regarding school and nonschool sponsored activities:

(a) An LEA may establish LEA specific rules or polices designating categories of school sponsored activities or groups and establishing LEA policy regarding use of facilities or LEA resources.

(b) An LEA may enter into contractual agreements to allow for fundraising and use of LEA facilities.

(i) An agreement under Subsection (4)(a) shall take into consideration the LEA's fiduciary responsibility for the management and use of public funds.

(ii) An LEA should consult with the LEA's insurer or legal counsel, or both, to ensure risks are adequately considered and managed;

(c) An LEA shall annually review fundraising activities that support or subsidize LEA or public school-authorized clubs, activities, sports, classes or programs to determine if the activities are school sponsored;

(d) An LEA shall ensure that revenues raised from school sponsored activities and funds expended from the proceeds are classified and processed as public funds;

(e) An LEA shall maintain adequate records to verify that funds collected from or during school sponsored activities are in compliance with LEA cash handling policies as required by R277-113-5;

(f) An LEA shall maintain adequate records to show that expenditures made to support activities from LEA or public school funds are in compliance with LEA expenditure of funds policies as required by R277-113-5; and

(g) An LEA shall:

(i) make records of activities available to parents, students, and donors;

(ii) maintain records in sufficient detail to track individual contributions and expenditures, as well as overall financial outcome;

(iii) restrict access to records as required by state or federal law.

R277-113-8. LEA Policies and Compliance with State and Federal Law.

(1) An LEA is responsible to ensure that its policies comply with the following state laws and Board Rules:

(a) Utah Constitution Article X, Section 3;

(b) Title 63G, Chapter 6a, Utah Procurement Code;

(c) Title 51, Chapter 4, Deposit of Funds Due State;

(d) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;

(e) Family Educational Rights and Privacy Act, 20 U.S.C. 1232g;

(f) Title 63G, Chapter 2, Government Records Access and Management Act;

(g) Title 53A, Chapter 12, Fees and Textbooks;

(h) Section 53A-4-205, Public Education Foundations;

(i) Title 53A, Chapter 11, Part 12, Student Clubs Act;

(j) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act;

(k) Additional state legal compliance guides for operating LEAs and non-operating LEAs as published by the office of the state Auditor;

(l) Subsection 51-7-3(26), Definition of Public Funds;

(m) Title 53A, Chapter 30, Internal Audits;

(n) R277-407, School Fees;

(o) R277-107, Educational Services Outside of Educator's Regular Employment;

(p) R277-515, Utah Educator Standards;

(q) R277-605, Coaching Standards and Athletic Clinics.

(2) An LEA shall include the following requirements of Title IX in LEA policies:

(a) Fundraising shall equitably benefit males and females;

(b) Males and females shall have reasonably equal access to facilities, fields, and equipment;

(c) School sponsored activities shall be reasonably equal for males and females.

KEY: school sponsored activities, public funds, fiscal policies and procedures, audit committee

October 10, 2017 **Art X, Sec 3**
53A-1-401
53A-1-402(1)(e)

R277. Education, Administration.
R277-703. Centennial Scholarship for Early Graduation.
R277-703-1. 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-15-102, which requires the Board to make payments to a public school student who graduates early;

(c) Section 53A-1-402, which authorizes the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements; and

(d) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) This rule:

(a) designates the early graduation centennial scholarship certificate for use by public schools;

(b) allows for graduation to be flexible and appropriate to meet individual students' needs; and

(c) outlines the early graduation procedure.

R277-703-2. Definitions.

(1) "Centennial scholarship" or "scholarship" means the amount awarded to an early graduating student in accordance with Section 53A-15-102.

(2) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(3) "UCAT" or "technical college" means the Utah System of Technical Colleges listed in Section 53B-2a-105.

R277-703-3. Curriculum Options for Accelerating a Secondary School Student's Education Program.

(1) If a student graduates any time before the conclusion of grade 11, or prior to the conclusion of grade 12, the student may receive a reimbursement towards enrollment in a Utah post-secondary institution as described in Section 53A-15-102 and this R277-703.

(2) A post-secondary institution selected by a student who receives a centennial scholarship shall receive a centennial scholarship certificate signed by the high school principal or charter school director entitling the early graduate to a partial tuition scholarship following the date of graduation according to the schedule established by this rule.

(3) A student seeking a centennial scholarship shall complete the courses of study and credit mandated by the Board and by the student's local school board or charter school governing board.

(4) Options for earning additional credit may include:

(a) courses:

(i) high school summer school;

(ii) high school or UCAT early morning or after school classes;

(iii) courses completed at the student's own rate based on performance as approved by the local school board or charter school governing board;

(iv) college courses numbered 1000 and above from fully accredited institutions;

(v) LEA-approved high school or college level correspondence courses; or

(vi) equivalency ratio of higher education hours to high school credits: five (5) quarter or three (3) semester hours equal one (1) unit of high school credit;

(b) demonstrated proficiency by assessment in an amount of credit as determined by the local school board or charter school governing board:

(i) advanced placement examination, as approved by the local school board or charter school governing board;

(ii) ACT or SAT scores that meet or exceed a level set by the local school board or charter school governing board;

(iii) Utah state or LEA secondary end-of-course tests;

(iv) demonstrated proficiency in a subject, as assessed by the LEA; or

(v) College Level Examination Program (CLEP) tests;

(c) approved work experience, as assessed by the LEA.

(d) demonstrated mastery in an experimental program that has received prior approval from the Board;

(e) increased credit for courses that are combined into a time frame that ordinarily accommodates a lesser number of classes, as approved by the LEA;

(f) independent study credit for an independent research project or independent reading relevant to a course of study; or

(g) credit for experience gained during travel relevant to a specific course if approved in advance by the LEA.

R277-703-4. Early Graduation Student Education Plan.

(1) In consultation with the student's parent or guardian and school advisor, a student seeking a centennial scholarship shall indicate to the secondary principal or charter school director the student's intent to complete early graduation at the beginning of the ninth grade year or as soon thereafter as the intent is known.

(2) To be eligible for early graduation, a student shall have a current plan for college and career readiness on file at the student's high school as described in Subsection R277-700-6(24).

R277-703-5. Local Education Requirements.

(1) Requirements relating to semesters in membership are inapplicable to students who have been approved under Section R277-703-4 for graduation following the eleventh grade year.

(2) Local academic and citizenship credit requirements for graduation which exceed Board requirements shall include provisions that permit students to graduate early.

R277-703-6. Funding Provisions.

(1) An LEA shall receive a payment designated for each high school from which students graduated before the end of the twelfth grade year.

(2) An LEA shall receive payment for one-half of the designated centennial scholarship amount for each student reported as having graduated at the conclusion of the eleventh grade year on the S-3 report in the fiscal year following the student's graduation.

(3)(a) An LEA shall receive payment based on a percentage of the centennial scholarship amount for each student reported as graduating during the twelfth grade year.

(b) A student described in Subsection (3)(a) shall also be listed on the S-3 report and payment shall be made to the LEA in the fiscal year following the students' graduation.

(c) An LEA shall receive payment for schools operating on the quarter or trimester system for each early graduating student according to the following schedule:

(i) end of first quarter of 12th grade year: 75 percent of one-half of the centennial scholarship amount;

(ii) end of second quarter of 12th grade year: 50 percent of one-half of the centennial scholarship amount;

(iii) end of third quarter of 12th grade year: 25 percent of one-half of the centennial scholarship amount;

(iv) end of first trimester of 12th grade year: 67 percent of one-half of the centennial scholarship amount; or

(v) end of second trimester of 12th grade year: 33 percent of one-half of the centennial scholarship amount.

(4) A student who graduates from high school at the conclusion of the eleventh grade year or during the twelfth grade year shall be entitled to a partial tuition scholarship in the form of the early graduation centennial scholarship certificate to be used at a Utah public college, university, community college,

technical college, or any other institution in Utah accredited by the Northwest Accreditation Commission that offers post-secondary courses.

(5) The post-secondary institution selected by a student who receives a centennial scholarship shall complete the early graduation centennial scholarship certificate and submit it to the Superintendent.

(6) Upon receipt of the early graduation centennial scholarship certificate, the Suprintendent shall verify the information, and reimburse the institution an amount set forth in the following schedule in the fiscal year during which the student enrolls in a post-secondary institution.

(7) Except as provided in Section R277-703-7, to be eligible for the scholarship, the student must enroll in an eligible post-secondary institution within one calendar year of graduation.

(8)(a) A student who graduates at the end of the eleventh grade year shall receive a full centennial scholarship.

(b) A student who graduates at the end of the first quarter of the twelfth grade year shall receive 75 percent of the centennial scholarship amount.

(c) A student who graduates at the end of the second quarter of the twelfth grade year shall receive 50 percent of the centennial scholarship amount.

(d) A student who graduates at the end of the third quarter of the twelfth grade year shall receive 25 percent of the centennial scholarship amount.

(e) A student who graduates at the end of the first trimester of the twelfth grade year shall receive 67 percent of the centennial scholarship amount.

(f) A student who graduates at the end of the second trimester of the twelfth grade year shall receive 33 percent of the centennial scholarship amount.

R277-703-7. Student Deferrals.

(1) Except as provided in Subsection (5) and as allowed in Subsection 53A-15-102(4), a student who is eligible for a centennial scholarship, as described in Subsection 53A-15-102(3) and this R277-703, may make a request to the Board that the Board defer consideration of the student for the scholarship for a set period of time up to five years.

(2) The Superintendent shall:

(a) create an application, for the Board's approval, for a student seeking a deferral to request the deferral; and

(b) make the application described in Subsection (2)(a) available online.

(3) A student seeking a deferral described in Subsection (1) shall file a request for deferral with the Superintendent on or before:

(a) the second Monday in February for a student who graduated on or before December 31 of a school year; and

(b) the second Monday in July for a student who graduated on or before June 15 of a school year.

(4)(a) If a student's request for a deferral is denied by the Superintendent, the student may request an appeal of the Superintendent's decision.

(b) The Law and Licensing Committee shall review a student's appeal within 60 days of receipt of the appeal.

(c) The Superintendent shall inform a student requesting appeal of the Law and Licensing Committee's decision.

(5) A student's centennial scholarship expires five years from the date the eligible student graduated.

KEY: curricula, early graduation, graduation requirements, scholarships

October 10, 2017	**Art X Sec 3**
Notice of Continuation August 14, 2017	**53A-1-402(1)**
	53A-1-401

R305. Environmental Quality, Administration.
R305-2. Electronic Meeting.
R305-2-1. Purpose.

Section 52-4-7.8 requires any public body that convenes or conducts an electronic meeting to establish written procedures for such meetings. This rule establishes procedures for conducting meetings of the Department of Environmental Quality and the Boards established within the Department in accordance with Section 19-1-106.

R305-2-2. Authority.

This rule is established under the authority of Sections 19-1-201(2)(k) and 202(1)(a).

R305-2-3. Procedure.

The following provisions govern any meeting at which one or more Board members appear telephonically or electronically pursuant to Section 52-4-7.8.

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

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

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

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

(5) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Department of Environmental Quality, 160 North 1950 West, Salt Lake City, Utah 84116. The anchor location is the physical location from which the electronic meeting originates or from where the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

KEY: electronic meetings, board meetings
November 8, 2002 19-1-201(2)(k)
Notice of Continuation October 26, 2017 19-1-202(1)(a)

R305. Environmental Quality, Administration.
R305-7. Administrative Procedures.
R305-7-101. Scope of Rule and Purpose of Parts.

(1) This rule governs all adjudicative procedures conducted under the authority of the Environmental Quality Code, Utah Code Ann. Title 19. This rule does not govern the proceedings that result in an initial determination by the Director, including the issuance of the initial determination itself.

(2) (a) Part 1 of this Rule (R305-7-101 through 113) applies to all adjudications before the agency. It addresses general and preliminary matters.

(b) Part 2 of this Rule (R305-7-200 through 217) applies to special adjudicative proceedings. These procedures are governed by Section 19-1-301.5.

(c) Part 3 of this Rule (R305-7-301 through 320) applies to adjudicative procedures that are not special adjudicative proceedings. These procedures are governed by Section 19-1-301.

(e) Part 4 of this Rule (R305-7-401 through 403) addresses matters initiated by notices of agency action.

(d) Part 5 of this Rule (R305-7-501 through 503) addresses declaratory orders and emergency adjudication.

(e) Part 6 of this Rule (R305-7-601 through 623) addresses matters relevant to specific statutes.

R305-7-102. Definitions.

(1) The following definitions apply to this Rule. The definitions in Part 6 of this Rule, e.g., the definition of "Director," also apply for matters governed by the statutory provisions specified in that Part. If the definition in Part 6 differs from the definition in Part 1, the definition in Part 6 controls.

(a) "Administrative Law Judge" or ALJ means the person appointed under Section 19-1-301(5) or Section 19-1-301.5(5) to conduct an adjudicative proceeding.

(b) "Administrative Proceedings Records Officer" means a person who receives a record copy of submissions on behalf of the agency, as specified in R305-7-104.

(c) "Administrative Record," for purposes of Part 2 of this Rule, means the record described in Section 19-1-301.5(8)(b) and upon which a special adjudicative proceeding is conducted. See also R305-7-209.

(d) "Days" means calendar days unless otherwise specified. See also R305-7-105.

(e) "Director" means the director of one of the divisions listed in Section 19-1-105(1)(a). The Director is defined, for each statute administered by the Department, in Part 6 of this Rule.

(f) "Executive Director" means the Executive Director of the Department of Environmental Quality.

(g) "Initial Order" means an order that is not a Permit Order, that is issued by the Director and that is the final step in the portion of a proceeding that is exempt from the requirements of UAPA as provided in Section 63G-4-102(2)(k).

(h) "Notice of Violation" means a notice of violation issued by the Director that is exempt from the requirements of UAPA under Section 63G-4-102(2)(k).

(i) "Part" means the sections of this Rule that are grouped together by subject matter, e.g., Sections R305-7-501 through 503 are Part 5 of this Rule.

(j) "Party" is defined in R-305-7-207 for special adjudicative proceedings, and in R305-7-305 for other proceedings.

(k) "Permit" means any of the following:
(i) a permit;
(ii) a plan;
(iii) a license;
(iv) an approval order; or
(v) another administrative authorization made by a Director, including a financial assurance determination as defined by Section 19-1-301.5(1)(c).

(l)(i) "Permit order" means an order issued by the Director that:
(A) approves a permit;
(B) renews a permit;
(C) denies a permit;
(D) modifies or amends a permit; or
(E) revokes and reissues a permit.

(ii) "Permit order" does not include an order terminating a permit.

(m) "Permit review adjudicative proceeding" and "special adjudicative proceedings" and "permit special proceedings" mean an adjudicative proceeding to resolve a challenge to a Permit Order including a financial assurance determination as defined by Section 19-1-301.5 (1)(c).

(n) "Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. "Person" also includes, as appropriate to the matter, other entities as provided in definitions in the statutes specified in the Department of Environmental Quality Code, Title 19, and in rules promulgated thereunder.

(o) "Rule" means this Rule R305-7, Administrative Procedures for the Department of Environmental Quality, unless otherwise specified.

(p) "UAPA" means the Utah Administrative Procedures Act, Utah Code Ann. Title 63G, Chapter 4.

(2)(a) Ordinarily, administrative proceedings under the Environmental Quality Code are decided by the Executive Director based on a proceeding conducted by and recommended decision prepared by an Administrative Law Judge. In the event governing law specifies that another person or entity conduct a proceeding in the place of an Administrative Law Judge, the term "Administrative Law Judge" shall mean the person or entity serving in that function. In the event governing law specifies that another person or entity make final determinations regarding dispositive actions, the term "Executive Director" shall mean the person or entity who makes that final decision.

(b) Nothing in this provision R305-7-102(2) authorizes the appointment of a person or entity other than an administrative law judge to conduct an adjudicative proceeding. Nothing in this provision R305-7-102(2) authorizes the appointment of a person or entity other than the Executive Director to make a final determination regarding an adjudicative proceeding.

R305-7-103. Form of Submissions.

(1) All submissions, whether on paper copy or electronic, shall use 8-1/2 by 11 inch pages, be double-spaced, with each page numbered, and have one inch margins and 12 point font. Paper copies of documents submitted under this Rule shall ordinarily be printed on white paper; double-sided printing is encouraged but not required.

(2) Requests for agency action, notices of agency action, petitions for review, and responses to requests for agency action, shall include numbered paragraphs.

(3) The first page of every filing shall contain a caption that gives the name and file number of the proceeding, the name of the ALJ if one has been appointed, and the filing date.

(4) Requirements for motions and briefs for special adjudicative proceedings are specified in R305-7-211 and R305-7-213. Requirements for motions for other proceedings are specified in R305-7-312.

R305-7-104. Filing and Service of Notices, Orders and Other Papers.

(1) (a) Filing and service of all papers shall be made by email except as otherwise provided in this R305-7-104 and in

R305-7-309(2)(b), R305-7-309(7)(b)(ii), and R305-7-313.

(b) In the event the ALJ determines that it is inappropriate in a specific case to file and serve all papers by email, the requirements of R305-7-104(4) will govern. Those requirements may be modified by the ALJ.

(c) The provisions of R305-7-104(2) will also apply regardless of whether filing and service are done by email (R305-7-104(3)) or by traditional service methods (R305-7-104(4)).

(d) A party seeking to have filing and service requirements governed by R305-7-104(4), such as a person who does not have access to email, shall file and serve that request as provided in R305-7-104(4). Once a request to proceed under R305-7-104(4) is filed and served, the provisions of that section shall apply to all future filing and service unless otherwise ordered by the ALJ.

(2) General Provisions Governing Filing and Service.

(a) Every submission shall be filed with:

(i) the ALJ or, if no ALJ has been appointed, the Director; and

(ii) the Administrative Proceedings Records Officer.

(b) In addition, every submission shall be served upon:

(i) the Director, if a submission is not filed with the Director under paragraph (2)(a)(i);

(ii) the assistant attorney general representing the Director;

(iii) the permittee or the person who was the recipient of the Permit Order, or other order or notice of violation being challenged;

(iv) any other party.

(c) A person, other than the Director, who is represented by an attorney or other representative, as provided in R305-7-106, shall be served through the attorney or other representative.

(d) Every submission shall include a certificate of service that shows the date and manner of filing with and service on the persons identified in R305-7-104(2)(a) and (b).

(e) Service on a regulated person at the person's last known address in the agency's file shall be deemed to be service on that person.

(3) Provisions governing electronic filing and service.

(a) A submission shall be filed with the Administrative Proceedings Records Officer by emailing it to DEQAPRO@utah.gov.

(b) Filing or service on all other parties shall be by email at addresses provided by those persons. If the person filing or serving the submission is unable, after due diligence, to determine an email address for a party, the person shall file or provide service by traditional means, as provided in R305-7-104(4).

(c) (i) A text document served by email shall be submitted as a searchable PDF document.

(ii) A person filing a submission may electronically file and serve a document without a signature if the person indicates that the document was signed (e.g., "signed by (name)" or "/s/ (name)") and keeps the original on file to be provided if requested by the ALJ.

(d) The ALJ may order any other submission to be provided in a searchable format.

(e) Large emails (5 Mb or more) may not be accepted by some email systems. It shall be the responsibility of a person sending a large email to ensure that it has been received by all parties, e.g., by telephoning or by sending a separate notification email and requesting a response.

(f) Photographic or other illustration documents filed and served by email shall be submitted as:

(i) a PDF document; or

(ii) a JPEG document.

(g) Documents that are difficult to file and serve by email because of their size or form may be filed and served on a CD, DVD, USB flash drive or other commonly used digital storage medium. A document may also be provided in paper form if it is impracticable to copy the document electronically. Filing and service of such documents shall be as provided in R305-7-104(4).

(h) A party shall provide a paper copy of any document, including signed documents, upon request by the ALJ.

(4) Provisions governing traditional filing and service.

(a) Filing and service shall be made:

(i) by United States mail, postage pre-paid;

(ii) by hand-delivery;

(iii) by overnight courier delivery; or

(iv) by the Utah State Building Mail system, if the sender and receiver are both state employees.

(b) Documents to be filed with or served on the Director shall be filed and served at the address specified in Part 6.

(c) Documents to be filed with the Administrative Proceedings Records Officer shall be submitted to one of these addresses:

(i) By U.S. Mail: Administrative Proceedings Records Officer, Environment Division, Utah Attorney General's Office, PO Box 140873, Salt Lake City Utah 84114-0873; or

(ii) By hand or commercial delivery: Administrative Proceedings Records Officer, Environment Division, Utah Attorney General's Office, 195 North 1950 West, Second Floor, Salt Lake City Utah 84116.

(d) (i) Except as provided in R305-7-104(5)(b), a document that is filed or served by U.S Mail or overnight delivery service shall be considered filed or served on the date it is mailed or provided to the overnight delivery service. A document that is filed or served by Utah State Building Mail shall be considered filed or served on the date it is placed in a Utah State Building Mail bin.

(5)(a) A paper, signed original of any Request for Agency Action, Petition for Review, Notice of Agency Action or Petition to Intervene shall be filed and served as provided in R305-7-104(2) and (4).

(b) To be timely, a Request for Agency Action, Petition for Review, or a Petition to Intervene must be received by the Director and the Administrative Proceedings Records Officer as provided in:

(i) R305-7-203(5) and R305-7-205 (for a Petition for Review, filed and served in a special adjudicative proceeding);

(ii) R305-7-303(5) (for a request for agency action filed and served in a proceeding other than a special adjudicative proceeding);

(iii) R305-7-204(2) and R305-7-205 (for a Petition to Intervene filed and served in a special adjudicative proceeding); and

(iv) R305-7-304 (which incorporates the requirements of R305-7-204(2)) for a Petition to Intervene filed and served in a proceeding other than a special adjudicative proceeding).

R305-7-105. Computation and Extensions of Time.

(1) A business day is any day other than a Saturday, Sunday or legal State of Utah holiday.

(2) As provided in R305-7-102, "days" means calendar days unless otherwise specified.

(3) Computing time.

(a) If a period is in calendar days:

(i) exclude the day of the event that triggers the period;

(ii) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(iii) include the last day of the period, but if the last day is a Saturday, Sunday, or legal State of Utah holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal State of Utah holiday.

(b) If a period is in business days:

(i) exclude the day of the event that triggers the period; and

(ii) count every business day.

(c) If a document is not filed or served by email, any time for responding to the document shall be extended by three business days. This provision does not apply to a Request for Agency Action, Petition for Review or a Petition to Intervene. See R305-7-104(5).

(4) Date of issuance.

The date of issuance of a Permit Order, a Notice of Agency Action or other order is the date the document is signed and dated.

(5) Extensions of Time.

(a) To the extent permitted by Section 19-1-301.5, the ALJ may approve extensions of any time limits established by this rule, and may extend time limits adopted in schedules established under R305-7-308. See Section 19-1-301.5(8).

(b) To the extent permitted by Section 19-1-301.5, the ALJ may postpone a deadline or, as applicable, a scheduled conference, oral argument or hearing, upon motion from the parties, or upon the ALJ's own motion. See Section 19-1-301.5(8).

(c) Notwithstanding any other provision in this section, R305-7-108(2) governs the ALJ's authority to extend time to file a Request for Agency Action, Petition for Review, or Petition to Intervene. See also the provisions cited in R305-7-108(2).

R305-7-106. Appearances and Representation.

(1) A party may be represented:

(a) by an individual if the individual is the party; or

(b) by a designated officer or other designated employee if the party is a person other than an individual.

(2) Any party may be represented by legal counsel. An attorney who is not currently a member in good standing of the Utah State Bar must present a written or oral motion for admission pro hac vice made by an active member in good standing of the Utah State Bar. Communication with and service on local counsel shall be deemed to be communication with and service on the party so represented.

R305-7-107. Proceeding Conducted by Teleconference or Other Electronic Means.

(1) All parties shall be present in person, or through an authorized representative (see R305-7-106), at an evidentiary hearing, if applicable.

(2) A party may participate in oral argument on a dispositive motion or oral argument on the merits of a special adjudicative proceeding by teleconference or other electronic means if:

(a) all other parties stipulate to participation by teleconference or other electronic means; and

(b) the ALJ approves the stipulation.

(3) A party may participate in any other hearing or conference on a dispositive motion or a hearing on the merits of a permit review adjudicative proceeding by teleconference or other electronic means if all other parties stipulate to participation by teleconference or other electronic means.

R305-7-108. Modifying Requirements of Rules.

(1) Except as provided in R305-7-108(2), the requirements of this Rule may be modified by order of the ALJ for good cause, provided the modification is not inconsistent with applicable statutory provisions.

(2) The following requirements may not be modified:

(a) the requirements for timely filing a Petition for Review under R305-7-203(5) and 205 for a special adjudicative proceeding;

(b) the requirements for timely filing a Request for Agency Action under R305-7-303(5) for a proceeding other than a special adjudicative proceeding;

(c) the requirements for timely filing a Petition to Intervene under R305-7-204(2) and 205 for a special adjudicative proceeding; and

(d) the requirements for timely filing a Petition to Intervene under R305-7-304 (which incorporates the requirements of R305-7-204(2)) for a proceeding other than a special adjudicative proceeding.

R305-7-109. Default.

(1) The provision controlling default under UAPA, Section 63G-4-209, governs default under special adjudicative proceedings as well as proceedings under UAPA, including enforcement proceedings. However, a petitioner in a special adjudicative proceeding is not allowed to file a request for agency action. Instead, a petitioner in a special adjudicative proceeding must file a Petition for Review. Therefore, if a petitioner in a special adjudicative proceeding improperly files a request for agency action a respondent is not required to answer it. In addition, a respondent in a special adjudicative proceeding is not required to file a response to a Petition for Review under Section 63G-4-209(1)(c). However, a party in a special adjudicative proceeding who does not file a brief as required Section 19-1-301.5(8) may be held in default. See Section 19-1-301.5(10)(c).

(2) A default order shall include a statement of the grounds for default and shall be filed with the Administrative Proceedings Records Officer and shall be served on all parties.

(3) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure. A motion to set aside a default and any subsequent order shall be made to the ALJ.

R305-7-110. Limitation on Authority under Rule.

Nothing in this Rule constitutes a grant of authority for any person other than the recipient to challenge a Notice of Violation or to initiate an action to challenge or require the agency's enforcement either generally or in a specific situation. See UAPA, Sections 63G-4-102(8) and 63G-4-201(3).

R305-7-111. No Limitation on Authority to Bring Action.

(1) Nothing in this Rule shall be read as a limitation either of the agency's statutory authority to bring an emergency proceeding or a judicial proceeding under UAPA, Section 63G-4-502, under the Department of Environmental Quality Code, Utah Code Ann. Title 19. It shall also not be read as a limitation on the procedures the agency may use for an emergency proceeding under those authorities.

(2) Failure in this Rule to provide administrative procedures for an administrative action that is authorized by statute shall not be read as a limitation of the agency's authority to bring that action.

R305-7-112. Procedures Not Addressed.

In the event there are authorities or situations for which procedures are not prescribed by these rules, the ALJ shall, for a specific case, identify analogous procedures or other procedures that will apply. If the proceeding is conducted under the authority of Section 19-1-301, it shall be conducted formally under UAPA.

R305-7-113. Applicability of UAPA.

(1) Special adjudicative proceedings are exempt from UAPA except as specifically provided in Section 19-1-301.5. See Section 19-1-301.5(3).

(2) With respect to all other orders:

(a) Initial Orders and Notices of Violation issued by the Director are exempt from the requirements of UAPA, as provided in Section 63G-4-102(2)(k).

(b) A proceeding to challenge an Initial Order or a Notice of Violation is subject to the requirements of UAPA.

(3) Neither UAPA nor this Rule applies to requests for government records or requests for confidentiality of government records. Those matters are governed by the Utah Government Records Access and Management Act, Sections 63G-2-101 through 901, and by Section 19-1-306.

R305-7-200. Retrospective Construction and Interpretation.

(1) SB 282 and SB 173 (Gen. Session 2015) modified Section 19-1-301.5 permit review adjudicative procedures effective May 12, 2015. Because the revisions are procedural, they shall be accorded retrospective construction in the sense that they will be applied to pending actions and proceedings, as well as to future actions but will not be so applied as to defeat procedural steps completed before the effective date of May 12, 2015.

R305-7-201. Scope of Rule; Purpose of Part.

Part 2 of this Rule (R305-7-201 through 217) specifies procedures to be used in a special adjudicative proceeding, as authorized under Section 19-1-301.5.

R305-7-202. Notice and Comment and Exhaustion of Remedies.

(1) As provided in 19-1-301.5(4), if a public comment period is provided during the permit application process, a person who challenges a Permit Order, including the permit applicant, may only raise an issue or argument during the special adjudicative proceeding that:

(a) the person raised during the public comment period; and

(b) was supported with sufficient information or documentation to enable the Director to fully consider the substance and significance of the issue.

(2) Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the Administrative Record in the same proceeding, or consist of state or federal statutes, regulations or rules, EPA documents of general applicability, or other generally available reference materials.

(3) The relevance of and the relevant portions of any supporting materials included with or incorporated by reference in comments shall be described with reasonable specificity.

(4) In preparing a comment response document, the Director may request that the permit applicant provide information in response to comments received during the public comment period.

R305-7-203. Petitions for Review.

(1) Permit orders may be contested by filing and serving a written Petition for Review as provided in R305-7-104(5).

(2) Any Petition for Review shall meet all of the requirements of UAPA, Section 63G-4-201(3)(a) and (3)(b), and the requirements of Section 19-1-301.5. See Section 19-1-301.5(6)(d).

(3) A Petition for Review shall be in writing, shall be signed by the person making the Petition for Review, or by that person's representative, and shall include:

(a) the names and addresses of all persons to whom a copy of the Petition for Review is being sent;

(b) the Director's file number or other reference number, if known;

(c) the date that the Petition for Review was mailed;

(d) a statement of the legal authority and jurisdiction under which review is requested;

(e) a statement of petitioner's position, including as applicable:

(i) the legal authority under which the Petition for Review is requested;

(ii) the legal authority under which the Executive Director has jurisdiction to review the Petition for Review;

(iii) each of the petitioner's arguments in support of the petitioner's requested relief;

(iv) an explanation of how each argument described in Section 19-1-301.5(6)(d)(v)(D) was preserved;

(v) a detailed description of any permit condition to which the petitioner is objecting;

(vi) any modification or addition to a permit that the petitioner is requesting;

(vii) a demonstration that the Director's permit decision is based on a finding of fact or conclusion of law that is clearly erroneous;

(viii) if the Director addressed a finding of fact or conclusion of law described in Section 19-1-301.5(6)(d)(v)(G) in a response to public comment, a citation to the comment and response that relates to the finding of fact or conclusion of law and an explanation of why the Director's response was clearly erroneous or otherwise warrants review; and

(ix) a claim for relief.

(4) It is not sufficient under Section 63G-4-201(3) to file and serve a general statement of disagreement, a reservation of rights to serve a Petition for Review, or a request to have the matter heard.

(5) To be timely, a Petition for Review to contest a Permit Order shall be, within 30 days of the date the Permit Order being challenged was issued:

(a) received for filing by the Administrative Proceedings Records Officer at the address specified in R305-7-104(4)(c) of this Rule;

(b) received by the Director at the address specified in Part 6; and

(c) served as provided in R305-7-104(2), (4) and (5).

(6) Failure to file a Petition for Review within the period specified in R305-7-104(5) waives any right to contest the permit order or to seek judicial review.

R305-7-204. Intervention.

(1) A person who seeks to intervene in a special adjudicative proceeding under this section shall file and serve:

(a) a Petition to Intervene that:

(i) meets the requirements of Section 63G-4-207(1); and

(ii) demonstrates that the person is entitled to intervention under Section 19-1-301.5(7)(c)(ii); and

(b) a timely Petition for Review.

(2) To be timely, a Petition to Intervene shall, within 30 days after the day on which the Permit Order being challenged was issued, be:

(a) received by the Administrative Proceedings Records Officer at the address specified in R305-7-104(4)(c) of this Rule;

(b) received by the Director at the address specified in Part 6;

(c) served on all other parties as provided in R305-7-104(4).

R305-7-205. Extensions of Time for Filing Petitions for Review and Petitions to Intervene.

The time for filing a Petition for Review or a Petition to Intervene may be extended only by stipulation of the parties and only if such stipulation is received for filing before the expiration of the time for filing the Petition for Review or Petition to Intervene.

R305-7-206. Proceedings After a Petition for Review is Filed.

(1) After a Petition for Review has been filed, the parties are encouraged to meet to attempt to resolve the matter.

(2)(a) Any party may at any time file a request for appointment of an ALJ. An ALJ will not ordinarily be

appointed until requested by a party, although the Executive Director may appoint an ALJ at any time.

(b) A request for appointment of an ALJ shall be filed as provided in R305-7-104(2)(a), and served as provided in R305-7-104(2)(b).

(3) After an ALJ is appointed, the ALJ shall review and respond to the Petition for Review in accordance with Subsections 63G-4-201(3)(d) and (e).

(4) Unless the parties stipulate or the ALJ orders otherwise following a motion, the Director shall file and serve the Administrative Record, as provided in R305-7-209, within 40 days after the day on which the Executive Director issues a notice of appointment of an administrative law judge.

(5) The schedule and page limits for briefing on the merits specified in Subsection 19-1-301.5(8)(a) shall apply except as otherwise stipulated by the parties and coordinated with the ALJ in accordance with R305-7-208(6).

(6) Dispositive Motions. The schedule for submission of dispositive motions specified in Subsection 19-1-301.5(8)(a) shall apply unless otherwise stipulated by the parties. However, without stipulation or order, dispositive motions may be submitted in advance of the schedule specified in Subsection 19-1-301.5(8)(a). Any issue or argument that could be raised in a dispositive motion is not waived by failure to file such a motion, but may be raised during the briefing on the merits. See R305-7-212.

(7) Subsection 19-1-301.5(13) is explained as follows. For each issue or argument that is not dismissed or otherwise resolved under Subsection 19-1-301.5(11)(b) or (12), the ALJ shall:

(a) provide the parties an opportunity for briefing and oral argument in accordance with Subsection 19-1-301.5(8);

(b) conduct a review of the Director's order or determination, based on the record as described in Subsection 19-1-301.5(9)(b)(c), and (10)(e); and

(c) within 60 days after the day on which oral argument takes place, or, if there is no oral argument, within 60 days after the day on which the reply brief is due, the ALJ shall submit to the Executive Director a proposed dispositive action, that includes:

(i) written findings of fact;

(ii) written conclusions of law; and

(iii) a recommended order.

R305-7-207. Parties.

(1) The following are parties to a special adjudicative proceeding:

(a) the Director who issued the Permit Order being challenged in the special adjudicative proceeding;

(b)(i) the permittee; or

(ii) the person who applied for the permit, if the permit was denied; and

(c) a person granted intervention by the ALJ.

(2) A person who has filed a Petition to Intervene that has not been denied is not a party, but will be treated as a party for purposes of this Rule (e.g., for purposes of service, making motions and settlement) unless otherwise ordered by the ALJ.

R305-7-208. Conferences, Proceedings and Order.

(1) The ALJ may hold one or more conferences for the purposes of:

(a) identifying and, if possible, narrowing the issues that will be considered;

(b) determining whether an issue will be considered through a dispositive motion or during the briefing on the merits;

(c) establishing schedules for the filing of motions and briefs;

(d) considering stipulations of fact or law; and

(e) considering any other matters.

(2) The ALJ shall promptly issue an order memorializing any determinations made about the matters considered in a conference.

(3) The ALJ may at any time order a party to make a more clear statement of the issues the party intends to raise.

(4) The ALJ may:

(a) require the parties to submit proposed schedules for the proceeding; and

(b) to the extent allowed by Section 19-1-301.5 and R305-7-208(6), change deadlines and page limits for submissions established by this Rule.

(5) The parties may request the ALJ hold a conference for the purpose of addressing the matters described in R305-7-208(1).

(6) Stipulated Scheduling Orders. The ALJ shall issue scheduling orders following Section 19-1-301.5 for the administrative record, briefing and page limits, and dispositive motions that shall apply unless the parties file stipulations for alternative scheduling and page limitations. The ALJ shall promptly adopt such timely filed stipulations in applicable scheduling orders unless the ALJ is not available on the stipulated hearing date or questions the necessity of the stipulated brief lengths.

(a) Stipulated Hearing Date. If the ALJ is not available on the stipulated hearing date, the ALJ shall confer with the parties to determine a mutually acceptable date and shall specify the mutually acceptable date in applicable scheduling orders.

(b) Stipulated Over-Length Briefs. If the ALJ questions the necessity of the stipulated over-length briefs, the ALJ may require the parties to state with specificity the issues to be briefed, the number of additional pages requested, and the good cause for allowing over-length briefs. The ALJ may promptly refuse to adopt or may promptly modify through order the parties' stipulation for over-length briefs if the parties fail to show good cause.

R305-7-209. Administrative Record.

(1) To the extent they relate to the issues and arguments raised in the Petition for Review, the Administrative Record shall consist of the following items, if they exist:

(a) the permit application, draft permit, and final permit;

(b) each statement of basis, fact sheet, engineering review, or other substantive explanation designated by the Director as part of the basis for the decision relating to the Permit Order;

(c) the notice and record of each public comment period;

(d) the notice and record of each public hearing, including oral comments made during the public hearing;

(e) written comments submitted during the public comment period;

(f) responses to comments that are designated by the Director as part of the basis for the decision relating to the Permit Order;

(g) any information that is:

(i) requested by and submitted to the Director; and

(ii) designated by the Director as part of the basis for the decision relating to the Permit Order;

(h) any additional information specified by rule;

(i) any additional documents agreed to by the parties; and

(j) information supplementing the record under Section 19-1-301.5(9)(c) or R305-7-210.

(2) If there has been no notice and comment period for a Permit Order, information that is submitted with the Petition for Review shall be deemed to be part of the Administrative Record as shall information submitted in any response to the Petition for Review.

(3)(a) The Director shall prepare the record by compiling it in chronological order, numbering each page and preparing an index.

(b) The Director shall, within 40 days of service of the Notice of Appointment, or as otherwise provided in R305-7-206;

(i) file and serve an electronic copy of the record in accordance with the requirements of R305-7-104; or

(ii) make a paper copy of the record available for review during normal working hours, and file and serve a copy of the record's index as provided in R305-7-104.

(4) Any challenges to the Administrative Record shall be made by motion within 10 business days of the date the record or index is served under paragraph (3)(b).

R305-7-210. Response to Supplemental Information.

If the Administrative Record is supplemented with additional information as described in R305-7-209(1)(i) or (j), the other parties may, in response, serve and file additional information specific to the supplemental information, which shall also be part of the Administrative Record. The additional information may not raise any new matters not raised in the supplemental information.

R305-7-211. Motions.

(1) A motion shall be made in writing, and shall include the grounds upon which it is based and the relief or order sought. A separate memorandum in support of the motion is not required.

(2) Any response to a motion shall be filed within 21 days of service of the motion.

(3) Any reply to a response to a motion may be filed within 10 days of service of the response. A reply shall be limited to matters raised in the response.

(4) A motion may not exceed 20 pages. If a separate memorandum in support of a motion is filed, the motion and memorandum together shall not exceed 20 pages. A response may not exceed 15 pages. A reply may not exceed ten pages.

(5) Deadlines and page limits may be modified by order of the ALJ.

(6) Any determination by the ALJ that is dispositive shall be forwarded to the Executive Director in the form of a recommended decision.

(7) See also R305-7-206(6) and R305-7-212 regarding issues and arguments not raised by motion.

R305-7-212. Challenges to a Petition to Intervene or to Failure to Preserve an Issue.

(1) A challenge to a Petition to Intervene under Section 19-1-301.5(7) or to a party's failure to preserve an issue under Section 19-1-301.5(4) and (6)(c) may be made by motion or may be made in the parties' briefs on the merits.

(2) If a challenge under paragraph (1) relies on a significant portion of the evidence or arguments that must be considered to make a determination on the merits, the party making the challenge under paragraph (1) is encouraged to do so in the brief on the merits.

(3) The ALJ may defer ruling on a motion under paragraph (1) until the ALJ makes a decision on the merits of the case if the ALJ finds that the motion relies on a significant portion of the evidence or arguments that must be considered to make a determination on the merits.

R305-7-213. Procedures for Determination on the Merits.

(1) Requirements for briefs on the merits in a special adjudicative proceeding are as follows:

(a) The schedule and page limits specified in Section 19-1-301.5(8)(a) shall apply except as otherwise stipulated by the parties and ordered by the ALJ in accordance with R305-7-208;

(b) Any page incorporated by reference from the administrative or adjudicative record shall count toward a page limitation;

(c) The table of contents, table of citations, and any addendum containing statutes, rules, regulations or portions of the administrative record cited do not count toward the page limitation;

(d) All statements of fact shall be supported by references to the pages in the administrative record in which the evidence is identified;

(e) Matters addressed in the petition but not in the opening brief shall be waived;

(f) Matters not addressed in the petition may not be raised in the opening brief.

(2) A reply or a surreply brief may not raise any issue that was not raised in the responsive brief or the reply, respectively.

(3) Briefs must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, or immaterial matters. A brief not meeting these criteria may fail to meet that party's burden of persuasion.

(4) In cases involving more than one petitioner or respondent, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(5) The ALJ shall provide an opportunity for oral argument. Oral argument shall, at a minimum, be recorded at the agency's expense using audio recording devices. The agency may elect instead to use a court reporter. If the agency does not elect to use a court reporter, any participant may request that the agency use a court reporter for the oral argument, which request shall be granted by the ALJ provided the requesting person agrees to bear the cost associated with the request. Any such request shall be submitted to the ALJ at least 10 business days before the scheduled oral argument.

(6) The parties may submit comments on the ALJ's recommended decision to the Executive Director. Comments shall not exceed 15 pages, and shall be submitted within ten business days of the service of the recommended decision. A party may file a response to another party's comments, not to exceed five pages, within five business days of the date of the service of the comments.

R305-7-214. Review and Determinations.

(1) The procedures and standards for resolving a permit review challenge are specified in Section 19-1-301.5; see in particular paragraphs (9) through (15).

(2) The standard of review for the Director's factual, technical, and scientific determinations specified in Section 19-1-301.5(14)(b) and (15)(c)(ii) is explained as follows:

(a) The petitioner has the burden of proof;

(b) Marshaling the evidence is a natural extension of the petitioner's burden of proof;

(c) For each factual, technical, and scientific determination challenged by petitioner, the petitioner is required to marshal and acknowledge the evidence in the record that supports the Director's determination. Such determination shall be overturned as clearly erroneous only if the petitioner has proven, after marshaling, that the Director's determination is not supported. See Subsections 19-1-301.5(6)(d)(v)(G) and (H) and 19-1-301.5(14); and

(d) If the petitioner fails to marshal, there is a presumption that the Director's factual, technical, and scientific determination is not clearly erroneous.

(3) The standard of review for non-factual determinations provided in Section 19-1-301.5(15)(c)(i) recognizes that the Director has been granted substantial discretion to interpret the division's governing statutes and rules.

R305-7-215. Interlocutory Orders.

(1) Interlocutory review (review by the Executive Director

before a final recommendation made by the ALJ) is not favored. Ordinarily, a party may challenge an order issued by the ALJ only after the ALJ has made a final recommended decision.

(2) A party may file, in accordance with R307-7-104, a motion for interlocutory review of a non-final ALJ order only if a ruling that is alleged to be in error could not be corrected through a challenge to the final recommended decision (e.g., a ruling denying privileged status to records), or where early resolution of a material issue may materially advance the termination of the proceeding.

(3) The Executive Director's determination to consider a motion for an interlocutory review is discretionary.

R305-7-216. Settlement.

The parties may agree to settle all or any portion of an action at any time during an administrative proceeding through a settlement agreement, an administrative settlement order, or a proposed judicial consent decree. Upon notice by the Director that there is a proposed settlement that will be subject to a public comment period, the ALJ shall suspend the administrative proceeding, in whole or in part, until notified by the Director or another party that the suspension should be lifted. The ALJ may order an update on the status of the settlement.

R305-7-217. Stays.

The procedure and standard for obtaining a stay is specified in Section 19-1-301.5(15).

R305-7-301. Scope of Rule; Purpose of Part.

Part 3 of this Rule (R305-7-301 through 320) specifies procedures to be used in adjudicative proceedings that are not permit review adjudicative proceedings, as authorized by Section 19-1-301. For the most part, proceedings under Part 3 of this Rule will be enforcement proceedings and proceedings to terminate permits.

R305-7-302. Designation of Proceedings as Formal or Informal.

(1) All proceedings to contest an order that is not a Permit Order, including proceedings to challenge a Notice of Violation or compliance order, shall be conducted as formal proceedings except as specifically provided in Part 6 of this Rule.

(2) The ALJ in accordance with Section 63G-4-202(3) may convert proceedings that are designated to be formal to informal and proceedings which are designated as informal to formal if conversion is in the public interest and rights of all parties are not unfairly prejudiced. A decision to use informal procedures must be approved by the Executive Director.

R305-7-303. Requests for Agency Action and Contesting an Initial Order or Notice of Violation.

(1) A Notice of Violation or an Initial Order may be contested by filing and serving a written Request for Agency Action as provided in R305-7-104(5).

(2) Any Request for Agency Action is governed by and shall meet all of the requirements of UAPA, Section 63G-4-201(3)(a) and (3)(b).

(3) As provided in Section 63G-4-201(3)(a), a Request for Agency Action shall be in writing and signed by the person making the Request for Agency Action, or by that person's representative, and shall include:

(a) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(b) the agency'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 agency;

(f) a statement of the facts and reasons forming the basis for relief or agency action; and

(4) A Request for Agency Action shall include the requestor's name, address and email address, if any.

(5) To be timely, a Request for Agency Action to contest an Initial Order or a Notice of Violation shall be received for filing by the Director and the Administrative Proceedings Records Officer as specified in R305-7-104(2), (4) and (5) within 30 days of the issuance of the Initial Order or a Notice of Violation. This time may be extended only by stipulation of the parties and only if such stipulation is received for filing before the expiration of the time for filing the Request for Agency Action.

(6) If a Request for Agency Action is made by a person other than the recipient of an Initial Order, the Request for Agency Action shall also include a Petition to Intervene that meets the requirements of Section 63G-4-207 and R305-7-304. See R305-7-110, however (limitations on the ability of third persons to challenge enforcement proceedings).

(7) (a) It is not sufficient under Section 63G-4-201(3)(a) or this rule to file a general statement of disagreement, a reservation of rights to file a request for agency action, or a request to have the matter heard.

(b) If a person files a document challenging a notice of violation or an order under this Part 3 that does not meet the requirements of this rule, a party may file a dispositive motion addressing that inadequacy. The notice of violation or order will be final if the Executive Director approves or approves with modifications the ALJ's recommended order of dismissal.

(8) Failure to file a Request for Agency Action within the period specified in R305-7-104(5) waives any right to contest the Initial Order or to seek judicial review.

R305-7-304. Intervention.

Proceedings that are not permit review adjudicative proceedings will not ordinarily be subject to intervention. See R305-7-110 regarding intervention in enforcement proceedings. In the event intervention is appropriate under the specific facts of the case, the procedures for intervention specified in Part 2, including the deadlines for filing intervention specified in R305-7-204(2), shall govern. This time may be extended only by stipulation of the parties and the prospective intervenor and only if such stipulation is received for filing before the expiration of the time for filing the Petition to Intervene. The status and treatment of prospective intervenors in R305-7-207(2), shall also govern.

R305-7-305. Parties.

The following persons are parties to an adjudicative proceeding to resolve a challenge to an Initial Order or Notice of Violation:

(1) the person to whom the Initial Order or Notice of Violation was directed;

(2) the Director who issued an Initial Order or Notice of Violation; and

(3) any person to whom the ALJ has granted intervention under R305-7-304.

R305-7-306. Proceedings After a Request for Agency Action is Filed.

(1) After a Request for Agency Action has been filed, the parties are encouraged to meet to attempt to resolve the matter.

(2)(a) Any party may at any time file a request for appointment of an ALJ. An ALJ will not ordinarily be appointed until requested by a party, although the Executive Director may appoint an ALJ at any time.

(b) A request for appointment of an ALJ shall be filed as

provided in R305-7-104(2)(a), and served as provided in R305-7-104(2)(b).

(3) After an ALJ is appointed, the ALJ shall issue a Notice of Further Proceedings in accordance with Section 63G-4-201(3)(d) and (e).

R305-7-307. Procedures for Informal Proceedings.

(1) Procedures for Informal Proceedings are governed by Section 63G-4-203 and, except as provided in R305-7-307(4), this Rule.

(2) No hearing or other conference is required for an informal proceeding. If a hearing is held, the parties shall be permitted to testify, present evidence and comment on issues. A hearing may be conducted as a meeting rather than using trial-type procedures.

(3) Discovery and intervention are not available in an informal proceeding. The ALJ may issue a subpoena or other order to compel the production of necessary evidence.

(4) The procedures specified in R305-7-310, 313, 314 and 315 do not apply to informal procedures.

R305-7-308. Conferences, Proceedings and Order.

(1) The ALJ may hold one or more conferences for the purposes of:

(a) identifying and, if possible, narrowing the issues that will be considered;

(b) determining whether an issue will be considered at a dispositive motion hearing or an evidentiary hearing;

(c) establishing schedules for disclosures, exchange of witness lists, and the filing of motions, testimony and pre-hearing memoranda;

(d) determining the status of the litigation;

(e) considering stipulations of fact or law; and

(f) considering any other pre-hearing matters.

(2) The ALJ shall issue an order memorializing any determinations made about the matters considered in a conference.

(3) The ALJ may at any time order a party to make a more clear statement of the issues the party intends to raise at a hearing.

(4) The ALJ may:

(a) require the parties to submit proposed schedules for the proceeding; and

(b) change deadlines and page limits for submissions established by this Rule.

(5) The parties may request the ALJ hold a conference for the purpose of addressing the matters described in R305-7-308(1).

R305-7-309. Agency Record.

(1) The final agency record shall consist of an Initial Record and an Adjudicative Record.

(2)(a) The Initial Record shall be prepared by the Director and shall consist of background documents for the matter that shall be deemed to be authenticated for purposes of the hearing and motions, and may be introduced as evidence by any party. The Initial Record is not intended to take the place of discovery or of the proffer by parties of documentary evidence.

(b) The Initial Record shall be indexed and compiled in chronological order. Each page of the Initial Record shall be numbered for ease of reference. A paper and an electronic copy of the Initial Record shall be filed with the ALJ. An electronic copy of the Initial Record shall be filed and served as provided in R305-7-104(3). Electronic records shall meet the requirements for electronic filing and service in R305-7-104(3).

(3) The Initial Record document index shall include, to the extent they exist and are relevant to the issues raised in the Request for Agency Action, any documentation designated by the Director as part of the basis for issuing the Notice of Violation or Initial Order.

(4) Documents other than those specified in R305-7-309(3) may be included in the Initial Record only upon the agreement of the parties. Documents that the parties cannot agree upon may be submitted in the course of the proceeding. Failure of a party to object to inclusion of a document in the Initial Record shall be deemed to be agreement to its inclusion in the initial record and to its authenticity.

(5) If many of the documents or large parts of the documents that would ordinarily constitute the Initial Record are irrelevant to the issues raised in the proceeding, the Director may propose a more limited Initial Record. If a matter involves a multi-volume document, for example, the Director may propose to exclude the parts of the permit that are unrelated, e.g., emergency response requirements if the dispute is about waste sampling.

(6) Results of analytical analyses of samples documented in the Initial Record are deemed to be accurate unless specifically objected to no later than 15 days before the date the Director's preliminary witness lists are due.

(7) Procedure for preparing the Initial Record.

(a) Unless the ALJ directs otherwise, the Director shall compile a draft index of documents in the Initial Record, provide the draft index to the other parties. The Director shall allow time for the other parties to comment on the draft index.

(b) After consideration of the comments, the Director shall prepare the Initial Record by compiling it in chronological order, numbering each page and preparing an index. The Director shall:

(i) file and serve an electronic copy of the record in accordance with the requirements of R305-7-104(3); or

(ii) make a paper copy of the record available for review during normal working hours, and file and serve a copy of the record's index as provided in R305-7-104.

(8) Any challenges to the Initial Record shall be made by motion within 10 business days of the date the record or index is served under paragraph (7)(b).

(9) The Adjudicatory Record consists of all documents filed or issued in the proceeding beginning with the Request for Agency Action.

R305-7-310. Disclosures and Discovery.

(1) Informal discovery by agreement of the parties is preferred. All parties shall have access to information contained in the agency's records unless the records are not required to be disclosed under the Government Records Access and Management Act, Title 63G, Chapter 2, as modified by Section 19-1-306 of the Utah Environmental Quality Code.

(2) Formal discovery is allowed in a matter by agreement of the parties involved in the formal discovery or if so directed by the ALJ in a formal proceeding. The ALJ may order formal discovery 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 burdensome;

(c) the formal discovery proposed is not unduly burdensome;

(d) the formal discovery proposed is necessary for the parties to properly prepare for the hearing;

(e) the formal discovery does not seek a party's position regarding a question of law or about the application of facts to law that could be addressed in a motion to dismiss or a motion for summary judgment; and

(f) the formal discovery proposed will not cause unreasonable delays.

(3)(a) Except as otherwise provided in this Section R305-7-310, the time periods, limitations and other requirements for discovery in the Utah Rules of Civil Procedure shall apply

unless otherwise ordered by the ALJ after consideration of the specific formal discovery proposed.

(b) No initial disclosure shall be required as provided in Utah Rules of Civil Procedure Rule 26(a)(1)(B) through (D).

(4) Each party shall provide to the other parties copies of any documents it intends to introduce as provided in R305-7-313(1). This information shall be provided and updated in accordance with a schedule established in the pre-hearing order.

R305-7-311. Subpoenas.

(1) A party requesting an administrative subpoena must prepare it and submit it to the Administrative Proceedings Records Officer for the signature of the ALJ. Each administrative subpoena form shall have the following statement prominently displayed on the form: This Administrative Subpoena is issued under the authority of the Utah Administrative Procedures Act, Section 63G-4-205(2). If you believe that this subpoena is inappropriate, you may object. The standards of Rule 45 of the Utah Rules of Civil Procedure will be used to determine whether a subpoena is appropriate. File any objection with (requestor to insert title and address of ALJ). See also Utah Admin. Code R305-7-311.

(2) Service of the subpoena shall be made by the party requesting it in a manner consistent with Rule 45(b) of the Utah Rules of Civil Procedure.

(3) A party or other person served with a subpoena may file an objection for the reasons specified in the Utah Rules of Civil Procedure, Rule 45. In response, the party that served the subpoena may file a Motion to Compel. The ALJ shall consider the Motion to Compel and require compliance with the existing subpoena, issue a new subpoena on specified conditions, or quash the subpoena.

R305-7-312. Motions.

(1) Motions may be made in writing at or before a hearing, or orally during a hearing. Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of motions that are not made orally shall be filed and served in accordance with R305-7-104. A separate memorandum in support of the motion is not required.

(2) A response to a motion, if any, shall be filed within 21 days of service of the motion.

(3) A reply, if any, may be filed within 10 days of service of the response. A reply shall be limited to matters raised in the response.

(4) A motion may not exceed 20 pages. If a separate memorandum in support of a motion is filed, the motion and memorandum together shall not exceed 20 pages. A response may not exceed 15 pages. A reply may not exceed 10 pages.

(5) Deadlines and page limits may be modified by order of the ALJ.

(6) When appropriate, parties are encouraged to file dispositive motions, such as a Motion for Judgment on the Pleadings, a Motion to Dismiss or a Motion for Summary Judgment. Parties are encouraged to file dispositive motions no later than 45 days prior to the scheduled hearing. Dispositive motions shall be prepared in accordance with requirements of Rule 12 or Rule 56 of the Utah Rules of Civil Procedure, as appropriate.

R305-7-313. Pre-hearing Briefs and other Pre-hearing Submissions.

(1) At least 30 days before a scheduled hearing, the parties shall exchange proposed exhibits and thereafter shall meet to attempt to stipulate to the admission of exhibits.

(2) At least 14 days before a scheduled hearing, the parties shall jointly file any stipulation regarding admission of exhibits and shall file copies of all of its exhibits that are subject to a stipulation. Electronic copies of the exhibits, as described in R305-7-104(3), shall be filed with the ALJ and the Administrative Proceedings Records Officer, and served on all other parties. Electronic and paper copies of the exhibits shall be served on the Administrative Proceedings Records Officer.

(3) Unless otherwise ordered by the ALJ, each party may, but is not required to file, at least 14 days before a scheduled hearing:

(a) A pre-hearing brief, limited to 25 pages, not including exhibits or any statement of facts; and

(b) Any motions related to the way the hearing will be conducted, or to the admission of exhibits and other evidence that will be presented at the hearing.

(4) A party may object to an exhibit when it is introduced in a hearing, except that no party may object to:

(a) the authenticity of a record included in the Initial Record;

(b) the accuracy of analytical analysis of samples documented in the Initial Record, except as provided in R305-7-309(6).

(5)(a) Any party may file testimony and evidence using pre-filed testimony of a witness, unless otherwise ordered by the ALJ.

(b) For lengthy or complex proceedings, pre-filed testimony is preferred and may be required by the ALJ.

(c) Pre-filed testimony shall be submitted at least 13 business days before a scheduled hearing.

R305-7-314. Hearings.

(1) The ALJ shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony, cross-examination, oral arguments or opening and closing statements while affording to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence. The ALJ shall also establish the order of presentation at the hearing.

(2)(a) All hearings shall, at a minimum, be recorded at the agency's expense using audio recording devices. The agency may elect instead to use a court reporter.

(b) Any party may request that the agency use a court reporter for the hearing, which request shall be granted by the ALJ. Unless otherwise ordered by the ALJ, the requesting party shall bear the cost associated with these requests. Any such requests shall be submitted to the ALJ at least 10 business days before the scheduled hearing.

(3) Evidence.

(a) Every party to an adjudicative proceeding has the right to introduce evidence, subject to Section 63G-4-206 and the Utah Rules of Evidence, to the extent those rules are not inconsistent with Section 63G-4-206 or this Rule. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

(i) The ALJ may admit any reliable evidence possessing probative value that would be accepted by a reasonably prudent person in the conduct of his affairs.

(ii) The ALJ may admit hearsay evidence. however, no finding of fact may be based solely on hearsay evidence unless that evidence is admissible under Section 63G-4-206 and, to the extent it is not inconsistent with that section, the Utah Rules of Evidence.

(iii) If a party attempts to introduce evidence into a hearing, and it is excluded, the party may proffer the excluded testimony or evidence to allow any reviewing authority to pass on the correctness of the ruling of exclusion.

(b) Except as provided in R305-7-314(3)(d), all witnesses who have provided pre-filed testimony shall be present at the hearing unless:

(i) otherwise agreed to by the parties; and

(ii) ordered by the ALJ.

(c) A witness for whom pre-filed testimony has been

submitted shall be allowed to give a brief summary of that testimony, and shall then be made available for cross-examination.

(d) Except as otherwise agreed to by the parties and ordered by the ALJ, the pre-filed testimony of any witness who is not present at the hearing will be treated as other hearsay evidence as provided in Utah Code Ann. Subsections 63G-4-206(1)(c) and 63G-4-208(3).

(e) Oral testimony at a formal hearing will be sworn. The oath will be administered by the reporter or the ALJ. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

R305-7-315. Post-hearing Findings and Conclusions.

Unless otherwise ordered by the ALJ, not later than 14 days after a hearing, each party may, but is not required to submit proposed findings of fact, indentifying with specificity supporting evidence in the record, and proposed conclusions of law.

R305-7-316. Executive Director's Decision on the Merits.

(1) The parties may submit comments on the ALJ's recommended decision to the Executive Director. Comments shall not exceed 15 pages, and shall be submitted within ten business days of the service of the recommended decision. A party may file a response to another party's comments, not to exceed five pages, within five business days of the date of the service of the comments.

(2) The Executive Director shall issue an order that meets the requirements of Section 63G-4-208.

R305-7-317. Interlocutory Orders.

(1) Interlocutory review is not favored. Ordinarily, a party may challenge an order issued by the ALJ only after the ALJ has made a final recommended decision.

(2) A party may file, in accordance with R305-7-104, a motion for interlocutory review of a non-final ALJ order only if a ruling that is alleged to be in error could not be corrected through a challenge to the final recommended decision (e.g., a ruling denying privileged status to records), or where early resolution of a material issue may materially advance the termination of the proceeding.

(3) The Executive Director's determination to consider a motion for an interlocutory review is discretionary.

R305-7-318. Stays of Orders.

(1) Stay of Orders Pending Administrative Adjudication.

(a) A party seeking a stay of an Initial Order during an adjudicative proceeding shall file a motion with the ALJ.

(b) An ALJ shall grant a stay if the party seeking the stay demonstrates the following:

(i) The party seeking the stay will suffer irreparable harm unless the stay is issued;

(ii) The threatened injury to the party seeking the stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;

(iii) The stay, if issued, would not be adverse to the public interest; and

(iv) There is a substantial likelihood that the party seeking the stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further adjudication.

(2) The standards specified in R305-7-318(1)(b) shall apply to any interlocutory review of an order regarding a requested stay of an Initial Order.

(3) Stay of the Order Pending Judicial Review.

(a) A party seeking a stay of a final order by the Executive Director shall file a motion with the Executive Director.

(b) The standards specified in R305-7-318(1)(b) shall apply to any such request.

R305-7-319. Effectiveness and Finality of Initial Orders and Notices of Violation.

(1) Unless otherwise stated in the order or notice, an Initial Order or a Notice of Violation is effective upon issuance and, even if it is contested, remains effective unless a stay is issued or the Initial Order or a Notice of Violation is rescinded, vacated or otherwise terminated.

(2) The date of issuance of an Initial Order or a Notice of Violation is the date the Initial Order or a Notice of Violation is signed and dated.

(3) Failure to contest an Initial Order or a Notice of Violation within the period provided in R305-7-303(5) waives any right of administrative contest, reconsideration, review or judicial appeal.

R305-7-320. Settlement.

The parties may agree to settle all or any portion of an action at any time during an administrative proceeding through a settlement agreement, an administrative settlement order, or a proposed judicial consent decree. Upon notice by the Director that there is a proposed settlement that will be subject to a public comment period, the ALJ shall suspend the administrative proceeding, in whole or in part, until notified by the Director or another party that the suspension should be lifted. The ALJ may order an update on the status of the settlement.

R305-7-401. Purpose of Part.

Part 4 of this Rule (R305-7-401 through 403) governs proceedings initiated by the agency with a Notice of Agency Action.

R305-7-402. Notices of Agency Action to Impose a Penalty.

Before issuing a Notice of Agency Action assessing penalties, the Director shall provide at least 30 days' notice of the proposed penalty, and shall provide the recipient with an opportunity to comment on the proposed penalty.

R305-7-403. Procedures following a Notice of Agency Action.

If the recipient of a Notice of Agency Action does not file a written response within 30 days of the date the Notice of Agency Action is issued, the Director may issue a final order under Section 63G-4-209(1)(c) and R305-7-109. If the recipient does file a written response, an ALJ will conduct a formal proceeding on the matter using, as appropriate, the procedures specified in UAPA and Parts 1, 2 (for Permit Orders), 3 (for all other orders) and 6 of this Rule.

R305-7-501. Purpose of Part.

Part 5 of this Rule (R305-7-501 through 503) governs requests for declaratory and emergency actions.

R305-7-502. Declaratory Orders.

(1) Any Request for a Declaratory Order shall be addressed first to the Director specified in Part 6 of this Rule,

(2) Any person who seeks to obtain a declaratory order shall file a Request for Declaratory Order that meets these requirements. The request shall:

(a) Clearly designate the Request for Agency Action as one requesting a declaratory order;

(b) Identify the statute, department or division rule or order to be reviewed;

(c) Describe in detail the situation or circumstances in which the applicability of the statute, rule or order is to be reviewed;

(d) Describe the Requestor's reason or need for the order;
(e) Set out a proposed order;
(f) As appropriate, address with specificity each of the circumstances described in R305-7-502(4) and demonstrate that the condition does not apply.
(3) Failure to submit a complete Request for Declaratory Order is grounds for denying the Request.
(4) The following classes of circumstances are exempt from declaratory order, as provided in Section 63G-4-503(3)(b):
(a) Circumstances in which a declaratory order would substantially prejudice the rights of a person who would be a necessary party under the Utah Rules of Civil Procedure, unless the Petitioner has that person's consent in writing;
(b) Circumstances in which the person requesting the declaratory order does not have standing;
(c) Circumstances in which informal agency opinion or other agency action is sufficient to meet the need described in the Petition;
(d) Circumstances in which questions have already been adequately addressed by the agency in an order or in informal advice;
(e) Circumstances that raise questions that are clear and do not warrant an order;
(f) Circumstances that are more properly addressed by a statutory change or rulemaking proceedings;
(g) Circumstances that arise out of pending or anticipated litigation in a civil, criminal or administrative forum and that are more properly addressed by that forum;
(h) Circumstances under which the critical facts are not clear and may be altered by subsequent events, or the issues are otherwise not yet ripe for consideration;
(i) Circumstances under which the person making the request is unable to show that real risk to that person will be confronted if the intended course of conduct is taken; and
(j) Circumstances involving use of the agency's emergency authority.
(5) If no declaratory order or order setting the matter for hearing is issued within 60 days of the Request, the Request shall be deemed denied.
(6) An Initial Order of the Director on a Request for Declaratory Action may be challenged by filing a request for agency action under this Rule.

R305-7-503. Emergency Actions.
Emergency orders may be issued as provided in Section 63G-4-502. See R305-7-111.

R305-7-601. Purpose of Part.
(1) Part 6 of this Rule (R305-7-601 through 623) provides definitions and other provisions that will govern the way the procedures specified in Parts 2 through 5 of this Rule will apply to adjudicative procedures brought under specific statutes.
(2) For all statutes, Parts 1, 2 and 6 of this Rule apply to a proceeding to challenge a Permit Order.
(3) For all statutes, Parts 1, 3 and 6 of this Rule apply to a proceeding to challenge a Notice of Violation or other Initial Order.

R305-7-602. Addresses for Filing.
(1) Documents submitted to the Executive Director of the Department of Environmental Quality shall be sent to:
Executive Director
Department of Environmental Quality
P.O. Box 144810
Salt Lake City, Utah 84114-4810
Alternatively, these documents may be delivered by courier or hand delivery to:
Executive Director
Department of Environmental Quality
195 North 1950 West, 4th Floor
Salt Lake City, Utah 84116-3097
(2) Documents submitted to the Director of the Division of Air Quality shall be sent to:
Director, Division of Air Quality
P.O. Box 144820
Salt Lake City, Utah 84114-4820
Alternatively, these documents may be delivered by courier or hand delivery to:
Director, Division of Air Quality
195 North 1950 West, 4th Floor
Salt Lake City, Utah 84116-3097
(3) Documents submitted to the Director of the Division of Drinking Water shall be sent to:
Director, Division of Drinking Water
P.O. Box 144830
Salt Lake City, Utah 84114-4830
Alternatively, these documents may be delivered by courier or hand delivery to:
Director, Division of Drinking Water
195 North 1950 West, 3rd Floor
Salt Lake City, Utah 84116-3097
(4) Documents submitted to the Director of the Division of Waste Management and Radiation Control shall be sent to:
Director, Division of Waste Management and Radiation Control
P.O. Box 144880
Salt Lake City, Utah 84114-4880
Alternatively, these documents may be delivered by courier or hand delivery to:
Director, Division of Waste Management and Radiation Control
195 North 1950 West, 2nd Floor
Salt Lake City, Utah 84116-3097
(5) Documents submitted to the Director of the Division of Environmental Response and Remediation shall be sent to:
Director, Division of Environmental Response and Remediation
P.O. Box 144840
Salt Lake City, Utah 84114-4840
Alternatively, these documents may be delivered by courier or hand delivery to:
Director, Division of Environmental Response and Remediation
195 North 1950 West, 1st Floor
Salt Lake City, Utah 84116-3097
(6) Documents submitted to the Director of the Division of Water Quality shall be sent to:
Director, Division of Water Quality
P.O. Box 144870
Salt Lake City, Utah 84114-4870
Alternatively, these documents may be delivered by courier or hand delivery to:
Director
Division of Water Quality
195 North 1950 West, 3rd Floor
Salt Lake City, Utah 84116-3097

R305-7-603. Matters Governed by Title 19, Chapter 1 of the Environmental Quality Code, but not Including Title 19, Chapter 1, Part 4.
(1) Scope. This subsection R305-7-603 applies to all matters governed by Title 19, Chapter 1, of the Environmental Quality Code.
(2) Definitions.
"Director" shall refer to the Executive Director.
(3) Orders and notices issued under the authority of Title 19, Chapter 1 of the Environmental Quality Code are not exempt from the requirements of UAPA. The provisions of

UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated under the authority of Title 19, Chapter 1, the "Environmental Quality Code."

(4) Initiating and intervening in a proceeding. Nothing in this Rule constitutes authority for any person other than the agency to initiate adjudicative proceedings under Title 19, Chapter 1. Nothing in this Rule constitutes authority for any person to intervene in an action commenced under Title 19, Chapter 1.

(5) Proceedings under Title 19, Chapter 1 of the Environmental Quality Code, and specifically under Section19-1-202(2)(a), will be conducted formally under UAPA.

(6) Agency review under Section 63G-4-301 is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-7-604. Matters Governed by the Air Conservation Act, Title 19, Chapter 2, but not Including Sections 19-2-112 or 19-2-123 through 19-2-126.

(1) This subsection R305-7-604 applies to all matters governed by the Air Conservation Act, Title 19, Chapter 2, but not including Sections 19-2-112 or 19-2-123 through 19-2-126.

(2) "Director" means the Director of the Division of Air Quality.

R305-7-605. Matters Governed by Section 19-2-112 of the Air Conservation Act.

(1) This subsection R305-7-605 describes matters governed by Section 19-2-112(1) of the Air Conservation Act, and applies to matters governed by Section 19-2-112(2) of that Act.

(2) Actions taken under the authority of Section 19-2-112(1) are subject to the procedures specified in that subsection only; neither this Rule nor UAPA applies.

(3) Orders and notices issued under the authority of 19-2-112(2) are subject to the requirements of and procedure specified in 63G-4-502. There is no administrative review available for orders issued under this provision. Any request for reconsideration shall be addressed to the Executive Director at the address specified in R305-7-602(1).

(4) Initiating and intervening in a proceeding. Nothing in this Rule constitutes authority for:

(a) any person other than the agency to initiate adjudicative proceedings under 19-2-112(2); or

(b) any person to intervene in an action commenced under 19-2-112(2).

R305-7-606. Matters Governed by Sections 19-2-123 through 19-2-126 of the Air Conservation Act.

(1) This subsection R305-7-606 applies to matters governed by Sections 19-2-123 through 19-2-126 of the Air Conservation Act. Sections 59-7-605 and 59-10-1009 of the Utah Tax Code also apply to these matters.

(2) Definitions.

"Director" means the Director of the Division of Air Quality for Requests relating to air pollution control equipment, or the Director of the Division of Water Quality for requests relating to water pollution control equipment.

R305-7-607. Matters Governed by the Radiation Control Act, Title 19, Chapter 3, but not Including Section 19-3-109.

(1) This subsection R305-7-607 applies to all matters governed by the Radiation Control Act, Title 19, Chapter 3, but not including Section 19-3-109.

(2) Definitions.

"Director" means the Director of the Division of Radiation Control.

R305-7-608. Matters Governed by the Radiation Control Act, Title 19, Chapter 3, Section 19-3-109.

(1) This subsection R305-7-608 applies to all matters governed by Section 19-3-109 of the Radiation Control Act.

(2) Definitions.

"Director" means the Director of the Division of Radiation Control.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of Section 19-3-109.

R305-7-609. Matters Governed by the Safe Drinking Water Act, Title 19, Chapter 4, but not Including Section 19-4-109(1).

(1) This subsection R305-7-609 applies to all matters governed by the Safe Drinking Water Act, Title 19, Chapter 4, but not included Section 19-4-109(1).

(2) Definitions.

"Director" means the Director of the Division of Drinking Water.

R305-7-610. Matters Governed by the Safe Drinking Water Act, Title 19, Chapter 4, Section 19-4-109(1).

(1) This subsection R305-7-610 applies to all matters governed by Section 19-4-109(1) of the Safe Drinking Water Act.

(2) Definitions.

"Director" means the Director of the Drinking Water Division.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of Section 19-4-109(1).

R305-7-611. Matters Governed by the Water Quality Act, Title 19, Chapter 5.

(1) This subsection R305-7-611 applies to all matters governed by the Water Quality Act, Title 19, Chapter 5.

(2) Definitions.

"Director" means the Director of the Division of Water Quality or, for purposes of groundwater quality at a facility licensed by and under the jurisdiction of the Division of Radiation Control, the Director of the Division of Radiation Control.

R305-7-612. Matters Governed by the Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 1.

(1) This subsection R305-7-612 applies to all matters governed by Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 1.

(2) Definitions.

"Director" means the Director of the Solid and Hazardous Waste Division.

R305-7-613. Matters Governed by the Hazardous Substances Mitigation Act, Title 19, Chapter 6, Part 3.

(1) This subsection R305-7-613 applies to all matters governed by the Hazardous Substances Mitigation Act, Title 19, Chapter 6, Part 3.

(2) Definitions.

"Director" means the Executive Director.

R305-7-614. Matters Governed by the Underground Storage Tank Act, Title 19, Chapter 6, Part 4, but not Including Sections 19-6-405.3, 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

(1) This subsection R305-7-614 applies to all matters governed by the Underground Storage Tank Act, Title 19, Chapter 6, Part 4, but not including Sections 19-6-405.3, 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

(2) Definitions.

"Director" means the Director of the Division of Environmental Response and Remediation.

R305-7-615. Matters Governed by the Underground Storage Tank Act, Title 19, Chapter 6, Sections 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

(1) This subsection R305-7-615 applies to all matters governed by Sections 19-6-407, 19-6-408, 19-6-416, and 19-6-416.5 of the Underground Storage Tank Act.

(2) Definitions.

"Director" means the Director of the Division of Environmental Response and Remediation.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of Sections 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

R305-7-616. Matters Governed by the Used Oil Management Act, Title 19, Chapter 6, Part 7.

(1) This subsection R305-7-616 applies to all matters governed by the Used Oil Management Act, Title 19, Chapter 6, Part 7.

(2) Definitions.

"Director" means the Director of the Division of Solid and Hazardous Waste.

R305-7-617. Matters Governed by the Waste Tire Recycling Act, Title 19, Chapter 6, Part 8.

(1) This subsection R305-7-617 applies to all matters governed by Waste Tire Recycling Act, Title 19, Chapter 6, Part 8.

(2) Definitions.

"Director" means the Director of the Division of Solid and Hazardous Waste.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of the Waste Tire Recycling Act, Title 19, Chapter 6, Part 8.

R305-7-618. Matters Governed by the Illegal Drug Operations Site Reporting and Decontamination Act, Title 19, Chapter 6, Part 9.

(1) This subsection R305-7-618 applies to all matters over which the Director has authority under the Illegal Drug Operations Site Reporting and Decontamination Act, Title 19, Chapter 6, Part 9, and under the authority of the Board.

(2) Definitions.

"Director" means the Director of the Division of Environmental Response and Remediation.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of the Illegal Drug Operations Site Reporting and Decontamination Act, Title 19, Chapter 6, Part 9.

R305-7-619. Matters Governed by the Mercury Switch Removal Act, Title 19, Chapter 6, Part 10.

(1) This subsection R305-7-619 applies to all matters governed by the Mercury Switch Removal Act, Title 19, Chapter 6, Part 10.

(2) Definitions.

"Director" means the Director of the Division of Solid and Hazardous Waste.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of the Mercury Switch Removal Act, Title 19, Chapter 6, Part 10.

R305-7-620. Matters Governed by the Industrial Byproduct Reuse Act, Title 19, Chapter 6, Part 11.

(1) Scope. This subsection R305-7-620 applies to all matters governed by the Industrial Byproduct Reuse Act, Title 19, Chapter 6, Part 11.

(2) Definitions.

"Director" means the Director of the Division of Solid and Hazardous Waste.

R305-7-621. Matters Governed by the Voluntary Cleanup Program Statute, Title 19, Chapter 8.

(1) This subsection R305-7-621 applies to all matters governed by the Voluntary Cleanup Program statute, Title 19, Chapter 8.

(2) Determinations about whether to enter into an agreement under this program lie within the sole discretion of the Executive Director or a person appointed by the Executive Director.

(3) The Executive Director delegates to the Director of the Division of Environmental Response and Remediation authority to issue orders and other Notices of Agency Action regarding:

(a) proposed determinations regarding approvals, disapprovals or modifications of work plans and reports;

(b) approvals, denials or modifications of certificates of completion; and

(c) declaratory orders under Section 63G-4-503 and R305-7-502.

R305-7-622. Matters Governed by the Environmental Institutional Control Act, Title 19, Chapter 10.

(1) This subsection R305-7-622 applies to all matters governed by the Environmental Institutional Control Act, Title 19, Chapter 10.

(2) A request to approve a proposed termination or modification of an environmental institutional control adopted under this act shall be considered a Request for Agency Action and Parts 1, 2 and 6 of this Rule shall apply.

R305-7-623. Matters Governed by the Uniform Environmental Covenants Act, Title 57, Chapter 25.

(1) This subsection R305-7-623 applies to all matters governed by the Uniform Environmental Covenants Act, Title 57, Chapter 25.

(2) A request to approve a proposed agreement, modification of an agreement, or termination of an agreement shall be considered to be a Request for Agency Action and Parts 1, 2 and 6 of this Rule shall apply.

KEY: administrative procedures, adjudicative procedures, hearings

November 20, 2015	**19-1-301**
Notice of Continuation October 26, 2017	**19-1-301.5**
	63G-4-102
	63G-4-201
	63G-4-202
	63G-4-203
	63G-4-205
	63G-4-503

R305. Environmental Quality, Administration.
R305-9. Recusal of a Board Member for Conflict of Interest.
R305-9-101. Purpose and Authority.

The purpose of this rule is to establish standards and procedures for addressing potential conflicts of interest. This rule is authorized by Section 19-1-201(1)(d)(i)(B).

R305-9-102. Disclosure of Interest Statements.

Each board member shall provide disclosure of interest statements on forms provided by the Department.

R305-9-103. Recusal.

(1) A board member shall be recused from voting during any board proceeding involving a matter in which the member has a conflict of interest.

(2) A board member may also be recused from participating in the board's discussion of a matter in which the member has a conflict of interest.

R305-9-104. Potential Conflicts of Interest.

A board member has a potential conflict of interest with respect to a matter to be considered by the board if:

(1) the board member's participation may be prohibited under Title 67, Chapter 16, the Utah Public Officers' and Employees' Ethics Act; or

(2) the board member's participation may constitute a violation of constitutional due process under the Utah or United States constitutions.

R305-9-105. Procedures.

A board member who has a potential conflict of interest with respect to a matter before the board, as described in R305-9-104, may:

(1) recuse himself or herself from participation in the board's discussion of the matter and from voting with the board on the matter; or

(2) disclose the potential conflict of interest and seek a determination by the board about how to proceed in the matter.

R305-9-106. Decision of the Board.

(1) In making a decision under this rule R305-9, the board shall consider:

(a) the nature of the matter before the board;

(b) the nature of the potential conflict; and

(c) the Legislative intent that the board reflect balanced viewpoints.

(2) The board shall determine:

(a) whether the circumstances constitute a conflict of interest such that the board member shall be recused from voting with the board on the matter; and

(b) if the board member has a conflict of interest, whether the board member shall also be recused from participation in the board's discussion of the matter.

KEY: conflict of interest, board member recusal, recusal
February 22, 2013 19-1-201(1)(d)(i)(B)
Notice of Continuation October 26, 2017

R307. Environmental Quality, Air Quality.
R307-335. Degreasing.
R307-335-1. Purpose.

The purpose of this rule is to limit volatile organic compound (VOC) emission from degreasing operations.

R307-335-2. Applicability.

R307-335 applies to degreasing operations that use VOCs and that are located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, or Weber counties.

R307-335-3. Definitions.

The following additional definitions apply to R307-335:

"Batch open top vapor degreasing" means the batch process of cleaning and removing grease and soils from metal surfaces by condensing hot solvent vapor on the colder metal parts.

"Cold cleaning" means the batch process of cleaning and removing soils from metal surfaces by spraying, brushing, flushing or immersing while maintaining the solvent below its boiling point.

"Conveyorized degreasing" means the continuous process of cleaning and removing greases and soils from metal surfaces by using either cold or vaporized solvents.

"Freeboard ratio" means the freeboard height (distance between solvent line and top of container) divided by the width of the degreaser.

"Open top vapor degreaser" means the batch process of cleaning and removing soils from metal surfaces by condensing low solvent vapor on the colder metal parts.

R307-335-4. Cold Cleaning Facilities.

No owner or operator shall operate a degreasing or solvent cleaning operation unless conditions in R307-335-4(1) through (7) are met.

(1) A cover shall be installed which shall remain closed except during actual loading, unloading or handling of parts in cleaner. The cover shall be designed so that it can be easily operated with one hand if:

(a) The volatility of the solvent is greater than 2 kPa (15 mm Hg or 0.3 psi) measured at 38 degrees C (100 degrees F),

(b) The solvent is agitated, or

(c) The solvent is heated.

(2) An internal draining rack for cleaned parts shall be installed on which parts shall be drained until all dripping ceases. If the volatility of the solvent is greater than 4.3 kPa (32 mm Hg at 38 degrees C (100 degrees F)), the drainage facility must be internal, so that parts are enclosed under the cover while draining. The drainage facility may be external for applications where an internal type cannot fit into the cleaning system.

(3) Waste or used solvent shall be stored in covered containers.

(4) Tanks, containers and all associated equipment shall be maintained in good operating condition, and leaks shall be repaired immediately or the degreaser shall be shutdown.

(5) Written procedures for the operation and maintenance of the degreasing or solvent cleaning equipment shall be permanently posted in an accessible and conspicuous location near the equipment.

(6) If the solvent volatility is greater than 4.3 kPa (33 mm Hg or 0.6 psi) measured at 38 degrees C (100 degrees F), or if solvent is heated above 50 degrees C (120 degrees F), then one of the following control devices shall be used:

(a) Freeboard that gives a freeboard ratio greater than 0.7;

(b) Water cover if the solvent is insoluble in and heavier than water); or

(c) Other systems of equivalent control, such as a refrigerated chiller or carbon adsorption.

(7) If used, the solvent spray shall be a solid fluid stream at a pressure that does not cause excessive splashing and may not be a fine, atomized or shower type spray.

R307-335-5. Open Top Vapor Degreasers.

Owners or operators of open top vapor degreasers shall, in addition to meeting the requirements of R307-335-4(3), (4) and (5),

(1) Equip the vapor degreaser with a cover that can be opened and closed without disturbing the vapor zone. The cover shall be closed except when processing work loads through the degreaser;

(2) Install one of the following control devices:

(a) Equipment necessary to sustain:

(i) A freeboard ratio greater than or equal to 0.75, and

(ii) A powered cover if the degreaser opening is greater than 1 square meter (10.8 square feet),

(b) Refrigerated chiller,

(c) Enclosed design (cover or door opens only when the dry part is actually entering or exiting the degreaser),

(d) Carbon adsorption system, with ventilation greater than or equal to 15 cubic meters per minute per square meter (50 cubic feet per minute per square foot) of air/vapor area when cover is open and exhausting less than 25 parts per million of solvent averaged over one complete adsorption cycle;

(3) Minimize solvent carryout by:

(a) Racking parts to allow complete drainage,

(b) Moving parts in and out of the degreaser at less than 3.3 meters per minute (11 feet per minute),

(c) Holding the parts in the vapor zone at least 30 seconds or until condensation ceases,

(d) Tipping out any pool of solvent on the cleaned parts before removal, and

(e) Allowing the parts to dry within the degreaser for at least 15 seconds or until visibly dry.

(4) Spray parts only in or below the vapor level;

(5) Not use ventilation fans near the degreaser opening, nor provide exhaust ventilation exceeding 20 cubic meters per minute per square meter (65 cubic feet per minute per square foot) in degreaser open area, unless necessary to meet state and federal occupational, health, and safety requirements.

(6) Not degrease porous or absorbent materials, such as cloth, leather, wood or rope;

(7) Not allow work loads to occupy more than half of the degreaser's open top area;

(8) Ensure that solvent is not visually detectable in water exiting the water separator;

(9) Install safety switches on the following:

(a) Condenser flow switch and thermostat (shuts off sump heat if condenser coolant is either not circulating or too warm); and

(b) Spray switch (shuts off spray pump if the vapor level drops excessively, i.e., greater than 10 cm (4 inches).

(10) Open top vapor degreasers with an open area smaller than one square meter (10.8 square feet) are exempt from R307-335-5(2)(b) and (d).

R307-335-6. Conveyorized Degreasers.

Owners and operators of conveyorized degreasers shall, in addition to meeting the requirements of R307-335-4(3), (4) and (5) and R307-335-5(5):

(1) Install one of the following control devices for conveyorized degreasers with an air/vapor interface equal to or greater than two square meters (21.5 square feet):

(a) Refrigerated chiller; or

(b) Carbon adsorption system, with ventilation greater than or equal to 15 cubic meters per minute per square meter (50 cubic feet per minute per square foot) of air/vapor area when downtime covers are open, and exhausting less than 25 parts per million of solvent, by volume, averaged over a complete adsorption cycle.

(2) Equip the cleaner with equipment, such as a drying tunnel or rotating (tumbling) basket, sufficient to prevent cleaned parts from carrying out solvent liquid or vapor.

(3) Provide downtime covers for closing off the entrance and exit during shutdown hours. Ensure that down-time cover is placed over entrances and exits of conveyorized degreasers immediately after the conveyor and exhaust are shut down and is removed just before they are started up.

(4) Minimize carryout emissions by racking parts for best drainage and maintaining the vertical conveyor speed at less than 3.3 meters per minute (11 feet per minute).

(5) Minimize openings: Entrances and exits should silhouette work loads so that the average clearance (between parts and the edge of the degreaser opening) is either less than 10 cm (4 inches) or less than 10% of the width of the opening.

(6) Install safety switches on the following:

(a) Condenser flow switch and thermostat - shuts off sump heat if coolant is either not circulating or too warm;

(b) Spray switch - shuts off spray pump or conveyor if the vapor level drops excessively, i.e., greater than 10 cm or (4 inches); and

(c) Vapor level control thermostat - shuts off sump level if vapor level rises too high.

(7) Ensure that solvent is not visibly detectable in the water exiting the water separator.

R307-335-7. Recordkeeping.

The owner or operator shall maintain, for a minimum of two years, appropriate records to demonstrate compliance with R307-335.

KEY: air pollution, degreasing
October 29, 2017 19-2-104(1)(a)
Notice of Continuation January 27, 2017

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.
R313-12. General Provisions.
R313-12-1. Authority.

The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(8) and Section 63J-1-504.

R313-12-2. Purpose and Scope.

It is the purpose of these rules to state such requirements as shall be applied in the use of radiation, radiation machines, and radioactive materials to ensure the maximum protection of the public health and safety to all persons at, or in the vicinity of, the place of use, storage, or disposal. These rules are intended to be consistent with the proper use of radiation machines and radioactive materials. Except as otherwise specifically provided, these rules apply to all persons who receive, possess, use, transfer, own or acquire any source of radiation, provided, however, that nothing in these rules shall apply to any person to the extent such person is subject to regulation by the U.S. Nuclear Regulatory Commission. See also Section R313-12-55.

R313-12-3. Definitions.

As used in these rules, these terms shall have the definitions set forth below. Additional definitions used only in a certain rule will be found in that rule.

"A1" means the maximum activity of special form radioactive material permitted in a Type A package.

"A2" means the maximum activity of radioactive material, other than special form radioactive material, low specific activity, and surface contaminated object material permitted in a Type A package. These values are either listed in 10 CFR 71, Appendix A, which is incorporated by reference in Section R313-19-100 or may be derived in accordance with the procedures prescribed in 10 CFR 71, Appendix A, which is incorporated by reference in Section R313-19-100.

"Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

"Accelerator produced radioactive material" means material made radioactive by a particle accelerator.

"Act" means Utah Radiation Control Act, Title 19, Chapter 3.

"Activity" means the rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

"Adult" means an individual 18 or more years of age.

"Address of use" means the building or buildings that are identified on the license and where radioactive material may be received, used or stored.

"Advanced practice registered nurse" means an individual licensed by this state to engage in the practice of advanced practice registered nursing. See Sections 58-31b-101 through 58-31b-801, Nurse Practice Act.

"Agreement State" means a state with which the United States Nuclear Regulatory Commission or the Atomic Energy Commission has entered into an effective agreement under Section 274 b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

"Airborne radioactive material" means a radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

"Airborne radioactivity area" means: a room, enclosure, or area in which airborne radioactive material exists in concentrations:

(a) In excess of the derived air concentrations (DACs), specified in Rule R313-15, or

(b) To such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI), or 12 DAC hours.

"As low as reasonably achievable" (ALARA) means making every reasonable effort to maintain exposures to radiation as far below the dose limits as is practical, consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed or registered sources of radiation in the public interest.

"Area of use" means a portion of an address of use that has been set aside for the purpose of receiving, using, or storing radioactive material.

"Background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include sources of radiation from radioactive materials regulated by the Division of Waste Management and Radiation Control under the Radiation Control Act or Rules.

"Becquerel" (Bq) means the SI unit of activity. One becquerel is equal to one disintegration or transformation per second.

"Bioassay" means the determination of kinds, quantities or concentrations, and in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these rules, "radiobioassay" is an equivalent term.

"Board" means the Waste Management and Radiation Control Board created under Section 19-1-106.

"Byproduct material" means:

(a) a radioactive material, with the exception of special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

(b) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition;

(c) (i) a discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

(ii) material that

(A) has been made radioactive by use of a particle accelerator; and

(B) is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

(d) a discrete source of naturally occurring radioactive material, other than source material, that

(i) The Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, has determined would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(ii) Before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

"Calibration" means the determination of:

(a) the response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or

(b) the strength of a source of radiation relative to a standard.

"CFR" means Code of Federal Regulations.

"Chelating agent" means a chemical ligand that can form coordination compounds in which the ligand occupies more than one coordination position. The agents include beta diketones, certain proteins, amine polycarboxylic acids, hydroxycarboxylic acids, gluconic acid, and polycarboxylic acids.

"Chiropractor" means an individual licensed by this state to engage in the practice of chiropractic. See Sections 58-73-101 through 58-73-701, Chiropractic Physician Practice Act.

"Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

"Commencement of construction" means taking any action defined as "construction" or any other activity at the site of a facility subject to these rules that have a reasonable nexus to radiological health and safety.

"Commission" means the U.S. Nuclear Regulatory Commission.

"Committed dose equivalent" (HT,50), means the dose equivalent to organs or tissues of reference (T), that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

"Committed effective dose equivalent" (HE,50), is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues.

"Consortium" means an association of medical use licensees and a PET radionuclide production facility in the same geographical area that jointly own or share in the operation and maintenance cost of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for medical use. The PET radionuclide production facility within the consortium must be located at an educational institution, a Federal facility, or a medical facility.

"Construction" means the installation of wells associated with radiological operations; for example, production, injection, or monitoring well networks associated with in-situ recovery or other facilities; the installation of foundations, or in-place assembly, erection, fabrication, or testing for any structure, system, or component of a facility or activity subject to these rules that are related to radiological safety or security. The term "construction" does not include:

(a) changes for temporary use of the land for public recreational purposes;

(b) site exploration, including necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;

(c) preparation of the site for construction of the facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(d) erection of fences and other access control measures that are not related to the safe use of, or security of, radiological materials subject to this part;

(e) excavation;

(f) erection of support buildings; for example, construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings; for use in connection with the construction of the facility;

(g) building of service facilities; for example, paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, and transmission lines;

(h) procurement or fabrication of components or portions of the proposed facility occurring at other than the final, in-place location at the facility; or

(i) taking any other action that has no reasonable nexus to radiological health and safety.

"Controlled area" means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee or registrant for any reason.

"Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

"Curie" means a unit of measurement of activity. One curie (Ci) is that quantity of radioactive material which decays at the rate of 3.7 x 10 to the tenth power disintegrations or transformations per second (dps or tps).

"Cyclotron" means a particle accelerator in which the charged particles travel in an outward spiral or circular path. A cyclotron accelerates charged particles at energies usually in excess of 10 megaelectron volts and is commonly used for production of short half-life radionuclides for medical use.

"Decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits:

(a) release of property for unrestricted use and termination of the license; or

(b) release of the property under restricted conditions and termination of the license.

"Deep dose equivalent" (H_d), which applies to external whole body exposure, means the dose equivalent at a tissue depth of one centimeter (1000 mg/cm^2).

"Dentist" means an individual licensed by this state to engage in the practice of dentistry. See sections 58-69-101 through 58-69-806, Dentist and Dental Hygienist Practice Act.

"Department" means the Utah Department of Environmental Quality.

"Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

"Diffuse source" means a radionuclide that has been unintentionally produced or concentrated during the processing of materials for use for commercial, medical, or research activities.

"Director" means the Director of the Division of Waste Management and Radiation Control.

"Discrete source" means a radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

"Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

"Dose" is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, or total effective dose equivalent. For purposes of these rules, "radiation dose" is an equivalent term.

"Dose equivalent" (H_T), means the product of the absorbed

dose in tissue, quality factor, and other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

"Dose limits" means the permissible upper bounds of radiation doses established in accordance with these rules. For purpose of these rules, "limits" is an equivalent term.

"Effective dose equivalent" (H_E), means the sum of the products of the dose equivalent to each organ or tissue (H_T), and the weighting factor (w_T,) applicable to each of the body organs or tissues that are irradiated.

"Embryo/fetus" means the developing human organism from conception until the time of birth.

"Entrance or access point" means an opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed or registered radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

"Explosive material" means a chemical compound, mixture, or device which produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

"EXPOSURE" when capitalized, means the quotient of dQ by dm where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons, both negatrons and positrons, liberated by photons in a volume element of air having a mass of "dm" are completely stopped in air. The special unit of EXPOSURE is the roentgen (R). See Section R313-12-20 Units of exposure and dose for the SI equivalent. For purposes of these rules, this term is used as a noun.

"Exposure" when not capitalized as the above term, means being exposed to ionizing radiation or to radioactive material. For purposes of these rules, this term is used as a verb.

"EXPOSURE rate" means the EXPOSURE per unit of time, such as roentgen per minute and milliroentgen per hour.

"External dose" means that portion of the dose equivalent received from a source of radiation outside the body.

"Extremity" means hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

"Facility" means the location within one building, vehicle, or under one roof and under the same administrative control

(a) at which the use, processing or storage of radioactive material is or was authorized; or

(b) at which one or more radiation-producing machines or radioactivity-inducing machines are installed or located.

"Former United States Atomic Energy Commission (AEC) or United States Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

"Generally applicable environmental radiation standards" means standards issued by the U.S. Environmental Protection Agency under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

"Gray" (Gy) means the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram.

"Hazardous waste" means those wastes designated as hazardous by the U.S. Environmental Protection Agency rules in 40 CFR Part 261.

"Healing arts" means the disciplines of medicine, dentistry, osteopathy, chiropractic, and podiatry.

"High radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of one mSv (0.1 rem), in one hour at 30 centimeters from the source of radiation or from a surface that the radiation penetrates. For purposes of these rules, rooms or areas in which diagnostic x-ray systems are used for healing arts purposes are not considered high radiation areas.

"Human use" means the intentional internal or external administration of radiation or radioactive material to human beings.

"Individual" means a human being.

"Individual monitoring" means the assessment of:

(a) dose equivalent, by the use of individual monitoring devices or, by the use of survey data; or

(b) committed effective dose equivalent by bioassay or by determination of the time weighted air concentrations to which an individual has been exposed, that is, DAC-hours.

"Individual monitoring devices" means devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of these rules, individual monitoring equipment and personnel monitoring equipment are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescence dosimeters (TLD's), pocket ionization chambers, and personal air sampling devices.

"Inspection" means an official examination or observation including, but not limited to, tests, surveys, and monitoring to determine compliance with rules, orders, requirements and conditions applicable to radiation sources.

"Interlock" means a device arranged or connected requiring the occurrence of an event or condition before a second condition can occur or continue to occur.

"Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

"Lens dose equivalent" (LDE) applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm^2).

"License" means a license issued by the Director in accordance with the rules adopted by the Board.

"Licensee" means a person who is licensed by the Department in accordance with these rules and the Act.

"Licensed or registered material" means radioactive material, received, possessed, used or transferred or disposed of under a general or specific license issued by the Director.

"Licensing state" means a state which, prior to November 30, 2007, was provisionally or finally designated as such by the Conference of Radiation Control Program Directors, Inc., which reviewed state regulations to establish equivalency with the Suggested State Regulations and ascertained whether a State has an effective program for control of natural occurring or accelerator produced radioactive material.

"Limits". See "Dose limits".

"Lost or missing source of radiation" means licensed or registered sources of radiation whose location is unknown. This definition includes, but is not limited to, radioactive material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

"Major processor" means a user processing, handling, or manufacturing radioactive material exceeding Type A quantities as unsealed sources or material, or exceeding four times Type B quantities as sealed sources, but does not include nuclear medicine programs, universities, industrial radiographers, or small industrial programs. Type A and B quantities are defined in 10 CFR 71.4.

"Member of the public" means an individual except when that individual is receiving an occupational dose.

"Minor" means an individual less than 18 years of age.

"Monitoring" means the measurement of radiation, radioactive material concentrations, surface area activities or quantities of radioactive material, and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these rules, radiation monitoring and radiation protection monitoring are equivalent terms.

"Natural radioactivity" means radioactivity of naturally occurring nuclides.

"Nuclear Regulatory Commission" (NRC) means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

"Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties for the licensee or registrant involve exposure to sources of radiation, whether or not the sources of radiation are in the possession of the licensee, registrant, or other person. Occupational dose does not include doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with Rule R313-32, from voluntary participation in medical research programs, or as a member of the public.

"Package" means the packaging together with its radioactive contents as presented for transport.

"Particle accelerator" means a machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of one megaelectron volt. For purposes of these rules, "accelerator" is an equivalent term.

"Permit" means a permit issued by the Director in accordance with the rules adopted by the Board.

"Permitee" means a person who is permitted by the Director in accordance with these rules and the Act.

"Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, or another state or political subdivision or agency thereof, and a legal successor, representative, agent or agency of the foregoing.

"Personnel monitoring equipment," see individual monitoring devices.

"Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy. See Sections 58-17b-101 through 58-17b-806, Pharmacy Practice Act.

"Physician" means both physicians and surgeons licensed under Section 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section 58-68-301, Utah Osteopathic Medical Practice Act.

"Physician assistant" means an individual licensed by this state to engage in practice as a physician assistant. See Sections 58-70a-101 through 58-70a-504, Physician Assistant Act.

"Podiatrist" means an individual licensed by this state to engage in the practice of podiatry. See Sections 58-5a-101 through 58-5a-501, Podiatric Physician Licensing Act.

"Practitioner" means an individual licensed by this state in the practice of a healing art. For these rules, only the following are considered to be a practitioner: physician, dentist, podiatrist, chiropractor, physician assistant, and advanced practice registered nurse.

"Protective apron" means an apron made of radiation-attenuating materials used to reduce exposure to radiation.

"Public dose" means the dose received by a member of the public from exposure to radiation or to radioactive materials released by a licensee, or to any other source of radiation under the control of a licensee or registrant. Public dose does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with Rule R313-32, or from voluntary participation in medical research programs.

"Pyrophoric material" means any liquid that ignites spontaneously in dry or moist air at or below 130 degrees Fahrenheit (54.4 degrees Celsius) or any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited and, when ignited, burns so vigorously and persistently as to create a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

"Quality factor" (Q) means the modifying factor, listed in Tables 1 and 2 of Section R313-12-20 that is used to derive dose equivalent from absorbed dose.

"Rad" means the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram

"Radiation" means alpha particles, beta particles, gamma rays, x-rays, neutrons, high speed electrons, high speed protons, and other particles capable of producing ions. For purposes of these rules, ionizing radiation is an equivalent term. Radiation, as used in these rules, does not include non-ionizing radiation, like radiowaves or microwaves, visible, infrared, or ultraviolet light.

"Radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem), in one hour at 30 centimeters from the source of radiation or from a surface that the radiation penetrates.

"Radiation machine" means a device capable of producing radiation except those devices with radioactive material as the only source of radiation.

"Radiation safety officer" means an individual who has the knowledge and responsibility to apply appropriate radiation protection rules and has been assigned such responsibility by the licensee or registrant. For a licensee authorized to use radioactive materials in accordance with the requirements of Rule R313-32,

(1) the individual named as the "Radiation Safety Officer" must meet the training requirements for a Radiation Safety Officer as stated in Rule R313-32; or

(2) the individual must be identified as a "Radiation Safety Officer" on

(a) a specific license issued by the Director, the U.S. Nuclear Regulatory Commission, or an Agreement State that authorizes the medical use of radioactive materials; or

(b) a medical use permit issued by a U.S. Nuclear Regulatory Commission master material licensee.

"Radiation source". See "Source of radiation."

"Radioactive material" means a solid, liquid, or gas which emits radiation spontaneously.

"Radioactivity" means the transformation of unstable atomic nuclei by the emission of radiation.

"Radiobioassay". See "Bioassay".

"Registrant" means any person who is registered with respect to radioactive materials or radiation machines with the Director or is legally obligated to register with the Director pursuant to these rules and the Act.

"Registration" means registration with the Director in accordance with the rules adopted by the Board.

"Regulations of the U.S. Department of Transportation" means 49 CFR 100 through 189 and 49 CFR 390 through 397, as referenced in 49 CFR 177.

"Rem" means the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor. One rem equals 0.01 sievert (Sv).

"Research and development" means:

(a) theoretical analysis, exploration, or experimentation; or

(b) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human

beings.

"Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of Rule R313-15.

"Restricted area" means an area, access to which is limited by the licensee or registrant for the purpose of protecting individuals against undue risks from exposure to sources of radiation. A "Restricted area" does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

"Roentgen" (R) means the special unit of EXPOSURE. One roentgen equals 2.58 x 10 to the -4 power coulombs per kilogram of air. See EXPOSURE.

"Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling.

"Sealed source and device registry" means the national registry that contains all the registration certificates, generated by both NRC and the Agreement States, that summarize the radiation safety information for the sealed sources and devices and describe the licensing and use conditions approved for the product.

"Shallow dose equivalent" (Hs) which applies to the external exposure of the skin of the whole body or the skin of an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter (seven mg per square centimeter).

"SI" means an abbreviation of the International System of Units.

"Sievert" (Sv) means the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor. One Sv equals 100 rem.

"Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

"Source container" means a device in which sealed sources are transported or stored.

"Source material" means:

(a) uranium or thorium, or any combination thereof, in any physical or chemical form, or

(b) ores that contain by weight one-twentieth of one percent (0.05 percent), or more of, uranium, thorium, or any combination of uranium and thorium. Source material does not include special nuclear material.

"Source material milling" means any activity that results in the production of byproduct material as defined by (b) of "byproduct material".

"Source of radiation" means any radioactive material, or a device or equipment emitting or capable of producing ionizing radiation.

"Special form radioactive material" means radioactive material which satisfies the following conditions:

(a) it is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(b) the piece or capsule has at least one dimension not less than five millimeters (0.197 inch); and

(c) it satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission in 10 CFR 71.75. A special form encapsulation designed in accordance with the U.S. Nuclear Regulatory Commission requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation designed in accordance with the requirements of 10 CFR 71.4 in effect on March 31, 1996, (see 10 CFR 71 revised January 1, 1983), and constructed before April 1, 1998, may continue to be used. Any other special form encapsulation must meet the specifications of this definition.

"Special nuclear material" means:

(a) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and other material that the U.S. Nuclear Regulatory Commission, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

(b) any material artificially enriched by any of the foregoing but does not include source material.

"Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams or a combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed one. For example, the following quantities in combination would not exceed the limitation and are within the formula:

((175(Grams contained U-235)/350) + (50(Grams U-233/200) + (50(Grams Pu)/200)) is equal to one.

"Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. When appropriate, such evaluation includes, but is not limited to, tests, physical examinations and measurements of levels of radiation or concentrations of radioactive material present.

"Test" means the process of verifying compliance with an applicable rule.

"These rules" means "Utah Radiation Control Rules".

"Total effective dose equivalent" (TEDE) means the sum of the effective dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

"Total organ dose equivalent" (TODE) means the sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in Subsection R313-15-1107(1)(f).

"U.S. Department of Energy" means the Department of Energy established by Public Law 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 et seq., to the extent that the Department exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof pursuant to sections 104(b), (c), and (d) of Public Law 93-438, October 11, 1974, 88 Stat. 1233 at 1237, effective January 19, 1975 known as the Energy Reorganization Act of 1974, and retransferred to the Secretary of Energy pursuant to section 301(a) of Public Law 95-91, August 14, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977 known as the Department of Energy Organization Act.

"Unrefined and unprocessed ore" means ore in its natural form prior to processing, like grinding, roasting or beneficiating, or refining. Processing does not include sieving or encapsulation of ore or preparation of samples for laboratory analysis.

"Unrestricted area" means an area, to which access is neither limited nor controlled by the licensee or registrant. For purposes of these rules, "uncontrolled area" is an equivalent

term.

"Waste" means those low-level radioactive wastes containing radioactive material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in paragraphs (b), (c), and (d) of the definition of byproduct material found in Section R313-12-3.

"Week" means seven consecutive days starting on Sunday.

"Whole body" means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knees.

"Worker" means an individual engaged in work under a license or registration issued by the Director and controlled by a licensee or registrant, but does not include the licensee or registrant.

"Working level" (WL), means any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of 1.3×10^5 MeV of potential alpha particle energy. The short-lived radon daughters are, for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon 220: polonium-216, lead-212, bismuth-212, and polonium-212.

"Working level month" (WLM), means an exposure to one working level for 170 hours. 2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month.

"Year" means the period of time beginning in January used to determine compliance with the provisions of these rules. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the decision to make the change is made not later than December 31 of the previous year. If a licensee or registrant changes in a year, the licensee or registrant shall assure that no day is omitted or duplicated in consecutive years.

R313-12-20. Units of Exposure and Dose.

(1) As used in these rules, the unit of EXPOSURE is the coulomb per kilogram (C per kg). One roentgen is equal to 2.58×10^{-4} coulomb per kilogram of air.

(2) As used in these rules, the units of dose are:

(a) Gray (Gy) is the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram. One gray equals 100 rad.

(b) Rad is the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram. One rad equals 0.01 Gy.

(c) Rem is the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor. One rem equals 0.01 Sv.

(d) Sievert (Sv) is the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor. One Sv equals 100 rem.

(3) As used in these rules, the quality factors for converting absorbed dose to dose equivalent are shown in Table 1.

TABLE 1

Quality Factors and Absorbed Dose Equivalencies

Type of Radiation	Quality Factor (Q)	Absorbed Dose Equal to a Unit Dose Equivalent
X, gamma, or beta radiation and high-speed electrons	1	1
Alpha particles, multiple-charged particles, fission fragments and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High energy protons	10	0.1

For the column in Table 1 labeled "Absorbed Dose Equal to a Unit Dose Equivalent", the absorbed dose in rad is equal to one rem or the absorbed dose in gray is equal to one Sv.

(4) If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in sievert per hour or rem per hour, as provided in Subsection R313-12-20(3), 0.01 Sv of neutron radiation of unknown energies may, for purposes of these rules, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence rate per unit dose equivalent or the appropriate Q value from Table 2 to convert a measured tissue dose in gray or rad to dose equivalent in sievert or rem.

TABLE 2

Mean Quality Factors, Q, and Fluence Per Unit Dose Equivalent for Monoenergetic Neutrons

	Neutron Energy Mev	Quality Factor Q	Fluence per Unit Dose Equivalent neutrons cm^{-2} rem^{-1}	Fluence per Unit Dose Equivalent neutrons cm^{-2} Sv^{-1}
thermal	2.5×10^{-8}	2	980×10^6	980×10^8
	1×10^{-7}	2	980×10^6	980×10^8
	1×10^{-6}	2	810×10^6	810×10^8
	1×10^{-5}	2	810×10^6	810×10^8
	1×10^{-4}	2	840×10^6	840×10^8
	1×10^{-3}	2	980×10^6	980×10^8
	1×10^{-2}	2.5	1010×10^6	1010×10^8
	1×10^{-1}	7.5	170×10^6	170×10^8
	5×10^{-1}	11	39×10^6	39×10^8
	1	11	27×10^6	27×10^8
	2.5	9	29×10^6	29×10^8
	5	8	23×10^6	23×10^8
	7	7	24×10^6	24×10^8
	10	6.5	24×10^6	24×10^8
	14	7.5	17×10^6	17×10^8
	20	8	16×10^6	16×10^8
	40	7	14×10^6	14×10^8
	60	5.5	16×10^6	16×10^8
	1×10^2	4	20×10^6	20×10^8
	2×10^2	3.5	19×10^6	19×10^8
	3×10^2	3.5	16×10^6	16×10^8
	4×10^2	3.5	14×10^6	14×10^8

For the column in Table 2 labeled "Quality Factor", the values of Q are at the point where the dose equivalent is maximum in a 30 cm diameter cylinder tissue-equivalent phantom.

For the columns in Table 2 labeled "Fluence per Unit Dose Equivalent", the values are for monoenergetic neutrons incident normally on a 30 cm diameter cylinder tissue equivalent phantom.

R313-12-40. Units of Radioactivity.

For purposes of these rules, activity is expressed in the SI unit of becquerel (Bq), or in the special unit of curie (Ci), or their multiples, or disintegrations or transformations per unit of time.

(1) One becquerel (Bq) equals one disintegration or transformation per second.

(2) One curie (Ci) equals 3.7×10^{10} disintegrations or transformations per second, which equals 3.7×10^{10} becquerel, which equals 2.22×10^{12} disintegrations or transformations per minute.

R313-12-51. Records.

(1) A person who receives source or byproduct material pursuant to a license issued pursuant to the regulations in this part shall keep records showing the receipt, transfer, and disposal of this source or byproduct material as follows:

(a) The licensee shall retain each record of receipt of

source or byproduct material as long as the material is possessed and for three years following transfer or disposition of the source or byproduct material.

(b) The licensee who transferred the material shall retain each record of transfer of source or byproduct material until the Director terminates each license that authorizes the activity that is subject to the recordkeeping requirement.

(c) The licensee shall retain each record of disposal of source or byproduct material until the Director terminates each license that authorizes the activity that is subject to the recordkeeping requirement.

(d) If source or byproduct material is combined or mixed with other licensed material and subsequently treated in a manner that makes direct correlation of a receipt record with a transfer, export, or disposition record impossible, the licensee may use evaluative techniques, such as first-in-first-out, to make the records that are required by Section R313-12-51 account for 100 percent of the material received.

(2) The licensee shall retain each record that is required by Section R313-12-51 or by license condition for the period specified by the appropriate rule or license condition. If a retention period is not otherwise specified by rule or license condition, each record must be maintained until the Director terminates the license that authorizes the activity that is subject to the recordkeeping requirement.

(3) A licensee or registrant shall maintain records showing the receipt, transfer, and disposal of all sources of radiation.

(4) Prior to license termination, each licensee authorized to possess radioactive material with a half-life greater than 120 days, in an unsealed form, may forward the following records to the Director:

(a) records of disposal of licensed material made under Sections R313-15-1002 (including burials authorized before January 28, 1981), R313-15-1003, R313-15-1004, and R313-15-1005; and

(b) records required by Subsection R313-15-1103(2)(d).

NOTE: 10 CFR 20.304 permitted burial of small quantities of licensed materials in soil before January 28, 1981, without specific U.S. Nuclear Regulatory Commission authorization. See 20.304 contained in the 10 CFR, parts 0 to 199, edition revised as of January 1, 1981.

(5) If licensed activities are transferred or assigned in accordance with Subsection R313-19-34(2), each licensee authorized to possess radioactive material, with a half-life greater than 120 days, in an unsealed form, shall transfer the following records to the new licensee and the new licensee will be responsible for maintaining these records until the license is terminated:

(a) records of disposal of licensed material made under Sections R313-15-1002 (including burials authorized before January 28, 1981), R313-15-1003, R313-15-1004, R313-15-1005, and R313-15-1008; and

(b) records required by Subsection R313-15-1103(2)(d).

(6) Prior to license termination, each licensee may forward the records required by Subsection R313-22-35(7) to the Director.

(7) Additional records requirements are specified elsewhere in these rules.

R313-12-52. Inspections.

(1) A licensee or registrant shall afford representatives of the Director, at reasonable times, opportunity to inspect sources of radiation and the premises and facilities wherein those sources of radiation are used or stored.

(2) A licensee or registrant shall make available to representatives of the Director for inspection, at any reasonable time, records maintained pursuant to these rules.

R313-12-53. Tests.

(1) A licensee or registrant shall perform upon instructions from a representative of the Director or shall permit the representative to perform reasonable tests as the representative deems appropriate or necessary including, but not limited to, tests of:

(a) sources of radiation;

(b) facilities wherein sources of radiation are used or stored;

(c) radiation detection and monitoring instruments; and

(d) other equipment and devices used in connection with utilization or storage of licensed or registered sources of radiation.

R313-12-54. Additional Requirements.

The Director may, by order, impose upon a licensee or registrant requirements in addition to those established in these rules that the Director deems appropriate or necessary to minimize any danger to public health and safety or the environment.

R313-12-55. Exemptions.

(1) The Board may, upon application or upon its own initiative, grant exemptions or exceptions from the requirements of these rules as it determines are authorized by law and will not result in undue hazard to public health and safety or the environment.

(2) U.S. Department of Energy contractors or subcontractors and U.S. Nuclear Regulatory Commission contractors or subcontractors operating within this state are exempt from these rules to the extent that the contractor or subcontractor under his contract receives, possesses, uses, transfers, or acquires sources of radiation. The following contractor categories are included:

(a) prime contractors performing work for the U.S. Department of Energy at U.S. Government-owned or controlled sites, including the transportation of sources of radiation to or from the sites and the performance of contract services during temporary interruptions of the transportation;

(b) prime contractors of the U.S. Department of Energy performing research in, or development, manufacture, storage, testing or transportation of, atomic weapons or components thereof;

(c) prime contractors of the U.S. Department of Energy using or operating nuclear reactors or other nuclear devices in a United States Government-owned vehicle or vessel; and

(d) any other prime contractor or subcontractor of the U.S. Department of Energy or of the U.S. Nuclear Regulatory Commission when the state and the U.S. Nuclear Regulatory Commission jointly determine:

(i) that the exemption of the prime contractor or subcontractor is authorized by law; and

(ii) that under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety.

R313-12-70. Impounding.

Sources of radiation shall be subject to impounding pursuant to Section 19-3-111. Persons who have a source of radiation impounded are subject to fees established in accordance with the Legislative Appropriations Act for the actual cost of the management and oversight activities performed by representatives of the Director.

R313-12-100. Prohibited Uses.

(1) A hand-held fluoroscopic screen using x-ray equipment shall not be used unless it has been listed in the Registry of Sealed Source and Devices or accepted for certification by the U.S. Food and Drug Administration, Center for Devices and Radiological Health.

(2) A shoe-fitting fluoroscopic device shall not be used.

R313-12-110. Communications.

All communications and reports concerning these rules, and applications filed thereunder, should be addressed to the Director of the Division of Waste Management and Radiation Control, P.O. Box 144880, 195 North 1950 West, Salt Lake City, Utah 84114-4880.

R313-12-111. Submission of Electronic Copies.

(1) All submissions to the Director not exempt in paragraph R313-12-111(5) shall also be submitted to the Director in electronic format. This requirement extends to all attachments to these documents.

(2) The electronic copy shall be a true, accurate, searchable and reproducible copy of the official submission, except that it need not include signatures or professional stamps.

(3) All electronic copies shall be submitted on a CD or DVD nonrewritable disc, except that documents smaller than 25 megabytes may be submitted by email.

(4) All documents shall be submitted in one of the following electronic formats, at the choice of the submitter:

(a) A searchable PDF document (a document that may be read and searched using Adobe Reader); or

(b) A Microsoft Word document.

(5) The requirements of this rule do not apply to:

(a) X-ray registration applications;

(b) Submissions shorter than 25 pages unless otherwise ordered by the Director;

(c) Public comments received during a formal public comment period;

(d) Correspondence received from individuals or organizations that are not currently regulated by the agency, unless that correspondence is about proposing an activity or facility that would be subject to agency regulation; and

(e) Documents used to make payments to the agency.

(6) If an official submission includes information for which business confidentiality is claimed or that is security-sensitive, this requirement applies only to that portion of the submission for which no confidentiality is claimed.

(7) The Director may waive the requirements of R313-12-111(1) for good cause.

KEY: definitions, units, inspections, exemptions
October 13, 2017 19-3-104
Notice of Continuation July 1, 2016 19-6-104

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.
R313-19. Requirements of General Applicability to Licensing of Radioactive Material.
R313-19-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe requirements governing the licensing of radioactive material. This rule also gives notice to all persons who knowingly provide to any licensee, applicant, certificate of registration holder, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's, applicant's or certificate of registration holder's activities subject to these rules, that they may be individually subject to Director enforcement action for violation of Section R313-19-5.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(7).

R313-19-2. General.

(1) A person shall not manufacture, produce, receive, possess, use, transfer, own or acquire radioactive material except as authorized in a specific or general license issued pursuant to Rules R313-21 or R313-22 or as otherwise provided in Rule R313-19.

(2) In addition to the requirements of Rules R313-19, R313-21 or R313-22, all licensees are subject to the requirements of Rules R313-12, R313-15, and R313-18. Licensees engaged in source material milling operations, authorized to possess byproduct material, as defined in Section R313-12-3 (see definition (b)) from source material milling operations, authorized to possess and maintain a source material milling facility in standby mode, authorized to receive byproduct material from other persons for disposal, or authorized to possess and dispose of byproduct material generated by source material milling operations are subject to the requirements of Rule R313-24. Licensees engaged in land disposal of radioactive material are subject to the requirements of Rule R313-25. Licensees using radioactive material in the healing arts are subject to the requirements of Rule R313-32. Licensees authorized to use sealed sources containing radioactive materials in panoramic irradiators with dry or wet storage of radioactive sealed sources, underwater irradiators, or irradiators with high dose rates from radioactive sealed sources are subject to the requirements of Rule R313-34. Licensees engaged in industrial radiographic operations are subject to the requirements of Rule R313-36. Licensees possessing category 1 or category 2 quantities of radioactive material, as defined in Section R313-37-3 (incorporating 10 CFR 37.5 by reference), are subject to the physical protection requirements of Rule R313-37. Licensees engaged in wireline and subsurface tracer studies are subject to the requirements of Rule R313-38.

R313-19-5. Deliberate Misconduct.

(1) Any licensee, certificate of registration holder, applicant for a license or certificate of registration, employee of a licensee, certificate of registration holder or applicant; or any contractor, including a supplier or consultant, subcontractor, employee of a contractor or subcontractor of any licensee or certificate of registration holder or applicant for a license or certificate of registration, who knowingly provides to any licensee, applicant, certificate holder, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's, certificate holder's or applicant's activities in these rules, may not:

(a) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, certificate of registration holder, or applicant to be in violation of any rule or order; or any term, condition, or limitation of any license issued by the Director; or

(b) Deliberately submit to the Director, a licensee, certificate of registration holder, an applicant, or a licensee's, certificate holder's or applicant's, contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the Director.

(2) A person who violates Subsections R313-19-5(1)(a) or (b) may be subject to enforcement action in accordance with Rule R313-14.

(3) For the purposes of Subsection R313-19-5(1)(a), deliberate misconduct by a person means an intentional act or omission that the person knows:

(a) Would cause a licensee, certificate of registration holder or applicant to be in violation of any rule or order; or any term, condition, or limitation, of any license issued by the Director; or

(b) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, certificate of registration holder, applicant, contractor, or subcontractor.

R313-19-7. Carriers.

Common and contract carriers, freight forwarders, warehousemen, and the U.S. Postal Service are exempt from the regulations in Rules R313-19, R313-21, R313-22, R313-32, R313-34, R313-36, R313-37, and R313-38 and the requirements for a license set forth in Subsection 19-3-104(3) to the extent that they transport or store radioactive material in the regular course of carriage for another or storage incident thereto.

R313-19-13. Exemptions.

(1) Source material.

(a) A person is exempt from Rules R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses, owns, or transfers source material in a chemical mixture, compound, solution or alloy in which the source material is by weight less than 1/20 of one percent (0.05 percent) of the mixture, compound, solution, or alloy.

(b) A person is exempt from Rules R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses or transfers unrefined and unprocessed ore containing source material; provided, that, except as authorized in a specific license, such person shall not refine or process the ore.

(c) A person is exempt from the requirements in Rules R313-15, R313-18, R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses or transfers:

(i) any quantities of thorium contained in:

(A) incandescent gas mantles,

(B) vacuum tubes,

(C) welding rods,

(D) electric lamps for illuminating purposes: provided that, each lamp does not contain more than 50 milligrams of thorium,

(E) germicidal lamps, sunlamps, and lamps for outdoor or industrial lighting provided that each lamp does not contain more than two grams of thorium,

(F) rare earth metals and compounds, mixtures, and products containing not more than 0.25 percent by weight thorium, uranium, or any combination of these, or

(G) personnel neutron dosimeters provided that each dosimeter does not contain more than 50 milligrams of thorium;

(ii) source material contained in the following products:

(A) glazed ceramic tableware manufactured before October 16, 2017, provided that the glaze contains not more than 20 percent by weight source material;

(B) piezoelectric ceramic containing not more than two percent by weight source material; or

(C) glassware containing not more than two percent by weight source material or, for glassware manufactured before

October 16, 2017, not more than ten percent by weight source material, but not including commercially manufactured glass brick, pane glass, ceramic tile, or other glass or ceramic used in construction;

(iii) photographic film, negatives and prints containing uranium or thorium;

(iv) a finished product or part fabricated of, or containing, tungsten-thorium or magnesium-thorium alloys, provided that the thorium content of the alloy does not exceed four percent by weight and that this exemption shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of the product or part;

(v) uranium contained in counterweights installed in aircraft, rockets, projectiles, and missiles, or stored or handled in connection with installation or removal of the counterweights, provided that:

(A) each counterweight has been impressed with the following legend clearly legible through any plating or other covering: "DEPLETED URANIUM",

(B) each counterweight is durably and legibly labeled or marked with the identification of the manufacturer and the statement: "UNAUTHORIZED ALTERATIONS PROHIBITED",

(C) The requirements specified in Subsections R313-19-13(1)(c)(v)(A) and (B) need not be met by counterweights manufactured prior to December 31, 1969, provided that such counterweights were manufactured under a specific license issued by the Atomic Energy Commission and were impressed with the legend, "CAUTION - RADIOACTIVE MATERIAL - URANIUM", as previously required by the rules in effect on June 30, 1969, and

(E) the exemption contained in Subsection R313-19-13(1)(c)(v) shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of any such counterweights other than repair or restoration of any plating or other covering;

(vi) natural or depleted uranium metal used as shielding constituting part of a shipping container which is conspicuously and legibly impressed with the legend "CAUTION - RADIOACTIVE SHIELDING - URANIUM" and the uranium metal is encased in mild steel or equally fire resistant metal of minimum wall thickness of one eighth inch (3.2 mm);

(vii) thorium or uranium contained in or on finished optical lenses and mirrors, provided that each lens or mirror does not contain more than 10 percent by weight thorium or uranium or, for lenses manufactured before October 16, 2017, 30 percent by weight of thorium, and that this exemption shall not be deemed to authorize either:

(A) the shaping, grinding, or polishing of a lens or manufacturing processes other than the assembly of such lens into optical systems and devices without alteration of the lens, or

(B) the receipt, possession, use, or transfer of thorium contained in contact lenses, or in spectacles, or in eyepieces in binoculars or other optical instruments;

(viii) thorium contained in a finished aircraft engine part containing nickel-thoria alloy, provided that:

(A) the thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide), and

(B) the thorium content in the nickel-thoria alloy does not exceed four percent by weight.

(ix) No person may initially transfer for sale or distribution a product containing source material to persons exempt under Subsection R313-19-13(1)(c), or equivalent regulations of an Agreement State, unless authorized by a license issued under 10 CFR 40.52 to initially transfer such products for sale or distribution.

(A) A person initially distributing source material in products covered by the exemptions in this Subsection R313-19-13(1)(c) before (Utah effective date to be set by the Board), without specific authorization may continue such distribution for one year beyond this date. Initial distribution may also be continued until the director takes final action on a pending application for license or license amendment to specifically authorize distribution submitted no later than one year beyond this date.

(B) A person authorized to manufacture, process, or produce these materials or products containing source material by an Agreement State, and a person who imports finished products or parts, for sale or distribution must be authorized by a license issued under 10 CFR 40.52 for distribution only and are exempt from the requirements of Rules R313-15 and R313-18 and Subsections R313-22-33(1)(a) and (b).

(d) The exemptions in Subsection R313-19-13(1)(c) do not authorize the manufacture of any of the products described.

(2) Radioactive material other than source material.

(a) Exempt concentrations.

(i) Except as provided in Subsection R313-19-13(2)(a)(iii) a person is exempt from Rules R313-19, R313-21 and R313-22 to the extent that the person receives, possesses, uses, transfers, owns or acquires products or materials containing:

(A) radioactive material introduced in concentrations not in excess of those listed in Section R313-19-70, or

(B) diffuse sources of natural occurring radioactive materials containing less than 15 picocuries per gram radium-226.

(ii) A manufacturer, processor, or producer of a product or material is exempt from the requirements for a license set forth in Rules R313-19, R313-21 and R313-22 and Rules R313-32, R313-34, R313-36, and R313-38 to the extent that the person transfers:

(A) radioactive material contained in a product or material in concentrations not in excess of those specified in R313-19-70; and

(B) introduced into the product or material by a licensee holding a specific license issued by the U.S. Nuclear Regulatory Commission authorizing the introduction.

(C) The exemption in R313-19-13-2(a)(ii)(A) and R313-19-13-2(a)(ii)(B) does not apply to the transfer of radioactive material contained in any food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

(iii) A person may not introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under Subsection R313-19-13(2)(a)(i) or equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State, except in accordance with a specific license issued pursuant to Subsection R313-22-75(1).

(b) Exempt quantities.

(i) Except as provided in Subsections R313-19-13(2)(b)(ii) through (iv) a person is exempt from these rules to the extent that the person receives, possesses, uses, transfers, owns, or acquires radioactive material in individual quantities which do not exceed the applicable quantity set forth in Section R313-19-71.

(ii) Subsection R313-19-13(2)(b) does not authorize the production, packaging or repackaging of radioactive material for purposes of commercial distribution, or the incorporation of radioactive material into products intended for commercial distribution.

(iii) A person may not, for purposes of commercial distribution, transfer radioactive material in the individual quantities set forth in Section R313-19-71, knowing or having reason to believe that the quantities of radioactive material will be transferred to persons exempt under Subsection R313-19-13(2)(b) or equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State, except

in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, pursuant to 10 CFR Part 32 or by the Director pursuant to Subsection R313-22-75(2), which license states that the radioactive material may be transferred by the licensee to persons exempt under Subsection R313-19-13(2)(b) or the equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State.

(iv) A person who possesses radioactive material received or acquired prior to September 25, 1971, under the general license formerly provided in 10 CFR Part 31.4 or equivalent regulations of a State is exempt from the requirements for a license set forth in Rule R313-19 to the extent that the person possesses, uses, transfers or owns radioactive material. This exemption does not apply for diffuse sources of radium-226.

(v) No person may, for purposes of producing an increased radiation level, combine quantities of radioactive material covered by this exemption so that the aggregate quantity exceeds the limits set forth in R313-19-71, except for radioactive material combined within a device placed in use before May 3, 1999, or as otherwise provided by these rules.

(c) Exempt items.

(i) Certain items containing radioactive material. Except for persons who apply radioactive material to, or persons who incorporate radioactive material into the following products, a person is exempt from these rules to the extent that person receives, possesses, uses, transfers, owns or acquires the following products:

(A) Timepieces or hands or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified levels of radiation:

(I) 25 millicuries (925.0 MBq) of tritium per timepiece;

(II) five millicuries (185.0 MBq) of tritium per hand;

(III) 15 millicuries (555.0 MBq) of tritium per dial. Bezels when used shall be considered as part of the dial;

(IV) 100 microcuries (3.7 MBq) of promethium-147 per watch or 200 microcuries (7.4 MBq) of promethium-147 per any other timepiece;

(V) 20 microcuries (0.74 MBq) of promethium-147 per watch hand or 40 microcuries (1.48 MBq) of promethium-147 per other timepiece hand;

(VI) 60 microcuries (2.22 MBq) of promethium-147 per watch dial or 120 microcuries (4.44 MBq) of promethium-147 per other timepiece dial. Bezels when used shall be considered as part of the dial;

(VII) the radiation dose rate from hands and dials containing promethium-147 will not exceed, when measured through 50 milligrams per square centimeter of absorber:

for wrist watches, 0.1 millirad (1.0 uGy) per hour at ten centimeters from any surface;

for pocket watches, 0.1 millirad (1.0 uGy) per hour at one centimeter from any surface;

for other timepieces, 0.2 millirad (2.0 uGy) per hour at ten centimeters from any surface;

(VIII) one microcurie (37.0 kBq) of radium-226 per timepiece in timepieces manufactured prior to November 30, 2007.

(B)(I) Static elimination devices which contain, as sealed source or sources, radioactive material consisting of a total of not more than 18.5 MBq (500 uCi) of polonium-210 per device.

(II) Ion generating tubes designed for ionization of air that contain, as a sealed source or sources, byproduct material consisting of a total of not more than 18.5 MBq (500 uCi) of polonium-210 per device or of a total of not more than 1.85 GBq (50 mCi) of hydrogen-3 (tritium) per device.

(III) Such devices authorized before October 23, 2012 for use under the general license then provided in 10 CFR 31.3 (January 1, 2012) or equivalent regulations of the Commission or an Agreement State and manufactured, tested, and labeled by the manufacturer in accordance with the specifications contained in a specific license issued by the Commission or Agreement State.

(C) Precision balances containing not more than one millicurie (37.0 MBq) of tritium per balance or not more than 0.5 millicurie (18.5 MBq) of tritium per balance part manufactured before June 9, 2010.

(D) Marine compasses containing not more than 750 millicuries (27.8 GBq) of tritium gas and other marine navigational instruments containing not more than 250 millicuries (9.25 GBq) of tritium gas manufactured before June 9, 2010.

(E) Ionization chamber smoke detectors containing not more than 1 microcurie (37 kBq) of americium-241 per detector in the form of a foil and designed to protect life and property from fires.

(F) Electron tubes, including spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pick-up tubes, radiation detection tubes, and other completely sealed tubes that are designed to conduct or control electrical currents; provided that each tube does not contain more than one of the following specified quantities of radioactive material:

(I) 150 millicuries (5.55 GBq) of tritium per microwave receiver protector tube or ten millicuries (370.0 MBq) of tritium per any other electron tube;

(II) one microcurie (37.0 kBq) of cobalt-60;

(III) five microcuries (185.0 kBq) of nickel-63;

(IV) 30 microcuries (1.11 MBq) of krypton-85;

(V) five microcuries (185.0 kBq) of cesium-137;

(VI) 30 microcuries (1.11 MBq) of promethium-147;

(VII) one microcurie (37.0 kBq) of radium-226;

and provided further, that the radiation dose rate from each electron tube containing radioactive material will not exceed one millirad (10.0 uGy) per hour at one centimeter from any surface when measured through seven milligrams per square centimeter of absorber.

(G) Ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, one or more sources of radioactive material, provided that:

(I) each source contains no more than one exempt quantity set forth in Section R313-19-71; and

(II) each instrument contains no more than ten exempt quantities. For purposes of this requirement, an instrument's source(s) may contain either one type or different types of radionuclides and an individual exempt quantity may be composed of fractional parts of one or more of exempt quantities in Section R313-19-71, provided that the sum of the fractions shall not exceed unity;

(III) for purposes of Subsection R313-19-13(2)(c)(i)(G), 0.05 microcurie (1.85 kBq) of americium-241 is considered an exempt quantity under Section R313-19-71.

(ii) Self-luminous products containing radioactive material.

(A) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution self-luminous products containing tritium, krypton-85, or promethium-147, and except as provided in R313-19-13(2)(c)(ii)(C), any person is exempt from the regulations in R313-15, R313-19, R313-21, R313-22, R313-32, R313-34, R313-36, and R313-38 to the extent that such a person receives, possesses, uses, transfers, owns, or acquires tritium, krypton-85, or promethium-147 in self-luminous products manufactured, processed, produced, or initially transferred in accordance with a specific license issued pursuant to 10 CFR 32.22 (2015), which license authorizes the initial transfer of the product for use.

(B) Any person who desires to manufacture, process, or produce, or initially transfer for sale or distribution self-luminous products containing tritium, krypton-85, or

promethium-147 for use under R313-19-13(2)(c)(ii)(A), should apply for a license under 10 CFR 32.22 (2015) and for a certificate of registration in accordance with 10 CFR 32.210 (2015).

(C) The exemption in R313-19-13(2)(c)(ii)(A) does not apply to tritium, krypton-85, or promethium-147 used in products primarily for frivolous purposes or in toys or adornments.

(D) Radium-226. A person is exempt from these rules, to the extent that such person receives, possesses, uses, transfers, or owns articles containing less than 0.1 microcurie (3.7 kBq) of radium-226 which were acquired prior to the effective date of these rules.

(iii) Gas and aerosol detectors containing radioactive material.

(A) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution gas and aerosol detectors containing radioactive material, any person is exempt from the regulations in parts R313-18, R313-15, R313-19, R313-21, R313-22, R313-32, R313-34, R313-36, and R313-38 to the extent that such person receives, possesses, uses, transfers, owns, or acquires byproduct material in gas and aerosol detectors designed to protect health, safety, or property, and manufactured, processed, produced, or initially transferred in accordance with a specific license issued under 10 CFR 32.26 (2015), which license authorizes the initial transfer of the product for use under this section. This exemption also covers gas and aerosol detectors manufactured or distributed before November 30, 2007, in accordance with a specific license issued by a State under comparable provisions to 10 CFR 32.26 (2015) authorizing distribution to persons exempt from regulatory requirements.

(B) Any person who desires to manufacture, process, or produce gas and aerosol detectors containing byproduct material, or to initially transfer such products for use under paragraph (a)of this section, should apply for a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 CFR Part 32.26 (2015) and for a certificate of registration in accordance with R313-22-210 or equivalent regulations of an Agreement State.

(iv) Capsules containing carbon-14 urea for "in vivo" diagnostic use for humans.

(A) Except as provided in Subsection R313-19-13(2)(c)(iv)(B), any person is exempt from the requirements in Rules R313-19 and R313-32 provided that the person receives, possesses, uses, transfers, owns, or acquires capsules containing 37 kBq (1 uCi) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each, for "in vivo" diagnostic use for humans.

(B) Any person who desires to use the capsules for research involving human subjects shall apply for and receive a specific license pursuant to Rule R313-32.

(C) Nothing in Subsection R313-19-13(2)(c)(iv) relieves persons from complying with applicable United States Food and Drug Administration, other Federal, and State requirements governing receipt, administration, and use of drugs.

(v) Certain industrial devices.

(A) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing radioactive material designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing an ionized atmosphere, any person is exempt from the regulations in parts R313-18, R313-15, R313-18, R313-15, R313-19, R313-21, R313-22, R313-32, R313-34, R313-36, and R313-38 to the extent that such person receives, possesses, uses, transfers, owns, or acquires radioactive material, in these certain detecting, measuring, gauging, or controlling devices and certain devices for producing an ionized atmosphere, and manufactured, processed, produced, or initially transferred in accordance with a specific license issued under 10 CFR 32.30 (2015), which license authorizes the initial transfer of the device for use under this rule. This exemption does not cover sources not incorporated into a device, such as calibration and reference sources.

(B) Any person who desires to manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing byproduct material for use under R313-19-13(2)(c)(v)(A), should apply for a license under 10 CFR 32.30 (2015) and for a certificate of registration in accordance with R313-22-210.

(vi) With respect to Subsections R313-19-13(2)(b)(iii), R313-19-13(2)(c)(i), (iii) and (iv), the authority to transfer possession or control by the manufacturer, processor, or producer of equipment, devices, commodities, or other products containing byproduct material whose subsequent possession, use, transfer, and disposal by other persons is exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

R313-19-20. Types of Licenses.

Licenses for radioactive materials are of two types: general and specific.

(1) General licenses provided in Rule R313-21 are effective without the filing of applications with the Director or the issuance of licensing documents to the particular persons, although the filing of a registration certificate with the Director may be required by the particular general license. The general licensee is subject to the other applicable portions of these rules and limitations of the general license.

(2) Specific licenses require the submission of an application to the Director and the issuance of a licensing document by the Director. The licensee is subject to applicable portions of these rules as well as limitations specified in the licensing document.

R313-19-25. Prelicensing Inspection.

The Director may verify information contained in applications and secure additional information deemed necessary to make a reasonable determination as to whether to issue a license and whether special conditions should be attached thereto by visiting the facility or location where radioactive materials would be possessed or used, and by discussing details of the proposed possession or use of the radioactive materials with the applicant or representatives designated by the applicant. Such visits may be made by representatives of the Director.

R313-19-30. Reciprocal Recognition of Licenses.

(1) Subject to these rules, a person who holds a specific license from the U.S. Nuclear Regulatory Commission, an Agreement State, or Licensing State, and issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is hereby granted a general license to conduct the activities authorized in the licensing document within this state, except in areas of exclusive federal jurisdiction, for a period not in excess of 180 days in a calendar year provided that:

(a) the licensing document does not limit the activity authorized by the document to specified installations or locations;

(b) the out-of-state licensee notifies the Director in writing at least three days prior to engaging in such activity. Notifications shall indicate the location, period, and type of proposed possession and use within the state, and shall be accompanied by a copy of the pertinent licensing document. If,

for a specific case, the three-day period would impose an undue hardship on the out-of-state licensee, the licensee may, upon application to the Director, obtain permission to proceed sooner. The Director may waive the requirement for filing additional written notifications during the remainder of the calendar year following the receipt of the initial notification from a person engaging in activities under the general license provided in Subsection R313-19-30(1);

(c) the out-of-state licensee complies with all applicable rules of the Board and with the terms and conditions of the licensing document, except those terms and conditions which may be inconsistent with applicable rules of the Board;

(d) the out-of-state licensee supplies other information as the Director may request; and

(e) the out-of-state licensee shall not transfer or dispose of radioactive material possessed or used under the general license provided in Subsection R313-19-30(1) except by transfer to a person specifically licensed by the Director or by the U.S. Nuclear Regulatory Commission, a Licensing State, or an Agreement State to receive the material.

(2) Notwithstanding the provisions of Subsection R313-19-30(1), a person who holds a specific license issued by the U.S. Nuclear Regulatory Commission, a Licensing State, or an Agreement State authorizing the holder to manufacture, transfer, install, or service a device described in Subsection R313-21-22(4) within the areas subject to the jurisdiction of the licensing body is hereby granted a general license to install, transfer, demonstrate, or service a device in this state provided that:

(a) the person shall file a report with the Director within thirty days after the end of a calendar quarter in which a device is transferred to or installed in this state. Reports shall identify each general licensee to whom a device is transferred by name and address, the type of device transferred, and the quantity and type of radioactive material contained in the device;

(b) the device has been manufactured, labeled, installed, and serviced in accordance with applicable provisions of the specific license issued to the person by the Nuclear Regulatory Commission, a Licensing State, or an Agreement State;

(c) the person shall assure that any labels required to be affixed to the device under rules of the authority which licensed manufacture of the device bear a statement that "Removal of this label is prohibited"; and

(d) the holder of the specific license shall furnish to the general licensee to whom the device is transferred or on whose premises a device is installed a copy of the general license contained in Subsection R313-21-22(4) or in equivalent rules of the agency having jurisdiction over the manufacture and distribution of the device.

(3) The Director may withdraw, limit, or qualify his acceptance of a specific license or equivalent licensing document issued by the U.S. Nuclear Regulatory Commission, a Licensing State or an Agreement State, or a product distributed pursuant to the licensing document, upon determining that the action is necessary in order to prevent undue hazard to public health and safety or the environment.

R313-19-34. Terms and Conditions of Licenses.

(1) Licenses issued pursuant to Rule R313-19 shall be subject to provisions of the Act, now or hereafter in effect, and to all rules, and orders of the Director.

(2)(a) Licenses issued or granted under Rules R313-21 and R313-22 and rights to possess or utilize radioactive material granted by a license issued pursuant to Rules R313-21 and R313-22 shall not be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of a license to a person unless the Director shall, after securing full information find that the transfer is in accordance with the provisions of the Act now or hereafter in effect, and to all rules, and orders of the Director, and shall give his consent in writing.

(b) An application for transfer of license shall include:

(i) The identity, technical and financial qualifications of the proposed transferee; and

(ii) Financial assurance for decommissioning information required by R313-22-35.

(3) Persons licensed by the Director pursuant to Rules R313-21 and R313-22 shall confine use and possession of the material licensed to the locations and purposes authorized in the license.

(4) Licensees shall notify the Director in writing and request termination of the license when the licensee decides to terminate activities involving materials authorized under the license.

(5) Licensees shall notify the Director in writing immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title 11, Bankruptcy, of the United States Code by or against:

(a) the licensee;

(b) an entity, as that term is defined in 11 USC 101(15), controlling the licensee or listing the license or licensee as property of the estate; or

(c) an affiliate, as that term is defined in 11 USC 101(2), of the licensee.

(6) The notification specified in Subsection R313-19-34(5) shall indicate:

(a) the bankruptcy court in which the petition for bankruptcy was filed; and

(b) the date of the filing of the petition.

(7) Licensees required to submit emergency plans pursuant to Subsection R313-22-32(8) shall follow the emergency plan approved by the Director. The licensee may change the approved plan without the Director's approval only if the changes do not decrease the effectiveness of the plan. The licensee shall furnish the change to the Director and to affected off-site response organizations within six months after the change is made. Proposed changes that decrease, or potentially decrease, the effectiveness of the approved emergency plan may not be implemented without prior application to and prior approval by the Director.

(8) Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-82/rubidium-82 generators shall test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85 contamination, respectively, in accordance with Rule R313-32 (incorporating 10 CFR 35.204 by reference). The licensee shall record the results of each test and retain each record for three years after the record is made.

(9) Each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

(10)(a) Authorization under Subsection R313-22-32(9) to produce Positron Emission Tomography (PET) radioactive drugs for noncommercial transfer to medical use licensees in its consortium does not relieve the licensee from complying with applicable FDA, other Federal, and State requirements governing radioactive drugs.

(b) A licensee authorized under Subsection R313-22-32(9) to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium shall:

(i) Satisfy the labeling requirements in Subsection R313-22-75(9)(a)(iv) for each PET radioactive drug transport radiation shield and each syringe, vial, or other container used to hold a PET radioactive drug intended for noncommercial distribution to members of its consortium.

(ii) Possess and use instrumentation to measure the

radioactivity of the PET radioactive drugs intended for noncommercial distribution to members of its consortium and meet the procedural, radioactivity measurement, instrument test, instrument check, and instrument adjustment requirements in Subsection R313-22-75(9)(c).

(c) A licensee that is a pharmacy authorized under Subsection R313-22-32(9) to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium shall require that any individual that prepares PET radioactive drugs shall be:

(i) an authorized nuclear pharmacist that meets the requirements in Subsection R313-22-75(9)(b)(ii); or

(ii) an individual under the supervision of an authorized nuclear pharmacist as specified in Rule R313-32 (incorporating 10 CFR 35.27 by reference).

(d) A pharmacy authorized under Subsection R313-22-32(9) to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium that allows an individual to work as an authorized nuclear pharmacist, shall meet the requirements of Subsection R313-22-75(9)(b)(v).

R313-19-41. Transfer of Material.

(1) Licensees shall not transfer radioactive material except as authorized pursuant to Section R313-19-41.

(2) Except as otherwise provided in the license and subject to the provisions of Subsections R313-19-41(3) and (4), licensees may transfer radioactive material:

(a) to the Director, if prior approval from the Director has been received;

(b) to the U.S. Department of Energy;

(c) to persons exempt from the rules in Rule R313-19 to the extent permitted under the exemption;

(d) to persons authorized to receive the material under terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the Director, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State, or to a person otherwise authorized to receive the material by the federal government or an agency thereof, the Director, an Agreement State or a Licensing State; or

(e) as otherwise authorized by the Director in writing.

(3) Before transferring radioactive material to a specific licensee of the Director, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State, or to a general licensee who is required to register with the Director, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4) The following methods for the verification required by Subsection R313-19-41(3) are acceptable:

(a) the transferor may possess, and read a current copy of the transferee's specific license or registration certificate;

(b) the transferor may possess a written certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date;

(c) for emergency shipments, the transferor may accept oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date, provided that the oral certification is confirmed in writing within ten days;

(d) the transferor may obtain other information compiled by a reporting service from official records of the Director, the U.S. Nuclear Regulatory Commission, an Agreement State, or a Licensing State regarding the identity of licensees and the scope and expiration dates of licenses and registration; or

(e) when none of the methods of verification described in Subsection R313-19-41(4) are readily available or when a transferor desires to verify that information received by one of the methods is correct or up-to-date, the transferor may obtain and record confirmation from the Director, the U.S. Nuclear Regulatory Commission, an Agreement State, or a Licensing State that the transferee is licensed to receive the radioactive material.

(5) Shipment and transport of radioactive material shall be in accordance with the provisions of Section R313-19-100.

R313-19-50. Reporting Requirements.

(1) Licensees shall notify the Director as soon as possible but not later than four hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of licensed material that could exceed regulatory limits. Events may include fires, explosions, toxic gas releases, etc.

(2) The following events involving licensed material require notification of the Director by the licensee within 24 hours:

(a) an unplanned contamination event that:

(i) requires access to the contamination area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

(ii) involves a quantity of material greater than five times the lowest annual limit on intake specified in Appendix B of 10 CFR 20.1001 through 20.2402 (2017), which is incorporated by reference, for the material; and

(iii) has access to the area restricted for a reason other than to allow radionuclides with a half-life of less than 24 hours to decay prior to decontamination; or

(b) an event in which equipment is disabled or fails to function as designed when:

(i) the equipment is required by rule or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;

(ii) the equipment is required by rule or license condition to be available and operable; and

(iii) no redundant equipment is available and operable to perform the required safety function; or

(c) an event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body; or

(d) an unplanned fire or explosion damaging licensed material or a device, container, or equipment containing licensed material when:

(i) the quantity of material involved is greater than five times the lowest annual limit on intake specified in Appendix B of 10 CFR 20.1001 through 20.2402 (2017), which is incorporated by reference, for the material; and

(ii) the damage affects the integrity of the licensed material or its container.

(3) Preparation and submission of reports. Reports made by licensees in response to the requirements of Section R313-19-50 must be made as follows:

(a) For radioactive materials, other than special nuclear material, licensees shall make reports required by Subsections R313-19-50(1) and (2) by telephone to the Director. To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) the caller's name and call back telephone number;

(ii) a description of the event, including date and time;

(iii) the exact location of the event;

(iv) the radionuclides, quantities, and chemical and physical form of the licensed material involved; and

(v) available personnel radiation exposure data.

(b) For special nuclear materials, licensees shall make reports required by Subsections R313-19-50(1) and (2) by telephone to the Director. To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) the caller's name, position title, and call-back telephone number;

(ii) the date, time, and exact location of the event; and

(iii) a description of the event, including:

(A) radiological or chemical hazards involved, including isotopes, quantities, and chemical and physical form of any material released; and

(B) actual or potential health and safety consequences to the workers, the public, and the environment, including relevant chemical and radiation data for actual personnel exposures to radiation or radioactive materials or hazardous chemicals produced from radioactive materials (e.g., level of radiation exposure, concentration of chemicals, and duration of exposure).

(c) Written report for materials other than special nuclear materials. A licensee who makes a report required by Subsections R313-19-50(1) or (2) shall submit a written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other rules may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports shall be sent to the Director. The report shall include the following:

(i) A description of the event, including the probable cause and the manufacturer and model number, if applicable, of equipment that failed or malfunctioned;

(ii) the exact location of the event;

(iii) the radionuclides, quantities, and chemical and physical form of the licensed material involved;

(iv) date and time of the event;

(v) corrective actions taken or planned and results of evaluations or assessments; and

(vi) the extent of exposure of individuals to radiation or radioactive materials without identification of individuals by name.

(d) Written report for special nuclear material. A licensee who makes a report required by Subsections R313-19-50(1) or (2) shall submit a written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other rules may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports shall be sent to the Director. The report shall include the following:

(i) the complete applicable information required by Subsection R313-19-50(3)(b);

(ii) the probable cause of the event, including all factors that contributed to the event and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned; and

(iii) corrective actions taken or planned to prevent occurrence of similar or identical events in the future and the results of any evaluations or assessments.

R313-19-61. Modification, Revocation, and Termination of Licenses.

(1) The terms and conditions of all licenses shall be subject to amendment, revision, or modification or the license may be suspended or revoked by reason of amendments to the Act, or by reason of rules, and orders issued by the Director.

(2) Licenses may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application or any statement of fact required under provisions of the Act, or because of conditions revealed by the application or statement of fact or any report, record, or inspection or other means which would warrant the Director to refuse to grant a license on an original application, or for violation of, or failure to observe any of the terms and conditions of the Act, or of the license, or of any rule, or order of the Director.

(3) Administrative reviews, modifications, revocations or terminations of licenses will be in accordance with Title 19, Chapter 3.

(4) The Director may terminate a specific license upon written request submitted by the licensee to the Director.

R313-19-70. Exempt Concentrations of Radioactive Materials.

Refer to Subsection R313-19-13(2)(a)

TABLE

Element (Atomic Number)	Radionuclide	Column I Concentration Material Normally Used As Gas (uCi/ml)	Column II Concentration Liquid (uCi/ml) Solid (uCi/g)
Antimony (51)	Sb-122		3 E-4
	Sb-124		2 E-4
	Sb-125		1 E-3
Argon (18)	Ar-37	1 E-3	
	Ar-41	4 E-7	
Arsenic (33)	As-73		5 E-3
	As-74		5 E-4
	As-76		2 E-4
	As-77		8 E-4
Barium (56)	Ba-131		2 E-3
	Ba-140		3 E-4
Beryllium (4)	Be-7		2 E-2
Bismuth (83)	Bi-206		4 E-4
Bromine (35)	Br-82	4 E-7	3 E-3
Cadmium (48)	Cd-109		2 E-3
	Cd-115m		3 E-4
	Cd-115		3 E-4
Calcium (20)	Ca-45		9 E-5
	Ca-47		5 E-4
Carbon (6)	C-14	1 E-6	8 E-3
Cerium (58)	Ce-141		9 E-4
	Ce-143		4 E-4
	Ce-144		1 E-4
Cesium (55)	Cs-131		2 E-2
	Cs-134m		6 E-2
	Cs-134		9 E-5
Chlorine (17)	Cl-38	9 E-7	4 E-3
Chromium (24)	Cr-51		2 E-2
Cobalt (27)	Co-57		5 E-3
	Co-58		1 E-3
	Co-60		5 E-4
Copper (29)	Cu-64		3 E-3
Dysprosium (66)	Dy-165		4 E-3
	Dy-166		4 E-4
Erbium (68)	Er-169		9 E-4
	Er-171		1 E-3
Europium (63)	Eu-152 (T = 9.2 h)		6 E-4
	Eu-155		2 E-3
Fluorine (9)	F-18	2 E-6	8 E-3
Gadolinium (64)	Gd-153		2 E-3
	Gd-159		8 E-4
Gallium (31)	Ga-72		4 E-4
Germanium (32)	Ge-71		2 E-2
Gold (79)	Au-196		2 E-3
	Au-198		5 E-4
	Au-199		2 E-3
Hafnium (72)	Hf-181		7 E-4
Hydrogen (1)	H-3	5 E-6	3 E-2
Indium (49)	In-113m		1 E-2
	In-114m		2 E-4
Iodine (53)	I-126	3 E-9	2 E-5
	I-131	3 E-9	2 E-5
	I-132	8 E-8	6 E-4
	I-133	1 E-8	7 E-5
	I-134	2 E-7	1 E-3
Iridium (77)	Ir-190		2 E-3
	Ir-192		4 E-4
	Ir-194		3 E-4
Iron (26)	Fe-55		8 E-3

	Fe-59		6 E-4
Krypton (36)	Kr-85m	1 E-6	
	Kr-85	3 E-6	
Lanthanum (57)	La-140		2 E-4
Lead (82)	Pb-203		4 E-3
Lutetium (71)	Lu-177		1 E-3
Manganese (25)	Mn-52		3 E-4
	Mn-54		1 E-3
	Mn-56		1 E-3
Mercury (80)	Hg-197m		2 E-3
	Hg-197		3 E-3
	Hg-203		2 E-4
Molybdenum (42)	Mo-99		2 E-3
Neodymium (60)	Nd-147		6 E-4
	Nd-149		3 E-3
Nickel (28)	Ni-65		1 E-3
Niobium (Columbium)(41)	Nb-95		1 E-3
	Nb-97		9 E-3
Osmium (76)	Os-185		7 E-4
	Os-191m		3 E-2
	Os-191		2 E-3
	Os-193		6 E-4
Palladium (46)	Pd-103		3 E-3
	Pd-109		9 E-4
Phosphorus (15)	P-32		2 E-4
Platinum (78)	Pt-191		1 E-3
	Pt-193m		1 E-2
	Pt-197m		1 E-2
	Pt-197		1 E-3
Potassium (19)	K-42		3 E-3
Praseodymium (59)	Pr-142		3 E-4
	Pr-143		5 E-4
Promethium (61)	Pm-147		2 E-3
	Pm-149		4 E-3
Rhenium (75)	Re-183		6 E-4
	Re-186		9 E-3
	Re-188		6 E-4
Rhodium (45)	Rh-103m		1 E-1
	Rh-105		1 E-3
Rubidium (37)	Rb-86		7 E-4
Ruthenium (44)	Ru-97		4 E-4
	Ru-103		8 E-4
	Ru-105		1 E-3
	Ru-106		1 E-4
Samarium (62)	Sm-153		8 E-4
Scandium (21)	Sc-46		4 E-4
	Sc-47		9 E-4
	Sc-48		3 E-4
Selenium (34)	Se-75		3 E-3
Silicon (14)	Si-31		9 E-3
Silver (47)	Ag-105		1 E-3
	Ag-110m		3 E-4
	Ag-111		4 E-4
Sodium (11)	Na-24		2 E-3
Strontium (38)	Sr-85		1 E-4
	Sr-89		1 E-4
	Sr-91		7 E-4
	Sr-92		7 E-4
Sulfur (16)	S-35	9 E-8	6 E-4
Tantalum (73)	Ta-182		4 E-4
Technetium (43)	Tc-96m		1 E-1
	Tc-96		1 E-3
Tellurium (52)	Te-125m		2 E-3
	Te-127m		6 E-4
	Te-127		3 E-3
	Te-129m		3 E-4
	Te-131m		6 E-4
	Te-132		3 E-4
Terbium (65)	Tb-160		4 E-4
Thallium (81)	Tl-200		4 E-3
	Tl-201		3 E-3
	Tl-202		1 E-3
	Tl-204		1 E-3
Thulium (69)	Tm-170		5 E-4
	Tm-171		5 E-3
Tin (50)	Sn-113		9 E-4
	Sn-125		2 E-4
Tungsten (Wolfram)(74)	W-181		4 E-3
	W-187		7 E-4
Vanadium (23)	V-48		3 E-4
Xenon (54)	Xe-131m	4 E-6	
	Xe-133	3 E-6	
	Xe-135	1 E-6	
Ytterbium (70)	Yb-175		1 E-3
Yttrium (39)	Y-90		2 E-4
	Y-91m		3 E-2
	Y-91		3 E-4
	Y-92		6 E-4
	Y-93		3 E-4
Zinc (30)	Zn-65		1 E-3
	Zn-69m		7 E-4
	Zn-69		2 E-2
Zirconium (40)	Zr-95		6 E-4
	Zr-97		2 E-4
Beta or gamma emitting radioactive material not listed above with half-life less than 3 years		1 E-10	1 E-6

(1) In expressing the concentrations in Section R313-19-70, the activity stated is that of the parent radionuclide and takes into account the radioactive decay products, because many radionuclides disintegrate into radionuclides which are also radioactive.

(2) For purposes of Subsection R313-19-13(2)(a) where there is involved a combination of radionuclides, the limit for the combination should be derived as follows: Determine for each radionuclide in the product the ratio between the radioactivity concentration present in the product and the exempt radioactivity concentration established in Section R313-19-70 for the specific radionuclide when not in combination. The sum of the ratios may not exceed one or unity.

(3) To convert microcuries (uCi) to SI units of kilobecquerels (kBq), multiply the above values by 37.

R313-19-71. Exempt Quantities of Radioactive Materials.
Refer to Subsection R313-19-13(2)(b)

TABLE

RADIOACTIVE MATERIAL	MICROCURIES
Antimony-122 (Sb-122)	100
Antimony-124 (Sb-124)	10
Antimony-125 (Sb-125)	10
Arsenic-73 (As-73)	100
Arsenic-74 (As-74)	10
Arsenic-76 (As-76)	10
Arsenic-77 (As-77)	100
Barium-131 (Ba-131)	10
Barium-133 (Ba-133)	10
Barium-140 (Ba-140)	10
Bismuth-210 (Bi-210)	1
Bromine-82 (Br-82)	10
Cadmium-109 (Cd-109)	10
Cadmium-115m (Cd-115m)	10
Cadmium-115 (Cd-115)	100
Calcium-45 (Ca-45)	10
Calcium-47 (Ca-47)	10
Carbon-14 (C-14)	100
Cerium-141 (Ce-141)	100
Cerium-143 (Ce-143)	100
Cerium-144 (Ce-144)	1
Cesium-129 (Cs-129)	100
Cesium-131 (Cs-131)	1,000
Cesium-134m (Cs-134m)	100
Cesium-134 (Cs-134)	1
Cesium-135 (Cs-135)	10
Cesium-136 (Cs-136)	10
Cesium-137 (Cs-137)	10
Chlorine-36 (Cl-36)	10
Chlorine-38 (Cl-38)	10
Chromium-51 (Cr-51)	1,000
Cobalt-57 (Co-57)	100
Cobalt-58m (Co-58m)	10
Cobalt-58 (Co-58)	10
Cobalt-60 (Co-60)	1
Copper-64 (Cu-64)	100
Dysprosium-165 (Dy-165)	10
Dysprosium-166 (Dy-166)	100
Erbium-169 (Er-169)	100
Erbium-171 (Er-171)	100
Europium-152 (Eu-152) 9.2h	100
Europium-152 (Eu-152) 13 yr	1
Europium-154 (Eu-154)	1
Europium-155 (Eu-155)	10
Fluorine-18 (F-18)	1,000
Gadolinium-153 (Gd-153)	10
Gadolinium-159 (Gd-159)	100
Gallium-67 (Ga-67)	100
Gallium-72 (Ga-72)	10
Germanium-68 (Ge-68)	10
Germanium-71 (Ge-71)	100
Gold-195 (Au 195)	10
Gold-198 (Au-198)	100

Gold-199 (Au-199)	100
Hafnium-181 (Hf-181)	10
Holmium-166 (Ho-166)	100
Hydrogen-3 (H-3)	1,000
Indium-111 (In-111)	100
Indium-113m (In-113m)	100
Indium-114m (In-114m)	10
Indium-115m (In-115m)	100
Indium-115 (In-115)	10
Iodine-123 (I-123)	100
Iodine-125 (I-125)	1
Iodine-126 (I-126)	1
Iodine-129 (I-129)	0.1
Iodine-131 (I-131)	1
Iodine-132 (I-132)	10
Iodine-133 (I-133)	1
Iodine-134 (I-134)	10
Iodine-135 (I-135)	10
Iridium-192 (Ir-192)	10
Iridium-194 (Ir-194)	100
Iron-52 (Fe-52)	10
Iron-55 (Fe-55)	100
Iron-59 (Fe-59)	10
Krypton-85 (Kr-85)	100
Krypton-87 (Kr-87)	10
Lanthanum-140 (La-140)	10
Lutetium-177 (Lu-177)	100
Manganese-52 (Mn-52)	10
Manganese-54 (Mn-54)	10
Manganese-56 (Mn-56)	10
Mercury-197m (Hg-197m)	100
Mercury-197 (Hg-197)	100
Mercury-203 (Hg-203)	10
Molybdenum-99 (Mo-99)	100
Neodymium-147 (Nd-147)	100
Neodymium-149 (Nd-149)	100
Nickel-59 (Ni-59)	100
Nickel-63 (Ni-63)	10
Nickel-65 (Ni-65)	100
Niobium-93m (Nb-93m)	10
Niobium-95 (Nb-95)	10
Niobium-97 (Nb-97)	10
Osmium-185 (Os-185)	10
Osmium-191m (Os-191m)	100
Osmium-191 (Os-191)	100
Osmium-193 (Os-193)	100
Palladium-103 (Pd-103)	100
Palladium-109 (Pd-109)	100
Phosphorus-32 (P-32)	10
Platinum-191 (Pt-191)	100
Platinum-193m (Pt-193m)	100
Platinum-193 (Pt-193)	100
Platinum-197m (Pt-197m)	100
Platinum-197 (Pt-197)	100
Polonium-210 (Po-210)	0.1
Potassium-42 (K-42)	10
Potassium-43 (K-43)	10
Praseodymium-142 (Pr-142)	100
Praseodymium-143 (Pr-143)	100
Promethium-147 (Pm-147)	10
Promethium-149 (Pm-149)	10
Rhenium-186 (Re-186)	100
Rhenium-188 (Re-188)	100
Rhodium-103m (Rh-103m)	100
Rhodium-105 (Rh-105)	100
Rubidium-81 (Rb-81)	10
Rubidium-86 (Rb-86)	10
Rubidium-87 (Rb-87)	10
Ruthenium-97 (Ru-97)	100
Ruthenium-103 (Ru-103)	10
Ruthenium-105 (Ru-105)	10
Ruthenium-106 (Ru-106)	1
Samarium-151 (Sm-151)	10
Samarium-153 (Sm-153)	100
Scandium-46 (Sc-46)	10
Scandium-47 (Sc-47)	100
Scandium-48 (Sc-48)	10
Selenium-75 (Se-75)	10
Silicon-31 (Si-31)	100
Silver-105 (Ag-105)	10
Silver-110m (Ag-110m)	1
Silver-111 (Ag-111)	100
Sodium-22 (Na-22)	10
Sodium-24 (Na-24)	10
Strontium-85 (Sr-85)	10
Strontium-89 (Sr-89)	1
Strontium-90 (Sr-90)	0.1
Strontium-91 (Sr-91)	10
Strontium-92 (Sr-92)	10
Sulfur-35 (S-35)	100
Tantalum-182 (Ta-182)	10
Technetium-96 (Tc-96)	10
Technetium-97m (Tc-97m)	100
Technetium-97 (Tc-97)	100
Technetium-99m (Tc-99m)	100
Technetium-99 (Tc-99)	10
Tellurium-125m (Te-125m)	10
Tellurium-127m (Te-127m)	10
Tellurium-127 (Te-127)	100
Tellurium-129m (Te-129m)	10
Tellurium-129 (Te-129)	100
Tellurium 131m (Te-131m)	10
Tellurium-132 (Te-132)	10
Terbium-160 (Tb-160)	10
Thallium-200 (Tl-200)	100
Thallium-201 (Tl-201)	100
Thallium-202 (Tl-202)	100
Thallium-204 (Tl-204)	10
Thulium-170 (Tm-170)	10
Thulium-171 (Tm-171)	10
Tin-113 (Sn-113)	10
Tin-125 (Sn-125)	10
Tungsten-181 (W-181)	10
Tungsten-185 (W-185)	10
Tungsten-187 (W-187)	100
Vanadium-48 (V-48)	10
Xenon-131m (Xe-131m)	1,000
Xenon-133 (Xe-133)	100
Xenon-135 (Xe-135)	100
Ytterbium-175 (Yb-175)	100
Yttrium-87 (Y-87)	10
Yttrium-88 (Y-88)	10
Yttrium-90 (Y-90)	10
Yttrium-91 (Y-91)	10
Yttrium-92 (Y-92)	100
Yttrium-93 (Y-93)	100
Zinc-65 (Zn-65)	10
Zinc-69m (Zn-69m)	100
Zinc-69 (Zn-69)	1,000
Zirconium-93 (Zr-93)	10
Zirconium-95 (Zr-95)	10
Zirconium-97 (Zr-97)	10
Any radioactive material not listed above other than alpha emitting radioactive material.	0.1

(1) To convert microcuries (uCi) to SI units of kilobecquerels (kBq), multiply the above values by 37.

R313-19-100. Transportation.

For purposes of Section R313-19-100, 10 CFR 71.0(c), 71.1(a), 71.3, 71.4, 71.13, 71.14(a), 71.15, 71.17, 71.19(a), 71.19(b), 71.19(c), 71.20 through 71.23, 71.47, 71.83 through 71.89, 71.97, 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.105, 71.127 through 71.137, and Appendix A to Part 71 (2014) are incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following:

(a) In 10 CFR 71.4 the following definitions:

(i) "close reflection by water";

(ii) "licensed material";

(iii) "optimum interspersed hydrogenous moderation";

(iv) "spent nuclear fuel or spent fuel"; and

(v) "state."

(2) The substitution of the following date reference:

(a) "October 1, 2011" for "October 1, 2008".

(3) The substitution of the following rule references:

(a) "R313-36 (incorporating 10 CFR 34.31(b) by reference)" for "Sec. 34.31(b) of this chapter" as found in 10 CFR 71.101(g);

(b) "R313-15-502" for reference to "10 CFR 20.1502";

(c) "R313-14" for reference to "10 CFR Part 2 Subpart B";

(d) "Rule R313-32, 10 CFR Part 35," for reference to "10 CFR part 35";

(e) "R313-15-906(5)" for reference to "10 CFR 20.1906(e)";

(f) "R313-19-100(5)" for "Sec.71.5";

(g) "10 CFR 71.101(a), 71.101(b), 71.101(c)(1),

71.101(g), 71.105, and 71.127 through 71.137" for "subpart H of this part" or for "subpart H" except in 10 CFR 71.17(b), 71.20(b), 71.21(b), 71.22(b), 71.23(b);

(h) "10 CFR 71.0(c), 71.1(a), 71.3, 71.4, 71.17(c)(2), 71.20(c)(2), 71.21(d)(2), 71.83 through 71.89, 71.97, 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.105, and 71.127 through 71.137" for "subparts A, G, and H of this part";

(i) "10 CFR 71.47" for "subparts E and F of this part"; and

(j) "10 CFR 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.105, and 71.127 through 71.137" for "Sec. Sec. 71.101 through 71.137."

(4) The substitution of the following terms:

(a) "Director" for:

(i) "Commission" in 10 CFR 71.0(c), 71.17(a), 71.20(a), 71.21(a), 71.22(a), 71.23(a), and 71.101(c)(1);

(ii) "Director, Division of Nuclear Safety, Office of Nuclear Security and Incident Response" in 10 CFR 71.97(c)(1), and 71.97(f)(1);

(iii) "Director, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001" in 10 CFR 71.97(c)(3)(iii);

(iv) "NRC" in 10 CFR 71.101(f);

(b) "Director, the U.S. Nuclear Regulatory Commission, or an Agreement State" for "Commission" in 10 CFR 71.3;

(c) "The Governor of Utah" for:

(i) "the governor of a State" in 71.97(a);

(ii) "each appropriate governor" in 10 CFR 71.97(c)(1);

(iii) "the governor" in 10 CFR 71.97(c)(3);

(iv) "the governor of the state" in 10 CFR 71.97(e);

(v) "the governor of each state" in 10 CFR 71.97(f)(1);

(vi) "a governor" in 10 CFR 71.97(e);

(d) "State of Utah" for "State" in 71.97(a), 71.97(b)(2), and 71.97(d)(4);

(e) "the Governor of Utah's" for:

(i) "the governor's" in 10 CFR 71.97(a), 71.97(c)(3), 71.97(c)(3)(iii), 71.97(e), and 71.97(f)(1);

(ii) "governor's" in 10 CFR 71.97(c)(1), and 71.97(e);

(f) "Specific or general" for "NRC" in 10 CFR 71.0(c);

(g) "The Director at the address specified in R313-12-110" for reference to "ATTN: Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards" in 10 CFR 71.101(c)(1);

(h) "Each" for "Using an appropriate method listed in Sec. 71.1(a), each" in 10 CFR 71.101(c)(1);

(i) "The material must be contained in a Type A package meeting the requirements of 49 CFR 173.417(a)." for "The fissile material need not be contained in a package which meets the standards of subparts E and F of this part; however, the material must be contained in a Type A package. The Type A package must also meet the DOT requirements of 49 CFR 173.417(a)." as found in 10 CFR 71.22(a) and 71.23(a);

(j) "Licensee" for "licensee, certificate holder, and applicant for a COC"; and

(k) "Licensee is" for reference to "licensee, certificate holder, and applicant for a COC are."

(5) Transportation of licensed material

(a) Each licensee who transports licensed material outside the site of usage, as specified in the license issued by the Director, the U.S. Nuclear Regulatory Commission or an Agreement State, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the U.S. Department of Transportation regulations in 49 CFR parts 107, 171 through 180, and 390 through 397 (2009), appropriate to the mode of transport.

(i) The licensee shall particularly note DOT regulations in the following areas:

(A) Packaging--49 CFR part 173: subparts A (49 CFR 173.1 through 49 CFR 173.13), B (49 CFR 173.21 through 49 CFR 173.40), and I (49 CFR 173.401 through 49 CFR 173.477).

(B) Marking and labeling--49 CFR part 172: subpart D (49 CFR 172.300 through 49 CFR 172.338); and 49 CFR 172.400 through 49 CFR 172.407 and 49 CFR 172.436 through 49 CFR 172.441 of subpart E.

(C) Placarding--49 CFR part 172: subpart F (49 CFR 172.500 through 49 CFR 172.560), especially 49 CFR 172.500 through 49 CFR 172.519 and 49 CFR 172.556; and appendices B and C.

(D) Accident reporting--49 CFR part 171: 49 CFR 171.15 and 171.16.

(E) Shipping papers and emergency information--49 CFR part 172: subparts C (49 CFR 172.200 through 49 CFR 172.205) and G (49 CFR 172.600 through 49 CFR 172.606).

(F) Hazardous material employee training--49 CFR part 172: subpart H (49 CFR 172.700 through 49 CFR 172.704).

(G) Security plans--49 CFR part 172: subpart I (49 CFR 172.800 through 49 CFR 172.804).

(H) Hazardous material shipper/carrier registration--49 CFR part 107: subpart G (49 CFR 107.600 through 49 CFR 107.606).

(ii) The licensee shall also note DOT regulations pertaining to the following modes of transportation:

(A) Rail--49 CFR part 174: subparts A through D (49 CFR 174.1 through 49 CFR 174.86) and K (49 CFR 174.700 through 49 CFR 174.750).

(B) Air--49 CFR part 175.

(C) Vessel--49 CFR part 176: subparts A through F (49 CFR 176.1 through 49 CFR 176.99) and M (49 CFR 176.700 through 49 CFR 107.720).

(D) Public Highway--49 CFR part 177 and parts 390 through 397.

(b) If DOT regulations are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of the DOT specified in paragraph (a) of this section to the same extent as if the shipment or transportation were subject to DOT regulations. A request for modification, waiver, or exemption from those requirements, and any notification referred to in those requirements, must be filed with, or made to, the Director, P.O. Box 144850, Salt Lake City, Utah 84114-4850.

KEY: licenses, reciprocity, transportation, exemptions
October 13, 2017 19-3-104
Notice of Continuation July 1, 2016 19-6-104

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.
R313-21. General Licenses.
R313-21-1. Purpose and Scope.

(1) R313-21 establishes general licenses for the possession and use of radioactive material contained in certain items and a general license for ownership of radioactive material.

(2) The rules set forth herein are adopted pursuant to the provisions of Sections 19-3-104(3)and 19-3-104(6).

R313-21-21. General Licenses--Source Material.

(1) A general license is hereby issued authorizing commercial and industrial firms, research, educational and medical institutions, and state and local government agencies to receive, possess, use and transfer uranium and thorium, in their natural isotopic concentrations and in the form of depleted uranium, for research, development, educational, commercial, or operational purposes in the following forms and quantities:

(a) No more than 1.5 kg (3.3 lb) of uranium and thorium in dispersible forms, for example, gaseous, liquid, powder, etc., at any one time. Any material processed by the general licensee that alters the chemical or physical form of the material containing source material must be accounted for as a dispersible form. A person authorized to possess, use, and transfer source material under Subsection R313-21-21(1) may not receive more than a total of 7 kg (15.4 lb) of uranium and thorium in any one calendar year. A person possessing source material in excess of these limits as of October 16, 2017, may continue to possess up to 7 kg (15.4 lb) of uranium and thorium at any one time for one year beyond this date, or until the Director takes final action on a pending application submitted on or before October 16, 2017, for a specific license for this material; and receive up to 70 kg (154 lb) of uranium or thorium in any one calendar year until December 31, 2018, or until the Director takes final action on a pending application submitted on or before October 16, 2018, for a specific license for this material; and

(b) No more than a total of 7 kg (15.4 lb) of uranium and thorium at any one time. A person authorized to possess, use, and transfer source material under Subsection R313-21-21(1) may not receive more than a total of 70 kg (154 lb) of uranium and thorium in any one calendar year. A person may not alter the chemical or physical form of the source material possessed under Subsection R313-21-21(1) unless it is accounted for under the limits of Subsection R313-21-21(1)(a); or

(c) No more than 7 kg (15.4 lb) of uranium, removed during the treatment of drinking water, at any one time. A person may not remove more than 70 kg (154 lb) of uranium from drinking water during a calendar year under Subsection R313-21-21(1)(a); or

(d) No more than 7 kg (15.4 lb) of uranium and thorium at laboratories for the purpose of determining the concentration of uranium and thorium contained within the material being analyzed at any one time. A person authorized to possess, use, and transfer source material under Subsection R313-21-21(1) may not receive more than a total of 70 kg (154 lb) of source material in any one calendar year.

(2) Any person who receives, possesses, uses, or transfers source material pursuant to the general license issued in Subsection R313-21-21(1):

(a) Is prohibited from administering source material, or the radiation therefrom, either externally or internally, to human beings except as may be authorized by the Director in a specific license.

(b) Shall not abandon this source material. Source material may be disposed of as follows:

(i) A cumulative total of 0.5 kg (1.1 lb) of source material in a solid, non-dispersible form may be transferred each calendar year, by a person authorized to receive, possess, use, and transfer source material under this general license to persons receiving the material for permanent disposal. The recipient of source material transferred under the provisions of Subsection R313-21-21(2) is exempt from the requirements to obtain a license under Rule R313-22 to the extent the source material is permanently disposed. This provision does not apply to any person who is in possession of source material under a specific license issued under Rules R313-19, and R313-22; or

(ii) In accordance with Section R313-15-1001.

(c) Is subject to the provisions in 10 CFR 40.2a through 40.4, 10 CFR 40.41(c), 10 CFR 40.46, and 10 CFR 40.61(a) and (b), which are incorporated by reference in Section R313-24-4, Section R313-12-3, Section R313-19-5, Section R313-19-34, Subsection R313-22-34(2), Section R313-19-41, Section R313-19-50, Section R313-15-1111, Sections R313-12-51 through R313-12-53, Section R313-19-61, Rule R313-14, 10 CFR 40.41(d), 10 CFR 40.41(e)(1) and (e)(3), 10 CFR 40.51(b)(6), and 10 CFR 40.56.

(d) Shall respond to written requests from the Director to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the person cannot provide the requested information within the allotted time, the person shall, within that same time period, request a longer period to supply the information by providing the Director a written justification using the method stated in Section R313-12-110.

(e) Shall not export such source material except in accordance with 10 CFR Part 110 (2017).

(3) Any person who receives, possesses, uses, or transfers source material in accordance with Subsection R313-21-21(1) shall conduct activities so as to minimize contamination of the facility and the environment. When activities involving such source material are permanently ceased at any site, if evidence of significant contamination is identified, the general licensee shall notify the Director using the method stated in Section R313-12-110 about such contamination and may consult with the Director as to the appropriateness of sampling and restoration activities to ensure that any contamination or residual source material remaining at the site where source material was used under this general license is not likely to result in exposures that exceed the limits in Section R313-15-402.

(4) Any person who receives, possesses, uses, or transfers source material in accordance with the general license granted in Subsection R313-21-21(1) is exempt from the provisions of Rules R313-15 and R313-18 to the extent that such receipt, possession, use, and transfer are within the terms of this general license, except that such person shall comply with the provisions of Sections R313-15-402 and R313-15-1001 to the extent necessary to meet the provisions of Subsections R313-21-21(2)(b) and R313-21-21(3). However, this exemption does not apply to any person who also holds a specific license issued under Rules R313-19 and R313-22.

(5) No person may initially transfer or distribute source material to persons generally licensed under Subsection R313-21-21(1)(a) or R313-21-21(1)(b), or paragraphs (a)(1) or (a)(2) of 10 CFR 40.22 for a non-Agreement State, or equivalent regulations of an Agreement State, unless authorized by a specific license issued in accordance with Subsection R313-22-54 or 10 CFR 40.54 for a non-Agreement State or equivalent provisions of an Agreement State. This prohibition does not apply to analytical laboratories returning processed samples to the client who initially provided the sample. Initial distribution of source material to persons generally licensed by Subsection R313-21-21(1) before October 16, 2017, without specific authorization may continue for one year beyond this date. Distribution may also be continued until the Director takes final action on a pending application for license or license amendment to specifically authorize distribution submitted on

or before October 16, 2018.

(6) A general license is hereby issued authorizing the receipt of title to source material without regard to quantity. This general license does not authorize a person to receive, possess, deliver, use, or transfer source material.

(7) Depleted uranium in industrial products and devices.

(a) A general license is hereby issued to receive, acquire, possess, use, or transfer, in accordance with the provisions of R313-21-21(7)(b), (c), (d), and (e), depleted uranium contained in industrial products or devices for the purpose of providing a concentrated mass in a small volume of the product or device.

(b) The general license in R313-21-21(7)(a) applies only to industrial products or devices which have been manufactured or initially transferred, either in accordance with a specific license issued to the manufacturer of the products or devices pursuant to R313-22-75(11) or in accordance with a specific license issued to the manufacturer by the Nuclear Regulatory Commission, an Agreement State, or a Licensing State which authorizes manufacture of the products or devices for distribution to persons generally licensed by the Nuclear Regulatory Commission, an Agreement State, or a Licensing State.

(c)(i) Persons who receive, acquire, possess, or use depleted uranium pursuant to the general license established by R313-21-21(7)(a) shall file form DWMRC-12 "Registration Form-Use of Depleted Uranium Under General License," with the Director. The form shall be submitted within 30 days after the first receipt or acquisition of depleted uranium. The registrant shall furnish on form DWMRC-12 the following information and other information as may be required by that form:

(A) name and address of the registrant;

(B) a statement that the registrant has developed and will maintain procedures designed to establish physical control over the depleted uranium described in R313-21-21(7)(a) and designed to prevent transfer of such depleted uranium in any form, including metal scrap, to persons not authorized to receive the depleted uranium; and

(C) name and title, address, and telephone number of the individual duly authorized to act for and on behalf of the registrant in supervising the procedures identified in R313-21-21(7)(c)(i)(B).

(ii) The registrant possessing or using depleted uranium under the general license established by R313-21-21(7)(a) shall report in writing to the Director any changes in information previously furnished on form DWMRC-12 "Registration Form - Use of Depleted Uranium Under General License." The report shall be submitted within 30 days after the effective date of the change.

(d) A person who receives, acquires, possesses, or uses depleted uranium pursuant to the general license established by R313-21-21(5)(a):

(i) shall not introduce depleted uranium, in any form, into a chemical, physical, or metallurgical treatment or process, except a treatment or process for repair or restoration of any plating or other covering of the depleted uranium;

(ii) shall not abandon depleted uranium;

(iii) shall transfer or dispose of depleted uranium only by transfer in accordance with the provisions of R313-19-41. In the case where the transferee receives the depleted uranium pursuant to the general license established by R313-21-21(7)(a), the transferor shall furnish the transferee a copy of R313-21 and a copy of form DWMRC-12. In the case where the transferee receives the depleted uranium pursuant to a general license contained in the Nuclear Regulatory Commission's or Agreement State's regulation equivalent to R313-21-21(7)(a), the transferor shall furnish the transferee a copy of this rule and a copy of form DWMRC-12 accompanied by a note explaining that use of the product or device is regulated by the Nuclear Regulatory Commission or Agreement State under requirements substantially the same as those in R313-21;

(iv) within 30 days of any transfer, shall report in writing to the Director the name and address of the person receiving the depleted uranium pursuant to the transfer;

(v) shall not export depleted uranium except in accordance with a license issued by the Nuclear Regulatory Commission pursuant to 10 CFR Part 110; and

(vi) shall pay annual fees pursuant to R313-70.

(e) Any person receiving, acquiring, possessing, using, or transferring depleted uranium pursuant to the general license established by R313-21-21(7)(a) is exempt from the requirements of R313-15 and R313-18 of these rules with respect to the depleted uranium covered by that general license.

R313-21-22. General Licenses*--Radioactive Material Other Than Source Material.

NOTE: *Different general licenses are issued in this section, each of which has its own specific conditions and requirements.

(1) RESERVED.

(2) Certain items and self-luminous products containing radium-226.

(a) A general license is hereby issued to a person to acquire, receive, possess, use, or transfer, in accordance with the provisions of Subsections R313-21-22(2)(b), R313-21-22(2)(c), and R313-21-22(2)(d), radium-226 contained in the following products manufactured prior to November 30, 2007.

(i) Antiquities originally intended for use by the general public. For the purposes of Subsection R313-21-22(2)(a), antiquities mean products originally intended for use by the general public and distributed in the late 19th and early 20th centuries, such as radium emanator jars, revigators, radium water jars, radon generators, refrigerator cards, radium bath salts, and healing pads.

(ii) Intact timepieces containing greater than 37 kilobecquerels (1 uCi), nonintact timepieces, and timepiece hands and dials no longer installed in timepieces.

(iii) Luminous items installed in air, marine, or land vehicles.

(iv) All other luminous products provided that no more than 100 items are used or stored at the same location at one time.

(v) Small radium sources containing no more than 37 kilobecquerels (1 uCi) of radium-226. For the purposes of Subsection R313-21-22(2)(a), "small radium sources" means discrete survey instrument check sources, sources contained in radiation measuring instruments, sources used in educational demonstrations such as cloud chambers and spinthariscopes, electron tubes, static eliminators, or as designated by the Director.

(b) Persons who acquire, receive, possess, use, or transfer radioactive material under the general license issued in Subsection R313-21-22(2)(a) are exempt from the provisions of Rules R313-15, R313-18, and Sections R313-12-51 and R313-19-50, to the extent that the receipt, possession, use, or transfers of radioactive material is within the terms of the general license; provided, however, that this exemption shall not be deemed to apply to a person specifically licensed under Rule R313-22.

(c) A person who acquires, receives, possesses, uses, or transfers radioactive material in accordance with the general license in Subsection R313-21-22(2)(a):

(i) Shall notify the Director should there be an indication of possible damage to the product so that it appears it could result in a loss of the radioactive material. A report containing a brief description of the event, and the remedial action taken, must be furnished to the Director within 30 days.

(ii) Shall not abandon products containing radium-226. The product, and radioactive material from the product, may

only be disposed of according to Section R313-15-1008 or by transfer to a person authorized by a specific license to receive the radium-226 in the product or as otherwise approved by the Director.

(iii) Shall not export products containing radium-226 except in accordance with 10 CFR Part 110.

(iv) Shall dispose of products containing radium-226 at a disposal facility authorized to dispose of radioactive material in accordance with Federal or State solid or hazardous waste laws, including the Solid Waste Disposal Act, as authorized under the Energy Policy Act of 2005, by transfer to a person authorized to receive radium-226 under Rule R313-22 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State or as otherwise approved by the Director.

(v) Shall respond to written requests from the Director to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by providing the Director a written justification using the method stated in Section R313-12-110.

(d) The general license in R313-21-22(2)(a) does not authorize the manufacture, assembly, disassembly, repair, or import of products containing radium-226, except that timepieces may be disassembled and repaired.

(3) RESERVED.

(4) Certain detecting, measuring, gauging or controlling devices and certain devices for producing light or an ionized atmosphere.*

NOTE: *Persons possessing radioactive material in devices under a general license in R313-21-22(4) before January 15, 1975, may continue to possess, use, or transfer that material in accordance with the labeling requirements of R313-21-22(4) in effect on January 14, 1975.

(a) A general license is hereby issued to commercial and industrial firms and research, educational and medical institutions, individuals in the conduct of their business, and state or local government agencies to own, acquire, receive, possess, use or transfer, in accordance with the provisions of R313-21-22(4)(b), (c) and (d), radioactive material, excluding special nuclear material, contained in devices designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere.

(b)(i) The general license in R313-21-22(4)(a) applies only to radioactive material contained in devices which have been manufactured or initially transferred and labeled in accordance with the specifications contained in:

(A) a specific license issued by the Director pursuant to R313-22-75(4); or

(B) an equivalent specific license issued by the Nuclear Regulatory Commission or an Agreement State; or

(C) An equivalent specific license issued by a State with provisions comparable to R313-22-75.*

NOTE: *Regulations under the Federal Food, Drug, and Cosmetic Act authorizing the use of radioactive control devices in food production require certain additional labeling thereon which is found in 21 CFR 179.21.

(ii) The devices must have been received from one of the specific licensees described in R313-21-22(4)(b)(i) or through a transfer made under R313-21-22(4)(c)(ix).

(c) Any person who owns, acquires, receives, possesses, uses or transfers radioactive material in a device pursuant to the general license in R313-21-22(4)(a):

(i) shall assure that all labels affixed to the device at the time of receipt and bearing a statement that removal of the label is prohibited are maintained thereon and shall comply with all instructions and precautions provided by the labels;

(ii) shall assure that the device is tested for leakage of radioactive material and proper operation of the on-off mechanism and indicator, if any, at no longer than six-month intervals or at other intervals as are specified in the label; however:

(A) Devices containing only krypton need not be tested for leakage of radioactive material, and

(B) Devices containing only tritium or not more than 3.7 megabecquerel (100 uCi) of other beta, gamma, or both, emitting material or 0.37 megabecquerel (10 uCi) of alpha emitting material and devices held in storage in the original shipping container prior to initial installation need not be tested for any purpose;

(iii) shall assure that other testing, installation, servicing, and removal from installation involving the radioactive materials, its shielding or containment, are performed:

(A) in accordance with the instructions provided by the labels; or

(B) by a person holding a specific license pursuant to R313-22 or from the Nuclear Regulatory Commission, an Agreement State, or a Licensing State to perform such activities;

(iv) shall maintain records showing compliance with the requirements of R313-21-22(4)(c)(ii) and (iii). The records shall show the results of tests. The records also shall show the dates of performance of, and the names of persons performing, testing, installation, servicing, and removal from the installation the radioactive material and its shielding or containment. The licensee shall retain these records as follows:

(A) Each record of a test for leakage of radioactive material required by R313-21-22(4)(c)(ii) shall be retained for three years after the next required leak test is performed or until the sealed source is transferred or disposed of;

(B) Each record of a test of the on-off mechanism and indicator required by R313-21-22(4)(c)(ii) shall be retained for three years after the next required test of the on-off mechanism and indicator is performed or until the sealed source is transferred or disposed of;

(C) Each record that is required by R313-21-22(4)(c)(iii) shall be retained for three years from the date of the recorded event or until the device is transferred or disposed of;

(v) shall immediately suspend operation of the device if there is a failure of, or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the on-off mechanism or indicator, or upon the detection of 185 becquerel (0.005 uCi) or more removable radioactive material. The device may not be operated until it has been repaired by the manufacturer or other person holding a specific license to repair the device that was issued by the Director, the Nuclear Regulatory Commission, an Agreement State, or a Licensing State. The device and any radioactive material from the device may only be disposed of by transfer to a person authorized by a specific license to receive the radioactive material in the device or as otherwise approved by the Director, the Nuclear Regulatory Commission, an Agreement State, or a Licensing State. A report containing a brief description of the event and the remedial action taken; and, in the case of detection of 185 becquerel (0.005 uCi) or more removable radioactive material or failure of or damage to a source likely to result in contamination of the premises or the environs, a plan for ensuring that the premises and environs are acceptable for unrestricted use, must be furnished to the Director within 30 days. Under these circumstances, the criteria set out in R313-15-402 may be applicable, as determined by the Director on a case-by-case basis;

(vi) shall not abandon the device containing radioactive material;

(vii) shall not export the device containing radioactive materials except in accordance with 10 CFR 110;

(viii)(A) shall transfer or dispose of the device containing radioactive material only by export as provided by R313-21-22(4)(c)(vii), by transfer to another general licensee as authorized in R313-21-22(4)(c)(ix), to a person authorized to receive the device by a specific license issued under R313-22, to an authorized waste collector under R313-25, or equivalent regulations of the Nuclear Regulatory Commission, an Agreement State, or a Licensing State , or as otherwise approved under R313-21-22(4)(c)(viii)(C);

(B) shall furnish a report to the Director within 30 days after transfer of a device to a specific licensee or export. The report must contain:

(I) the identification of the device by manufacturer's or initial transferor's name, model number, and serial number;

(II) the name, address, and license number of the person receiving the device, the license number is not applicable if exported; and

(III) the date of the transfer;

(C) shall obtain written approval from the Director before transferring the device to any other specific licensee not specifically identified in R313-21-22(4)(c)(viii)(A); however, a holder of a specific license may transfer a device for possession and use under its own specific license without prior approval, if the holder:

(I) verifies that the specific license authorizes the possession and use, or applies for and obtains an amendment to the license authorizing the possession and use;

(II) removes, alters, covers, or clearly and unambiguously augments the existing label (otherwise required by R313-21-22(4)(c)(i)) so that the device is labeled in compliance with R313-15-904; however, the manufacturer, model number, and serial number must be retained;

(III) obtains the manufacturer's or initial transferor's information concerning maintenance that would be applicable under the specific license (such as leak testing procedures); and

(IV) reports the transfer under R313-21-22(4)(c)(viii)(B);

(ix) shall transfer the device to another general licensee only if:

(A) the device remains in use at a particular location. In this case, the transferor shall give the transferee a copy of R313-21-22(4), R313-12-51, R313-15-1201, and R313-15-1202, and any safety documents identified in the label of the device. Within 30 days of the transfer, the transferor shall report to the Director:

(I) the manufacturer's or initial transferor's name;

(II) the model number and serial number of the device transferred;

(III) the transferee's name and mailing address for the location of use; and

(IV) the name, title, and phone number of the responsible individual identified by the transferee in accordance with R313-21-22(4)(c)(xii) to have knowledge of and authority to take actions to ensure compliance with the appropriate regulations and requirements; or

(B) the device is held in storage by an intermediate person in the original shipping container at its intended location of use prior to initial use by a general licensee;

(x) shall comply with the provisions of R313-15-1201 and R313-15-1202 for reporting radiation incidents, theft or loss of licensed material, but shall be exempt from the other requirements of R313-15 and R313-18;

(xi) shall respond to written requests from the Director to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by submitting a letter to the Director and provide written justification as to why it cannot comply;

(xii) shall appoint an individual responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements. The general licensee, through this individual, shall ensure the day-to-day compliance with appropriate regulations and requirements. This appointment does not relieve the general licensee of any of its responsibility in this regard;

(xiii)(A) shall register, in accordance with R313-21-22(4)(c)(xiii)(B) and (C), devices containing at least 370 megabecquerel (ten mCi) of cesium-137, 3.7 megabecquerel (0.1 mCi) of strontium-90, 37 megabecquerel (one mCi) of cobalt-60, 3.7 megabecquerel (0.1 mCi) of radium-226, or 37 megabecquerel (one mCi) of americium-241 or any other transuranic, (elements with atomic number greater than uranium-92), based on the activity indicated on the label. Each address for a location of use, as described under R313-21-22(4)(c)(xiii)(C)(IV) represents a separate general licensee and requires a separate registration and fee;

(B) if in possession of a device meeting the criteria of R313-21-22(4)(c)(xiii)(A), shall register these devices annually with the Director and shall pay the fee required by R313-70. Registration shall include verifying, correcting, or adding, as appropriate, to the information provided in a request for registration received from the Director. The registration information must be submitted to the Director within 30 days of the date of the request for registration or as otherwise indicated in the request. In addition, a general licensee holding devices meeting the criteria of R313-21-22(4)(c)(xiii)(A) is subject to the bankruptcy notification requirement in R313-19-34(5) and (6);

(C) in registering devices, the general licensee shall furnish the following information and any other information specifically requested by the Director:

(I) name and mailing address of the general licensee;

(II) information about each device: the manufacturer or initial transferor, model number, serial number, the radioisotope and activity as indicated on the label;

(III) name, title, and telephone number of the responsible person designated as a representative of the general licensee under R313-21-22(4)(c)(xii);

(IV) address or location at which the device(s) are used, stored, or both. For portable devices, the address of the primary place of storage;

(V) certification by the responsible representative of the general licensee that the information concerning the device(s) has been verified through a physical inventory and checking of label information; and

(VI) certification by the responsible representative of the general licensee that they are aware of the requirements of the general license; and

(D) persons generally licensed by the Nuclear Regulatory Commission, an Agreement State, or Licensing State with respect to devices meeting the criteria in R313-21-22(4)(c)(xiii)(A) are not subject to registration requirements if the devices are used in areas subject to Division jurisdiction for a period less than 180 days in any calendar year. The Director will not request registration information from such licensees;

(xiv) shall report changes to the mailing address for the location of use, including changes in the name of a general licensee, to the Director within 30 days of the effective date of the change. For a portable device, a report of address change is only required for a change in the device's primary place of storage; and

(xv) may not hold devices that are not in use for longer than 2 years. If devices with shutters are not being used, the shutter must be locked in the closed position. The testing required by R313-21-22(4)(c)(ii) need not be performed during the period of storage only. However, when devices are put back

into service or transferred to another person, and have not been tested within the required test interval, they must be tested for leakage before use or transfer and the shutter tested before use. Devices kept in standby for future use are excluded from the two-year time limit if the general licensee performs quarterly physical inventories of these devices while they are in standby.

(d) The general license in R313-21-22(4)(a) does not authorize the manufacture or import of devices containing radioactive material.

(e) The general license provided in R313-21-22(4)(a) is subject to the provisions of R313-12-51 through R313-12-53, R313-12-70, R313-14, R313-19-34, R313-19-41, R313-19-61, and R313-19-100.

(5) Luminous safety devices for aircraft.

(a) A general license is hereby issued to own, receive, acquire, possess and use tritium or promethium-147 contained in luminous safety devices for use in aircraft, provided:

(i) each device contains not more than 370.0 gigabecquerel (10 Ci) of tritium or 11.1 gigabecquerel (300 mCi) of promethium-147; and

(ii) each device has been manufactured, assembled or initially transferred in accordance with a specific license issued by the Director, the Nuclear Regulatory Commission or an Agreement State, or each device has been manufactured or assembled in accordance with the specifications contained in a specific license issued by the Director or an Agreement State to the manufacturer or assembler of the device pursuant to licensing requirements equivalent to those in R313-22-75(5).

(b) Persons who own, receive, acquire, possess or use luminous safety devices pursuant to the general license in R313-21-22(5) are exempt from the requirements of R313-15 and R313-18, except that they shall comply with the provisions of R313-15-1201 and R313-15-1202.

(c) This general license does not authorize the manufacture, assembly, repair, or import of luminous safety devices containing tritium or promethium-147.

(d) This general license does not authorize the export of luminous safety devices containing tritium or promethium-147.

(e) This general license does not authorize the ownership, receipt, acquisition, possession or use of promethium-147 contained in instrument dials.

(f) This general license is subject to the provisions of R313-12-51 through R313-12-70, R313-14, R313-19-34, R313-19-41, R313-19-61, and R313-19-100.

(6) Ownership of radioactive material. A general license is hereby issued to own radioactive material without regard to quantity. Notwithstanding any other provisions of R313-21, this general license does not authorize the manufacture, production, transfer, receipt, possession, use, import, or export of radioactive material except as authorized in a specific license.

(7) Calibration and reference sources.

(a) A general license is hereby issued to own, receive, acquire, possess, use and transfer, in the form of calibration or reference sources, americium-241, plutonium or radium-226 in accordance with the provisions of Subsections R313-21-22(7)(b) and (c), to a person who holds a specific license issued by the Director which authorizes that person to receive, possess, use and transfer radioactive material.

(b) The general license in Subsection R313-21-22(7)(a) applies only to calibration or reference sources which have been manufactured or initially transferred in accordance with the specifications contained in a specific license issued by the Nuclear Regulatory Commission pursuant to 10 CFR 32.57 or 10 CFR 70.39 or which have been manufactured in accordance with the specifications contained in a specific license issued to the manufacturer by the Director, or an Agreement State which authorizes manufacture of the sources for distribution to persons generally licensed, or in accordance with a specific license issued by a State with requirements equivalent to 10 CFR 32.57 or 10 CFR 70.39.

(c) The general license provided in Subsection R313-21-22(7)(a) is subject to the provisions of Sections R313-12-51 through R313-12-53, R313-12-70, and Rules R313-14, R313-19-34, R313-19-41, R313-19-61, R313-19-100, R313-15 and R313-18. In addition, persons who own, receive, acquire, possess, use or transfer one or more calibration or reference sources pursuant to the general license in Subsection R313-21-22(7)(a):

(i) shall not possess at any one time, at any one location of storage or use, more than 185.0 kilobecquerel (5 uCi) of americium-241, 185.0 kilobecquerel (5 uCi) of plutonium, or 185.0 kilobecquerel (5 uCi) of radium-226 in such sources;

(ii) shall not receive, possess, use or transfer a source unless the source, or the storage container, bears a label which includes one of the following statements or a substantially similar statement which contains the information called for in the following statement:

The receipt, possession, use and transfer of this source, Model No. ....., Serial No. ....., are subject to a general license and the regulations of the United States Nuclear Regulatory Commission or of a state with which the Commission has entered into an agreement for the exercise of regulatory authority. Do not remove this label.

CAUTION - RADIOACTIVE MATERIAL

THIS SOURCE CONTAINS (AMERICIUM-241)(PLUTONIUM)(RADIUM-226)*

DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

.....

Typed or printed name of the manufacturer or initial transferor

NOTE: *Show the name of the appropriate material.

(iii) shall not transfer, abandon, or dispose of a source except by transfer to a person authorized by a license issued by the Director, the Nuclear Regulatory Commission, or an Agreement State to receive the source;

(iv) shall store a source, except when the source is being used, in a closed container adequately designed and constructed to contain americium-241, plutonium, or radium-226 which might otherwise escape during storage; and

(v) shall not use a source for any purpose other than the calibration of radiation detectors or the standardization of other sources.

(d) A general license issued pursuant to Subsection R313-21-22(7)(a) does not authorize the manufacture, import, or export of calibration or reference sources containing americium-241, plutonium, or radium-226.

(8) RESERVED.

(9) General license for use of radioactive material for certain in vitro clinical or laboratory testing.*

NOTE: *The New Drug provisions of the Federal Food, Drug and Cosmetic Act also govern the availability and use of any specific diagnostic drug in interstate commerce.

(a) A general license is hereby issued to any physician, veterinarian in the practice of veterinary medicine, clinical laboratory or hospital to receive, acquire, possess, transfer or use, for the following stated tests, in accordance with the provisions of R313-21-22(9) (b), (c), (d), (e), and (f) the following radioactive materials in prepackaged units for use in in-vitro clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals:

(i) iodine-125, in units not exceeding 370.0 kilobecquerel (10 uCi) each;

(ii) iodine-131, in units not exceeding 370.0 kilobecquerel (10 uCi) each;

(iii) carbon-14, in units not exceeding 370.0 kilobecquerel (10 uCi) each;

(iv) hydrogen-3 (tritium), in units not exceeding 1.85 megabecquerel (50 uCi) each;

(v) iron-59, in units not exceeding 740.0 kilobecquerel (20 uCi) each;

(vi) cobalt-57, in units not exceeding 370.0 kilobecquerel (10 uCi) each;

(vii) selenium-75, in units not to exceed 370.0 kilobecquerel (10 uCi) each; or

(viii) mock iodine-125, reference or calibration sources, in units not exceeding 1.85 kilobecquerel (0.05 uCi) of iodine-129 and 185.0 becquerel (0.005 uCi) of americium-241 each.

(b) A person shall not receive, acquire, possess, use or transfer radioactive material pursuant to the general license established by R313-21-22(9)(a) until that person has filed form DWMRC-07, "Registration Form-In Vitro Testing with Radioactive Material Under General License," with the Director and received a Certificate of Registration signed by the Director, or until that person has been authorized pursuant to R313-32 to use radioactive material under the general license in R313-21-22(9). The physician, veterinarian, clinical laboratory or hospital shall furnish on form DWMRC-07 the following information and other information as may be required by that form:

(i) name and address of the physician, veterinarian, clinical laboratory or hospital;

(ii) the location of use; and

(iii) a statement that the physician, veterinarian, clinical laboratory or hospital has appropriate radiation measuring instruments to carry out in vitro clinical or laboratory tests with radioactive material as authorized under the general license in Subsection R313-21-22(9)(a) and that the tests will be performed only by personnel competent in the use of radiation measuring instruments and in the handling of the radioactive material.

(c) A person who receives, acquires, possesses or uses radioactive material pursuant to the general license established by Subsection R313-21-22(9)(a) shall comply with the following:

(i) The general licensee shall not possess at any one time, pursuant to the general license in Subsection R313-21-22(9)(a) at any one location of storage or use, a total amount of iodine-125, iodine-131, selenium-75, iron-59, cobalt-57, or any combination, in excess of 7.4 megabecquerel (200 uCi).

(ii) The general licensee shall store the radioactive material, until used, in the original shipping container or in a container providing equivalent radiation protection.

(iii) The general licensee shall use the radioactive material only for the uses authorized by Subsection R313-21-22(9)(a).

(iv) The general licensee shall not transfer the radioactive material except to a person authorized to receive it pursuant to a license issued by the Director, the Nuclear Regulatory Commission, an Agreement State or Licensing State, nor transfer the radioactive material in a manner other than in the unopened, labeled shipping container as received from the supplier.

(v) The general licensee shall dispose of the Mock Iodine-125 reference or calibration sources described in Subsection R313-21-22(9)(a)(viii) as required by Section R313-15-1001.

(vi) The general licensee shall pay annual fees pursuant to Rule R313-70.

(d) The general licensee shall not receive, acquire, possess, or use radioactive material pursuant to Subsection R313-21-22(9)(a):

(i) Except as prepackaged units which are labeled in accordance with the provision of a specific license issued pursuant to R313-22-75(7) or in accordance with the provisions of a specific license issued by the Nuclear Regulatory Commission, or an Agreement State, or before November 30, 2007, in accordance with the provisions of a specific license issued by a State with comparable provisions to 10 CFR 32.71 (2017) which authorizes the manufacture and distribution of iodine-125, iodine-131, carbon-14, hydrogen-3(tritium), iron-59, selenium-75, cobalt-57, or Mock Iodine-125 to persons generally licensed under Subsection R313-21-22(9) or its equivalent, and

(ii) Unless the following statement, or a substantially similar statement which contains the information called for in the following statement, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

"This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians in the practice of veterinary medicine, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the United States Nuclear Regulatory Commission or of a state with which the Commission has entered into an agreement for the exercise of regulatory authority.

.....

Name of Manufacturer"

(e) The physician, veterinarian, clinical laboratory or hospital possessing or using radioactive material under the general license in Subsection R313-21-22(9)(a) shall report in writing to the Director, changes in the information previously furnished in the "Registration Form-In Vitro Testing with Radioactive Material Under General License", form DWMRC-07. The report shall be furnished within 30 days after the effective date of the change.

(f) Any person using radioactive material pursuant to the general license of Subsection R313-21-22(9)(a) is exempt from the requirements of Rules R313-15 and R313-18 with respect to radioactive material covered by that general license, except that persons using the Mock Iodine-125 described in Subsection R313-21-22(9)(a)(viii) shall comply with the provisions of Sections R313-15-1001, R313-15-1201 and R313-15-1202.

(10) Ice Detection Devices.

(a) A general license is hereby issued to own, receive, acquire, possess, use and transfer strontium-90 contained in ice detection devices, provided each device contains not more than 1.85 megabecquerel (50 uCi) of strontium-90 and each device has been manufactured or initially transferred in accordance with a specific license issued by the Nuclear Regulatory Commission, or each device has been manufactured in accordance with the specifications contained in a specific license issued by the Director, an Agreement State, or a Licensing State to the manufacturer of the device pursuant to licensing requirements equivalent to those in 10 CFR 32.61.

(b) Persons who own, receive, acquire, possess, use or transfer strontium-90 contained in ice detection devices pursuant to the general license in Subsection R313-21-22(10)(a):

(i) shall, upon occurrence of visually observable damage, such as a bend or crack or discoloration from over-heating to the device, discontinue use of the device until it has been inspected, tested for leakage and repaired by a person holding a specific license from the Director, the Nuclear Regulatory Commission, an Agreement State, or a Licensing State to manufacture or service the device; or shall dispose of the device pursuant to the provisions of Section R313-15-1001;

(ii) shall assure that all labels affixed to the device at the time of receipt, and which bear a statement which prohibits removal of the labels, are maintained thereon; and

(iii) are exempt from the requirements of Rules R313-15 and R313-18 except that the persons shall comply with the provisions of Sections R313-15-1001, R313-15-1201 and

R313-15-1202.

(c) This general license does not authorize the manufacture, assembly, disassembly, repair, or import of strontium-90 in ice detection devices.

(d) This general license is subject to the provision of Sections R313-12-51 through R313-12-53, R313-12-70, R313-14, R313-19-34, R313-19-41, R313-19-61, and R313-19-100 of these rules.

KEY: radioactive materials, general licenses, source materials
October 13, 2017 19-3-104
Notice of Continuation January 17, 2017 19-6-104

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.
R313-22. Specific Licenses.
R313-22-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe the requirements for the issuance of specific licenses.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(7).

R313-22-2. General.

The provisions and requirements of Rule R313-22 are in addition to, and not in substitution for, other requirements of these rules. In particular the provisions of Rule R313-19 apply to applications and licenses subject to Rule R313-22.

R313-22-4. Definitions.

"Alert" means events may occur, are in progress, or have occurred that could lead to a release of radioactive material but that the release is not expected to require a response by off-site response organizations to protect persons off-site.

"Nationally tracked source" is a sealed source containing a quantity equal to or greater than Category 1 or Category 2 levels of any radioactive material listed in Appendix E of 10 CFR 20.1001 to 20.2402 (2017), which is incorporated by reference. In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold.

"Principal activities" means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

"Site Area Emergency" means events may occur, are in progress, or have occurred that could lead to a significant release of radioactive material and that could require a response by off-site response organizations to protect persons off-site.

R313-22-30. Specific License by Rule.

A license by rule is issued in the following circumstances, without the necessity of filing an application for a specific license as required by Subsection R313-22-32(1), and the licensee shall be subject to the applicable provisions of Sections R313-22-33, R313-22-34, R313-22-35, R313-22-36 and R313-22-37:

(1) When a site must be timely remediated of contamination by radioactive materials that are subject to licensing under these rules but are unlicensed;

(2) When radioactive materials existing as a result of improper handling, spillage, accidental contamination, or unregulated or illegal possession, transfer, or receipt, must be stored and those materials have not been licensed under these rules.

R313-22-32. Filing Application for Specific Licenses.

(1) Applications for specific licenses shall be filed on a form prescribed by the Director.

(2) The Director may, after the filing of the original application, and before the expiration of the license, require further statements in order to enable the Director to determine whether the application should be granted or denied or whether a license should be modified or revoked.

(3) Applications shall be signed by the applicant or licensee or a person duly authorized to act for and on the applicant's behalf.

(4) An application for a license may include a request for a license authorizing one or more activities.

(5) In the application, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the Director, provided the references are clear and specific.

(6)(i) Except as provided in R313-22 (6)(ii), (iii) or (iv) of this section, an application for a specific license to use byproduct material in the form of a sealed source or in a device that contains the sealed source must either---

(A) Identify the source or device by manufacturer and model number as registered with the sealed source and device registry under R313-22-210; or

(B) Contain the information identified in 10 CFR 32.210(c) (January 1, 2015).

(ii) For sources or devices manufactured before October 23, 2012 that are not registered with sealed source and device registry under R313-22-210 and for which the applicant is unable to provide all categories of information specified in 10 CFR 32.210(c) (January 1, 2015), the application must include:

(A) All available information identified in 10 CFR 32.210(c) (January 1, 2015) concerning the source, and, if applicable, the device; and

(B) Sufficient additional information to demonstrate that there is reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property. Such information must include a description of the source or device, a description of radiation safety features, the intended use and associated operating experience, and the results of a recent leak test.

(iii) For sealed sources and devices allowed to be distributed without registration of safety information in accordance with 10 CFR 32.210(g)(1) (2015), the applicant may supply only the manufacturer, model number, and radionuclide and quantity.

(iv) If it is not feasible to identify each sealed source and device individually, the applicant may propose constraints on the number and type of sealed sources and devices to be used and the conditions under which they will be used, in lieu of identifying each sealed source and device.

(7) As provided by Section R313-22-35, certain applications for specific licenses filed under these rules shall contain a proposed decommissioning funding plan or a certification of financial assurance for decommissioning. In the case of renewal applications submitted before January 1, 1995, this submittal may follow the renewal application but shall be submitted on or before January 1, 1995.

(8)(a) Applications to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in Section R313-22-90, "Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release", shall contain either:

(i) An evaluation showing that the maximum dose to a individual off-site due to a release of radioactive materials would not exceed one rem effective dose equivalent or five rems to the thyroid; or

(ii) An emergency plan for responding to a release of radioactive material.

(b) One or more of the following factors may be used to support an evaluation submitted under Subsection R313-22-32(8)(a)(i):

(i) The radioactive material is physically separated so that only a portion could be involved in an accident;

(ii) All or part of the radioactive material is not subject to

release during an accident because of the way it is stored or packaged;

(iii) The release fraction in the respirable size range would be lower than the release fraction shown in Section R313-22-90 due to the chemical or physical form of the material;

(iv) The solubility of the radioactive material would reduce the dose received;

(v) Facility design or engineered safety features in the facility would cause the release fraction to be lower than shown in Section R313-22-90;

(vi) Operating restrictions or procedures would prevent a release fraction as large as that shown in Section R313-22-90; or

(vii) Other factors appropriate for the specific facility.

(c) An emergency plan for responding to a release of radioactive material submitted under Subsection R313-22-32(8)(a)(ii) shall include the following information:

(i) Facility description. A brief description of the licensee's facility and area near the site.

(ii) Types of accidents. An identification of each type of radioactive materials accident for which protective actions may be needed.

(iii) Classification of accidents. A classification system for classifying accidents as alerts or site area emergencies.

(iv) Detection of accidents. Identification of the means of detecting each type of accident in a timely manner.

(v) Mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers on-site, and a description of the program for maintaining equipment.

(vi) Assessment of releases. A brief description of the methods and equipment to assess releases of radioactive materials.

(vii) Responsibilities. A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying off-site response organizations and the Director; also responsibilities for developing, maintaining, and updating the plan.

(viii) Notification and coordination. A commitment to and a brief description of the means to promptly notify off-site response organizations and request off-site assistance, including medical assistance for the treatment of contaminated injured on-site workers when appropriate. A control point shall be established. The notification and coordination shall be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the Director immediately after notification of the appropriate off-site response organizations and not later than one hour after the licensee declares an emergency.

NOTE: These reporting requirements do not supersede or release licensees of complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99-499 or other state or federal reporting requirements, including 40 CFR 302, 2010.

(ix) Information to be communicated. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to off-site response organizations and to the Director.

(x) Training. A brief description of the frequency, performance objectives and plans for the training that the licensee will provide workers on how to respond to an emergency including special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site including the use of team training for the scenarios.

(xi) Safe shutdown. A brief description of the means of restoring the facility to a safe condition after an accident.

(xii) Exercises. Provisions for conducting quarterly communications checks with off-site response organizations and biennial on-site exercises to test response to simulated emergencies. Quarterly communications checks with off-site response organizations shall include the check and update of all necessary telephone numbers. The licensee shall invite off-site response organizations to participate in the biennial exercises. Participation of off-site response organizations in biennial exercises although recommended is not required. Exercises shall use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises shall evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques shall be corrected.

(xiii) Hazardous chemicals. A certification that the applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99-499, if applicable to the applicant's activities at the proposed place of use of the radioactive material.

(d) The licensee shall allow the off-site response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the Director. The licensee shall provide any comments received within the 60 days to the Director with the emergency plan.

(9) An application from a medical facility, educational institution, or Federal facility to produce Positron Emmission Tomography (PET) radioactive drugs for non-commercial transfer to licensees in its consortium authorized for medical use under Rule R313-32 shall include:

(a) A request for authorization for the production of PET radionuclides or evidence of an existing license issued pursuant to 10 CFR Part 30 or equivalent Agreement State requirements for a PET radionuclide production facility within its consortium from which it receives PET radionuclides.

(b) Evidence that the applicant is qualified to produce radioactive drugs for medical use by meeting one of the criteria in Subsection R313-22-75(9)(a)(ii).

(c) Identification of the individual(s) authorized to prepare the PET radioactive drugs if the applicant is a pharmacy, and documentation that each individual meets the requirements of an authorized nuclear pharmacist as specified in Rule R313-32.

(d) Information identified in Subsection R313-22-75(9)(a)(iii) on the PET drugs to be noncommercially transferred to members of its consortium.

R313-22-33. General Requirements for the Issuance of Specific Licenses.

(1) A license application shall be approved if the Director determines that:

(a) the applicant and all personnel who will be handling the radioactive material are qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these rules in a manner as to minimize danger to public health and safety or the environment;

(b) the applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or the environment;

(c) the applicant's facilities are permanently located in Utah, otherwise the applicant shall seek reciprocal recognition as required by Section R313-19-30;

(d) the issuance of the license will not be inimical to the health and safety of the public;

(e) the applicant satisfies applicable special requirements in Sections R313-22-50, R313-22-54, and R313-22-75, and Rules R313-24, R313-25, R313-32, R313-34, R313-36, or R313-38; and

(f) in the case of an application for a license to receive and possess radioactive material for commercial waste disposal by land burial, or for the conduct of other activities which the Director determines will significantly affect the quality of the environment, the Director, before commencement of construction of the plant or facility in which the activity will be conducted, has concluded, after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. The Director shall respond to the application within 60 days. Commencement of construction prior to a response and conclusion shall be grounds for denial of a license to receive and possess radioactive material in the plant or facility.

R313-22-34. Issuance of Specific Licenses.

(1) Upon a determination that an application meets the requirements of the Act and the rules of the Board, the Director will issue a specific license authorizing the proposed activity in a form and containing conditions and limitations as the Director deems appropriate or necessary.

(a) Specific licenses for a new license application shall have an expiration date five years from the end of the month in which it is issued.

(b) Specific licenses for a renewed license shall expire ten years after the expiration date of the previous version of the license.

(c) Notwithstanding R313-22-34(1)(b), if during the review of the license renewal application, the Director determines issues that need to be reassessed sooner than the ten year renewal interval, the Director may shorten the renewal interval on a case by case basis. Examples of issues that may result in a shortened renewal interval includes new technologies, new company management, poor regulatory compliance, or other situations that would warrant increased attention.

(2) The Director may incorporate in licenses at the time of issuance, or thereafter, additional requirements and conditions with respect to the licensee's receipt, possession, use and transfer of radioactive material subject to Rule R313-22 as the Director deems appropriate or necessary in order to:

(a) minimize danger to public health and safety or the environment;

(b) require reports and the keeping of records, and to provide for inspections of activities under the license as may be appropriate or necessary; and

(c) prevent loss or theft of material subject to Rule R313-22.

R313-22-35. Financial Assurance and Recordkeeping for Decommissioning.

(1)(a) Applicants for a specific license authorizing the possession and use of unsealed radioactive material of half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities set forth in Appendix B of 10 CFR 30.1 through 30.72, 2010, which is incorporated by reference, shall submit a decommissioning funding plan as described in Subsection R313-22-35(5). The decommissioning funding plan shall also be submitted when a combination of radionuclides is involved if R divided by 10^5 is greater than one, where R is defined here as the sum of the ratios of the quantity of each radionuclide to the applicable value in Appendix B of 10 CFR 30.1 through 30.72, 2010, which is incorporated by reference.

(b) Holders of, or applicants for, a specific license authorizing the possession and use of sealed sources or plated foils of half-life greater than 120 days and in quantities exceeding 10^{12} times the applicable quantities set forth in Appendix B of 10 CFR 30.1 through 30.72, 2010, which is incorporated by reference, or when a combination of isotopes is involved if R, as defined in Subsection R313-22-35(1)(a), divided by 10^{12} is greater than one, shall submit a decommissioning funding plan as described in Subsection R313-22-35(5).

(c) Applicants for a specific license authorizing the possession and use of more than 100 mCi of source material in a readily dispersible form shall submit a decommissioning funding plan as described in Subsection R313-22-35(5).

(2) Applicants for a specific license authorizing possession and use of radioactive material of half-life greater than 120 days and in quantities specified in Subsection R313-22-35(4), or authorizing the possession and use of source material greater than 10 mCi but less than or equal to 100 mCi in a readily dispersible form shall either:

(a) submit a decommissioning funding plan as described in Subsection R313-22-35(5); or

(b) submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by Subsection R313-22-35(4) using one of the methods described in Subsection R313-22-35(6). Applicants for a specific license authorizing the possession and use of source material in a readily dispersible form shall submit a certification that financial assurance for decommissioning has been provided in the amount of $225,000 by October 20, 2007. For an applicant subject to this subsection, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of Subsection R313-22-35(6) shall be submitted to the Director before receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to the Director, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements in Subsection R313-22-35(6).

(3)(a) Holders of a specific license issued on or after October 20, 2006, which is of a type described in Subsections R313-22-35(1) or (2), shall provide financial assurance for decommissioning in accordance with the criteria set forth in Section R313-22-35.

(b) Holders of a specific license issued before October 20, 2006, and of a type described in Subsection R313-22-35(1), shall submit by October 20, 2007, a decommissioning funding plan as described in Subsection R313-22-35(5) or a certification of financial assurance for decommissioning in an amount at least equal to $1,125,000 in accordance with the criteria set forth in Section R313-22-35. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

(c) Holders of a specific license issued before October 20, 2006, and of a type described in Subsection R313-22-35(2), shall submit by October 20, 2007, a decommissioning funding plan as described in Subsection R313-22-35(5) or a certification of financial assurance for decommissioning in accordance with the criteria set forth in Section R313-22-35.

(d) A licensee who has submitted an application before October 20, 2006, for renewal of license in accordance with Section R313-22-37, shall provide financial assurance for decommissioning in accordance with Subsections R313-22-

35(1) and (2).

(e) Waste collectors and waste processors, as defined in Appendix G of 10 CFR 20.1001 to 20.2402, 2015, which is incorporated by reference, shall provide financial assurance in an amount based on a decommissioning funding plan as described in Subsection R313-22-35(5). The decommissioning funding plan shall include the cost of disposal of the maximum amount (curies) of radioactive material permitted by the license, and the cost of disposal of the maximum quantity, by volume, of radioactive material which could be present at the licensee's facility at any time, in addition to the cost to remediate the licensee's site to meet the license termination criteria of Rule R313-15.

(f) If, in surveys made under R313-15-501(1), residual radioactivity in the facility and environment, including the subsurface, is detected at levels that would, if left uncorrected, prevent the site from meeting the R313-15-402 criteria for unrestricted use, the licensee shall submit a decommissioning funding plan within one year of when the survey is completed.

(g) Holders of a specific license issued prior to October 20, 2006, which is of a type described in Subsections R313-22-35(1), (2), or (3)(h), shall submit a decommissioning funding plan to the Director on or before October 20, 2007. Holders of a specific license issued on or after October 20, 2006, which is of a type described in Subsections R313-22-35(1), (2), or (3)(h), shall submit a decommissioning funding plan to the Director as a part of the license application.

(h) Applicants for a specific license authorizing the possession and use of radioactive materials in sufficient quantities that require financial assurance and recordkeeping for decommissioning under Section R313-22-35 shall assure that all documents submitted to the Director for the purpose of demonstrating compliance with financial assurance and recordkeeping requirements meet the applicable criteria contained in the Nuclear Regulatory Commission's document NUREG-1757, Volume 3, "Consolidated NMSS Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness" (9/2003).

(i) Documents provided to the Director under Subsection R313-22-35(3)(h) shall provide that legal remedies be sought in a court of appropriate jurisdiction within Utah.

(4) Table of required amounts of financial assurance for decommissioning by quantity of material. Licensees required to submit an amount of financial assurance listed in this table must do so during a license application or as part of an amendment to an existing license. Licensees having possession limits exceeding the upper bounds of this table must base financial assurance on a decommissioning funding plan.

TABLE

Greater than 10^4 but less than or equal to 10^5 times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72 (2010) which is incorporated by reference, in unsealed form. For a combination of radionuclides, if R, as defined in Subsection R313-22-35(1)(a) divided by 10^4 is greater than one but R divided by 10^5 is less than or equal to one:	$1,125,000
Greater than 10^3 but less than or equal to 10^4 times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72 (2010) which is incorporated by reference, in unsealed form. For a combination of radionuclides, if R, as defined in Subsection R313-22-35(1)(a) divided by 10^3 is greater than one but R divided by 10^4 is less than or equal to one:	$225,000
Greater than 10^{10} but less than or equal to 10^{12} times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72 (2010) which is incorporated by reference, in sealed sources or plated foils. For combination of radionuclides, if R, as defined in R313-22-35(1)(a), divided by 10^{10} is greater than one, but R divided by 10^{12} is less than or equal to one:	$113,000

(5)(a) Each decommissioning funding plan shall be submitted for review and approval and shall contain-

(i) A detailed cost estimate for decommissioning, in an amount reflecting:

(A) The cost of an independent contractor to perform all decommissioning activities;

(B) The cost of meeting the R313-15-402 criteria for unrestricted use, provided that, if the applicant or licensee can demonstrate its ability to meet the provisions of R313-15-403, the cost estimate may be based on meeting the R313-15-403 criteria;

(C) The volume of onsite subsurface material containing residual radioactivity that will require remediation; and

(D) An adequate contingency factor.

(ii) Identification of and justification for using the key assumptions contained in the decommissioning cost estimate;

(iii) A description of the method of assuring funds for decommissioning from R313-22-35(6), including means for adjusting cost estimates and associated funding levels periodically over the life of the facility;

(iv) A certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning; and

(v) A signed original of the financial instrument obtained to satisfy the requirements of R313-22-35(6) (unless a previously submitted and accepted financial instrument continues to cover the cost estimate for decommissioning).

(b) At the time of license renewal and at intervals not to exceed 3 years, the decommissioning funding plan shall be resubmitted with adjustments as necessary to account for changes in costs and the extent of contamination. If the amount of financial assurance will be adjusted downward, this cannot be done until the updated decommissioning funding plan is approved. The decommissioning funding plan shall update the information submitted with the original or prior approved plan, and shall specifically consider the effect of the following events on decommissioning costs:

(i) Spills of radioactive material producing additional residual radioactivity in onsite subsurface material;

(ii) Waste inventory increasing above the amount previously estimated;

(iii) Waste disposal costs increasing above the amount previously estimated;

(iv) Facility modifications;

(v) Changes in authorized possession limits;

(vi) Actual remediation costs that exceed the previous cost estimate;

(vii) Onsite disposal; and

(viii) Use of a settling pond.

(6) Financial assurance for decommissioning shall be provided by one or more of the following methods:

(a) Prepayment. Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets so that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities;

(b) A surety method, insurance, or other guarantee method. These methods shall guarantee that decommissioning costs will be paid. A surety method may be in the form of a

surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Subsection R313-22-35(8). A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of Section R313-22-35. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Subsection R313-22-35(9). A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of Section R313-22-35 or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. A surety method or insurance used to provide financial assurance for decommissioning shall contain the following conditions:

(i) the surety method or insurance shall be open-ended or, if written for a specified term, such as five years, shall be renewed automatically unless 90 days or more prior to the renewal date the issuer notifies the Director, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance shall also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Director within 30 days after receipt of notification of cancellation,

(ii) the surety method or insurance shall be payable to a trust established for decommissioning costs. The trustee and trust shall be acceptable to the Director. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency, and

(iii) the surety method or insurance shall remain in effect until the Director has terminated the license;

(c) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions shall be as stated in Subsection R313-22-35(6)(b);

(d) In the case of Federal, State or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on the Table in Subsection R313-22-35(4) and indicating that funds for decommissioning will be obtained when necessary; or

(e) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

(7) Persons licensed under Rule R313-22 shall keep records of information important to the decommissioning of a facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with Subsection R313-19-34(2), licensees shall transfer all records described in Subsections R313-22-35(7)(a) through (d) to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated. If records important to the decommissioning of a facility are kept for other purposes, reference to these records and their locations may be used. Information the Director considers important to decommissioning consists of the following:

(a) records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records shall include any known information on identification of involved nuclides, quantities, forms, and concentrations;

(b) as-built drawings and modification of structures and equipment in restricted areas where radioactive materials are used or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations;

(c) except for areas containing only sealed sources, provided the sources have not leaked or no contamination remains after a leak, or radioactive materials having only half-lives of less than 65 days, a list contained in a single document and updated every two years, including all of the following:

(i) all areas designated and formerly designated as restricted areas as defined under Section R313-12-3;

(ii) all areas outside of restricted areas that require documentation under Subsection R313-22-35(7)(a);

(iii) all areas outside of restricted areas where current and previous wastes have been buried as documented under Section R313-15-1109; and

(iv) all areas outside of restricted areas which contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in Sections R313-15-401 through R313-15-406, or apply for approval for disposal under Section R313-15-1002; and

(d) records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

(8) Criteria relating to use of financial tests and parent company guarantees for providing reasonable assurance of funds for decommissioning.

(a) To pass the financial test referred to in Subsection R313-22-35(6)(b), the parent company shall meet one of the following criteria:

(i) The parent company shall have all of the following:

(A) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;

(B) Net working capital and tangible net worth each at least six times the current decommissioning cost estimates, or prescribed amount if a certification is used;

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates, or prescribed amount if a certification is used; or

(ii) The parent company shall have all of the following:

(A) A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's;

(B) Tangible net worth at least six times the current decommissioning cost estimate, or prescribed amount if a certification is used;

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at

least 90 percent of total assets or at least six times the current decommissioning cost estimates, or prescribed amount if certification is used.

(b) The parent company's independent certified public accountant shall have compared the data used by the parent company in the financial test, which is derived from the independently audited, year end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure the licensee shall inform the Director within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

(c)(i) After the initial financial test, the parent company shall repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

(ii) If the parent company no longer meets the requirements of Subsection R313-22-35(8)(a) the licensee shall send notice to the Director of intent to establish alternative financial assurance as specified in Section R313-22-35. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year end financial data show that the parent company no longer meets the financial test requirements. The licensee shall provide alternate financial assurance within 120 days after the end of such fiscal year.

(d) The terms of a parent company guarantee which an applicant or licensee obtains shall provide that:

(i) The parent company guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the Director, as evidenced by the return receipts.

(ii) If the licensee fails to provide alternate financial assurance as specified in Section R313-22-35 within 90 days after receipt by the licensee and Director of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee.

(iii) The parent company guarantee and financial test provisions shall remain in effect until the Director has terminated the license.

(iv) If a trust is established for decommissioning costs, the trustee and trust shall be acceptable to the Director. An acceptable trustee includes an appropriate State or Federal Government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(9) Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning.

(a) To pass the financial test referred to in Subsection R313-22-35(6)(b), a company shall meet all of the following criteria:

(i) Tangible net worth at least ten times the total current decommissioning cost estimate, or the current amount required if certification is used, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor;

(ii) Assets located in the United States amounting to at least 90 percent of total assets or at least ten times the total current decommissioning cost estimate, or the current amount required if certification is used, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor; and

(iii) A current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poor's, or Aaa, Aa, or A as issued by Moody's.

(b) To pass the financial test, a company shall meet all of the following additional requirements:

(i) The company shall have at least one class of equity securities registered under the Securities Exchange Act of 1934;

(ii) The company's independent certified public accountant shall have compared the data used by the company in the financial test which is derived from the independently audited, yearend financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the Director within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test; and

(iii) After the initial financial test, the company shall repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(c) If the licensee no longer meets the requirements of Subsection R313-22-35(9)(a), the licensee shall send immediate notice to the Director of its intent to establish alternate financial assurance as specified in Section R313-22-35 within 120 days of such notice.

(d) The terms of a self-guarantee which an applicant or licensee furnishes shall provide that:

(i) The guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the Director, as evidenced by the return receipt.

(ii) The licensee shall provide alternative financial assurance as specified in Section R313-22-35 within 90 days following receipt by the Director of a notice of a cancellation of the guarantee.

(iii) The guarantee and financial test provisions shall remain in effect until the Director has terminated the license or until another financial assurance method acceptable to the Director has been put in effect by the licensee.

(iv) The licensee shall promptly forward to the Director and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission pursuant to the requirements of section 13 of the Securities and Exchange Act of 1934.

(v) If, at any time, the licensee's most recent bond issuance ceases to be rated in a category of "A" or above by either Standard and Poor's or Moody's, the licensee shall provide notice in writing of such fact to the Director within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of A or above by both Standard and Poor's and Moody's, the licensee no longer meets the requirements of Subsection R313-22-35(9)(a).

(vi) The applicant or licensee shall provide to the Director a written guarantee, a written commitment by a corporate officer, which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Director, the licensee shall set up and fund a trust in the amount of the current cost estimates for decommissioning.

R313-22-36. Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas.

(1) A specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under Section R313-22-37 no less than 30 days before the expiration date stated in the existing license. If an application for renewal has been filed at least 30 days prior to the expiration date stated in the existing license, the existing license expires at the end of the day on which the Director makes a final determination to deny the renewal

application or, if the determination states an expiration date, the expiration date stated in the determination.

(2) A specific license revoked by the Director expires at the end of the day on the date of the Director's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by an Order issued by the Director.

(3) A specific license continues in effect, beyond the expiration date if necessary, with respect to possession of radioactive material until the Director notifies the licensee in writing that the license is terminated. During this time, the licensee shall:

(a) limit actions involving radioactive material to those related to decommissioning; and

(b) continue to control entry to restricted areas until they are suitable for release so that there is not an undue hazard to public health and safety or the environment.

(4) Within 60 days of the occurrence of any of the following, a licensee shall provide notification to the Director in writing of such occurrence, and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity so that the building or outdoor area is suitable for release so that there is not an undue hazard to public health and safety or the environment, or submit within 12 months of notification a decommissioning plan, if required by Subsection R313-22-36(7), and begin decommissioning upon approval of that plan if:

(a) the license has expired pursuant to Subsections R313-22-36(1) or (2); or

(b) the licensee has decided to permanently cease principal activities at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release because of an undue hazard to public health and safety or the environment; or

(c) no principal activities under the license have been conducted for a period of 24 months; or

(d) no principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release because of an undue hazard to public health and safety or the environment.

(5) Coincident with the notification required by Subsection R313-22-36(4), the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to Section R313-22-35 in conjunction with a license issuance or renewal or as required by Section R313-22-36. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to Subsection R313-22-36(7)(d)(v).

(a) A licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so on or before August 15, 1997.

(b) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the Director.

(6) The Director may grant a request to extend the time periods established in Subsection R313-22-36(4) if the Director determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to Subsection R313-22-36(4). The schedule for decommissioning set forth in Subsection R313-22-36(4) may not commence until the Director has made a determination on the request.

(7)(a) A decommissioning plan shall be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the Director and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(i) procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(ii) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(iii) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(iv) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(b) The Director may approve an alternate schedule for submittal of a decommissioning plan required pursuant to Subsection R313-22-36(4) if the Director determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(c) Procedures such as those listed in Subsection R313-22-36(7)(a) with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

(d) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(i) a description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(ii) a description of planned decommissioning activities;

(iii) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(iv) a description of the planned final radiation survey; and

(v) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning.

(vi) For decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, the plan shall include a justification for the delay based on the criteria in Subsection R313-22-36(8).

(e) The proposed decommissioning plan will be approved by the Director if the information therein demonstrates that the decommissioning will be completed as soon as practical and that the health and safety of workers and the public will be adequately protected.

(8)(a) Except as provided in Subsection R313-22-36(9), licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practical but no later than 24 months following the initiation of decommissioning.

(b) Except as provided in Subsection R313-22-36(9), when decommissioning involves the entire site, the licensee shall request license termination as soon as practical but no later than 24 months following the initiation of decommissioning.

(9) The Director may approve a request for an alternative schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the Director determines that the alternative is warranted by consideration of the following:

(a) whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(b) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

(c) whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived

radionuclides to decay;

(d) whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(e) other site-specific factors which the Director may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(10) As the final step in decommissioning, the licensee shall:

(a) certify the disposition of all licensed material, including accumulated wastes, by submitting a completed Form DWMRC-14 or equivalent information; and

(b) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in Sections R313-15-401 through R313-15-406. The licensee shall, as appropriate:

(i) report levels of gamma radiation in units of millisieverts (microroentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters--removable and fixed-- for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(ii) specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(11) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the Director determines that:

(a) radioactive material has been properly disposed;

(b) reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(c) documentation is provided to the Director that:

(i) a radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning in Sections R313-15-401 through R313-15-406; or

(ii) other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in Sections R313-15-401 through R313-15-406.

R313-22-37. Renewal of Licenses.

Application for renewal of a specific license shall be filed on a form prescribed by the Director and in accordance with Section R313-22-32.

R313-22-38. Amendment of Licenses at Request of Licensee.

Applications for amendment of a license shall be filed in accordance with Section R313-22-32 and shall specify the respects in which the licensee desires the license to be amended and the grounds for the amendment.

R313-22-39. Director Action on Applications to Renew or Amend.

In considering an application by a licensee to renew or amend the license, the Director will use the criteria set forth in Sections R313-22-33, R313-22-50, and R313-22-75 and in Rules R313-24, R313-25, R313-32, R313-34, R313-36, or R313-38, as applicable.

R313-22-50. Special Requirements for Specific Licenses of Broad Scope.

Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity or other product containing byproduct material whose subsequent possession, use, transfer and disposal by all other persons who are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(1) The different types of broad licenses are set forth below:

(a) A "Type A specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of the radioactive material specified in the license, but not exceeding quantities specified in the license, for any authorized purpose. The quantities specified are usually in the multicurie range.

(b) A "Type B specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of radioactive material specified in Section R313-22-100 for any authorized purpose. The possession limit for a Type B broad license, if only one radionuclide is possessed thereunder, is the quantity specified for that radionuclide in Section R313-22-100, Column I. If two or more radionuclides are possessed thereunder, the possession limits are determined as follows: For each radionuclide, determine the ratio of the quantity possessed to the applicable quantity specified in Section R313-22-100, Column I, for that radionuclide. The sum of the ratios for the radionuclides possessed under the license shall not exceed unity.

(c) A "Type C specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of radioactive material specified in Section R313-22-100, for any authorized purpose. The possession limit for a Type C broad license, if only one radionuclide is possessed thereunder, is the quantity specified for that radionuclide in Section R313-22-100, Column II. If two or more radionuclides are possessed thereunder, the possession limits are determined as follows: For each radionuclide, determine the ratio of the quantity possessed to the applicable quantity specified in Section R313-22-100, Column II, for that radionuclide. The sum of the ratios for the radionuclides possessed under the license shall not exceed unity.

(2) An application for a Type A specific license of broad scope shall be approved if all of the following are complied with:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the applicant has engaged in a reasonable number of activities involving the use of radioactive material; and

(c) the applicant has established administrative controls and provisions relating to organization and management, procedures, recordkeeping, material control and accounting, and management review that are necessary to assure safe operations, including:

(i) the establishment of a radiation safety committee composed of such persons as a radiation safety officer, a representative of management, and persons trained and experienced in the safe use of radioactive material;

(ii) the appointment of a radiation safety officer who is qualified by training and experience in radiation protection, and who is available for advice and assistance on radiation safety matters; and

(iii) the establishment of appropriate administrative procedures to assure:

(A) control of procurement and use of radioactive material,

(B) completion of safety evaluations of proposed uses of radioactive material which take into consideration such matters as the adequacy of facilities and equipment, training and

experience of the user, and the operating or handling procedures, and

(C) review, approval, and recording by the radiation safety committee of safety evaluations of proposed uses prepared in accordance with Subsection R313-22-50(2)(c)(iii)(B) prior to use of the radioactive material.

(3) An application for a Type B specific license of broad scope shall be approved if all of the following are complied with:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the applicant has established administrative controls and provisions relating to organization and management, procedures, recordkeeping, material control and accounting, and management review that are necessary to assure safe operations, including:

(i) the appointment of a radiation safety officer who is qualified by training and experience in radiation protection, and who is available for advice and assistance on radiation safety matters; and

(ii) the establishment of appropriate administrative procedures to assure:

(A) control of procurement and use of radioactive material,

(B) completion of safety evaluations of proposed uses of radioactive material which take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures, and

(C) review, approval, and recording by the radiation safety officer of safety evaluations of proposed uses prepared in accordance with Subsection R313-22-50(3)(b)(iii)(B) prior to use of the radioactive material.

(4) An application for a Type C specific license of broad scope shall be approved, if:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the applicant submits a statement that radioactive material will be used only by, or under the direct supervision of individuals, who have received:

(i) a college degree at the bachelor level, or equivalent training and experience, in the physical or biological sciences or in engineering; and

(ii) at least forty hours of training and experience in the safe handling of radioactive material, and in the characteristics of ionizing radiation, units of radiation dose and quantities, radiation detection instrumentation, and biological hazards of exposure to radiation appropriate to the type and forms of radioactive material to be used; and

(c) the applicant has established administrative controls and provisions relating to procurement of radioactive material, procedures, recordkeeping, material control and accounting, and management review necessary to assure safe operations.

(5) Specific licenses of broad scope are subject to the following conditions:

(a) unless specifically authorized by the Director, persons licensed pursuant to this section shall not:

(i) conduct tracer studies in the environment involving direct release of radioactive material;

(ii) receive, acquire, own, possess, use, or transfer devices containing 100,000 curies (3.7 PBq) or more of radioactive material in sealed sources used for irradiation of materials;

(iii) conduct activities for which a specific license issued by the Director under Section R313-22-75, and Rules R313-25, R313-32 or R313-36 is required; or

(iv) add or cause the addition of radioactive material to a food, beverage, cosmetic, drug or other product designed for ingestion or inhalation by, or application to, a human being.

(b) Type A specific licenses of broad scope issued under Rule R313-22 shall be subject to the condition that radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety committee.

(c) Type B specific license of broad scope issued under Rule R313-22 shall be subject to the condition that radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety officer.

(d) Type C specific license of broad scope issued under Rule R313-22 shall be subject to the condition that radioactive material possessed under the license may only be used, by or under the direct supervision of, individuals who satisfy the requirements of Subsection R313-22-50(4).

R313-22-54. Requirements for a Specific License to Initially Transfer Source Material for Use Under Section R313-21-21.

(1) An application for a specific license to initially transfer source material for use under Section R313-21-21, or 10 CFR 40.22 for a non-Agreement State, or equivalent regulations of an Agreement State, will be approved if:

(a) The applicant satisfies the general requirements specified in Section R313-22-33; and

(b) The applicant submits adequate information on, and the Director approves the methods to be used for quality control, labeling, and providing safety instructions to recipients.

R313-22-55. Conditions of Specific Licenses to Initially Transfer Source Material for Use Under Section R313-21-21.

(1)(a) Each person licensed under Section R313-22-54 shall label the immediate container of each quantity of source material with the type of source material and quantity of material and the words, "radioactive material."

(b) Each person licensed under Section R313-22-54 shall ensure that the quantities and concentrations of source material are as labeled and indicated in any transfer records.

(c) Each person licensed under Section R313-22-54 shall provide the information specified in Subsections R313-22-55(1)(c)(i) and (c)(ii) to each person to whom source material is transferred for use under Section R313-21-21 or 10 CFR 40.22 for non-Agreement States or equivalent provisions in Agreement State regulations. This information must be transferred before the source material is transferred for the first time in each calendar year to the particular recipient. The required information includes:

(i) A copy of Sections R313-21-21 and R313-19-41, or relevant equivalent regulations of the Agreement State.

(ii) Appropriate radiation safety precautions and instructions relating to handling, use, storage, and disposal of the material.

(d) Each person licensed under Section R313-22-54 shall report transfers as follows:

(i) File a report with the Director. The report shall include the following information:

(A) The name, address, and license number of the person who transferred the source material;

(B) For each general licensee under Section R313-21-21 or 10 CFR 40.22 for non-Agreement States or equivalent Agreement State provisions to whom greater than 50 grams (0.11 pounds) of source material has been transferred in a single calendar quarter, the name and address of the general licensee to whom source material is distributed; a responsible agent, by name or position or both and phone number, of the general licensee to whom the material was sent; and the type, physical form, and quantity of source material transferred; and

(C) The total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients.

(ii) File a report with:

(A) Each responsible Agreement State agency that identifies all persons, operating under provisions equivalent to 10 CFR 40.22 (2016), to whom greater than 50 grams (0.11 pounds) of source material has been transferred within a single calendar quarter; or

(B) The U.S. Nuclear Regulatory Commission for non-Agreement States, that identifies all persons, operating under 10 CFR 40.22 (2016), to whom greater than 50 grams (0.11 pounds) of source material has been transferred within a single calendar quarter.

(C) The report shall include the following information specific to those transfers made to the Agreement State being reported to:

(I) The name, address, and license number of the person who transferred the source material; and

(II) The name and address of the general licensee to whom source material was distributed; a responsible agent, by name and/or position and phone number, of the general licensee to whom the material was sent; and the type, physical form, and quantity of source material transferred.

(III) The total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients within the Agreement State or non-Agreement State.

(iii) Submit each report by January 31 of each year covering all transfers for the previous calendar year. If no transfers were made to persons generally licensed under Section R313-21-21 or 10 CFR 40.22, or equivalent Agreement State provisions during the current period, a report shall be submitted to the Director indicating so. If no transfers have been made to general licensees in a particular Agreement State or non-Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency or the U.S. Nuclear Regulatory Commission upon request of the agency or Commission.

(e) Each person licensed under Section R313-22-54 shall maintain all information that supports the reports required by Section R313-22-55 concerning each transfer to a general licensee for a period of one year after the event is included in a report to the Director.

R313-22-75. Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material.

(1) Licensing the introduction of radioactive material in exempt concentrations into products or materials, and transfer of ownership or possession of the products and materials.

(a) The authority to introduce radioactive material in exempt concentrations into equipment, devices, commodities or other products may be obtained only from the Nuclear Regulatory Commission, Washington, D.C. 20555; and

(b) The manufacturer, processor or producer of equipment, devices, commodities or other products containing exempt concentrations of radioactive materials may obtain the authority to transfer possession or control of the equipment, devices, commodities, or other products containing exempt concentrations to persons who are exempt from regulatory requirements only from the Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) Licensing the distribution of radioactive material in exempt quantities. Authority to transfer possession or control by the manufacturer, processor or producer of equipment, devices, commodities or other products containing byproduct material whose subsequent possession, use, transfer, and disposal by other persons who are exempted from regulatory requirements may be obtained only from the Nuclear Regulatory Commission, Washington, D.C. 20555.

(3) Reserved

(4) Licensing the manufacture and distribution of devices to persons generally licensed under Subsection R313-21-22(4).

(a) An application for a specific license to manufacture or distribute devices containing radioactive material, excluding special nuclear material, to persons generally licensed under Subsection R313-21-22(4) or equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State will be approved if:

(i) the applicant satisfies the general requirements of Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

(A) the device can be safely operated by persons not having training in radiological protection,

(B) under ordinary conditions of handling, storage and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that a person will receive in one year, a dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1), and

(C) under accident conditions, such as fire and explosion, associated with handling, storage and use of the device, it is unlikely that a person would receive an external radiation dose or dose commitment in excess of the following organ doses:

TABLE

Whole body; head and trunk; gonads; or lens of eye	active blood-forming organs; 150.0 mSv (15 rems)
Hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than one square centimeter	2.0 Sv (200 rems)
Other organs	500.0 mSv (50 rems); and

(iii) each device bears a durable, legible, clearly visible label or labels approved by the Director, which contain in a clearly identified and separate statement:

(A) instructions and precautions necessary to assure safe installation, operation and servicing of the device; documents such as operating and service manuals may be identified in the label and used to provide this information,

(B) the requirement, or lack of requirement, for leak testing, or for testing an "on-off" mechanism and indicator, including the maximum time interval for testing, and the identification of radioactive material by radionuclide, quantity of radioactivity, and date of determination of the quantity, and

(C) the information called for in one of the following statements, as appropriate, in the same or substantially similar form:

(I) "The receipt, possession, use and transfer of this device, Model No. ....., Serial No. ....., are subject to a general license or the equivalent, and the regulations of the Nuclear Regulatory Commission or a state with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION -RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(II) "The receipt, possession, use and transfer of this

device, Model No. ....., Serial No. ....., are subject to a general license or the equivalent, and the regulations of a Licensing State. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION - RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(iv) Each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model number and serial number, the isotope and quantity, the words, "Caution-Radioactive Material," the radiation symbol described in Section R313-15-901, and the name of the manufacturer or initial distributor.

(v) Each device meeting the criteria of Subsection R313-21-22(4)(c)(xiii)(A), bears a permanent label, for example, embossed, etched, stamped, or engraved, affixed to the source housing if separable, or the device if the source housing is not separable, that includes the words, "Caution-Radioactive Material," and, if practicable, the radiation symbol described in Section R313-15-901.

(vi) The device has been registered in the Sealed Source and Device Registry.

(b) In the event the applicant desires that the device be required to be tested at intervals longer than six months, either for proper operation of the "on-off" mechanism and indicator, if any, or for leakage of radioactive material or for both, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the device or similar devices and by design features which have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the "on-off" mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the Director will consider information which includes, but is not limited to:

(i) primary containment, or source capsule;

(ii) protection of primary containment;

(iii) method of sealing containment;

(iv) containment construction materials;

(v) form of contained radioactive material;

(vi) maximum temperature withstood during prototype tests;

(vii) maximum pressure withstood during prototype tests;

(viii) maximum quantity of contained radioactive material;

(ix) radiotoxicity of contained radioactive material; and

(x) operating experience with identical devices or similarly designed and constructed devices.

(c) In the event the applicant desires that the general licensee under Subsection R313-21-22(4), or under equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with this activity or activities, and basis for these estimates. The submitted information shall demonstrate that performance of this activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1).

(d)(i) If a device containing radioactive material is to be transferred for use under the general license contained in Subsection R313-21-22(4), each person that is licensed under Subsection R313-22-75(4) shall provide the information specified in Subsections R313-22-75(4)(d)(i)(A) through (E) to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes:

(A) a copy of the general license contained in Subsection R313-21-22(4); if Subsections R313-21-22(4)(c)(ii) through (iv) or R313-21-22(4)(c)(xiii) do not apply to the particular device, those paragraphs may be omitted;

(B) a copy of Sections R313-12-51, R313-15-1201, and R313-15-1202;

(C) a list of services that can only be performed by a specific licensee;

(D) Information on acceptable disposal options including estimated costs of disposal; and

(E) An indication that the Director's policy is to issue civil penalties for improper disposal.

(ii) If radioactive material is to be transferred in a device for use under an equivalent general license of the Nuclear Regulatory Commission, an Agreement State, or Licensing State, each person that is licensed under Subsection R313-22-75(4) shall provide the information specified in Subsections R313-22-75(4)(d)(ii)(A) through (D) to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes:

(A) A copy of an Agreement State's or Licensing State's regulations equivalent to Sections R313-12-51, R313-15-1201, R313-15-1202, and Subsection R313-21-22(4) or a copy of 10 CFR 31.5, 10 CFR 31.2, 10 CFR 30.51, 10 CFR 20.2201, and 10 CFR 20.2202. If a copy of the Nuclear Regulatory Commission regulations is provided to a prospective general licensee in lieu of the Agreement State's or Licensing State's regulations, it shall be accompanied by a note explaining that use of the device is regulated by the Agreement State or Licensing State; if certain paragraphs of the regulations do not apply to the particular device, those paragraphs may be omitted;

(B) A list of services that can only be performed by a specific licensee;

(C) Information on acceptable disposal options including estimated costs of disposal; and

(D) The name or title, address, and phone number of the contact at the Nuclear Regulatory Commission, Agreement State, or Licensing State from which additional information may be obtained.

(iii) An alternative approach to informing customers may be proposed by the licensee for approval by the Director.

(iv) Each device that is transferred after February 19, 2002 must meet the labeling requirements in Subsection R313-22-75(4)(a)(iii).

(v) If a notification of bankruptcy has been made under Section R313-19-34 or the license is to be terminated, each person licensed under Subsection R313-22-75(4) shall provide, upon request, to the Director, the Nuclear Regulatory Commission, or an appropriate Agreement State or Licensing State, records of final disposition required under Subsection R313-22-75(4)(d)(vii)(H).

(vi) Each person licensed under Subsection R313-22-75(4) to initially transfer devices to generally licensed persons shall comply with the requirements of Subsections R313-22-75(4)(d)(vi) and (vii).

(A) The person shall report all transfers of devices to persons for use under the general license under Subsection R313-21-22(4) and all receipts of devices from persons licensed under Subsection R313-21-22(4) to the Director. The report must be submitted on a quarterly basis on Form 653, "Transfers of Industrial Devices Report" as prescribed by the Nuclear Regulatory Commission, or in a clear and legible report containing all of the data required by the form.

(B) The required information for transfers to general licensees includes:

(I) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternative address for the general licensee shall be submitted along with information on the actual location of use.

(II) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(III) The date of transfer;

(IV) The type, model number, and serial number of device transferred; and

(V) The quantity and type of radioactive material contained in the device.

(C) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate persons.

(D) For devices received from a Subsection R313-21-22(4) general licensee, the report must include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(E) If the licensee makes changes to a device possessed by a Subsection R313-21-22(4) general licensee, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(F) The report must cover each calendar quarter, must be filed within 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(G) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(H) If no transfers have been made to or from persons generally licensed under Subsection R313-21-22(4) during the reporting period, the report must so indicate.

(vii) The person shall report all transfers of devices to persons for use under a general license in the Nuclear Regulatory Commission's, an Agreement State's, or Licensing State's regulations that are equivalent to Subsection R313-21-22(4) and all receipts of devices from general licensees in the Nuclear Regulatory Commission's, Agreement State's, or Licensing State's jurisdiction to the Nuclear Regulatory Commission, or to the responsible Agreement State or Licensing State agency. The report must be submitted on Form 653, "Transfers of Industrial Devices Report" as prescribed by the Nuclear Regulatory Commission, or in a clear and legible report containing all of the data required by the form.

(A) The required information for transfers to general licensee includes:

(I) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternative address for the general licensee shall be submitted along with information on the actual location of use.

(II) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(III) The date of transfer;

(IV) The type, model number, and serial number of the device transferred; and

(V) The quantity and type of radioactive material contained in the device.

(B) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate persons.

(C) For devices received from a general licensee, the report must include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(D) If the licensee makes changes to a device possessed by a general licensee, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(E) The report must cover each calendar quarter, must be filed within 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(F) The report must clearly identify the specific licensee submitting the report and must include the license number of the specific licensee.

(G) If no transfers have been made to or from a Nuclear Regulatory Commission licensee, or to or from a particular Agreement State or Licensing State licensee during the reporting period, this information shall be reported to the Nuclear Regulatory Commission or the responsible Agreement State or Licensing State agency upon request of the agency.

(H) The person shall maintain all information concerning transfers and receipts of devices that supports the reports required by Subsection R313-22-75(4)(d)(vii). Records required by Subsection R313-22-75(4)(d)(vii)(H) must be maintained for a period of three years following the date of the recorded event.

(5) Special requirements for the manufacture, assembly or repair of luminous safety devices for use in aircraft. An application for a specific license to manufacture, assemble or repair luminous safety devices containing tritium or promethium-147 for use in aircraft for distribution to persons generally licensed under Subsection R313-21-22(5) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.53 through 32.56 (2015) or their equivalent.

(6) Special requirements for license to manufacture or initially transfer calibration sources containing americium-241, plutonium or radium-226 for distribution to persons generally licensed under Subsection R313-21-22(7). An application for a specific license to manufacture calibration and reference sources containing americium-241, plutonium or radium-226 to persons generally licensed under Subsection R313-21-22(7) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.57 through 32.59, and 10 CFR 70.39 (2015), or their equivalent.

(7) Manufacture and distribution of radioactive material for certain in vitro clinical or laboratory testing under general

license. An application for a specific license to manufacture or distribute radioactive material for use under the general license of Subsection R313-21-22(9) will be approved if:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the radioactive material is to be prepared for distribution in prepackaged units of:

(i) iodine-125 in units not exceeding 370 kilobecquerel (ten uCi) each;

(ii) iodine-131 in units not exceeding 370 kilobecquerel (ten uCi) each;

(iii) carbon-14 in units not exceeding 370 kilobecquerel (ten uCi) each;

(iv) hydrogen-3 (tritium) in units not exceeding 1.85 megabecquerel (50 uCi) each;

(v) iron-59 in units not exceeding 740.0 kilobecquerel (20 uCi) each;

(vi) cobalt-57 in units not exceeding 370 kilobecquerel (ten uCi) each;

(vii) selenium-75 in units not exceeding 370 kilobecquerel (ten uCi) each; or

(viii) mock iodine-125 in units not exceeding 1.85 kilobecquerel (0.05 uCi) of iodine-129 and 1.85 kilobecquerel (0.05 uCi) of americium-241 each;

(c) prepackaged units bear a durable, clearly visible label:

(i) identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 370 kilobecquerel (ten uCi) of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 1.85 megabecquerel (50 uCi) of hydrogen-3 (tritium); 740.0 kilobecquerel (20 uCi) of iron-59; or Mock Iodine-125 in units not exceeding 1.85 kilobecquerel (0.05 uCi) of iodine-129 and 1.85 kilobecquerel (0.05 uCi) of americium-241 each; and

(ii) displaying the radiation caution symbol described in Section R313-15-901 and the words, "CAUTION, RADIOACTIVE MATERIAL", and "Not for Internal or External Use in Humans or Animals";

(d) one of the following statements, as appropriate, or a substantially similar statement which contains the information called for in one of the following statements, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

(i) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the Nuclear Regulatory Commission or of a state with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority.

.....

Name of Manufacturer"

(ii) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of a Licensing State.

.....

Name of Manufacturer"

(e) the label affixed to the unit, or the leaflet or brochure which accompanies the package, contains adequate information as to the precautions to be observed in handling and storing radioactive material. In the case of the Mock Iodine-125 reference or calibration source, the information accompanying the source shall also contain directions to the licensee regarding the waste disposal requirements set out in Section R313-15-1001.

(8) Licensing the manufacture and distribution of ice detection devices. An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed under Subsection R313-21-22(10) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the criteria of 10 CFR 32.61, 32.62, 2015 ed. are met.

(9) Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing radioactive material for medical use under R313-32.

(a) An application for a specific license to manufacture and distribute radiopharmaceuticals containing radioactive material for use by persons licensed pursuant to Rule R313-32 will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits evidence that the applicant is at least one of the following:

(A) registered with the U.S. Food and Drug Administration (FDA) as the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding, or processing of a drug under 21 CFR 207.20(a);

(B) registered or licensed with a state agency as a drug manufacturer;

(C) licensed as a pharmacy by a State Board of Pharmacy; or

(D) operating as a nuclear pharmacy within a medical institution; or

(E) registered with a State Agency as a Positron Emission Tomography (PET) drug production facility.

(iii) the applicant submits information on the radionuclide; the chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees; and

(iv) the applicant satisfies the following labeling requirements:

(A) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL"; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.

(B) A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL" and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

(b) A licensee described by Subsections R313-22-75(9)(a)(ii)(C) or (D):

(i) May prepare radioactive drugs for medical use, as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference), provided that the radioactive drug is prepared by either an authorized nuclear pharmacist, as specified in Subsections R313-22-75(9)(b)(ii) and (iv), or an individual under the supervision of an authorized nuclear pharmacist as specified in Rule R313-32 (incorporating 10 CFR 35.27 by

reference).

(ii) May allow a pharmacist to work as an authorized nuclear pharmacist if:

(A) this individual qualifies as an authorized nuclear pharmacist as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference);

(B) this individual meets the requirements specified in Rule R313-32 (incorporating 10 CFR 35.55(b) and 10 CFR 35.59 by reference) and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(C) this individual is designated as an authorized nuclear pharmacist in accordance with Subsection R313-22-75(9)(b)(iv).

(iii) The actions authorized in Subsections R313-22-75(9)(b)(i) and (ii) are permitted in spite of more restrictive language in license conditions.

(iv) May designate a pharmacist, as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference), as an authorized nuclear pharmacist if:

(A) The individual was a nuclear pharmacist preparing only radioactive drugs containing accelerator produced radioactive material, and

(B) The individual practiced at a pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007, or at all other pharmacies before August 8, 2009, or an earlier date as noticed by the NRC.

(v) Shall provide to the Director:

(A) a copy of each individual's certification by a specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or Agreement State as specified in Rule R313-32 (incorporating 10 CFR 35.55(a) by reference) with the written attestation signed by a preceptor as required by Rule R313-32 (incorporating 10 CFR 35.55(b)(2) by reference); or

(B) the Nuclear Regulatory Commission or Agreement State license; or

(C) the permit issued by a licensee or Commission master materials permittee of broad scope or the authorization from a commercial nuclear pharmacy authorized to list its own authorized nuclear pharmacist; or

(D) the permit issued by a U.S. Nuclear Commission master materials licensee; or

(E) documentation that only accelerator produced radioactive materials were used in the practice of nuclear pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007 or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC; and

(F) a copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, pursuant to Subsections R313-22-75(9)(b)(ii)(A) and R313-22-75(9)(b)(ii)(C), the individual to work as an authorized nuclear pharmacist.

(c) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

(i) perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(ii) check each instrument for constancy and proper operation at the beginning of each day of use.

(d) Nothing in Subsection R313-22-75(9) relieves the licensee from complying with applicable FDA, or Federal, and State requirements governing radioactive drugs.

(10) Manufacture and distribution of sources or devices containing radioactive material for medical use. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed under Rule R313-32 for use as a calibration, transmission, or reference source or for the uses listed in Rule R313-32 (incorporating 10 CFR 35.400, 10 CFR 35.500, 10 CFR 35.600, and 35.1000 by reference) will be approved if:

(a) the applicant satisfies the general requirements in Section R313-22-33;

(b) the applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

(i) the radioactive material contained, its chemical and physical form and amount,

(ii) details of design and construction of the source or device,

(iii) procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents,

(iv) for devices containing radioactive material, the radiation profile of a prototype device,

(v) details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests,

(vi) procedures and standards for calibrating sources and devices,

(vii) legend and methods for labeling sources and devices as to their radioactive content, and

(viii) instructions for handling and storing the source or device from the radiation safety standpoint, these instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device; provided that instructions which are too lengthy for a label may be summarized on the label and printed in detail on a brochure which is referenced on the label;

(c) the label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity and date of assay, and a statement that the source or device is licensed by the Director for distribution to persons licensed pursuant to Rule R313-32 (incorporating 10 CFR 35.18, 10 CFR 35.400, 10 CFR 35.500, and 10 CFR 35.600 by reference) or under equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State; provided that labeling for sources which do not require long term storage may be on a leaflet or brochure which accompanies the source;

(d) the source or device has been registered in the Sealed Source and Device Registry.

(e) in the event the applicant desires that the source or device be required to be tested for leakage of radioactive material at intervals longer than six months, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source; and

(f) in determining the acceptable interval for test of leakage of radioactive material, the Director shall consider information that includes, but is not limited to:

(i) primary containment or source capsule,

(ii) protection of primary containment,

(iii) method of sealing containment,

(iv) containment construction materials,

(v) form of contained radioactive material,

(vi) maximum temperature withstood during prototype tests,

(vii) maximum pressure withstood during prototype tests,

(viii) maximum quantity of contained radioactive material,

(ix) radiotoxicity of contained radioactive material, and

(x) operating experience with identical sources or devices or similarly designed and constructed sources or devices.

(11) Requirements for license to manufacture and distribute industrial products containing depleted uranium for mass-volume applications.

(a) An application for a specific license to manufacture industrial products and devices containing depleted uranium for use pursuant to Subsection R313-21-21(7) or equivalent regulations of the Nuclear Regulatory Commission or an Agreement State will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses and potential hazards of the industrial product or device to provide reasonable assurance that possession, use or transfer of the depleted uranium in the product or device is not likely to cause an individual to receive a radiation dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1); and

(iii) the applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(b) In the case of an industrial product or device whose unique benefits are questionable, the Director will approve an application for a specific license under Subsection R313-22-75(11) only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(c) The Director may deny an application for a specific license under Subsection R313-22-75(11) if the end use of the industrial product or device cannot be reasonably foreseen.

(d) Persons licensed pursuant to Subsection R313-22-75(11)(a) shall:

(i) maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

(ii) label or mark each unit to:

(A) identify the manufacturer of the product or device and the number of the license under which the product or device was manufactured, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and

(B) state that the receipt, possession, use and transfer of the product or device are subject to a general license or the equivalent and the regulations of the Nuclear Regulatory Commission or an Agreement State;

(iii) assure that the uranium before being installed in each product or device has been impressed with the following legend clearly legible through a plating or other covering: "Depleted Uranium";

(iv) furnish to each person to whom depleted uranium in a product or device is transferred for use pursuant to the general license contained in Subsection R313-21-21(5) or its equivalent:

(A) a copy of the general license contained in Subsection R313-21-21(7) and a copy of form DWMRC-12; or

(B) a copy of the general license contained in the Nuclear Regulatory Commission's or Agreement State's regulation equivalent to Subsection R313-21-21(7) and a copy of the Nuclear Regulatory Commission's or Agreement State's certificate, or alternatively, furnish a copy of the general license contained in Subsection R313-21-21(7) and a copy of form DWMRC-12 with a note explaining that use of the product or device is regulated by the Nuclear Regulatory Commission or an Agreement State under requirements substantially the same as those in Subsection R313-21-21(7);

(v) report to the Director all transfers of industrial products or devices to persons for use under the general license in Subsection R313-21-21(7). The report shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the Director and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of the calendar quarter in which the product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under Subsection R313-21-21(7) during the reporting period, the report shall so indicate;

(vi) provide certain other reports as follows:

(A) report to the Nuclear Regulatory Commission all transfers of industrial products or devices to persons for use under the Nuclear Regulatory Commission general license in 10 CFR 40.25 (2010);

(B) report to the responsible state agency all transfers of devices manufactured and distributed pursuant to Subsection R313-22-75(11) for use under a general license in that state's regulations equivalent to Subsection R313-21-21(7),

(C) reports shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the agency and the general licensee, the type and model number of the device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of each calendar quarter in which a product or device is transferred to the generally licensed person,

(D) if no transfers have been made to Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the Nuclear Regulatory Commission, and

(E) if no transfers have been made to general licensees within a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency upon the request of that agency; and

(vii) records shall be kept showing the name, address and point of contact for each general licensee to whom the person transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in Subsection R313-21-21(7) or equivalent regulations of the Nuclear Regulatory Commission or an Agreement State. The records shall be maintained for a period of two years and shall show the date of each transfer, the quantity of depleted uranium in the product or device transferred, and compliance with the report requirements of Subsection R313-22-75(11).

R313-22-90. Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release. Refer to Subsection R313-22-32(8).

TABLE

Radioactive Material(1)	Release Fraction	Quantity (curies)
Actinium-228	0.001	4,000
Americium-241	.001	2
Americium-242	.001	2
Americium-243	.001	2
Antimony-124	.01	4,000
Antimony-126	.01	6,000
Barium-133	.01	10,000

Barium-140	.01	30,000
Bismuth-207	.01	5,000
Bismuth-210	.01	600
Cadmium-109	.01	1,000
Cadmium-113	.01	80
Calcium-45	.01	20,000
Californium-252 (20 mg)	.001	9
Carbon-14	.01 Non CO	50,000
Cerium-141	.01	10,000
Cerium-144	.01	300
Cesium-134	.01	2,000
Cesium-137	.01	3,000
Chlorine-36	.5	100
Chromium-51	.01	300,000
Cobalt-60	.001	5,000
Copper-64	.01	200,000
Curium-242	.001	60
Curium-243	.001	3
Curium-244	.001	4
Curium-245	.001	2
Europium-152	.01	500
Europium-154	.01	400
Europium-155	.01	3,000
Germanium-68	.01	2,000
Gadolinium-153	.01	5,000
Gold-198	.01	30,000
Hafnium-172	.01	400
Hafnium-181	.01	7,000
Holmium-166m	.01	100
Hydrogen-3	.5	20,000
Iodine-125	.5	10
Iodine-131	.5	10
Indium-114m	.01	1,000
Iridium-192	.001	40,000
Iron-55	.01	40,000
Iron-59	.01	7,000
Krypton-85	1.0	6,000,000
Lead-210	.01	8
Manganese-56	.01	60,000
Mercury-203	.01	10,000
Molybdenum-99	.01	30,000
Neptunium-237	.001	2
Nickel-63	.01	20,000
Niobium-94	.01	300
Phosphorus-32	.5	100
Phosphorus-33	.5	1,000
Polonium-210	.01	10
Potassium-42	.01	9,000
Promethium-145	.01	4,000
Promethium-147	.01	4,000
Ruthenium-106	.01	200
Radium-226	.001	100
Samarium-151	.01	4,000
Scandium-46	.01	3,000
Selenium-75	.01	10,000
Silver-110m	.01	1,000
Sodium-22	.01	9,000
Sodium-24	.01	10,000
Strontium-89	.01	3,000
Strontium-90	.01	90
Sulfur-35	.5	900
Technetium-99	.01	10,000
Technetium-99m	.01	400,000
Tellurium-127m	.01	5,000
Tellurium-129m	.01	5,000
Terbium-160	.01	4,000
Thulium-170	.01	4,000
Tin-113	.01	10,000
Tin-123	.01	3,000
Tin-126	.01	1,000
Titanium-44	.01	100
Vanadium-48	.01	7,000
Xenon-133	1.0	900,000
Yttrium-91	.01	2,000
Zinc-65	.01	5,000
Zirconium-93	.01	400
Zirconium-95	.01	5,000
Any other beta-gamma emitter	.01	10,000
Mixed fission products	.01	1,000
Mixed corrosion products	.01	10,000
Contaminated equipment, beta-gamma	.001	10,000
Irradiated material, any form other than solid noncombustible	.01	1,000
Irradiated material, solid noncombustible	.001	10,000
Mixed radioactive waste, beta-gamma	.01	1,000
Packaged mixed waste, beta-gamma(2)	.001	10,000
Any other alpha emitter	.001	2
Contaminated equipment, alpha	.0001	20
Packaged waste, alpha(2)	.0001	20
Combinations of radioactive materials listed above(1)	-----	-----

(1) For combinations of radioactive materials, consideration of the need for an emergency plan is required if the sum of the ratios of the quantity of each radioactive material authorized to the quantity listed for that material in Section R313-22-90 exceeds one.

(2) Waste packaged in Type B containers does not require an emergency plan.

R313-22-100. Limits for Broad Licenses. Refer to Section R313-22-50.

TABLE

RADIOACTIVE MATERIAL	COLUMN I	COLUMN II
	CURIES	
Antimony-122	1	0.01
Antimony-124	1	0.01
Antimony-125	1	0.01
Arsenic-73	10	0.1
Arsenic-74	1	0.01
Arsenic-76	1	0.01
Arsenic-77	10	0.1
Barium-131	10	0.1
Barium-140	1	0.01
Beryllium-7	10	0.1
Bismuth-210	0.1	0.001
Bromine-82	10	0.1
Cadmium-109	1	0.01
Cadmium-115m	1	0.01
Cadmium-115	10	0.1
Calcium-45	1	0.01
Calcium-47	10	0.1
Carbon-14	100	1
Cerium-141	10	0.1
Cerium-143	10	0.1
Cerium-144	0.1	0.001
Cesium-131	100	1
Cesium-134m	100	1
Cesium-134	0.1	0.001
Cesium-135	1	0.01
Cesium-136	10	0.1
Cesium-137	0.1	0.001
Chlorine-36	1	0.01
Chlorine-38	100	1
Chromium-51	100	1
Cobalt-57	10	0.1
Cobalt-58m	100	1
Cobalt-58	1	0.01
Cobalt-60	0.1	0.001
Copper-64	10	0.1
Dysprosium-165	100	1
Dysprosium-166	10	0.1
Erbium-169	10	0.1
Erbium-171	10	0.1
Europium-152 (9.2h)	10	0.1
Europium-152 (13y)	0.1	0.001
Europium-154	0.1	0.001
Europium-155	1	0.01
Fluorine-18	100	1
Gadolinium-153	1	0.01
Gadolinium-159	10	0.1
Gallium-72	10	0.1
Germanium-71	100	1
Gold-198	10	0.1
Gold-199	10	0.1
Hafnium-181	1	0.01
Holmium-166	10	0.1
Hydrogen-3	100	1
Indium-113m	100	1
Indium-114m	1	0.01
Indium-115m	100	1
Indium-115	1	0.01
Iodine-125	0.1	0.001
Iodine-126	0.1	0.001
Iodine-129	0.1	0.01
Iodine-131	0.1	0.001
Iodine-132	10	0.1
Iodine-133	1	0.01
Iodine-134	10	0.1
Iodine-135	1	0.01
Iridium-192	1	0.01
Iridium-194	10	0.1

Iron-55	10	0.1
Iron-59	1	0.01
Krypton-85	100	1
Krypton-87	10	0.1
Lanthanum-140	1	0.01
Lutetium-177	10	0.1
Manganese-52	1	0.01
Manganese-54	1	0.01
Manganese-56	10	0.1
Mercury-197m	10	0.1
Mercury-197	10	0.1
Mercury-203	1	0.01
Molybdenum-99	10	0.1
Neodymium-147	10	0.1
Neodymium-149	10	0.1
Nickel-59	10	0.1
Nickel-63	1	0.01
Nickel-65	10	0.1
Niobium-93m	1	0.01
Niobium-95	1	0.01
Niobium-97	100	1
Osmium-185	1	0.01
Osmium-191m	100	1
Osmium-191	10	0.1
Osmium-193	10	0.1
Palladium-103	10	0.1
Palladium-109	10	0.1
Phosphorus-32	1	0.01
Platinum-191	10	0.1
Platinum-193m	100	1
Platinum-193	10	0.1
Platinum-197m	100	1
Platinum-197	10	0.1
Polonium-210	0.01	0.0001
Potassium-42	1	0.01
Praseodymium-142	10	0.1
Praseodymium-143	10	0.1
Promethium-147	1	0.01
Promethium-149	10	0.1
Radium-226	0.01	0.0001
Rhenium-186	10	0.1
Rhenium-188	10	0.1
Rhodium-103m	1,000	10
Rhodium-105	10	0.1
Rubidium-86	1	0.01
Rubidium-87	1	0.01
Ruthenium-97	100	1
Ruthenium-103	1	0.01
Ruthenium-105	10	0.1
Ruthenium-106	0.1	0.001
Samarium-151	1	0.01
Samarium-153	10	0.1
Scandium-46	1	0.01
Scandium-47	10	0.1
Scandium-48	1	0.01
Selenium-75	1	0.01
Silicon-31	10	0.1
Silver-105	1	0.01
Silver-110m	0.1	0.001
Silver-111	10	0.1
Sodium-22	0.1	0.001
Sodium-24	1	0.01
Strontium-85m	1,000	10
Strontium-85	1	0.01
Strontium-89	1	0.01
Strontium-90	0.01	0.0001
Strontium-91	10	0.1
Strontium-92	10	0.1
Sulphur-35	10	0.1
Tantalum-182	1	0.01
Technetium-96	10	0.1
Technetium-97m	10	0.1
Technetium-97	10	0.1
Technetium-99m	100	1
Technetium-99	1	0.01
Tellurium-125m	1	0.01
Tellurium-127m	1	0.01
Tellurium-127	10	0.1
Tellurium-129m	1	0.01
Tellurium-129	100	1
Tellurium-131m	10	0.1
Tellurium-132	1	0.01
Terbium-160	1	0.01
Thallium-200	10	0.1
Thallium-201	10	0.1
Thallium-202	10	0.1
Thallium-204	1	0.01
Thulium-170	1	0.01
Thulium-171	1	0.01
Tin-113	1	0.01
Tin-125	1	0.01
Tungsten-181	1	0.01
Tungsten-185	1	0.01
Tungsten-187	10	0.1
Vanadium-48	1	0.01
Xenon-131m	1,000	10
Xenon-133	100	1
Xenon-135	100	1
Ytterbium-175	10	0.1
Yttrium-90	1	0.01
Yttrium-91	1	0.01
Yttrium-92	10	0.1
Yttrium-93	1	0.01
Zinc-65	1	0.01
Zinc-69m	10	0.1
Zinc-69	100	1
Zirconium-93	1	0.01
Zirconium-95	1	0.01
Zirconium-97	1	0.01
Any radioactive material other than source material, special nuclear material, or alpha-emitting radioactive material not listed above	0.1	0.001

R313-22-201. Serialization of Nationally Tracked Sources.

Each licensee who manufacturers a nationally tracked source after October 19, 2007, shall assign a unique serial number to each nationally tracked source. Serial numbers must be composed only of alpha-numeric characters.

R313-22-210. Registration of Product Information.

Licensees who manufacture or initially distribute a sealed source or device containing a sealed source whose product is intended for use under a specific license or general license are deemed to have provided reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and the environment if the sealed source or device has been evaluated in accordance with 10 CFR 32.210 (2015) or equivalent regulations of an Agreement State.

R313-22-211. Inactivation of Certificates of Registration of Sealed Sources and Devices.

Licensees who no longer manufacture or initially transfer any of the sealed sources or devices covered by a particular certificate issued in accordance with the requirements of R313-22-210 shall request inactivation of the registration certificate in accordance with 10 CFR 32.211 (2015) or equivalent regulations of an Agreement State.

KEY: specific licenses, decommissioning, broad scope, radioactive materials
October 13, 2017 19-3-104
Notice of Continuation July 1, 2016 19-6-104

R357. Governor, Economic Development.
R357-11. Technology Commercialization and Innovation Program (TCIP).
R357-11-1. Purpose.

(1) The purpose of the Technology Commercialization and Innovation Act is to catalyze and enhance growth of technologies by encouraging interdisciplinary research activity and targeted areas, facilitating the transition of technologies out of the higher education to enhance job creation, and to support the commercialization of technologies developed by small businesses to enhance job creation.

R357-11-2. Authority.

(1) UCA 63N-3-204(2)(b) requires the office to make rules to regulate the Technology Commercialization Innovation Program ("TCIP") grant structure and awards and to recapture awards when a recipient fails to maintain a presence in Utah for at least five years after the award is made, as set forth in these rules.

R357-11-3. Definitions.

(1) This rule adopts the definitions set forth in 63N-3-203.

(2) "Board" means the Board of Business Development set forth in 63N-1-301.

(3) "Derivative Technology" means: Incremental advance or new of application of an existing technology.

(4) "Developmental Research Phase" means: A phase in which the technology is not beyond a basic concept as determined by the office.

(5) "New technology means" Intellectual property not previously marketed or generated revenue for any entity.

(6) Qualified Pre-screening entity "means" A University's Technology Transfer Office or the USTAR Technology Outreach Innovation Program. This term only applies to University team applicants.

(7) "Service location" means a location where a grant recipient is developing and/or commercializing the new technology in a way that provides economic impact to the state; including but not limited to: job creation, new state revenue, and new local revenue.

(8) Solicitation Cycle Means: A granting cycle from application to grant distribution to be held at least once a year or more depending on availability of funds. All dates for any solicitation may be found on the TCIP website.

(9) "TCIP" means the Technology Commercialization and Innovation Program as defined in Utah Code Section 63N-3-203(6).

R357-11-4. General Grant Requirements.

(1) An applicant can only receive a TCIP award totaling an amount defined in policy per new technology. Policy shall be available on the TCIP website.

(2) An applicant may not submit more than one application in the same solicitation cycle if the applicant has more than one new technology that meets the eligibility requirement for a TCIP grant.

(a) Only one new technology project per applicant will be funded in a solicitation cycle.

(3) An applicant that has generated more than $500,000 in revenue from the proposed new or derivative technology is not eligible for a TCIP grant.

(4) An applicant that has raised more than $3,000,000 at the time of application in total prior funding, including equity and debt based financing, is not eligible for the TCIP grant.

(5) An applicant may apply for a TCIP grant up to three times. If an applicant has not been awarded a grant for that specific technology within three different solicitations, TCIP will reject subsequent applications without review. If an applicant who has previously received TCIP funding within the past three years wishes to apply for additional funding they can, however once that same technology has been reviewed and rejected three times without being funded it may no longer be considered for review. Executive Director of GOED or the director's designee has the right to review and accept or reject a technology that has been submitted over three times to ensure it meets these criteria.

R357-11-5. Matching Funds.

(1) Matching funds may be considered in granting an award if the Office provides notice of such a requirement in the application. If considered a grant recipient must show proof of the matching funds.

(2) Matching funds may be raised and spent at any time prior to submitting an invoice to the TCIP

(a) Grant recipient must submit bank statements (for Licensees) or financial statements (for Universities) demonstrating that the matching funds were available during the match period.

(b) If matching funds have been required by the Office to be a condition precedent to a grant award, matching funds do not have to be in place at the time of the application, but must be in place before TCIP funds are disbursed within the contract period of one year.

R357-11-6. Applicant Specific Requirements.

(1) University Teams: In order to apply for a grant or loan under the TCIP program, a University Team must satisfy the following initial criteria:

(a) The technology must be organized by faculty led university team;

(b) The technology must have completed the developmental research phase; and

(c) The applicant must be pre-screened by a qualified pre-screening entity.

(d) The qualified pre-screening entity must certify that the technology meets the criteria set forth in (a) and (b) of this section, and the certification must be provided before grant is awarded.

(2) Small Businesses: In order to apply for a grant or loan under the TCIP program, a small business must satisfy the following initial criteria:

(a) The applicant must be a "small business" as defined by the Federal Small Business Administration's definition and meet the criteria set forth in UCA Section 63N-3-203(5).

(3) A University-licensee is also be eligible if it meets the definitions in (a) above.

R357-11-7. Review of Applications and Awards.

(1) Applicants who successfully meet the eligibility requirements set forth in R357-11-4 and R357-11-5 and R357-11-6 may submit their application for the TCIP grant through the online registration portal.

(2) The Executive Director of GOED or the director's designee will evaluate the applications received in each solicitation cycle. The Executive Director or the designee may use the following criteria, as defined by the Executive Director or the designee, to evaluate applications for TCIP grants:

(a) Quality, diversity, and number of jobs created in Utah,

(b) Quality of Management and Leadership, including experience with commercialization of new technologies as demonstrated by grant applicant's application and proposal;

(c) Strength of the new technology and potential for commercialization;

(d) Size and Growth of the market of the proposed technology

(e) Applicant's ability to market the technology and the credibility of their "go-to-market" strategy.

(f) Availability of matching funds and the source and

relevance of those funds as set forth in R357-11-5

(g) Whether the project combines or coordinates related research at two or more institutions of higher education;

(h) Any other criteria deemed necessary or valuable to the selection process.

(3) Additionally, each applicant's application will be compared against and with the strength of all other applicants' applications and proposals within the same solicitation cycle.

(4) The Executive Director may assemble an outside review team to review the criteria set forth above and to make recommendations regarding the application.

(5) The Executive Director or his designee shall propose funding allocations to the Board.

(6) After the Board provides its advice, the Executive Director or the designee shall determine which applications should be prioritized for funding.

(7) Applications will be prioritized and funded based on the criteria set forth in (1)-(3). Award letters will be provided setting forth the terms of the grant offer.

R357-11-8. Requirements for Grant Recipients.

(1) Contract

(a) An applicant who is awarded a TCIP grant must sign a contract with the State of Utah prior to receiving any funds

(2) Sub-Contracts

(a) Grant Recipients are prohibited from subcontracting with another entity to administer the new technology funded by the Grant.

(3) Time in State

(a) Grant recipients will be expected to retain their company, and supported technology, and exploit the technology in the State of Utah for a minimum period of five years from the date of their agreement with the State.

(b) Any applicant who fails to maintain a manufacturing or service location in the state or who fails to exploit the new technology from a location in the state will be subject to recapture of the grant funding, subject to the provisions of Utah Code Section 63N-3-204(2)(d) and R357-11-8.

(4) Authorization to disclose tax information

(a) Licensee grant recipients will be required to sign an authorization to disclose tax records for up to five years from the date of their agreement with the State.

(5) Mentoring Program

(a) Grant awardees may be required to participate in the TCIP Mentoring Program in order to secure funding.

(b) If a grant award is contingent on participation in the TCIP Mentoring Program, an awardee will be required to show active participation in the program prior to receiving any or part of the grant funding as outlined in recipient's contract.

R357-11-9. Funding.

(1) TCIP funding is for developing existing research to the point of commercialization, bridging the "funding gap" between research dollars and manufacturing dollars.

(2) TCIP funding may be used to:

(a) Purchase equipment;

(b) Purchase supplies;

(c) Fund graduate/undergraduate students for time directly applicable to center commercialization activities related to the new technology;

(d) Fund faculty salaries directly applicable to center commercialization and related to the new technology;

(e) Fund technology transfer activities (trade shows, brochures, etc.);

(f) Fund market analysis;

(g) Pay for consulting fees directly applicable to center commercialization;

(h) Pay for business manager or marketing manager salaries directly applicable to center commercialization activities; or

(i) Other purposes approved by GOED in writing.

(3) Carryover Funds

(a) The budget described in the contract is designated for the particular fiscal year and is an integral part of the contract. Upon the expiration of the contract, residual funds under the contract can only be accessed by amending the contract as described above.

(4) Invoicing Requirement

(a) To receive funds from the program, an invoice should be submitted by the awardee upon completion of the milestones or the mentor program with verification from the TCIP manager.

(b) Every invoice must include:

(i) Contract Number;

(ii) Name of entity and Principal Investigator.;

(iii) Billing Period; and

(iv) Current and Cumulative Amounts.

R357-11-10. Reporting Requirements.

(1) Reporting and Monitoring

(a) Grant awardees or mentor will be required to submit a report of activities, achievements and expenses, etc. as specified in the awardees contract.

(b) Grant awardees or mentor will be required to comply with the State's request for information pertaining to the economic impact to the State, at least annually for up to five years from date of the agreement.

(c) Grant awardees or mentor will also be required to respond to additional periodic reporting to the TCIP Director, Governor's Office of Economic Development and GOED Board, and the Legislature, at any time during the agreement period and thereafter for two additional years.

(d) Universities and Small Businesses should also expect periodic site visits from TCIP Director or board members. Such visits will be scheduled at mutually convenient times.

R357-11-11. Recapture.

(1) In order to receive grant funding under these provisions, an applicant must commit to maintain a manufacturing location or service location in the State of Utah for at least five years from the date that the grant award letter is issued.

(2) Maintaining a manufacturing and service location means that the applicant will perform at least 51% percent of the grant activities listed above in the State of Utah, will exploit the technology into a commercial project in Utah and will maintain working operations in the State for at least five years from the date the grant award letter is issued.

(3) If the applicant fails to maintain a manufacturing a service location in Utah for at least five years from the date the grant award letter is issued, the entire grant amount may be subject to recapture.

(4) A repayment by an applicant shall be prorated based on the number of full years the applicant operated in the state from the date of the awarded grant.

(5) Should an applicant fail to comply with the requirements to maintain a manufacturing and service location in Utah for the purpose of exploiting the new technology that is the subject of the grant, the Office will issue a Notice of Agency Action for Recapture.

(6) The Notice of Agency Action shall contain the grounds for recapture, and the prorated amount of the recapture, if any.

KEY: technology, innovations, commercialization, small businesses

October 13, 2017 63N-3-204(2)

R392. Health, Disease Control and Prevention, Environmental Services.
R392-103. Food Handler Training and Certificate.
R392-103-1. Purpose.

(1) This rule requires adherence to uniform statewide standards for training and testing food handlers, issuing food handler certificates and permits, and paying and receiving fees.

(2) The Centers for Disease Control and Prevention has identified five risk factors associated with foodborne illness outbreaks. Four of the five risk factors result from improper handling of food by food handlers or poor personal hygiene of food handlers.

(3) Proper application of the required training principles will empower food handlers to prevent and safeguard against foodborne illnesses. Testing of food handlers confirms that the food handler gained an understanding of correct food protection principles. A food handler permit that is recognized statewide provides a tool for local health officers to verify that food handlers have received state approved training and testing.

(4) State and local monitoring of the food handler training, certificate, and permitting process is critical to promoting and protecting public health. Coordination between this process, the routine inspection of regulated facilities, and the investigation of foodborne illness outbreaks is necessary to respond quickly and effectively to identified and suspected risks to public health.

R392-103-2. Authority.

This rule is authorized by Section 26-15-5 and Section 26-1-30.

R392-103-3. Definitions.

(1) "Certificate" means the documentation of food handler training completion indicating passing of a Department approved exam.

(2) "Cross Contact" means the unintentional transfer of an allergen from a food or food-contact surface containing an allergen to a food or food-contact surface that does not contain the allergen.

(3) "Cross Contamination" means the process by which microorganisms are unintentionally transferred with harmful effect to food or food contact surfaces from other food, food contact surfaces, food handlers, or equipment.

(4) "Department" means the Utah Department of Health.

(5) "Double Handwash" means to wash hands in a handwashing sink immediately after using the toilet room or changing a diaper and then washing the hands again after entering the food preparation or food service area, but before handling food.

(6) "Food Handler" means a person who works with unpackaged food, food equipment or utensils, or food-contact surfaces for a food establishment or food truck as defined in R392-100 or R392-102 respectively.

(7) "Food Handler Applicant" or "applicant" means a person who is seeking or receiving training from an approved food handler training provider, or a person who holds a certificate and has made application with a Local Health Officer to obtain a food handler permit.

(8) "Food Handler Permit" or "permit" means a permit issued by a local health department to allow a person to work as a food handler.

(9) "Food Service Establishment" has the same meaning as provided in Section 26-15a-102(3).

(10) "Independent Instructional Design and Testing Expert" means a person who has received training and has a graduate degree from an accredited university with a certification in psychometrics and expertise in Instructional Design.

(11) "Local Health Department" has the same meaning as provided in Section 26A-1-102(5).

(12) "Local Health Officer" means the director of the jurisdictional local health department as defined in Section 26A, Chapter 1, or designated representative.

(13) "Person in Charge" means the person present at a food service establishment or temporary food service event who is responsible for its operation at the time of inspection by the local health officer.

(14) "Training Provider" means an entity that provides a food handler training program and exam approved by the Utah Department of Health.

R392-103-4. Food Handler Permit Issuing Procedure, Reciprocity, and Renewal.

(1) Except when Subsections R392-103-4(15) and (16) apply, a person may not work as a food handler for a food service establishment or temporary event unless the person:

(a) obtains a certificate within 14 days after the day on which the person begins employment as a food handler; and

(b) obtains a food handler permit within 30 days after the day on which the person begins employment as a food handler.

(2) A food handler shall obtain a food handler permit no later than 7 days after the expiration of the food handler's existing permit.

(3) Replacement of lost permits shall only be issued by the local health department having jurisdiction.

(a) A local health department may charge a fee for replacement of a lost or misplaced permit.

(4) A training provider shall promptly issue a certificate to any food handler applicant who receives the training provider's Department approved training and passes a Department approved exam.

(5)(a) Using a data template approved by the Department, a training provider shall transmit via email the information described in Subsection R392-103-7(10)(a) to the local health department having jurisdiction within seven days of a certificate's issuance.

(b) This data transmission shall serve as notification to the local health department that an applicant has completed an approved course and exam.

(i) A training provider shall provide all information required by the Department-approved data template.

(ii) No provider or local health department may require changes to the data template or require additional information unless approved by the Department.

(6) To prevent fraud, the training provider shall number each issued certificate using a unique numbering system.

(7) The certificate shall contain the following information:

(a) Name of the person to whom the certificate is issued;

(b) Date of issuance; and

(c) Name of the issuing training provider.

(8) Upon issuance, the certificate shall be valid for 30 days. A local health officer shall accept the certificate as proof that the food handler applicant completed Department approved training and testing.

(9) A local health officer shall issue a food handler permit when:

(a) an applicant provides to the local health department a valid certificate of an approved food handler training program; or

(b) the local health department has received notification of an applicant receiving training and passing an approved exam by the training provider as required in Subsection R392-103-4(5); and

(c) The local health department has received a food handler permit fee.

(i) The food handler permit fee shall be no more than $15 and shall be uniform statewide.

(10) The front of an issued food handler permit shall contain the following information:

(a) Title that reads, "Utah Food Handler Permit";
(b) Name of the food handler;
(c) Permit expiration date;
(d) Identification number that includes the training provider's 2-letter unique identifier followed by up to 8 alphanumeric characters;
(e) Name of local health department issuing the permit;
(f) The phrase, "This Permit is Not a Legal Form of Identification" stated at the bottom of the permit; and
(g) Utah State seal.
(11) The back of an issued food handler permit shall contain the following statements:
(a) "Permit must be presented upon request by the local health officer"; and
(b) "Permit may be revoked for cause".
(12) A local health officer shall accept any food handler permit issued under authority of this rule until the date of expiration, revocation, or suspension of the food handler permit.
(13) Except for temporary food service events, the person in charge of a food establishment shall provide, upon request of the local health officer, a copy of a food handler permit for each food handler working in the food establishment. For temporary events, the person in charge is not required to maintain copies of food handler permits, but at least one present person must be able to show that person's current food handler permit to the local health officer.
(14) Food handler permits shall be valid statewide for 3 years from the date of issuance. Food handler permits may be renewed every 3 years by completing an approved food handler training course, passing an exam administered by an approved food handler training provider, and receiving a food handler permit from a local health officer.
(15) The local health officer shall accept a food handler permit issued to a back country outfitter by the United States Department of the Interior, or by a public health authority in Arizona, Colorado, Idaho, Nevada, or Wyoming. This applies only to food handling done at a back country food establishment and meeting the exemption requirements of Section 26-15a-105(1)(i).
(16) A person who has met the requirements of Rule R392-101 to become certified as a food safety manager shall be exempt from the requirement to obtain a food handler permit under this section.

R392-103-5. Suspension or Revocation of Food Handler Permits.
(1) A local health officer may revoke or suspend a food handler permit if:
(a) A food handler is ill with a disease that may be transmitted through the handling of food;
(b) The local health officer documents in two or more inspections within two years that the same food handler has at least twice failed to apply the same training objective listed in Subsection R392-103-6(2); or
(c) A food handler shows willful disregard for food safety or food protection in a manner that has the potential to endanger public health.
(2) The local health officer may confiscate any food handler permit that the local health officer cannot authenticate or that has been revoked or suspended.
(3) A food handler may reapply to a local health department for reinstatement of a revoked or suspended food handler permit by requesting a hearing with the local health officer and demonstrating to the local health officer's satisfaction that the food handler permit may be reinstated.

R392-103-6. Food Handler Training Requirements.
(1) A person or entity shall receive approval from the Department before offering training to food handlers in the state. An approved food handler training program shall:
(a) include at least 75 minutes of training time offered either in an internet-based course, a trainer-led course, or a combination of both;
(b) contain basic training information regarding the Centers for Disease Control top 5 risk factors associated with foodborne illness; and
(c) only contain information that is consistent with the FDA national model food code standard incorporated by reference in R392-100.
(2) A training provider shall ensure that the food handler training program contains each of the following specific training objectives:
(a) Food Protection - Limiting Harmful Pathogens
(i) Define potentially hazardous foods (foods that require time or temperature controls for safety, TCS).
(ii) Provide a comprehensive list of foodborne pathogen sources.
(iii) Discuss ideal conditions for bacterial growth in food.
(iv) List the temperature danger zone.
(v) List proper hot and cold holding temperatures of food which requires time or temperature control for safety.
(vi) List the appropriate temperatures for refrigerators and hot holding equipment.
(vii) Describe the approved procedures for thawing frozen foods.
(viii) Describe the approved methods for cooling food.
(ix) Describe approved and unapproved food sources.
(x) Describe the correct procedures for date marking and discarding food.
(xi) Identify the conditions in which time can be used as a public health control without temperature control.
(b) Food Protection - Destroying Harmful Pathogens and Preventing Food Contamination
(i) List the required final cook temperatures for foods.
(ii) Describe the procedure and list the final temperature for reheating leftovers for hot hoolding.
(iii) Describe the relationship between cooking time and temperature in killing microorganisms.
(iv) Define cross contamination.
(v) List the possible sources of cross contamination when handling food.
(vi) Discuss how a food handler might contaminate food.
(vii) Identify steps to prevent cross contamination.
(viii) Stress the importance of eliminating bare-hand contact with ready-to-eat food.
(ix) Describe how, when, and where to use utensils or gloves.
(x) Define and give examples of the major food allergens.
(xi) Describe the range of symptoms, including the types of mild reactions to anaphylactic shock or death, that an individual having an allergic reaction may experience after exposure to a food allergen.
(xii) Identify steps to prevent cross-contact of food allergens, and stress that cooking does not remove an allergen from food.
(c) Equipment, Utensils, and Linens
(i) Explain the difference between cleaning and sanitizing, and describe the correct procedures for each.
(ii) Identify when surfaces should be cleaned and sanitized.
(iii) Identify the commonly-used chemicals approved for sanitizing food-contact surfaces.
(iv) Describe how to test chemical concentration of sanitizing solutions used on food-contact surfaces, and stress its importance.
(v) Describe the 3-compartment sink method of cleaning, rinsing, and sanitizing utensils and how to correctly dry dishes.
(vi) Describe the correct procedure for cleaning and

sanitizing utensils and equipment when using a warewashing machine.

(vii) Describe the correct procedures for storing cleaned dishes and utensils, laundered linens, and single-service and single-use articles.

(viii) Describe the procedures for safe chemical storage and use.

(ix) Describe the correct procedures for handling, storage, and removal of solid waste.

(d) Employee Health and Hygiene

(i) List the reportable foodborne illness diagnoses as well as reportable symptoms, past illnesses, and history of exposure that a food handler must report to the person in charge.

(ii) Describe the personal hygiene practices a food handler must follow to prevent food contamination.

(iii) Describe the proper hand washing procedure and when a double hand wash is required.

(iv) Describe how hands become contaminated and when and where hand washing should occur.

(v) List approved jewelry, clothing, and hair restraints.

(vi) Describe the correct procedures to prevent a foodborne illness from a cut, burn, or other wound.

(vii) Describe the conditions in which an employee may eat, drink, or use any form of tobacco as well as the precautions to take after these activities.

(viii) Define a foodborne illness.

(ix) List the population groups that are the most vulnerable to foodborne illness.

(3) Each time a food handler permit is renewed, the food handler must take a training course from an approved food handler training provider before the food handler may take a food handler exam.

(4) A person may instruct an approved food handler training program only when the person is registered with a local health department as an instructor.

(5) Prior to registration, each instructor of a trainer-led food handler course shall demonstrate to the local health department that the instructor has received food protection management training equivalent to the requirements of R392-101-3, as determined by the local health officer or the Department.

(6) Prior to training program approval, a representative of an internet-based food handler course shall demonstrate to the Department that the representative has received food protection management training equivalent to the requirements of R392-101-3, as determined by the Department.

(7) A training provider shall maintain a list of past and current instructors registered with a local health department denoting the dates the instructor taught food handler courses. A training provider shall provide the instructor list to the Department upon request. Online training providers shall maintain a list or database of courses taught online according to course version and training date.

(8) A training provider shall maintain a system to verify a certificate upon request of the Department, the local health department, or the food establishment where the food handler is employed.

(9) A training provider may charge a reasonable fee. A training provider may collect both the training fee and food handler permit fee at the same time from the applicant when the applicant initially pays for the training course.

(10) If a person or entity is not approved by the department to provide an approved food handler training program, the person or entity may not represent, in connection with the person's or entity's name of business, including in advertising, that the person or entity is a provider of an approved food handler training program or otherwise represent that a program offered by the person or entity will qualify a person to work as a food handler.

R392-103-7. Exam Requirements.

(1) A training provider shall use the bank of food handler exam questions issued by the Department and obtained through application to the Department, or a Department approved set of questions as described in R392-103-7(2). Exams shall contain 40 multiple choice questions with 10 randomly selected questions from each content section listed in Subsection R392-103-6(2)(a) through (d). A training provider shall routinely rotate exam questions from the exam question bank, and randomize the order of exam questions as well as the answer order of the multiple-choice questions.

(2) If a training provider elects not to use the Department issued questions, the training provider may request approval of a different bank of exam questions. For approval, the training provider shall pay to the Department a fee to review the exam questions. The fee shall reflect actual costs, but shall not exceed $500. The training provider shall also submit to the Department the proposed bank of at least 200 exam questions organized by the required content sections and covering the learning objectives listed in this rule with at least 25 questions from each content section. In addition, the training provider shall contract, at their own expense, with a Department approved independent instructional design and testing expert to evaluate the proposed bank of exam questions. The independent instructional design and testing expert shall analyze a training provider's bank of exam questions to determine if the exam questions effectively measure the applicant's knowledge of the learning objectives outlined in this rule and meet the appropriate testing standards for question structure. To be approved, the independent instructional design and testing expert must provide the Department with a positive recommendation based on the expert's analysis. The Department must approve any change in the provider offered bank of exam questions before implementation. Exam approval is good for three years, after which a provider shall reapply for exam approval.

(3) If the Department finds that a question inadequately tests comprehension of the learning objectives, the Department may invalidate the question and may require the training provider to revise or remove the exam question. A training provider shall update any invalidated exam questions no more than 30 days after receiving written notice from the Department.

(4) In order to pass the required exam, a food handler applicant shall correctly answer at least 75% of the exam questions.

(5) A training provider may offer a written, oral, or online food handler exam. As circumstances dictate, a training provider may offer an oral exam individually to a food handler applicant having language or reading comprehension difficulties or other mental or physical limitations that may interfere with the applicant's ability to complete a written or an online exam.

(6) A training provider shall implement procedures to prevent cheating on exams. A training provider shall ensure that exam questions are protected from:

(a) Unauthorized access;

(b) Copy or alteration; and

(c) Access to food handler applicants outside of established exam time.

(7) A training provider shall inform a food handler applicant, at the beginning of the course, that:

(a) food handler permits are valid for 3 years statewide; and

(b) lost or misplaced permits may be reissued by the applicant's local health department for a fee.

(8) A training provider shall inform a food handler applicant, at the beginning of the course, that the food handler applicant is strictly prohibited from engaging in any of the following practices:

(a) Downloading exams onto a flash drive or other portable electronic device;

(b) Distributing the exam in any way to another person;
(c) Taking notes during the exam;
(d) Using a cell phone or other recording device; or,
(e) Conversing with any other person or receiving aid to answer questions during the exam process.

(9) A training provider shall invalidate the certificates of any food handler applicant involved in the violation of any of the exam security requirements listed in Subsection R392-103-7(8). A food handler applicant involved in violation of the exam security requirements shall receive a certificate from a training provider only after the food handler applicant has successfully completed an additional training course and a proctored exam.

(10)(a) A training provider shall maintain records for at least three years of each food handler applicant's:
(i) Name;
(ii) Mailing address;
(iii) Email address;
(iv) Primary phone number;
(v) Date of birth;
(vi) Date of exam;
(vii) Exam score;
(viii) Certificate expiration date; and
(ix) Name of instructor.

(b) A training provider shall provide this record to the local health department receiving application from the food handler applicant within seven days as required in Subsection R392-103-4(5).

(11) A training provider shall implement procedures to prevent the duplication of certificates such as the use of a void pantograph, invisible watermarks, copy-evident or security paper, or the use of electronic copy protection features.

(12) A training provider shall proctor any exam offered in person either in written form or on a computer located at the training facility.

(13) A training provider shall require a food handler applicant to provide a signature attesting that the applicant has complied with exam requirements.

(14) A training provider shall offer a course and exam evaluation to food handler applicants.

(15) An internet-based training provider shall implement procedures to reasonably inhibit fraudulent attempts to circumvent the food handler training and exam requirements in this rule such as a person taking an exam in place of another person. A training provider shall implement procedures to reasonably ensure a food handler applicant taking an approved course and exam is focused on training materials and actively engaged throughout the training period.

(16) An internet-based training provider offering an exam over the internet shall meet the following additional protocols:

(a) The training provider shall log the start and end time of each online exam.

(b) The training provider shall monitor any repeat attempts to pass an online exam, and shall require a food handler applicant to retake a food handler training course after three failed attempts to pass the exam.

(c) The training provider shall track the Internet Protocol (IP) address or similar electronic location identifier of a food handler applicant who begins an online exam.

(d) The training provider shall require a food handler applicant to provide an electronic signature before taking an online exam to attest that the applicant will comply with exam requirements.

(e) The training provider shall require a food handler applicant to provide all applicant information required by this rule and shall electronically link the information to the exam before the exam may be offered.

(f) The training provider shall present a minimum of four pre-exam questions at the end of each learning section. The food handler applicant shall correctly answer 75% of the pre-exam questions before being allowed to proceed to the next section. The training provider shall ensure that the food handler applicant completes all pre-exam questions before proceeding to the online exam.

(g) The Department and local health officers will evaluate exam protocols during the training program approval process. The Department may audit the training program at any time to determine that the existing protocols are preventing fraudulent activities.

(17) An internet-based training provider shall maintain all documentation of fraud prevention measures required in Subsection R392-103-7(16)(a) through (e) for 3 years, and may be required to submit copies of this documentation to the Department in response to any of the following events:

(a) Upon initial application submittal to the Department for food handler training program approval;

(b) When applying to the Department for training program revalidation as required in R392-103-8(5);

(c) During an audit by the Department; or

(d) At the written request of the Department.

(18) An internet-based training provider shall provide technical support to users by way of the internet, phone, or other method in case technical difficulties occur.

(19) An internet-based training provider shall monitor exam protocols and perform a self-review at least monthly to assess that the system is working and to ensure that each exam meets exam protocols before issuing a certificate.

R392-103-8. Training Provider Approval and Auditing.

(1) A food handler training provider that has been approved by the Department before the effective date of this rule may continue to provide food handler training and testing as previously approved until three years from the effective date of this rule, at which time full compliance with this rule is required.

(2) To be considered for approval after the effective date of this rule, a prospective training provider shall submit to the Department:

(a) a completed application;

(b) a written summary describing how the training program meets each training objective listed in Subsection R392-103-6(2);

(c) a copy of the course curriculum, including slides, handouts, talking points, script, videos, brochures, or any additional information used during the course, or full access to the online course; and

(d) a copy of the exam questions, if applicable, as described in Subsection R392-103-7(2).

(3) As part of the approval process, the Department shall provide prospective training providers with either a hard copy or electronic copy of this rule. Training providers shall sign an affidavit provided by the Department stating that the training provider will comply with the requirements of this rule and abide by confidentiality agreements when using Department provided exam questions.

(4) During the initial approval process and any subsequent audits, a training provider shall grant access to the Department to audit or authenticate any documents used in the food handler training as well as the identity of instructors and training providers.

(5) A training provider shall submit an application to the Department for training program revalidation every 3 years from the date of initial approval by the Department. The training provider shall follow the requirements of Subsection R392-103-8(2) to apply for revalidation.

(6) In order to determine and verify compliance with this rule, the Department may conduct an audit of the training provider's program. The Department may conduct audits

routinely, randomly, or in response to a complaint. A training provider shall allow the Department unrestricted access to the following:

(a) Course training and testing materials; and,

(b) Online training sites; and,

(c) Classroom training sessions.

(7)(a) If the Department finds that a training provider is non-compliant during an audit, the Department shall revoke the registration and remove the training provider from the list of approved food handler training providers in Utah. The training provider shall then immediately cease and desist training and issuing certificates until the Department has verified that the issues of non-compliance have been corrected.

(b) The Department shall notify the local health departments when a training provider has been removed from or added to the list of approved food handler training providers in Utah.

(c) The local health officer shall refuse to accept certificates issued by a training provider as described in Subsection R392-103-8(7)(a) from the date the training provider was found to be in non-compliance until the violation is corrected and the Department has again issued written approval and placed the training provider on the list of approved food handler training providers in Utah.

(8) A training provider shall comply with the Americans with Disability Act (ADA) access requirements regardless of the size of the training operation.

KEY: food handler training, food handler certificates, food handler permits, food handler exams

October 25, 2017 **26-1-30(4)**
26-15-5
26A-1-114(1)(h)

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-32. Hospital Record-keeping Policy.
R414-32-1.

1. General Requirement

A hospital providing care for any Utah Medicaid patient must provide sufficient documentary evidence that ancillary services for which Medicaid is billed were actually rendered in the diagnosis and/or treatment of that patient and that such services were properly authorized by a licensed physician. If such evidence is not provided in accordance with the provisions of this administrative rule, then reimbursement for such unsupported charges will not be allowed by Medicaid.

2. Documentation That Services Were Rendered

Sufficient documentary evidence that an ancillary service was rendered consists of medical reports, x-rays and laboratory analyses normally provided by the department which renders the service. Department logs may be accepted as documentation that ancillary services were rendered if each entry is signed and dated by an authorized individual rendering the services.

3. Documentation That Services Were Properly Authorized

Sufficient documentary evidence of a physician authorization consists of a written order signed and dated by a licensed physician within the time limits specified in the bylaws of the hospital or within thirty (30) days after the date of discharge, whichever is sooner.

A written departmental protocol is acceptable as authorization if the protocol is specific with respect both to the medical service to be rendered and to the conditions and circumstances under which the service may be given without the direct authorization of a licensed physician. All such protocols must have the formal written approval of the appropriate medical staff committees of the hospital and be signed by the physician in charge of the care unit.

4. Notification of Discrepancies

If, upon examination of a hospital patient's medical record 30 days or more after the patient was discharged, sufficient documentary evidence is not found to support charges for ancillary services, the Department of Health or its agent will notify the hospital in writing of such discrepancy. If within thirty (30) days of the date the hospital is notified of such discrepancy, the hospital compiles in the medical record sufficient documentary evidence in support of the charge that was noted as a discrepancy, then such evidence will be considered sufficient. If the hospital does not place such evidence in the medical record within thirty (30) days after being notified of the discrepancy then reimbursement will not be allowed for the unsupported item. Subsequent presentation of any documentation will not be accepted by the Department of Health.

KEY: medicaid
1987 26-1-5
Notice of Continuation October 17, 2017

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-504. Nursing Facility Payments.
R414-504-1. Introduction.

(1) This rule adopts a case mix or severity based payment system, commonly referred to as RUGS (Resource Utilization Group System) for nursing facilities that are not ICF/MRs. This system reimburses facilities based on the case mix index of the facility. It also establishes rates for ICF/MR facilities.

(2) This rule is authorized by Utah Code sections 26-1-5, 26-18-3, and 26-35a.

R414-504-2. Definitions.

The definitions in R414-1-2 and R414-501-2 apply to this rule. In addition:

(1) "Behaviorally complex resident" means a long-term care resident with a severe, medically based behavior disorder, including traumatic brain injury, dementia, Alzheimer's, Huntington's Chorea, which causes diminished capacity for judgment, retention of information or decision-making skills, or a resident, who meets the Medicaid criteria for nursing facility level of care and who has a medically-based mental health disorder or diagnosis and has a high level resource use in the nursing facility not currently recognized in the case mix.

(2) "Case Mix Index" means a score assigned to each facility based on the average of the Medicaid patients' RUGS scores for that facility.

(3) "Facility Case Mix Rate" means the rate the Department issues to a facility for a specified period of time. This rate utilizes the case mix index for a provider, labor wage index application and other case mix related costs.

(4) "FCP" means the Facility Cost Profile report filed by the provider on an annual basis.

(5) "Minimum Data Set" (MDS) means a set of screening, clinical and functional status elements, including common definitions and coding categories, that form the foundation of the comprehensive assessment for all residents of long term care facilities certified to participate in Medicaid.

(6) "Nursing Costs" means the most current costs from the annual FCP report reported on lines 070-012 Nursing Admin Salaries and Wages; 070-013 Nursing Admin Tax and Benefits; 070-040 Nursing Direct Care Salaries and Wages; 070-041 Nursing Direct Care Tax and Benefits, and 070-050 Purchased Nursing Services.

(7) "Nursing facility" or "facility" means a Medicaid-participating NF, SNF, or a combination thereof, as defined in 42 USC 1396r (a) (1988), 42 CFR 440.150 and 442.12 (1993), and UCA 26-21-2(15).

(8) "Patient day" means the care of one patient during a day of service, excluding the day of discharge.

(9) "Property costs" means the fair rental value (FRV) established by this rule.

(10) "RUGS" means the 34 RUG identification system based on the Resource Utilization Group System established by Medicare to measure and ultimately pay for the labor, fixed costs and other resources necessary to provide care to Medicaid patients. Each "RUG" is assigned a weight based on an assessment of its relative value as measured by resource utilization.

(11) "RUGS score" means a total number based on the individual RUGS derived from a resident's physical, mental and clinical condition, which projects the amount of relative resources needed to provide care to the resident. RUGS is calculated from the information obtained through the submission of the MDS data.

(12) "Sole community provider" means a facility that is not an urban provider and is not within 30 paved road miles of another existing facility and is the only facility:

(a) within a city, if the facility is located within the incorporated boundaries of a city; or

(b) within the unincorporated area of the county if it is located in an unincorporated area.

(13)(a) "Urban provider" means a facility located in a county which has a population greater than 90,000 persons.

(b) "Rural provider" means a facility that is not an urban provider.

(14) "FRV Data Report" means a report that provides the Department with information relating to capital improvements to be included in the FRV calculation.

(15) "Banked beds" means beds that have been taken off-line by the provider, through the process defined by Utah Department of Health, Bureau of Facility Licensing, Certification, and Resident Assessment, to reduce the operational capacity of the facility, but does not reduce the licensed bed capacity.

(16) "Bed Addition" means, as used in the fair rental value calculation, a capitalized project that adds additional beds to the facility. This must be new and complete construction. An increase in total licensed beds and new construction costs support a claim of additional beds.

(17) "Bed Replacement" means, as used in the fair rental value calculation, a capitalized project that furnishes a bed in the place of another, previously existing, bed. Room remodeling is not a replacement of beds. This must be new and complete construction.

(18) "Major Renovation" means, as used in the fair rental value calculation, a capitalized project with a cost equal to or greater than $500 per licensed bed. A renovation extends the life, increases the productivity, or significantly improves the safety (such as by asbestos removal) of a facility as opposed to repairs and maintenance which either restore the facility to, or maintain it at, it's normal or expected service life. Vehicle costs are not a major renovation capital expenditure.

R414-504-3. Principles of Facility Case Mix Rates and Other Payments.

The following principles apply to the payment of freestanding and provider based nursing facilities for services rendered to nursing care level I, II, and III Medicaid patients, as defined in Rule R414-502. This rule does not affect the system for reimbursement for intensive skilled Medicaid patient add-on amounts.

(1) Approximately 59% of total payments in aggregate to nursing facilities for nursing care level I, II and III Medicaid patients are based on a prospective facility case mix rate. In addition, these facilities shall be paid a flat basic operating expense payment equal to approximately 29% of the total payments. The balance of the total payments will be paid in aggregate to facilities as required by Section R414-504-3 based on other authorized factors, including property and behaviorally complex residents, in the proportion that the facility qualifies for the factor.

(2) Each quarter, the Department shall calculate a new case mix index for each nursing facility. The case mix index is based on three months of MDS assessment data. The newly calculated case mix index is applied to a new rate at the beginning of a quarter according to the following schedule:

(a) January, February and March MDS assessments are used for July 1 rates.

(b) April, May and June MDS assessments are used for October 1 rates.

(c) July, August and September MDS assessments are used for January 1 rates.

(d) October, November and December MDS assessments are used for April 1 rates.

(3) MDS data is used in calculating each facility's case mix index. This information is submitted by each facility and, as such, each facility is responsible for the accuracy of its data.

The Department may exclude inaccurate or incomplete MDS data from the calculation.

(4) MDS assessments for recipients who are eligible for the "Intensive Skilled" add-on are excluded from the case mix calculation. A facility with less than 20 percent of its total census days as Medicaid days, as reported on its FCP or FRV data report, is excluded from the state case mix average. The state average case mix index is used to set the rate for that facility.

(5) A facility may apply for a special add-on rate for behaviorally complex residents by filing a written request with the Division of Health Care Financing. The Department may approve an add-on rate if an assessment of the acuity and needs of the patient demonstrates that the facility is not adequately reimbursed by the RUGS score for that patient. The rate is added on for the specific resident's payment and is not subsumed as part of the facility case mix rate. Utah's Bureau of Health Facility Licensure, Certification and Resident Assessment will make the determination as to qualification for any additional payment. The Division of Health Care Financing shall determine the amount of any add-on.

(6) Property costs are paid separately from the RUGS rate.

(7) Reimbursement for nursing home rates is in accordance with Attachment 4.19-D of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

(8) A sole community provider that is financially distressed may apply for a payment adjustment above the case mix index established rate. The maximum increase will be 7.5% above the average of the most recent Medicaid daily rate for all Medicaid residents in all freestanding nursing facilities in the state. The maximum duration of this adjustment is for no more than a total of 12 months per facility in any five-year period.

(a) The application shall propose what the adjustment should be and include a financial review prepared by the facility documenting:

(i) the facility's income and expenses for the past 12 months; and

(ii) specific steps taken by the facility to reduce costs and increase occupancy.

(b) Financial support from the local municipality and county governing bodies for the continued operation of the facility in the community is a necessary prerequisite to an acceptable application. The Department, the facility and the local governing bodies may negotiate the amount of the financial commitment from the governing bodies, but in no case may the local commitment be less than 50% of the state share required to fund the proposed adjustment. Any continuation of the adjustment beyond 6 months requires a local commitment of 100% of the state share for the rate increase above the base rate. The applicant shall submit letters of commitment from the applicable municipality or county, or both, committing to make an intergovernmental transfer for the amount of the local commitment.

(i) If the governmental agency receives donations in order to provide the financial contribution, it must document that the donations are "bona fide" as set forth in 42 CFR 433.54.

(c) The Department may conduct its own independent financial review of the facility prior to making a decision whether to approve a different payment rate.

(d) If the Department determines that the facility is in imminent peril of closing, it may make an interim rate adjustment for up to 90 days.

(e) The Department's determination shall be based on maintaining access to services and maintaining economy and efficiency in the Medicaid program.

(f) If the facility desires an adjustment for more than 90 days, it must demonstrate that:

(i) the facility has taken all reasonable steps to reduce costs, increase revenue and increase occupancy;

(ii) despite those reasonable steps the facility is currently losing money and forecast to continue losing money; and

(iii) the amount of the approved adjustment will allow the facility to meet expenses and continue to support the needs of the community it serves, without unduly enriching any party.

(g) If the Department approves an interim or other adjustment, it shall notify the facility when the adjustment is scheduled to take effect and how much contribution is required from the local governing bodies. Payment of the adjustment is contingent on the facility obtaining a fully executed binding agreement with local governing bodies to pay the contribution to the Department.

(h) The Department may withhold or deny payment of the interim or other adjustment if the facility fails to obtain the required agreement prior to the scheduled effective date of the adjustment.

(9) A provider may challenge the rate set pursuant to this rule using the appeal in Rule R410-14. This applies to which rate methodology is used as well as to the specifics of implementation of the methodology. A provider must exhaust administrative remedies before challenging rates in any other forum.

(10) In developing payment rates, the Department may adjust urban and non-urban rates to reflect differences in urban and non-urban labor costs. The urban labor costs reimbursement cannot exceed 106% of the non-urban labor costs. Labor costs are as reported on the most recent FCP but do not include FCP-reported management, consulting, director, and home office fees.

(11) The Department reimburses swing beds, transitional care unit beds, and small health care facility beds that are used as nursing facility beds, using the prior calendar year state-wide average of the daily nursing facility rate.

(12) Withholding of Title XIX payments

(a) Unless specified otherwise, the Department may withhold Title XIX payments from providers if:

(i) there is a shortage in a resident trust account managed by the facility;

(ii) the facility fails to submit a complete and accurate FCP as required by Utah State Plan Attachment 4.19-D, Section 332;

(iii) the facility fails to submit timely, accurate Minimum Data Set (MDS) data;

(iv) the facility owes money to the Division of Health Care Financing because of an overpayment, nursing care facility assessment, civil money penalty, or other offset; or

(v) the facility fails to respond within 10 business days to a written request for information.

(13) The Department shall provide written notice before withholding payments.

(14) When the Department rescinds withholding of payments to a provider, it will, without notice, resume payments according to the regular claims payment cycle.

(b) For ongoing operations, the Department will provide notice before withholding payments. The Department and provider may negotiate a repayment schedule acceptable to the Department for monies owed to the Department listed in subsection (a)(iv). The repayment schedule may not exceed 180 days.

(c) When the Department rescinds withholding of payments to a facility, it will resume payments according to the regular claims payment cycle.

R414-504-4. Quality Improvement Incentive.

(1) Reimbursement for Nursing Home Quality Improvement Incentives is in accordance with Attachment 4.19-D of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

(2) Division staff are not required to request additional information relating to any application submission.

(3) Providers shall ensure all necessary information is included in the application in order to qualify.

(4) For applications received and reviewed by division staff prior to the annual submision deadline, if the application is incorrect or lacks sufficient supporting documentation, then the application shall be denied. If it is received prior to the annual submission deadline, the provider may submit a subsequent application that includes all needed supporting documentation for consideration.

(5) For applications received prior to the annual submission deadline and reviewed by division staff after the annual submission deadline, then the provider's application may be considered for qualification of a reduced amount, where possible, based on the submitted documentation.

(6) In all cases, no additional applications, documentation or explanation will be accepted if submitted after the annual submission deadline.

R414-504-5. Reimbursement for Intermediate Care Facilities for the Mentally Retarded.

The following principles apply to the payment of community-based intermediate care facilities for the mentally retarded (ICF/MRs) that are licensed under Section 26-21-13.5:

(1) The Department pays approximately 93% of the aggregate payments to ICF/MRs based on a prospective flat rate established in Utah State Plan Attachment 4.19-D. The Department pays the balance as a property cost component calculated by the Fair Rental Value system pursuant to Section R414-504-3.

(2)(a) Reimbursement for the ICF/MR Quality Improvement Incentive is in accordance with Attachment 4.19-D of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

(b) Division staff are not required to request additional information relating to any application submission.

(c) Providers shall ensure all necessary information is included in the application in order to qualify.

(d) For applications received and reviewed by division staff prior to the annual submission deadline, if the application is incorrect or lacks sufficient supporting documentation, then the application shall be denied. If it is received prior to the annual submission deadline, the provider may submit a subsequent application that includes all needed supporting documentation for consideration.

(e) For applications received prior to the annual submission deadline and reviewed by division staff after the annual submission deadline, then the provider's application may be considered for qualification of a reduced amount, where possible, based on the submitted documentation.

(f) In all cases, no additional applications, documentation or explanation will be accepted if submitted after the annual submission deadline.

KEY: Medicaid
November 1, 2017 26-1-5
Notice of Continuation October 17, 2017 26-35a

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-509. Medicaid Autism Waiver Open Enrollment Process.
R414-509-1. Introduction and Authority.

(1) This rule defines the open enrollment process to enroll individuals in the Medicaid Autism Waiver program.

(2) This rule is authorized by Section 26-18-407. Waiver services are optional and provided in accordance with 42 CFR 440.225.

R414-509-2. Definitions.

(1) "Attrition" means the act of a waiver recipient leaving the waiver for any reason. Examples include the recipient moving out-of-state or the recipient turning seven years of age.

(2) "Geographical Region" means a county or counties that are identified as belonging to one of the twelve Utah local health department districts.

(3) "Department" means the Department of Health.

(4) "Open enrollment" means the period during which the Department accepts waiver applications.

(5) "Opening" means the availability for an individual to participate in the Medicaid Autism Waiver program.

(6) "Waiver Operating Agency" means the Department of Human Services, which contracts with the Department of Health to implement defined waiver operations.

R414-509-3. Open Enrollment Eligibility Requirements.

To participate in the open enrollment process, the individual must meet the following eligibility requirements:

(1) The individual must have a diagnosis of an autism spectrum disorder from a licensed clinician. Diagnosis must be rendered by a clinician who is authorized under the scope of his licensure;

(2) On the final day of the open enrollment period, the individual must:

(a) Be at least two years of age;

(b) Be not older than six years and six months of age; and

(3) Meet the financial eligibility requirement defined in the Medicaid Autism Waiver program.

R414-509-4. Open Enrollment Periods.

The Department will determine when open enrollment periods are held and for what duration based on the availability of funds for the Medicaid Autism Waiver program.

R414-509-5. Open Enrollment Procedures.

(1) The Department accepts the following means of application during open enrollment periods:

(a) Online application, with a time and date stamp confirming that the application was received within the open enrollment period;

(b) Facsimile, with a time and date stamp confirming that the application was received within the open enrollment period; and

(c) Mail, with the postmark on applications dated no sooner than the first day of the open enrollment period and no later than the last day of the open enrollment period.

(2) The number of individuals who may enroll in the waiver program during an open enrollment period is based on the availability of funds.

(3) The Department enrolls all individuals who meet the requirements of Section R414-509-3 if the number of applications does not exceed the number of available openings when the open enrollment period ends.

(4) If the number of applications exceeds the number of available waiver openings, then the Department shall:

(a) Compile all applications that it receives during the open enrollment period;

(b) Assign each application a random number;

(c) Create lists of randomly numbered applications by assigned geographical region;

(d) Assure that rural and underserved regions of the state are represented. The Department assigns waiver openings by geographical regions as follows:

(i) The Department allocates openings to each geographical region based on the percentage of population who reside within the geographical region. The Department obtains population information from the most recent United States Census Report;

(e) The Department begins at the top of the randomized list and matches the number of available geographical openings with the same number of applications;

(i) If a selected applicant does not meet the eligibility criteria described in Section R414-509-3, the Department selects the next application on the randomized list;

(f) The Department enrolls the selected individual into waiver services.

(5) If there are not enough applications to fill all openings within a geographical region, the Department distributes the remaining waiver openings to other geographical regions.

R414-509-6. Procedures for Filling Openings Created by Attrition.

Attrition is ongoing in the Medicaid Autism Waiver program because the waiver serves a child only through the end of the month in which the child turns seven years of age.

(1) To fill waiver openings due to attrition outside of open enrollment periods, the Department develops an applicant pool.

(a) The Department determines the number of applicants available in the applicant pool for each geographical region by using the process described in Subsection R414-509-5(4)(d)(i) to determine the number of waiver openings and factoring that number by four;

(b) The Department requires the Waiver Operating Agency to inform the Department of all waiver openings within ten business days;

(c) The Department identifies the geographical region where each opening occurs;

(d) The Department identifies the next randomly numbered application available within that geographical region;

(e) The Department matches the randomly numbered application to the applicant name, and based on the applicant's age, evaluates whether the applicant continues to be eligible for the waiver.

(i) To be eligible for waiver enrollment on the date of identification, the applicant may not exceed six years and six months of age;

(ii) If the applicant is not eligible for waiver enrollment based on Subsection R414-509-6(1)(e)(i), the Department identifies the next randomly numbered application available within the geographical region until the Department can identify an eligible applicant.

(2) If there are not enough applications to fill all openings within a geographical region, the Department distributes the remaining waiver openings to other geographical regions.

(3) When the Department determines an open enrollment period is going to occur, it may suspend filling openings that arise through attrition.

KEY: Medicaid
June 28, 2013 26-1-5
Notice of Continuation October 2, 2017 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-517. Inpatient Hospital Provider Assessments.
R414-517-1. Introduction and Authority.

This rule defines the scope of hospital provider assessment. This rule is authorized under Title 26, Chapter 36b.

R414-517-2. Definitions.

The definitions in Section 26-36b-103 apply to this rule.

R414-517-3. Audit of Hospitals.

(1) For hospitals that do not file a Medicare cost report for the time frames outlined in Section 26-36b-205, the Department of Health shall audit the hospital's records to determine the correct discharges for the assessment.

(2) Hospitals subject to the assessment shall make their records available for reasonable inspection upon written request from the Department. Failure to make the records available shall be considered non-compliance and subject the hospital to penalties set forth in Section R414-517-5.

R414-517-4. Change in Hospital Status.

(1) If a hospital's status changes during any given year and it no longer falls under the definition of a hospital that is subject to the assessment outlined in Section 26-36b-205, the hospital must submit in writing to the Division of Medicaid and Health Financing (DMHF) a notice of the status change and the effective date of that change. The notice must be mailed to the correct address, as follows, and is only effective upon receipt by the Reimbursement Unit:

Via United States Postal Service:
Utah Department of Health
DMHF, BCRP
Attn: Reimbursement Unit
P.O. Box 143102
Salt Lake City, UT 84114-3102
Via United Parcel Service, Federal Express, and similar:
Utah Department of Health
DMHF, BCRP
Attn: Reimbursement Unit
288 North 1460 West
Salt Lake City, UT 84116-3231

(2) For any period where a hospital is no longer subject to the assessment and notice has been given under Subsection R414-517-4(1):

(a) the Department shall require payment of the assessment from that hospital for the full quarter in which the status change occurred and the hospital will receive full payment, as outlined in Section 26-36b-210, for the applicable quarter; and

(b) the hospital is exempt from future assessment and not eligible for payment under this rule.

(3) For State Fiscal Year 2018 and subsequent years, the Department shall determine if new providers are eligible to receive payments as allowed under Section 26-36b-210. The new providers will also be subject to the assessment beginning that same state fiscal year as they become eligible to receive the payments as allowed under Section 26-36b-210. New providers identified will be added prospectively beginning with that new state fiscal year.

R414-517-5. Penalties and Interest.

(1) If DMHF audits a hospital's records to determine the correct discharges for the assessment for a hospital that is required to file a Medicare cost report, but failed to provide its Medicare cost report within the timeline required, DMHF shall fine the hospital five percent of its annual calculated assessment. The fine is payable within 30 days of invoice.

(2) If DMHF audits a hospital's records to determine the correct discharges for the assessment because the hospital does not file a Medicare cost report and did not submit its discharges and supporting documentation within the timeline required, DMHF shall fine the hospital five percent of its annual calculated assessment. The fine is payable within 30 days of invoice.

(3) If a hospital fails to fully pay its assessment on or before the due date, DMHF shall fine the hospital five percent of its quarterly calculated assessment. The fine is payable within 30 days of invoice.

(4) On the last day of each quarter, if a hospital has any unpaid assessment or penalty, DMHF shall fine the hospital five percent of the unpaid amount. The fine is payable within 30 days of invoice.

R414-517-6. Rule Repeal.

The Department shall repeal this rule in conjunction with the repeal of the Hospital Provider Assessment Act outlined in Section 26-36b-211.

KEY: Medicaid
November 1, 2017 **26-1-5**
26-18-3
26-36b

R432. Health, Family Health and Preparedness, Licensing.
R432-2. General Licensing Provisions.
R432-2-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-2-2. Purpose.

The purpose of this rule is to define the standards that health care facilities and agencies must follow in order to obtain a license. No person or governmental unit acting severally or jointly with any other person, or governmental unit shall establish, conduct, or maintain a health facility in this state without first obtaining a license from the Department. Section 26-21-8.

R432-2-3. Exempt Facilities.

The provisions of Section 26-21-7 apply for exempt facilities.

R432-2-4. Distinct Part.

Licensed health care facilities that wish to offer services outside the scope of their license or services regulated by another licensing rule, with the exception of federally recognized Swing Bed Units, shall submit for Department review a program narrative defining the levels of service to be offered and the specific patient population to be served. If the program is determined to require a license, the facility must meet the definition of a distinct part entity and all applicable codes and standards and obtain a separate license.

R432-2-5. Requirements for a Satellite Service Operation.

(1) A "satellite operation" is a health care treatment service that:

(a) is administered by a parent facility within the scope of the parent facility's current license,

(b) is located further than 250 yards from the licensed facility or other areas determined by the department to be a part of the provider's campus,

(c) does not qualify for licensing under Section 26-21-2, and

(d) is approved by the Department for inclusion under the parent facility's license and identified as a remote service.

(2) A licensed health care facility that wishes to offer a satellite operation shall submit for Department review a program narrative and one set of construction drawings. The program narrative shall define at least the following:

(a) location of the remote facility (street address);

(b) capacity of the remote facility;

(c) license category of the parent facility;

(d) service to be provided at the remote facility (must be a service authorized under the parent facility license);

(e) ancillary administrative and support services to be provided at the remote facility; and

(f) International Building Code occupancy classification of the remote facility physical structure.

(3) Upon receipt of the satellite service program narrative and construction drawings, the Department shall make a determination of the applicable licensing requirements including the need for licensing the service. The Department shall verify at least the following items:

(a) There is only a single health care treatment service provided at the remote site and that it falls within the scope of the parent facility license;

(b) The remote facility physical structure complies with all construction codes appropriate for the service provided;

(c) All necessary administrative and support services for the specified treatment service are available, on a continuous basis during the hours of operation, to insure the health, safety, and welfare of the clients.

(4) If a facility qualifies as a single satellite service treatment center the Department shall issue a separate license identifying the facility as a "satellite service" of the licensed parent facility. This license shall be subject to all requirements set forth in R432-2 of the Health Facility Rules.

(5) A parent facility that wishes to offer more than one health care service at the same remote site shall either obtain a satellite service license for each service offered as described above or obtain a license for the remote complex as a free-standing health care facility.

(6) A satellite facility is not permitted within the confines of another licensed health care facility.

(7) A licensed hospital is limited to one emergency department satellite location.

R432-2-6. Requirements for a Branch Location.

(1) A "Branch Location" is a licensed Home Health, Personal Care or Hospice agency location which:

(a) is administered by a parent agency within the scope of the parent agency's current license;

(b) is located no further than 150 miles from the licensed parent agency or within a designated geographical service area as determined by the Department; and

(c) is approved by the Department as a branch location under the parent agency's license.

(2) An applicant for a branch location license shall submit a narrative of the program for Department review. The narrative shall include the following:

(a) street address of the parent and branch;

(b) license category of the parent agency;

(c) service(s) to be provided at the branch location, which must be a service authorized under the parent agency license; and

(d) ancillary administrative and support services to be provided at the branch location.

(3) Upon receipt of the branch location program narrative, the Department shall make a determination of the applicable licensing requirements including the need for licensing the service. The Department shall verify at least the following items:

(a) the service provided at the remote site falls within the scope of the parent agency license; and

(b) all necessary administrative and support services are available, on a continuous basis during the hours of operation, to insure the health, safety, and welfare of the clients.

(4) If a location qualifies as a branch location the Department shall issue a separate license identifying the agency as a "Branch Location" of the licensed parent agency. This license shall be subject to all requirements set forth in R432-2 of the Health Facility Rules.

R432-2-7. Applications for License Actions.

(1) An applicant for a license shall file a Request for Agency Action/License Application with the Utah Department of Health on a form furnished by the Department.

(2) Each applicant shall comply with all zoning, fire, safety, sanitation, building and licensing laws, regulations, ordinances, and codes of the city and county in which the facility or agency is located. The applicant shall obtain the following clearances and submit them as part of the completed application to the licensing agency:

(a) A certificate of fire clearance from the State Fire Marshal or designated local fire authority certifying compliance with local and state fire codes is required with initial and renewal application, change of ownership, and at any time new construction or substantial remodeling has occurred.

(b) A satisfactory Food Services Sanitation Clearance report by a local or state sanitarian is required for facilities providing food service at initial application and upon a change of ownership.

(c) Certificate of Occupancy from the local building official at initial application, change of location and at the time of any new construction or substantial remodeling.

(3) As used in this section, an "owner" is any person or entity:

(a) ultimately responsible for operating a health care facility; or

(b) legally responsible for decisions and liabilities in a business management sense or that bears the final responsibility for operating decisions made in the capacity of a governing body.

(4) The applicant shall submit contact information for the ownership of the legal entity including the names, email addresses and mailing addresses.

(5) The applicant shall provide the following written assurances on all individuals listed in R432-2-7(4):

(a) None of the persons has been convicted of a felony;

(b) None of the persons has been found in violation of any local, state, or federal law which arises from or is otherwise related to the individual's relationship to a health care facility; and

(c) None of the persons who has currently or within the five years prior to the date of application had previous interest in a licensed health care facility that has been any of the following:

(i) subject of a patient care receivership action;

(ii) closed as a result of a settlement agreement resulting from a decertification action or a license revocation;

(iii) involuntarily terminated from participation in either Medicaid or Medicare programs; or

(iv) convicted of patient abuse, neglect or exploitation where the facts of the case prove that the licensee failed to provide adequate protection or services for the person to prevent such abuse.

R432-2-8. License Fee.

In accordance with Subsection 26-21-6(1)(d), the applicant shall submit a license fee with the completed application form. A current fee schedule is available from the Bureau of Health Facility Licensing upon request. Any late fees is assessed according to the fee schedule.

R432-2-9. Additional Information.

The Department may require additional information or review other documents to determine compliance with licensing rules. These include:

(1) architectural plans and a description of the functional program.

(2) policies and procedures manuals.

(3) verification of individual licenses, registrations or certification required by the Utah Department of Commerce.

(4) data reports including the submission of the annual report at the Departments request.

(5) documentation that sufficient assets are available to provide services: staff, utilities, food supplies, and laundry for at least a two month period of time.

R432-2-10. Initial License Issuance or Denial.

(1) The Department shall render a decision on an initial license application within 60 days of receipt of a complete application packet or within six months of the date the first component of an application packet is received; provided, in either case, a minimum of 45 days is allowed for the initial policy and procedure manual review.

(2) Upon verification of compliance with licensing requirements the Department shall issue a provisional license.

(3) The Department shall issue a written notice of agency decision under the procedures for adjudicative proceedings (R432-30) denying a license if the facility is not in compliance with the applicable laws, rules, or regulations. The notice shall state the reasons for denial.

(4) An applicant who is denied licensing may reapply for initial licensing as a new applicant and shall be required to initiate a new request for agency action as described in R432-2-7.

(5) The Department shall assess an administrative fee on all denied license applications. This fee shall be subtracted from any fees submitted as part of the application packet and a refund for the balance returned to the applicant.

R432-2-11. License Contents and Provisions.

(1) The license shall document the following:

(a) the name of the health facility,

(b) licensee,

(c) type of facility,

(d) approved licensed capacity including identification of operational and secure unit beds,

(e) street address of the facility,

(f) issue and expiration date of license,

(g) construction variance information, and

(h) license number.

(2) The license is not assignable or transferable.

(3) Each license is the property of the Department. The licensee shall return the license within five days following closure of a health care facility or upon the request of the Department.

(4) The licensee shall post the license on the licensed premises in a place readily visible and accessible to the public.

R432-2-12. Expiration and Renewal.

(1) Each standard license shall expire at midnight on the day designated on the license as the expiration date, unless the license is revoked or extended under subsection (2) or (4) by the Department.

(2) If a facility is operating under a conditional license for a period extending beyond the expiration date of the current license, the Department shall establish a new expiration date.

(3) The licensee shall submit a Request for Agency Action/License Application form, applicable fees, clearances, and the annual report for the previous calendar year (if required by the Department under R432-2-9) 15 days before the current license expires.

(4) A license shall expire on the date specified on the license unless the licensee requests and is granted an extension from the Department.

(5) The Department shall renew a standard license upon verification that the licensee and facility are in compliance with all applicable license rules.

(6) Facilities no longer providing patient care or client services may not have their license renewed.

R432-2-13. New License Required.

(1) A prospective licensee shall submit a Request for Agency Action/License Application, fees, and required documentation for a new license at least 30 days before any of the following proposed or anticipated changes occur:

(a) occupancy of a new facility;

(b) change of ownership; or

(c) change in license category.

(2) Before the Department may issue a new license, the prospective licensee shall provide documentation that:

(a) all patient care records, personnel records, staffing schedules, quality assurance committee minutes, in-service program records, and other documents required by applicable rules remain in the facility and have been transferred to the custody of the new licensee.

(b) the existing policy and procedures manual or a new manual has been adopted by the facility governing body before

change of ownership occurs.

(c) new contracts for professional or other services not provided directly by the facility have been secured.

(d) new transfer agreements have been drafted and signed.

(e) written documentation exists of clear ownership or lease of the facility by the new owner.

(3) Upon sale or other transfer of ownership, the licensee shall provide the new owner with a written accounting, prepared by an independent certified public accountant, of all patient funds being transferred, and obtain a written receipt for those funds from the new owner.

(4) A prospective licensee is responsible for all uncorrected rule violations and deficiencies including any current plan of correction submitted by the previous licensee unless a revised plan of correction, approved by the Department, is submitted by the prospective licensee before the change of ownership becomes effective.

(5) If a license is issued to the new owner the previous licensee shall return his license to the Department within five days of the new owners receipt of the license.

(6) Upon verification that the facility is in compliance with all applicable licensing rules, the Department shall issue a new license effective the date compliance is determined as required by R432-2-9.

R432-2-14. Change in Licensing Status.

(1) A licensee shall submit a Request for Agency Action/License Application to amend or modify the license status at least 30 days before any of the following proposed or anticipated changes:

(a) increase or decrease of licensed capacity;

(b) change in name of facility;

(c) occupancy of a replacement facility;

(d) change of license classification; or

(e) change in administrator.

(2) An increase of licensed capacity may incur an additional license fee if the increase exceeds the maximum number of units in the fee category division of the existing license. This fee shall be the difference in license fee for the existing and proposed capacity according to the license fee schedule.

(3) Upon verification that the licensee and facility are in compliance with all applicable licensing rules, the Department shall issue an amended or modified license effective the date that the Department determines that the licensee is in compliance.

R432-2-15. Facility Ceases Operation.

(1) A licensee that voluntarily ceases operation shall complete the following:

(a) notify the Department and the patients or their next of kin at least 30 days before the effective date of closure.

(b) make provision for the safe keeping of records.

(c) return all patients' monies and valuables at the time of discharge.

(d) The licensee must return the license to the Department within five days after the facility ceases operation.

(2) If the Department revokes a facility's license or if it issues an emergency closure order, the licensee shall document for Department review the following:

(a) the location and date of discharge for all residents,

(b) the date that notice was provided to all residents and responsible parties to ensure an orderly discharge and assistance with placement; and

(c) the date and time that the facility complied with the closure order.

R432-2-16. Provisional License.

(1) A provisional license is an initial license issued to an applicant for a probationary period of six months.

(2) In granting a provisional license, the Department shall determine that the facility has the potential to provide services and be in full compliance with licensing rules during the six month period.

(3) A provisional license is nonrenewable. The Department may issue a provisional license for no longer than six months.

(4) If the licensee fails to meet terms and conditions of licensing before the expiration date of the provisional license, the license shall automatically expire.

R432-2-17. Conditional License.

(1) A conditional license is a remedial license issued to a licensee if there is a determination of substandard quality of care, immediate jeopardy or a pattern of violations which would result in a ban on admissions at the facility or if the licensee is found to have:

(a) a Class I violation or a Class II violation that remains uncorrected after the specified time for correction;

(b) more than three cited repeat Class I or II violations from the previous year; or

(c) fails to fully comply with administrative requirements for licensing.

(2) A standard license is revoked by the issuance of a conditional license.

(3) The Department may not issue a conditional license after the expiration of a provisional license.

(4) In granting a conditional license, the Department shall be assured that the lack of full compliance does not harm the health, safety, and welfare of the patients.

(5) The Department shall establish the period of time for the conditional license based on an assessment of the nature of the existing violations and facts available at the time of the decision.

(6) The Department shall set conditions whereby the licensee must comply with an accepted plan of correction.

(7) If the licensee fails to meet the conditions before the expiration date of the conditional license, the license shall automatically expire.

R432-2-18. Standard License.

(1) A standard license is a license issued to a licensee if:

(a) the licensee meets the conditions attached to a provisional or conditional license;

(b) the licensee corrects the identified rule violations; or

(c) the licensee completes all licensing renewal requirements as per R432-2-12.

R432-2-19. Variances.

(1) A health facility may submit a request for agency action to obtain a variance from state rules at any time.

(a) An applicant requesting a variance shall file a Request for Agency Action/Variance Application with the Utah Department of Health on forms furnished by the Department.

(b) The Department may require additional information from the facility before acting on the request.

(c) The Department shall act upon each request for variance in writing within 60 days of receipt of a completed request.

(2) If the Department grants a variance, it shall amend the license in writing to indicate that the facility has been granted a variance. The variance may be renewable or non-renewable. The licensee shall maintain a copy of the approved variance on file in the facility and make the copy available to all interested parties upon request.

(a) The Department shall file the request and variance with the license application.

(b) The terms of a requested variance may be modified

upon agreement between the Department and the facility.

(c) The Department may impose conditions on the granting of a variance as it determines necessary to protect the health and safety of the residents or patients.

(d) The Department may limit the duration of any variance.

(3) The Department shall issue a written notice of agency decision denying a variance upon determination that the variance is not justified.

(4) The Department may revoke a variance if:

(a) The variance adversely affects the health, safety, or welfare of the residents.

(b) The facility fails to comply with the conditions of the variance as granted.

(c) The licensee notifies the Department in writing that it wishes to relinquish the variance and be subject to the rule previously varied.

(d) There is a change in the statute, regulations or rules.

R432-2-20. Change In Ownership.

(1) As used in this section, an "owner" is any person or entity:

(a) ultimately responsible for operating a health care facility; or

(b) legally responsible for decisions and liabilities in a business management sense or that bears the final responsibility for operating decisions made in the capacity of a governing body.

(2) The owner of the health care facility does not need to own the real property or building where the facility operates.

(3) A property owner is also an owner of the facility if he:

(a) retains the right or participates in the operation or business decisions of the enterprise;

(b) has engaged the services of a management company to operate the facility; or

(c) takes over the operation of the facility.

(4) A licensed provider whose ownership or controlling ownership interest has changed must submit a Request for Agency Action/License Application and fees to the department 30 days prior to the proposed change

(5) Changes in ownership that require action under subsection (4) include any arrangement that:

(a) transfers the business enterprise or assets to another person or firm, with or without the transfer of any real property rights;

(b) removes, adds, or substitutes an owner or part owner; or

(c) in the case of an incorporated owner:

(i) is a merger with another corporation if the board of directors of the surviving corporation differs by 20 percent or more from the board of the original licensee; or

(ii) creates a separate corporation, including a wholly owned subsidiary, if the board of directors of the separate corporation differs by 20 percent or more from the board of the original licensee.

(6) A person or entity that contracts with an owner to manage the enterprise, subject to the owner's general approval of operating decisions it makes is not an owner, unless the parties have agreed that the managing entity is also an owner.

(7) A transfer between departments of government agencies for management of a government-owned health care facility is not a change of ownership under this section.

KEY: health care facilities

October 6, 2017	**26-21-9**
Notice of Continuation August 12, 2013	**26-21-11**
	26-21-12
	26-21-13

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 R432-4-25.

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 practioner'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. Certification in Cardiopulmonary Resuscitation (CPR) refers to certification issued after completion of a course that is consistent with the most current version of the American Heart Association Guidelines for Health Care Provider CPR; 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 patients 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 Heath 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 bassinet 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 R386-702-14 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

October 17, 2017	**26-21-5**
Notice of Continuation November 5, 2015	**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.

(q) Certification in Cardiopulmonary Resuscitation (CPR) refers to certification issued after completion of a course that is consistent with the most current version of the American Heart Association Guidelines for Health Care Provider CPR.

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) proper use and documentation of restraints;

(vii) resident rights;

(viii) A basic understanding of the various types of mental illness, including symptoms, expected behaviors and intervention approaches; and

(ix) 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 shall ensure that on all shifts, staff are available who are CPR certified, trained in emergency procedures and basic first aid, including the Heimlich maneuver.

(8) 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.

(9) 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(5)(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 consulation 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 dietician 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 manuever;

(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 certifcate 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
October 6, 2017 26-21-5
Notice of Continuation February 13, 2017 26-21-16

R432. Health, Family Health and Preparedness, Licensing.
R432-270. Assisted Living Facilities.
R432-270-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-270-2. Purpose.

This rule establishes the licensing and operational standards for assisted living facilities Type I and Type II. Assisted living is intended to enable persons experiencing functional impairments to receive 24-hour personal and health-related services in a place of residence with sufficient structure to meet the care needs in a safe manner.

R432-270-3. Definitions.

(1) The terms used in these rules are defined in R432-1-3.

(2) In addition:

(a) "Assessment" means documentation of each resident's ability or current condition in the following areas:

(i) memory and daily decision making ability;

(ii) ability to communicate effectively with others;

(iii) physical functioning and ability to perform activities of daily living;

(iv) continence;

(v) mood and behavior patterns;

(vi) weight loss;

(vii) medication use and the ability to self-medicate;

(viii) special treatments and procedures;

(ix) disease diagnoses that have a relationship to current activities of daily living status, behavior status, medical treatments, or risk of death;

(x) leisure patterns and interests;

(xi) assistive devices; and

(xii) prosthetics.

(b) "Activities of daily living (ADL)":

(i) means those personal functional activities required for an individual for continued well-being, including:

(A) personal grooming, including oral hygiene and denture care;

(B) dressing;

(C) bathing;

(D) toileting and toilet hygiene;

(E) eating/nutrition;

(F) administration of medication; and

(G) transferring, ambulation and mobility.

(ii) are divided into the following levels:

(A) "Independent" means the resident can perform the ADL without help.

(B) "Assistance" means the resident can perform some part of an ADL, but cannot do it entirely alone.

(C) "Dependent" means the resident cannot perform any part of an ADL; it must be done entirely by someone else.

(c) Certification in Cardiopulmonary Resuscitation (CPR) refers to certification issued after completion of a course that is consistent with the most current version of the American Heart Association Guidelines for Health Care Provider CPR.

(d) "Home-like" as used in statute and this rule means a place of residence which creates an atmosphere supportive of the resident's preferred lifestyle. Home-like is also supported by the use of residential building materials and furnishings.

(e) "Hospice patient" means an individual who is admitted to a hospice program or agency.

(f) "Legal representative" means an individual who is legally authorized to make health care decisions on behalf of another individual.

(g) "Monitoring device":

(i) means a video surveillance camera or a microphone or other device that captures audio; and

(ii) does not include:

(A) a device that is specifically intended to intercept wire, electronic, or oral communication without notice to or the consent of a party to the communication; or

(B) a device that is connected to the Internet or that is set up to transmit data via an electronic communication.

(h) "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.

(i) "Self-direct medication administration" means the resident can:

(i) recognize medications offered by color or shape; and

(ii) question differences in the usual routine of medications.

(j) "Service Plan" means a written plan of care for services which meets the requirements of R432-270-13.

(k) "Services" means activities which help the residents develop skills to increase or maintain their level of psycho-social and physical functioning, or which assist them in activities of daily living.

(l) "Significant change" means a major change in a resident's status that is self-limiting or impacts on more than one area of the resident's health status.

(m) "Significant assistance" means the resident is unable to perform any part of an ADL and is dependent upon staff or others to accomplish the ADL as defined in R432-270-3(2)(b).

(n) "Social care" means:

(i) providing opportunities for social interaction in the facility or in the community; or

(ii) providing services to promote independence or a sense of self-direction.

(o) "Unit" means an individual living space, including living and sleeping space, bathroom, and optional kitchen area.

R432-270-4. Licensing.

(1) A person that offers or provides care to two or more unrelated individuals in a residential facility must be minimally licensed as an assisted living facility if:

(a) the individuals stay in the facility for more than 24 hours; and

(b) the facility provides or arranges for the provision of assistance with one or more activity of daily living for any of the individuals.

(2) An assisted living facility may be licensed as a Type I facility if:

(a) the individuals under care are capable of achieving mobility sufficient to exit the facility without the assistance of another person.

(3) An assisted living facility must be licensed as a Type II facility if the individuals under care are capable of achieving mobility sufficient to exit the facility only with the limited assistance of one person;.

(4) A Type I assisted living facility shall provide social care to the individuals under care.

(5) A Type II assisted living facility shall provide care in a home-like setting that provides an array of coordinated supportive personal and health care services available 24 hours per day to residents who need any of these services as required by department rule.

(6) Type I and II assisted living facilities must provide each resident with a separate living unit. Two residents may share a unit upon written request of both residents.

(7) An individual may continue to remain in an assisted living facility provided:

(a) the facility construction can meet the individual's needs;

(b) the individual's physical and mental needs are appropriate to the assisted living criteria; and

(c) the facility provides adequate staffing to meet the

individual's needs.

(8) Assisted living facilities may be licensed as large, small or limited capacity facilities.

(a) A large assisted living facility houses 17 or more residents.

(b) A small assisted living facility houses six to 16 residents.

(c) A limited capacity assisted living facility houses two to five residents.

R432-270-5. Licensee.

(1) The licensee must:

(a) ensure compliance with all federal, state, and local laws;

(b) assume responsibility for the overall organization, management, operation, and control of the facility;

(c) establish policies and procedures for the welfare of residents, the protection of their rights, and the general operation of the facility;

(d) implement a policy which ensures that the facility does not discriminate on the basis of race, color, sex, religion, ancestry, or national origin in accordance with state and federal law;

(e) secure and update contracts for required services not provided directly by the facility;

(f) respond to requests for reports from the Department; and

(g) appoint, in writing, a qualified administrator who shall assume full responsibility for the day-to-day operation and management of the facility. The licensee and administrator may be the same person.

(2) The licensee shall implement a quality assurance program to include a Quality Assurance Committee. The committee must:

(a) consist of at least the facility administrator and a health care professional, and

(b) meet at least quarterly to identify and act on quality issues.

(3) If the licensee is a corporation or an association, it shall maintain an active and functioning governing body to fulfill licensee duties and to ensure accountability.

R432-270-6. Administrator Qualifications.

(1) The administrator shall have the following qualifications:

(a) be 21 years of age or older;

(b) have knowledge of applicable laws and rules;

(c) have the ability to deliver, or direct the delivery of, appropriate care to residents;

(d) successfully complete the criminal background screening process defined in R432-35; and

(e) for all Type II facilities, complete a Department approved national certification program within six months of hire.

(2) In addition to R432-270-6(1) the administrator of a Type I facility shall have an associate degree or two years experience in a health care facility.

(3) In addition to R432-270-6(1) the administrator of a Type II small or limited-capacity assisted living facility shall have one or more of the following:

(a) an associate degree in a health care field;

(b) two years or more management experience in a health care field; or

(c) one year's experience in a health care field as a licensed health care professional.

(4) In addition to R432-270-6(1) the administrator of a Type II large assisted living facility must have one or more of the following:

(a) a State of Utah health facility administrator license;

(b) a bachelor's degree in a health care field, to include management training or one or more years of management experience;

(c) a bachelor's degree in any field, to include management training or one or more years of management experience and one year or more experience in a health care field; or

(d) an associates degree and four years or more management experience in a health care field.

R432-270-7. Administrator Duties.

(1) The administrator must:

(a) be on the premises a sufficient number of hours in the business day, and at other times as necessary, to manage and administer the facility;

(b) designate, in writing, a competent employee, 21 years of age or older, to act as administrator when the administrator is unavailable for immediate contact. It is not the intent of this subsection to permit a de facto administrator to replace the designated administrator.

(2) The administrator is responsible for the following:

(a) recruit, employ, and train the number of licensed and unlicensed staff needed to provide services;

(b) verify all required licenses and permits of staff and consultants at the time of hire or the effective date of contract;

(c) maintain facility staffing records for the preceding 12 months;

(d) admit and retain only those residents who meet admissions criteria and whose needs can be met by the facility;

(e) review at least quarterly every injury, accident, and incident to a resident or employee and document appropriate corrective action;

(f) maintain a log indicating any significant change in a resident's condition and the facility's action or response;

(g) complete an investigation whenever there is reason to believe that a resident has been subject to abuse, neglect, or exploitation;

(h) report all suspected abuse, neglect, or exploitation in accordance with Section 62A-3-305, and document appropriate action if the alleged violation is verified.

(i) notify the resident's responsible person within 24 hours of significant changes or deterioration of the resident's health, and ensure the resident's transfer to an appropriate health care facility if the resident requires services beyond the scope of the facility's license;

(j) conduct and document regular inspections of the facility to ensure it is safe from potential hazards;

(k) complete, submit, and file all records and reports required by the Department;

(l) participate in a quality assurance program; and

(m) secure and update contracts for required professional and other services not provided directly by the facility.

(3) The administrator's responsibilities shall be included in a written and signed job description on file in the facility.

R432-270-8. Personnel.

(1) Qualified competent direct-care personnel shall be on the premises 24 hours a day to meet residents needs as determined by the residents' assessment and service plans. Additional staff shall be employed as necessary to perform office work, cooking, housekeeping, laundering and general maintenance.

(2) The services provided or arranged by the facility shall be provided by qualified persons in accordance with the resident's written service plan.

(3) All personnel who provide personal care to residents in a Type I facility shall be at least 18 years of age or be a certified nurse aide and shall have related experience in the job assigned or receive on the job training.

(4) Personnel who provide personal care to residents in a

Type II facility must be certified nurse aides or complete a state certified nurse aide program within four months of the date of hire.

(5) Personnel shall be licensed, certified, or registered in accordance with applicable state laws.

(6) The administrator shall maintain written job descriptions for each position, including job title, job responsibilities, qualifications or required skills.

(7) Facility policies and procedures must be available to personnel at all times.

(8) Each employee must receive documented orientation to the facility and the job for which they are hired. Orientation shall include the following:

(a) job description;

(b) ethics, confidentiality, and residents' rights;

(c) fire and disaster plan;

(d) policy and procedures;

(e) reporting responsibility for abuse, neglect and exploitation; and

(f) dementia specific training including:

(i) communicating with dementia patients and their caregivers;

(ii) communication methods and when they are appropriate;

(iii) types and stages of dementia including information on the physical and cognitive declines as the disease progresses;

(iv) person centered care principles; and

(v) how to maintain safety in the dementia patient environment.

(9) Each employee shall receive documented in-service training. The training shall be tailored to annually include all of the following subjects that are relevant to the employee's job responsibilities:

(a) principles of good nutrition, menu planning, food preparation, and storage;

(b) principles of good housekeeping and sanitation;

(c) principles of providing personal and social care;

(d) proper procedures in assisting residents with medications;

(e) recognizing early signs of illness and determining when there is a need for professional help;

(f) accident prevention, including safe bath and shower water temperatures;

(g) communication skills which enhance resident dignity;

(h) first aid;

(i) resident's rights and reporting requirements of Section 62A-3-201 to 312; and

(j) Dementia/Alzheimer's specific training.

(10) The facility administrator shall annually receive a total of 4 hours of Dementia/Alzheimer's specific training.

(11) An employee who reports suspected abuse, neglect, or exploitation shall not be subject to retaliation, disciplinary action, or termination by the facility for that reason alone.

(12) The facility shall establish a personnel health program through written personnel health policies and procedures which protect the health and safety of personnel, residents and the public.

(13) The facility must complete an employee placement health evaluation to include at least a health inventory when an employee is hired. Facilities may use their own evaluation or a Department approved form.

(a) A health inventory shall obtain at least the employee's history of the following:

(i) conditions that may predispose the employee to acquiring or transmitting infectious diseases; and

(ii) conditions that may prevent the employee from performing certain assigned duties satisfactorily.

(b) The facility shall develop employee health screening and immunization components of the personnel health program.

(c) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(i) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(A) initial hiring;

(B) suspected exposure to a person with active tuberculosis; and

(C) development of symptoms of tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(d) All infections and communicable diseases reportable by law shall be reported to the local health department in accordance with the Communicable Disease Rule, R386-702-3.

(14) The facility shall develop and implement policies and procedures governing an infection control program to protect residents, family and personnel; which includes appropriate task related employee infection control procedures and practices.

(15) The facility shall comply with the Occupational Safety and Health Administration's Blood-borne Pathogen Standard.

R432-270-9. Residents' Rights.

(1) Assisted living facilities shall develop a written resident's rights statement based on this section.

(2) The administrator or designee shall give the resident a written description of the resident's legal rights upon admission, including the following:

(a) a description of the manner of protecting personal funds, in accordance with Section R432-270-20; and

(b) a statement that the resident may file a complaint with the state long term care ombudsman and any other advocacy group concerning resident abuse, neglect, or misappropriation of resident property in the facility.

(3) The administrator or designee shall notify the resident or the resident's responsible person at the time of admission, in writing and in a language and manner that the resident or the resident's responsible person understands, of the resident's rights and of all rules governing resident conduct and responsibilities during the stay in the facility.

(4) The administrator or designee must promptly notify in writing the resident or the resident's responsible person when there is a change in resident rights under state law.

(5) Resident rights include the following:

(a) the right to be treated with respect, consideration, fairness, and full recognition of personal dignity and individuality;

(b) the right to be transferred, discharged, or evicted by the facility only in accordance with the terms of the signed admission agreement;

(c) the right to be free of mental and physical abuse, and chemical and physical restraints;

(d) the right to refuse to perform work for the facility;

(e) the right to perform work for the facility if the facility consents and if:

(i) the facility has documented the resident's need or desire for work in the service plan,

(ii) the resident agrees to the work arrangement described in the service plan,

(iii) the service plan specifies the nature of the work performed and whether the services are voluntary or paid, and

(iv) compensation for paid services is at or above the prevailing rate for similar work in the surrounding community;

(f) the right to privacy during visits with family, friends, clergy, social workers, ombudsmen, resident groups, and advocacy representatives;

(g) the right to share a unit with a spouse if both spouses consent, and if both spouses are facility residents;

(h) the right to privacy when receiving personal care or

services;

(i) the right to keep personal possessions and clothing as space permits;

(j) the right to participate in religious and social activities of the resident's choice;

(k) the right to interact with members of the community both inside and outside the facility;

(l) the right to send and receive mail unopened;

(m) the right to have access to telephones to make and receive private calls;

(n) the right to arrange for medical and personal care;

(o) the right to have a family member or responsible person informed by the facility of significant changes in the resident's cognitive, medical, physical, or social condition or needs;

(p) the right to leave the facility at any time and not be locked into any room, building, or on the facility premises during the day or night. Assisted living Type II residents who have been assessed to require a secure environment may be housed in a secure unit, provided the secure unit is approved by the fire authority having jurisdiction. This right does not prohibit the locking of facility entrance doors if egress is maintained;

(q) the right to be informed of complaint or grievance procedures and to voice grievances and recommend changes in policies and services to facility staff or outside representatives without restraint, discrimination, or reprisal;

(r) the right to be encouraged and assisted throughout the period of a stay to exercise these rights as a resident and as a citizen;

(s) the right to manage and control personal funds, or to be given an accounting of personal funds entrusted to the facility, as provided in R432-270-20 concerning management of resident funds;

(t) the right, upon oral or written request, to access within 24 hours all records pertaining to the resident, including clinical records;

(u) the right, two working days after the day of the resident's oral or written request, to purchase at a cost not to exceed the community standard photocopies of the resident's records or any portion thereof;

(v) the right to personal privacy and confidentiality of personal and clinical records;

(w) the right to be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(x) the right to be fully informed in a language and in a manner the resident understands of the resident's health status and health rights, including the following:

(i) medical condition;

(ii) the right to refuse treatment;

(iii) the right to formulate an advance directive in accordance with UCA Section 75-2a; and

(iv) the right to refuse to participate in experimental research.

(6) The following items must be posted in a public area of the facility that is easily accessible by residents:

(a) the long term care ombudsmen's notification poster;

(b) information on Utah protection and advocacy systems; and

(c) a copy of the resident's rights.

(7) The facility shall have available in a public area of the facility the results of the current survey of the facility and any plans of correction.

(8) A resident may organize and participate in resident groups in the facility, and a resident's family may meet in the facility with the families of other residents.

(a) The facility shall provide private space for resident groups or family groups.

(b) Facility personnel or visitors may attend resident group or family group meetings only at the group's invitation.

(c) The administrator shall designate an employee to provide assistance and to respond to written requests that result from group meetings.

R432-270-10. Admissions.

(1) The facility shall have written admission, retention, and transfer policies that are available to the public upon request.

(2) Before accepting a resident, the facility must obtain sufficient information about the person's ability to function in the facility through the following:

(a) an interview with the resident and the resident's responsible person; and

(b) the completion of the resident assessment.

(3) If the Department determines during inspection or interview that the facility knowingly and willfully admits or retains residents who do not meet license criteria, then the Department may, for a time period specified, require that resident assessments be conducted by an individual who is independent from the facility.

(4) A Type I facility:

(a) shall accept and retain residents who meet the following criteria:

(i) are ambulatory or mobile and are capable of taking life saving action in an emergency without the assistance of another person;

(ii) have stable health;

(iii) require no assistance or only limited assistance in the activities of daily living (ADL); and

(iv) do not require total assistance from staff or others with more than three ADLs.

(b) may accept and retain residents who meet the following criteria:

(i) are cognitively impaired or physically disabled but able to evacuate from the facility without the assistance of another person; and

(ii) require and receive intermittent care or treatment in the facility from a licensed health care professional either through contract or by the facility, if permitted by facility policy.

(5) A Type II facility may accept and retain residents who meet the following criteria:

(a) require total assistance from staff or others in more than three ADLs, provided that:

(i) the staffing level and coordinated supportive health and social services meet the needs of the resident; and

(ii) the resident is capable of evacuating the facility with the limited assistance of one person.

(b) are physically disabled but able to direct their own care; or

(c) are cognitively impaired or physically disabled but able to evacuate from the facility with the limited assistance of one person.

(6) Type I and Type II assisted living facilities shall not admit or retain a person who:

(a) manifests behavior that is suicidal, sexually or socially inappropriate, assaultive, or poses a danger to self or others;

(b) has active tuberculosis or other chronic communicable diseases that cannot be treated in the facility or on an outpatient basis; or may be transmitted to other residents or guests through the normal course of activities; or

(c) requires inpatient hospital, long-term nursing care or 24-hour continual nursing care that will last longer than 15 calendar days after the day on which the nursing care begins.

(7) Type I and Type II assisted living facilities shall not deny an individual admission to the facility for the sole reason that the individual or the individual's legal representative requests to install or operate a monitoring device in the

individual's room in accordance with UCA Section 26-21-304.

(8) The prospective resident or the prospective resident's responsible person must sign a written admission agreement prior to admission. The admission agreement shall be kept on file by the facility and shall specify at least the following:

(a) room and board charges and charges for basic and optional services;

(b) provision for a 30-day notice prior to any change in established charges;

(c) admission, retention, transfer, discharge, and eviction policies;

(d) conditions under which the agreement may be terminated;

(e) the name of the responsible party;

(f) notice that the Department has the authority to examine resident records to determine compliance with licensing requirements; and

(g) refund provisions that address the following:

(i) thirty-day notices for transfer or discharge given by the facility or by the resident,

(ii) emergency transfers or discharges,

(iii) transfers or discharges without notice, and

(iv) the death of a resident.

(9) A type I assisted living facility may accept and retain residents who have been admitted to a hospice program, under the following conditions:

(a) the facility keeps a copy of the physician's diagnosis and orders for care;

(b) the facility makes the hospice services part of the resident's service plan which shall explain who is responsible to meet the resident's needs; and

(c) a facility may retain hospice patient residents who are not capable of exiting the facility without assistance with the following conditions:

(i) the facility must assure that a worker or an individual is assigned solely to each specific hospice patient and is on-site to assist the resident in emergency evacuation 24 hours a day, seven days a week;

(ii) the facility must train the assigned worker or individual to specifically assist in the emergency evacuation of the assigned hospice patient resident;

(iii) the worker or individual must be physically capable of providing emergency evacuation assistance to the particular hospice patient resident; and

(iv) hospice residents who are not capable of exiting the facility without assistance comprise no more than 25 percent of the facility's resident census.

(10) A type II assisted living facility may accept and retain hospice patient residents under the following conditions:

(a) the facility keeps a copy of the physician's diagnosis and orders for care;

(b) the facility makes the hospice services part of the resident's service plan which shall explain who is responsible to meet the resident's needs; and

(c) if the hospice patient resident cannot evacuate the facility without significant assistance, the facility must:

(i) develop an emergency plan to evacuate the hospice resident in the event of an emergency; and

(ii) integrate the emergency plan into the resident's service plan.

R432-270-11. Transfer or Discharge Requirements.

(1) A resident may be discharged, transferred, or evicted for one or more of the following reasons:

(a) The facility is no longer able to meet the resident's needs because the resident poses a threat to health or safety to self or others, or the facility is not able to provide required medical treatment.

(b) The resident fails to pay for services as required by the admission agreement.

(c) The resident fails to comply with written policies or rules of the facility.

(d) The resident wishes to transfer.

(e) The facility ceases to operate.

(2) Prior to transferring or discharging a resident, the facility shall serve a transfer or discharge notice upon the resident and the resident's responsible person.

(a) The notice shall be either hand-delivered or sent by certified mail.

(b) The notice shall be made at least 30 days before the day on which the facility plans to transfer or discharge the resident, except that the notice may be made as soon as practicable before transfer or discharge if:

(i) the safety or health of persons in the facility is endangered; or

(ii) an immediate transfer or discharge is required by the resident's urgent medical needs.

(3) The notice of transfer or discharge shall:

(a) be in writing with a copy placed in the resident file;

(b) be phrased in a manner and in a language the resident can understand;

(c) detail the reasons for transfer or discharge;

(d) state the effective date of transfer or discharge;

(e) state the location to which the resident will be transferred or discharged;

(f) state that the resident may request a conference to discuss the transfer or discharge; and

(g) contain the following information:

(i) for facility residents who are 60 years of age or older, the name, mailing address, and telephone number of the State Long Term Care Ombudsman;

(ii) for facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

(iii) for facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(4) The facility shall provide sufficient preparation and orientation to a resident to ensure a safe and orderly transfer or discharge from the facility.

(5) The resident or the resident's responsible person may contest a transfer or discharge. If the transfer or discharge is contested, the facility shall provide an informal conference, except where undue delay might jeopardize the health, safety, or well-being of the resident or others.

(a) The resident or the resident's responsible person must request the conference within five calendar days of the day of receipt of notice of discharge to determine if a satisfactory resolution can be reached.

(b) Participants in the conference shall include the facility representatives, the resident or the resident's responsible person, and any others requested by the resident or the resident's responsible person.

(6) The facility may not discharge a resident for the sole reason that the resident or the resident's legal representative requests to install or operate a monitoring device in the individual's room in accordance with UCA Section 26-21-304.

R432-270-12. Resident Assessment.

(1) A signed and dated resident assessment shall be completed on each resident prior to admission and at least every six months thereafter.

(2) In Type I and Type II facilities, the initial and six-

month resident assessment must be completed and signed by a licensed health care professional.

(3) The resident assessment must accurately reflect the resident's status at the time of assessment.

(4) The resident assessment must include a statement signed by the licensed health care professional completing the resident assessment that the resident meets the admission and level of assistance criteria for the facility.

(5) The facility shall use a resident assessment form that is approved and reviewed by the Department to document the resident assessments.

(6) The facility shall revise and update each resident's assessment when there is a significant change in the resident's cognitive, medical, physical, or social condition and update the resident's service plan to reflect the change in condition.

R432-270-13. Service Plan.

(1) Each resident must have an individualized service plan that is consistent with the resident's unique cognitive, medical, physical, and social needs, and is developed within seven calendar days of the day the facility admits the resident. The facility shall periodically revise the service plan as needed.

(2) The facility shall use the resident assessment to develop, review, and revise the service plan for each resident.

(3) The service plan shall include a written description of the following:

(a) what services are provided;

(b) who will provide the services, including the resident's significant others who may participate in the delivery of services;

(c) how the services are provided;

(d) the frequency of services; and

(e) changes in services and reasons for those changes.

R432-270-14. Service Coordinator.

(1) If the administrator appoints a service coordinator, the service coordinator must have knowledge, skills and abilities to coordinate the service plan for each resident.

(2) The duties and responsibilities of the service coordinator must be defined by facility policy and included in the designee's job description.

(3) The service coordinator is responsible to document that the resident or resident's designated responsible person is encouraged to actively participate in developing the service plan.

(4) The administrator and designated service coordinator are responsible to ensure that each resident's service plan is implemented by facility staff.

R432-270-15. Nursing Services.

(1) The facility must develop written policies and procedures defining the level of nursing services provided by the facility.

(2) A Type I assisted living facility must employ or contract with a registered nurse to provide or delegate medication administration for any resident who is unable to self-medicate or self-direct medication management.

(3) A Type II assisted living facility must employ or contract with a registered nurse to provide or supervise nursing services to include:

(a) a nursing assessment on each resident;

(b) general health monitoring on each resident; and

(c) routine nursing tasks, including those that may be delegated to unlicensed assistive personnel in accordance with the Utah Nurse Practice Act R156-31B-701.

(4) A Type I assisted living facility may provide nursing care according to facility policy. If a Type I assisted living facility chooses to provide nursing services, the nursing services must be provided in accordance with R432-270-15(3)(a) through (c).

(5) Type I and Type II assisted living facilities shall not provide skilled nursing care, but must assist the resident in obtaining required services. To determine whether a nursing service is skilled, the following criteria shall apply:

(a) The complexity or specialized nature of the prescribed services can be safely or effectively performed only by, or under the close supervision of licensed health care professional personnel.

(b) Care is needed to prevent, to the extent possible, deterioration of a condition or to sustain current capacities of a resident.

(6) At least one certified nurse aide must be on duty in a Type II facility 24 hours per day.

R432-270-16. Secure Units.

(1) A Type II assisted living facility with approved secure units may admit residents with a diagnosis of Alzheimer's/dementia if the resident is able to exit the facility with limited assistance from one person.

(2) Each resident admitted to a secure unit must have an admission agreement that indicates placement in the secure unit.

(a) The secure unit admission agreement must document that a wander risk management agreement has been negotiated with the resident or resident's responsible person.

(b) The secure unit admission agreement must identify discharge criteria that would initiate a transfer of the resident to a higher level of care than the assisted living facility is able to provide.

(3) There shall be at least one staff with documented training in Alzheimer's/dementia care in the secure unit at all times.

(4) Each secure unit must have an emergency evacuation plan that addresses the ability of the secure unit staff to evacuate the residents in case of emergency.

R432-270-17. Arrangements for Medical or Dental Care.

(1) The facility shall assist residents in arranging access for ancillary services for medically related care including physician, dentist, pharmacist, therapy, podiatry, hospice, home health, and other services necessary to support the resident.

(2) The facility shall arrange for care through one or more of the following methods:

(a) notifying the resident's responsible person;

(b) arranging for transportation to and from the practitioner's office; or

(c) arrange for a home visit by a health care professional.

(3) The facility must notify a physician or other health care professional when the resident requires immediate medical attention.

R432-270-18. Activity Program.

(1) Residents shall be encouraged to maintain and develop their fullest potential for independent living through participation in activity and recreational programs.

(2) The facility shall provide opportunities for the following:

(a) socialization activities;

(b) independent living activities to foster and maintain independent functioning;

(c) physical activities; and

(d) community activities to promote resident participation in activities away from the facility.

(3) The administrator shall designate an activity coordinator to direct the facility's activity program. The activity coordinator's duties include the following:

(a) coordinate all recreational activities, including volunteer and auxiliary activities;

(b) plan, organize, and conduct the residents' activity

program with resident participation; and

(c) develop and post monthly activity calendars, including information on community activities, based on residents' needs and interests.

(4) The facility shall provide sufficient equipment, supplies, and indoor and outdoor space to meet the recreational needs and interests of residents.

(5) The facility shall provide storage for recreational equipment and supplies. Locked storage must be provided for potentially dangerous items such as scissors, knives, and toxic materials.

R432-270-19. Medication Administration.

(1) A licensed health care professional must assess each resident to determine what level and type of assistance is required for medication administration. The level and type of assistance provided shall be documented on each resident's assessment.

(2) Each resident's medication program must be administered by means of one of the methods described in (a) through (f) in this section:

(a) The resident is able to self-administer medications.

(i) Residents who have been assessed to be able to self-administer medications may keep prescription medications in their rooms.

(ii) If more than one resident resides in a unit, the facility must assess each person's ability to safely have medications in the unit. If safety is a factor, a resident shall keep his medication in a locked container in the unit.

(b) The resident is able to self-direct medication administration. Facility staff may assist residents who self-direct medication administration by:

(i) reminding the resident to take the medication;

(ii) opening medication containers; and

(iii) reminding the resident or the resident's responsible person when the prescription needs to be refilled.

(c) Family members or a designated responsible person may administer medications. If a family member or designated responsible person assists with medication administration, they shall sign a waiver indicating that they agree to assume the responsibility to fill prescriptions, administer medication, and document that the medication has been administered. Facility staff may not serve as the designated responsible person.

(d) For residents who are unable to self-administer or self-direct medications, facility staff may administer medications only after delegation by a licensed health care professional under the scope of their 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.

(e) Residents may independently administer their own personal insulin injections if they have been assessed to be independent in that process. This may be done in conjunction with the administration of medication in methods (a) through (d) of this section.

(f) home health or hospice agency staff may provide medication administration to facility residents exclusively, or in conjunction with (a) through (e) of this section.

(3) The facility must have a licensed health care professional or licensed pharmacist review all resident medications at least every six months.

(4) Medication records shall include the following:

(a) the resident's name;

(b) the name of the prescribing practitioner;

(c) medication name including prescribed dosage;

(d) the time, dose and dates administered;

(e) the method of administration;

(f) signatures of personnel administering the medication; and

(g) the review date.

(5) The licensed health care professional or licensed pharmacist should document any change in the dosage or schedule of medication in the medication record. When changes in the medication are documented by the facility staff the licensed health care professional must co-sign within 72 hours. The licensed health care professional must notify all unlicensed assistive personnel who administer medications of the medication change.

(6) The facility must have access to a reference for possible reactions and precautions for all prescribed medications in the facility.

(7) The facility must notify the licensed health care professional when medication errors occur.

(8) Medication error incident reports shall be completed when a medication error occurs or is identified.

(9) Medication errors must be incorporated into the facility quality improvement process.

(10) Medications stored in a central storage area shall be:

(a) locked to prevent unauthorized access; and

(b) available for the resident to have timely access to the medication.

(11) Medications that require refrigeration shall be stored separately from food items and at temperatures between 36 - 46 degrees Fahrenheit.

(12) The facility must develop and implement policies governing the;

(a) security and disposal of controlled substances by the licensee or facility staff which shall be consistent with the provisions of 21 CFR 1307.21; and

(b) destruction and disposal of unused, outdated, or recalled medications.

(13) The facility shall document the return of resident's medication to the resident or to the resident's responsible person upon discharge.

R432-270-20. Management of Resident Funds.

(1) Residents have the right to manage and control their financial affairs. The facility may not require residents to deposit their personal funds or valuables with the facility.

(2) The facility need not handle residents' cash resources or valuables. However, upon written authorization by the resident or the resident's responsible person, the facility may hold, safeguard, manage, and account for the resident's personal funds or valuables deposited with the facility, in accordance with the following:

(a) The licensee shall establish and maintain on the residents' behalf a system that assures a full, complete, and separate accounting according to generally accepted accounting principles of each resident's personal funds entrusted to the facility. The system shall:

(i) preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident, and preclude facility personnel from using residents' monies or valuables as their own;

(ii) separate residents' monies and valuables intact and free from any liability that the licensee incurs in the use of its own or the facility's funds and valuables;

(iii) maintain a separate account for resident funds for each facility and not commingle such funds with resident funds from

another facility;

(iv) for records of residents' monies which are maintained as a drawing account, include a control account for all receipts and expenditures and an account for each resident and supporting receipts filed in chronological order;

(v) keep each account with columns for debits, credits, and balance; and

(vi) include a copy of the receipt that it furnished to the residents for funds received and other valuables entrusted to the licensee for safekeeping.

(b) The facility shall make individual financial records available on request through quarterly statements to the resident or the resident's legal representative.

(c) The facility shall purchase a surety bond or otherwise provide assurance satisfactory to the Department that all resident personal funds deposited with the facility are secure.

(d) The facility shall deposit, within five days of receipt, all resident monies that are in excess of $150 in an interest-bearing bank account, that is separate from any of the facility's operating accounts, in a local financial institution.

(i) Interest earned on a resident's bank account shall be credited to the resident's account.

(ii) In pooled accounts, there shall be a separate accounting for each resident's share, including interest.

(e) The facility shall maintain a resident's personal funds that do not exceed $150 in a non-interest-bearing account, interest-bearing account, or petty cash fund.

(f) Upon discharge of a resident with funds or valuables deposited with the facility, the facility shall that day convey the resident's funds, and a final accounting of those funds, to the resident or the resident's legal representative. Funds and valuables kept in an interest-bearing account shall be accounted for and made available within three working days.

(g) Within 30 days following the death of a resident, except in a medical examiner case, the facility shall convey the resident's valuables and funds entrusted to the facility, and a final accounting of those funds, to the individual administering the resident's estate.

R432-270-21. Facility Records.

(1) The facility must maintain accurate and complete records. Records shall be filed, stored safely, and be easily accessible to staff and the Department.

(2) Records shall be protected against access by unauthorized individuals.

(3) The facility shall maintain personnel records for each employee and shall retain such records for at least three years following termination of employment. Personnel records must include the following:

(a) employee application;

(b) date of employment;

(c) termination date;

(d) reason for leaving;

(e) documentation of CPR and first aid training;

(f) health inventory;

(g) food handlers permits;

(h) TB skin test documentation; and

(i) documentation of criminal background screening.

(4) The facility must maintain in the facility a separate record for each resident that includes the following:

(a) the resident's name, date of birth, and last address;

(b) the name, address, and telephone number of the person who administers and obtains medications, if this person is not facility staff;

(c) the name, address, and telephone number of the individual to be notified in case of accident or death;

(d) the name, address, and telephone number of a physician and dentist to be called in an emergency;

(e) the admission agreement;

(f) the resident assessment; and

(g) the resident service plan.

(5) Resident records must be retained for at least three years following discharge.

(6) There shall be 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 residents. The reports shall be kept on file for at least three years.

R432-270-22. Food Services.

(1) Facilities must have the capability to provide three meals a day, seven days a week, to all residents, plus snacks.

(a) The facility shall maintain onsite a one-week supply of nonperishable food and a three day supply of perishable food as required to prepare the planned menus.

(b) There shall be no more than a 14 hour interval between the evening meal and breakfast, unless a nutritious snack is available in the evening.

(c) The facility food service must comply with the following:

(i) All food shall be of good quality and shall be prepared by methods that conserve nutritive value, flavor, and appearance.

(ii) The facility shall ensure food is palatable, attractively served, and delivered to the resident at the appropriate temperature.

(iii) Powdered milk may only be used as a beverage, upon the resident's request, but may be used in cooking and baking.

(2) The facility shall provide adaptive eating equipment and utensils for residents as needed.

(3) A different menu shall be planned and followed for each day of the week.

(a) All menus must be approved and signed by a certified dietitian.

(b) Cycle menus shall cover a minimum of three weeks.

(c) The current week's menu shall be posted for residents' viewing.

(d) Substitutions to the menu that are actually served to the residents shall be recorded and retained for three months for review by the Department.

(4) Meals shall be served in a designated dining area suitable for that purpose or in resident rooms upon request by the resident.

(5) Residents shall be encouraged to eat their meals in the dining room with other residents.

(6) Inspection reports by the local health department shall be maintained at the facility for review by the Department.

(7) If the facility admits residents requiring therapeutic or special diets, the facility shall have an approved dietary manual for reference when preparing meals. Dietitian consultation shall be provided at least quarterly and documented for residents requiring therapeutic diets.

(8) The facility shall employ food service personnel to meet the needs of residents.

(a) While on duty in food service, the cook and other kitchen staff shall not be assigned concurrent duties outside the food service area.

(b) All personnel who prepare or serve food shall have a current Food Handler's Permit.

(9) Food service shall comply with the Utah Department of Health Food Service Sanitation Regulations, R392-100.

(10) If food service personnel also work in housekeeping or provide direct resident care, the facility must develop and implement employee hygiene and infection control measures to maintain a safe, sanitary food service.

R432-270-23. Housekeeping Services.

(1) The facility shall employ housekeeping staff to maintain both the exterior and interior of the facility.

(2) The facility shall designate a person to direct housekeeping services. This person shall:

(a) post routine laundry, maintenance, and cleaning schedules for housekeeping staff.

(b) ensure all furniture, bedding, linens, and equipment are clean before use by another resident.

(3) The facility shall control odors by maintaining cleanliness.

(4) There shall be a trash container in every occupied room.

(5) All cleaning agents, bleaches, insecticides, or poisonous, dangerous, or flammable materials shall be stored in a locked area to prevent unauthorized access.

(6) Housekeeping personnel shall be trained in preparing and using cleaning solutions, cleaning procedures, proper use of equipment, proper handling of clean and soiled linen, and procedures for disposal of solid waste.

(7) Bathtubs, shower stalls, or lavatories shall not be used as storage places.

(8) Throw or scatter rugs that present a tripping hazard to residents are not permitted.

R432-270-24. Laundry Services.

(1) The facility shall provide laundry services to meet the needs of the residents, including a sufficient supply of linens.

(2) The facility shall inform the resident or the resident's responsible person in writing of the facility's laundry policy for residents' personal clothing.

(3) Food may not be stored, prepared, or served in any laundry area.

(4) The facility shall make available for resident use at least one washing machine and one clothes dryer.

R432-270-25. Maintenance Services.

(1) The facility shall conduct maintenance, including preventive maintenance, according to a written schedule to ensure that the facility equipment, buildings, fixtures, spaces, and grounds are safe, clean, operable, in good repair and in compliance with R432-6.

(a) Fire rated construction and assemblies must be maintained in accordance with R710-3, Assisted Living Facilities.

(b) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition, free of ice, snow, and other hazards.

(c) Electrical systems, including appliances, cords, equipment call lights, and switches shall be maintained to guarantee safe functioning.

(d) Air filters installed in heating, ventilation and air conditioning systems must be inspected, cleaned or replaced in accordance with manufacturer specifications.

(2) A pest control program shall be conducted in the facility buildings and on the grounds by a licensed pest control contractor or a qualified employee, certified by the State, to ensure the absence of vermin and rodents. Documentation of the pest control program shall be maintained for Department review.

(3) The facility shall document maintenance work performed.

(4) Hot water temperature controls shall automatically regulate temperatures of hot water delivered to plumbing fixtures used by residents. The facility shall maintain hot water delivered to public and resident care areas at temperatures between 105 - 120 degrees Fahrenheit.

R432-270-26. Disaster and Emergency Preparedness.

(1) The facility is responsible for the safety and well-being of residents in the event of an emergency or disaster.

(2) The licensee and the administrator are responsible to develop and coordinate plans with state and local emergency disaster authorities to respond to potential emergencies and disasters. The plan shall outline the protection or evacuation of all residents, and include arrangements for staff response or provisions of additional staff to ensure the safety of any resident with physical or mental limitations.

(a) Emergencies and disasters include fire, severe weather, missing residents, death of a resident, interruption of public utilities, explosion, bomb threat, earthquake, flood, windstorm, epidemic, or mass casualty.

(b) The emergency and disaster response plan shall be in writing and distributed or made available to all facility staff and residents to assure prompt and efficient implementation.

(c) The licensee and the administrator must review and update the plan as necessary to conform with local emergency plans. The plan shall be available for review by the Department.

(3) The facility's emergency and disaster response plan must address the following:

(a) the names of the person in charge and persons with decision-making authority;

(b) the names of persons who shall be notified in an emergency in order of priority;

(c) the names and telephone numbers of emergency medical personnel, fire department, paramedics, ambulance service, police, and other appropriate agencies;

(d) instructions on how to contain a fire and how to use the facility alarm systems;

(e) assignment of personnel to specific tasks during an emergency;

(f) the procedure to evacuate and transport residents and staff to a safe place within the facility or to other prearranged locations;

(g) instructions on how to recruit additional help, supplies, and equipment to meet the residents' needs after an emergency or disaster;

(h) delivery of essential care and services to facility occupants by alternate means;

(i) delivery of essential care and services when additional persons are housed in the facility during an emergency; and

(j) delivery of essential care and services to facility occupants when personnel are reduced by an emergency.

(4) The facility must maintain safe ambient air temperatures within the facility.

(a) Emergency heating must have the approval of the local fire department.

(b) Ambient air temperatures of 58 degrees F. or below may constitute an imminent danger to the health and safety of the residents in the facility. The person in charge shall take immediate action in the best interests of the residents.

(c) The facility shall have, and be capable of implementing, contingency plans regarding excessively high ambient air temperatures within the facility that may exacerbate the medical condition of residents.

(5) Personnel and residents shall receive instruction and training in accordance with the plans to respond appropriately in an emergency. The facility shall:

(a) annually review the procedures with existing staff and residents and carry out unannounced drills using those procedures;

(b) hold simulated disaster drills semi-annually;

(c) hold simulated fire drills quarterly on each shift for staff and residents in accordance with Rule R710-3; and

(d) document all drills, including date, participants, problems encountered, and the ability of each resident to evacuate.

(6) The administrator shall be in charge during an

emergency. If not on the premises, the administrator shall make every effort to report to the facility, relieve subordinates and take charge.

(7) The facility shall provide in-house all equipment and supplies required in an emergency including emergency lighting, heating equipment, food, potable water, extra blankets, first aid kit, and radio.

(8) The following information shall be posted in prominent locations throughout the facility:

(a) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, and appropriate communication and emergency transport systems; and

(b) evacuation routes, location of fire alarm boxes, and fire extinguishers.

R432-270-27. First Aid.

(1) There shall be one staff person on duty at all times who has training in basic first aid, the Heimlich maneuver, certification in cardiopulmonary resuscitation and emergency procedures to ensure that each resident receives prompt first aid as needed.

(2) First aid training refers to any basic first aid course.

(3) The facility must have a first aid kit available at a specified location in the facility.

(4) The facility shall have a current edition of a basic first aid manual approved by the American Red Cross, the American Medical Association, or a state or federal health agency.

(5) The facility must have a clean up kit for blood borne pathogens.

R432-270-28. Pets.

(1) The facility may allow residents to keep household pets such as dogs, cats, birds, fish, and hamsters if permitted by local ordinance and by facility policy.

(2) Pets must be kept clean and disease-free.

(3) The pets' environment shall be kept clean.

(4) Small pets such as birds and hamsters shall be kept in appropriate enclosures.

(5) Pets that display aggressive behavior are not permitted in the facility.

(6) Pets that are kept at the facility or are frequent visitors must have current vaccinations.

(7) Upon approval of the administrator, family members may bring residents' pets to visit.

(8) Each facility with birds shall have procedures which prevent the transmission of psittacosis. Procedures shall ensure the minimum handling and placing of droppings into a closed plastic bag for disposal.

(9) Pets are not permitted in central food preparation, storage, or dining areas or in any area where their presence would create a significant health or safety risk to others.

R432-270-29. Respite Services.

(1) Assisted Living facilities may offer respite services and are not required to obtain a respite license from the Utah Department of Health.

(2) The purpose of respite is to provide intermittent, time limited care to give primary caretakers relief from the demands of caring for a person.

(3) Respite services may be provided at an hourly rate or daily rate, but shall not exceed 14-days for any single respite stay. Stays which exceed 14 days shall be considered a non-respite assisted living facility admission, subject to the requirements of R432-270.

(4) The facility shall coordinate the delivery of respite services with the recipient of services, case manager, if one exists, and the family member or primary caretaker.

(5) 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.

(6) The facility must complete a service agreement to 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.

(7) The facility shall have written policies and procedures approved by the Department prior to providing respite care. Policies and procedures must be available to staff regarding the respite care clients 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 personal funds.

(8) Persons receiving respite services shall be provided a copy of the Resident Rights documents upon admission.

(9) The facility shall maintain a record for each person receiving respite services which includes:

(a) a service agreement;

(b) demographic information and resident identification data;

(c) nursing notes;

(d) physician treatment orders;

(e) records made by staff regarding daily care of the person in service;

(f) accident and injury reports; and

(g) a post-service summary.

(10) Retention and storage of respite records shall comply with R432-270-21(1), (2), and (5).

(11) If a person has an advanced directive, a copy shall be filed in the respite record and staff shall be informed of the advanced directive.

R432-270-29b. Adult Day Care Services.

(1) Assisted Living Facilities Type I and II may offer adult day care services and are not required to obtain a license from Utah Department of Human Services. If facilities provide adult day care services, they shall submit policies and procedures for Department approval.

(2) "Adult Day Care" means the care and support to three or more functionally impaired adults through a comprehensive program that provides a variety of social, recreational and related support services in a licensed health care setting.

(3) A qualified Director shall be designated by the governing board to be responsible for the day to day program operation.

(4) The Director shall have written records on-site for each consumer and staff person, to 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 program shall have written eligibility, admission

and discharge policy to include the following:

(a) Intake process;

(b) Notification of responsible party;

(c) Reasons for admission refusal which includes a written, signed statement;

(d) Resident rights notification; and

(e) Reason for discharge or dismissal.

(6) Before a program admits a consumer, a written assessment shall be completed to evaluate current health and medical history, immunizations, legal status, and social psychological factors.

(7) A written consumer agreement, developed with the consumer, the responsible party and the Director or designee, shall be completed, signed by all parties include the following:

(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) The Director, or designee, shall develop, implement and review the individual consumer service plan. The plan shall include the specification of daily activities and services. The service plan shall be developed within three working days of admission and evaluated semi-annually.

(9) There shall be 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. Each report will be reviewed by the Director and responsible party. The reports will be kept on file.

(10) There shall be a daily activity schedule posted and implemented as designed. (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 per consumer designated for adult day care during program operational hours.

(a) Hallways, office, storage, kitchens, and bathrooms shall not be included in computation.

(b) All indoor and outdoor areas shall be maintained in a clean, secure and safe condition.

(c) 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.

(13) Staff supervision shall be provided continually when consumers are present.

(a) When eight or fewer consumers are present, one staff person shall provide direct supervision.

(b) When 9-16 consumers are present, two staff shall provide direct supervision at all time. The ratio of one staff per eight consumers will continue progressively.

(c) In all programs where one-half or more of the consumers are diagnosed by a physician's assessment with Alzheimer, or related dementia, the ratio shall be one staff for each six consumers.

R432-270-30. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

KEY: health care facilities
October 6, 2017 26-21-5
Notice of Continuation April 10, 2014 26-21-1

R432. Health, Family Health and Preparedness, Licensing.
R432-300. Small Health Care Facility - Type N.
R432-300-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-300-2. Purpose.

The purpose of this rule is to establish standards for protection of the health, safety, and welfare of individuals who receive nursing care in privately owned homes.

R432-300-3. Time for Compliance.

All facilities governed by these rules shall be in full compliance at the time of licensing.

R432-300-4. Definitions.

(1) Refer to common definitions R432-1-3, in addition;

(2) Certification in Cardiopulmonary Resuscitation (CPR) refers to certification issued after completion of a course that is consistent with the most current version of the American Heart Association Guidelines for Health Care Provider CPR.

(3) "Dependent" means a person who meets one or all of the following criteria:

(a) requires inpatient hospital or 24 hour continual nursing care that will last longer than 15 calender days after the day on which the nursing care begins;

(b) is unable to evacuate from the facility without the physical assistance of two persons.

(4) "Health care setting" means a health care facility or agency, either public or private, that is involved in the provision or delivery of nursing care.

(5) "Licensed health care professional" means a registered nurse, physician assistant, advanced practice nurse, or physician licensed by the Utah Department of Commerce who has education and experience to assess and evaluate the health care needs of a resident.

(6) "Owner or licensee" means a licensed nurse who resides in the facility and provides daily direct care during daytime hours to residents in the facility as opposed to simply working a duty shift in the facility.

(7) "Semi-independent" means a person who is:

(a) physically disabled, but able to direct his own care; or

(b) cognitively impaired or physically disabled, but able to evacuate from the facility with the physical assistance of one person.

(8) "Significant change" means a major change in a resident's status that is not self-limiting, impacts on more than one area of the resident's health status, and requires interdisciplinary review or revision of the service plan.

(9) "Small Health Care Facility - Type N" means a home or a residence occupied by the licensee, who is a licensed nurse, that provides protected living arrangements plus nursing care and services on a daily basis for two to three individuals unrelated to the licensee.

R432-300-5. License Required.

A license is required to operate a Small Health Care Facility Type N, see R432-2.

R432-300-6. Criteria for Type N Facility.

The licensee must meet the following criteria to obtain a license for a Small Health Care Facility - Type N:

(1) provide care in a residence where the licensee lives full time;

(2) meet local zoning requirements to allow the facility to be operated at the given address;

(3) obtain a certificate of fire clearance annually from the local fire marshal having jurisdiction;

(4) have a physician assessment and approval for each resident's admission;

(5) provide daily, licensed nursing care; and

(6) provide 24-hour direct care staff available on the premises.

R432-300-7. Physical Environment.

(1) The licensee must provide comfortable living accommodations and privacy for residents who live in the facility.

(2) Bedrooms may be private or semi-private.

(a) Single-bed rooms must have a minimum of 100 square feet of floor space.

(b) Multiple-bed rooms must have a minimum of 80 square feet of floor space per bed and are limited to two beds.

(c) Beds shall be placed at least three feet away from each other.

(d) The licensee's family members or staff shall not share sleeping quarters with residents.

(e) Each resident shall have a separate twin size or larger sized bed.

(f) No room ordinarily used for other purposes (such as a hall, corridor, unfinished attic, garage, storage area, shed or similar detached building) may be used as a sleeping room for a resident.

(g) Each bedroom must have light and ventilation.

(h) Each bedroom must have a window to the outside which opens easily. Windows must have insect screens.

(i) Each bedroom must have a closet or space suitable for hanging clothing and personal belongings.

(j) Each bedroom and toilet room must have a trash container.

(k) The licensee must make available reading lamps in each resident room according to the individual needs of each resident.

(3) Toilets and bathrooms must provide privacy, be well-ventilated, and be accessible to and usable by all persons accepted for care.

(a) Toilets, tubs, and showers must have ADAAG approved grab bars.

(b) If the licensee admits a resident with disabilities, the bath, shower, sink, and toilet must be equipped for use by persons with disabilities in accordance with ADAAG.

(4) Heating, air conditioning, and ventilating systems must provide comfortable temperatures for the resident.

(a) Heating systems must be capable of maintaining temperatures of 80 degrees F. in areas occupied by residents.

(b) Cooling systems must be capable of maintaining temperatures of 72 degrees F. in areas occupied by residents.

(c) Facilities licensed after July 1, 1998, must comply with ventilation and minimum total air change requirements as outlined in R432-6-22 Table 2, which is adopted and incorporated by reference.

(5) Residents may be housed on the main floor only, unless an outside exit leading to the ground grade level is provided from any upper or lower levels.

(6) At least one building entrance shall be accessible to persons with physical disabilities.

R432-300-8. Administration and Organization.

(1) The licensee is responsible for compliance with Utah law and licensing requirements, management, operation, and control of the facility.

(2) The licensee is responsible to establish and implement facility policies and procedures. Policies and procedures must reflect current facility practice.

(3) The licensee must be a licensed nurse with at least two years experience working in a health care setting, and must provide nursing coverage on a daily basis during daytime hours of operation.

(4) The licensee must employ sufficient staff to meet the needs of the residents.

(5) All employees must be 18 years of age, and successfully complete an orientation program in order to provide personal care and demonstrate competency.

(a) The licensee must orient employees to the residents' daily routine and train employees to assist the residents in activities of daily living.

(b) Employees must be registered, certified or licensed as required by the Utah Department of Commerce.

(c) Registration, licenses and certificates must be current, filed in the personnel files, and presented to the licensee within 45-days of employment.

(6) The licensee is responsible to establish and implement written policies and procedures for a personnel health program to protect the health and safety of personnel and clients.

(a) Each employee must, upon hire, complete a health evaluation that includes a health inventory.

(b) The health inventory must document the employee's health history of the following:

(i) conditions that predispose the employee to acquiring or transmitting infectious diseases; and

(ii) conditions which may prevent the employee from performing certain assigned duties satisfactorily.

(c) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(i) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(A) initial hiring;

(B) suspected exposure to a person with active tuberculosis; and

(C) development of symptoms of tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(d) The licensee must report all infections and communicable diseases reportable by law to the local health department in accordance with R386-702-2.

R432-300-9. Facility Records.

(1) The licensee must maintain accurate and complete records that are filed, stored safely, and are easily accessible to staff and the Department.

(2) Records must be protected against access by unauthorized individuals.

(3) The licensee must maintain personnel records for each employee and retain such records for at least three years following termination of employment. Personnel records must include the following:

(a) an employee application;

(b) the date of employment and initial policies and procedures orientation;

(c) the termination date;

(d) the reason for leaving;

(e) documentation of cardio-pulmonary resuscitation, first aid, and emergency procedures training;

(f) a health inventory;

(g) a food handlers permit;

(h) TB skin test documentation;

(i) documentation of criminal background check; and

(j) certifications, registration, and licenses as required.

(4) The licensee must maintain in the facility a separate record for each resident that includes the following:

(a) the resident's name, date of birth, and last address;

(b) the name, address, and telephone number of the person who administers and obtains medications, if this is not facility staff;

(c) the name, address, and telephone number of the individual to be notified in case of accident or death;

(d) the name, address, and telephone number of a physician and dentist to be called in an emergency;
(e) an admission diagnoses and reason for admission;
(f) any known allergies;
(g) the admission agreement;
(h) a copy of an advanced directive or living will initiated by the resident;
(i) a physician's assessment;
(j) a resident assessment;
(k) a written plan of care;
(l) physician orders;
(m) daily nursing notes including temperature, pulse, respirations, blood pressure, height, and weight notations when indicated or as needed due to a change in the resident's condition;
(n) if entrusted to the facility, a record of the resident's cash resources and valuables; and
(o) incident and accident reports.
(5) Resident records must be retained for at least seven years following discharge.

R432-300-10. Acceptance and Retention of Residents.
(1) A Type N Small Health Care facility may accept semi-dependent residents.
(a) The licensee may accept one dependent resident only if the licensee has equipment and additional staff available to assist the dependent resident in the event of a facility emergency evacuation.
(b) The licensee must establish acceptance criteria which includes:
(i) the resident's health needs;
(ii) the residents's ability to perform activities of daily living; and
(iii) the ability of the facility to address the residents needs.
(2) A resident shall not be accepted nor retained by a Type "N" Small Health Care Facility when:
(a) The resident has active tuberculosis or serious communicable diseases;
(b) The resident requires inpatient hospital care; or
(c) The resident has a mental illness that manifests behavior which is suicidal, assaultive, or harmful to self or others.
(3) The licensee must request that the family or responsible person relocate the resident within seven days if the resident requires care which cannot be provided in the Type N facility.

R432-300-11. Transfer or Discharge Requirements.
(1) The licensee may discharge, transfer, or evict a resident for one or more of the following reasons:
(a) The facility is no longer able to meet the resident's needs.
(b) The resident fails to pay for services as required by the admission agreement.
(c) The resident fails to comply with written policies or rules of the facility.
(d) The resident wishes to transfer.
(e) The facility ceases operation.
(2) Prior to transferring or discharging a resident, the licensee must serve a transfer or discharge notice to the resident and the resident's responsible person.
(a) The notice must be either hand-delivered or sent by certified mail.
(b) The notice must be made at least 30 days before the day on which the licensee plans to transfer or discharge the resident, except that the notice may be made as soon as practicable before transfer or discharge if:
(i) the safety or health of persons in the facility is endangered; or
(ii) an immediate transfer or discharge is required by the resident's urgent medical needs.
(3) The notice of transfer or discharge must:
(a) be in writing with a copy placed in the resident file;
(b) be phrased in a manner and in a language the resident or the resident's responsible person can understand;
(c) detail the reasons for transfer or discharge;
(d) state the effective date of transfer or discharge;
(e) state the location to which the resident will be transferred or discharged;
(f) state that the resident or responsible party may request a conference to discuss the transfer or discharge; and
(g) contain the following information:
(i) for facility residents who are 60 years of age or older, the name, mailing address, and telephone number of the State Long Term Care Ombudsman;
(ii) for facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act; and
(iii) for facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.
(4) The licensee must provide sufficient preparation and orientation to a resident to ensure a safe and orderly transfer or discharge from the facility.
(5) The resident or the resident's responsible person may contest a transfer or discharge. If the transfer or discharge is contested, the licensee shall provide an informal conference, except where undue delay might jeopardize the health, safety, or well-being of the resident or others.
(a) The resident or the resident's responsible person must request the conference within five calendar days of the day of receipt of notice of discharge to determine if a satisfactory resolution can be reached.
(b) Participants in the conference shall include the licensee, the resident or the resident's responsible person, and any others requested by the resident or the resident's responsible person.

R432-300-12. Personal Physician.
(1) Each resident must have a personal physician. The physician's assessment must be completed prior to admission.
(2) The physician's signed assessment shall document:
(a) that the resident is capable of functioning in a Type N Small Health Care Facility;
(b) that the resident is free of communicable diseases or any condition which would prevent admission to the facility;
(c) a list of current medications including dosage, time of administration, route, and assistance required;
(d) type of diet and restrictions or special instructions;
(e) any known allergies; and
(f) any physical or mental limitations, or restrictions on activity.

R432-300-13. Nursing Care.
(1) Each Type N facility must provide nursing care services to meet the needs of the residents.
(2) A licensed nurse must be on-site working directly with residents on a daily basis in accordance with each resident's care plan and individual needs.
(3) Nursing practice must be in accordance with the Utah Nurse Practice Act 58-31b.
(4) Licensed nurses have the following responsibilities:
(a) direct the implementation of physician's orders;

(b) develop and implement an individualized care plan for each resident within seven calender days of admission, and direct the delivery of nursing care, treatments, procedures, and other services to meet the needs of the residents;

(c) review and update at least every six months the health care needs of each resident admitted to the facility and develop resident care plans according to the resident's needs and the physician's orders;

(d) review each resident's medication regimen as needed and immediately after medication changes to ensure accuracy;

(e) ensure that nursing notes describe the care rendered including the resident's response;

(f) supervise staff to assure they perform restorative measures in their daily care of residents;

(g) teach and coordinate resident care and rehabilitative care to promote and maintain optimal physical and mental functioning of the resident; and

(h) plan and conduct documented orientation and in-service programs for staff.

(5) The licensed nurse must develop and maintain a current health services policy and procedure manual that is to be reviewed and updated by the licensed nurse at least annually.

(a) The manual must be accessible to all staff and be available for review by the Department.

(b) The policy and procedure manual must address the following:

(i) bathing;

(ii) positioning;

(iii) enema administration;

(iv) decubitus prevention and care;

(v) bed making;

(vi) isolation procedures;

(vii) blood sugar monitoring procedures;

(viii) telephone orders;

(ix) charting;

(x) rehabilitative nursing;

(xi) diets and feeding residents;

(xii) oral hygiene and denture care;

(xiii) medication administration;

(xiv) Alzheimer's/dementia care;

(xv) universal precautions and blood-borne pathogens; and

(xvi) housekeeping and cleaning procedures.

(6) Each resident's care plan must include measures to prevent and reduce incontinence.

(a) The licensed nurse must assess each resident to determine the resident's ability to participate in a bowel and bladder management program.

(b) An individualized plan for each incontinent resident shall begin within two weeks of the initial assessment.

(c) The licensed nurse must document a weekly evaluation of the resident's performance in the bowel/bladder management program.

(d) Fluid intake and output must be recorded for each resident and evaluated at least weekly when ordered by a physician or nurse.

(7) The licensee must ensure that staff are trained in rehabilitative nursing.

(a) The licensee must provide daily and document rehabilitative nursing services for residents who require such services.

(b) Rehabilitative nursing services shall include the following:

(i) turning and positioning of residents as per physician's or nurse's orders;

(ii) assisting residents to ambulate;

(iii) improving resident's range of motion;

(iv) restorative feeding;

(v) bowel and bladder retraining;

(vi) teaching residents self-care skills;

(vii) teaching residents transferring skills; and

(viii) taking measures to prevent secondary disabilities such as contractures and decubitus ulcers.

R432-300-14. General Resident Care Policies.

(1) Each resident must be treated as an individual with dignity and respect in accordance with Residents' Rights R432-270-9.

(2) The licensee is responsible to develop and implement resident care policies. These policies must address the following:

(a) The licensee must orient each resident upon admission to the facility, services, and staff.

(b) Each resident must receive care to ensure good personal hygiene, including bathing, oral hygiene, shampoo and hair care, shaving or beard trimming, fingernail and toenail care.

(c) Linens and other items in contact with the resident must be changed weekly or as the item is soiled.

(d) The licensee is responsible to encourage and assist each resident to achieve and maintain the highest level of functioning and independence including:

(i) teaching the resident self-care,

(ii) assisting residents to adjust to their disabilities and prosthetic devices,

(iii) directing residents in prescribed therapy exercises; and

(iv) redirecting residents interests as necessary.

(e) Each resident must receive care and treatment to ensure the prevention of decubitus ulcers, contractures, and deformities.

(f) Each resident must receive good nutrition and adequate fluids for hydration.

(i) All residents must have ready access to water and drinking glasses.

(ii) Residents unable to feed themselves shall be assisted to eat in a prompt, orderly manner.

(iii) Residents who require assistance with eating or drinking must be provided with adaptive equipment.

(g) Each resident has the right to visual privacy during treatments and personal care. Visual privacy may be provided by privacy curtains or portable screens.

(h) Facility staff must answer call lights or monitoring devices promptly.

(3) The licensee must notify the resident's responsible person and physician of significant changes or deterioration of the resident's health, and ensure the resident's transfer to an appropriate health care facility if the resident requires services beyond the scope of the Type N facility license. This notification must be documented in the resident's record.

(4) The licensee is responsible to assist residents in making arrangements for medical and dental care including transportation to and from the medical or dental facility.

(5) The licensee must document and make available for Department review every accident or incident causing injury to a resident or employee. The documentation must include appropriate corrective action.

(6) The licensee is responsible to document and implement a quality improvement process that at least quarterly identifies problems, implements corrective actions, and evaluates the effectiveness of the corrective actions.

R432-300-15. Medications.

(1) A licensed health care professional must upon admission and at least every six months thereafter assess each resident to determine what level and type of assistance is required for medication administration. The level and type of assistance provided must be documented on a Department approved form in each resident's service plan.

(2) Each resident's medication program must be

administered by means of one of the methods as described in (a) through (c) in this section:

(a) The resident is able to self-administer medications.

(i) Residents who have been assessed to be able to self-administer medications may keep prescription medications in their rooms.

(ii) If more than one resident resides in a unit, the licensee must assess each resident's ability to safely have medications in the unit. If safety is a factor, the resident must keep medications in a locked container in the unit.

(b) The resident requires assistance from facility staff to administer medications. Facility staff may assist residents who self-medicate by:

(i) reminding the resident to take the medication;

(ii) opening medication containers;

(iii) reading the instructions on container labels;

(iv) checking the dosage against the label of the container;

(v) reassuring the resident that the dosage is correct;

(vi) observing that the resident takes the medication; and

(vii) reminding the resident or the resident's responsible person when the prescription needs to be refilled.

(viii) Facility staff must document any staff assistance with medication administration including the type of medication and when it was taken by the resident.

(c) The resident's family or designated responsible person assists the resident with medication administration. Family members or a designated responsible person may set up medications in a package which identifies the medication and time to administer. If family members or a designated responsible person assists with medication administration, they must sign a waiver indicating that they agree to assume the responsibility to fill prescriptions, administer medication, and document the type of medication, the time administered, and the amount taken by the resident.

(3) Medication records must include the following information:

(a) the resident's name;

(b) the name of the prescribing practitioner;

(c) the name of the medication, including prescribed dosage;

(d) the times and dates administered;

(e) the method of administration;

(f) signatures of staff or responsible persons administering the medication; and

(g) the review date.

(4) Any change in the dosage or schedule of medication administration must be ordered by the resident's licensed practitioner and be documented in the medication record. All facility staff or persons assisting with medication administration must be notified of the medication change.

(5) The licensee must have available in the facility a current pharmacological reference book with information on possible reactions and precautions to any medications taken by a resident.

(6) The resident's family and licensed practitioner must be notified if medications errors occur.

(7) Medications must be stored in a locked central storage area to prevent unauthorized access.

(a) If medication is stored in a central location, residents shall have timely access to the medication.

(b) Medications that require refrigeration must be stored separately from food items and at temperatures between 36 - 46 degrees F.

(8) The administration, storage, and handling of oxygen must comply with the requirements of the 1996 edition of NFPA 99, which is adopted and incorporated by reference.

(9) Facility policies must address the disposal of unused, outdated, or recalled medications.

(a) The licensee must return a resident's medication to the resident or to the resident's responsible person upon discharge.

(b) A licensed health care professional must document the return to the resident or the resident's responsible person of medication stored in a central storage.

(c) Disposal of controlled substances must comply with the Pharmacy Practice Act, which is adopted and incorporated by reference.

R432-300-16. First Aid.

(1) The licensee must ensure that at least one staff person is on duty at all times who has training in basic first aid, the Heimlich maneuver, certification in cardiopulmonary resuscitation, and emergency procedures to ensure that each resident receives prompt first aid as needed.

(2) The licensee must ensure that a first aid kit is available at a specified location in the facility.

(3) The licensee must ensure that a current edition of a basic first aid manual approved by the American Red Cross, the American Medical Association, or a state or federal health agency is available at a specified location in the facility.

(4) Each facility must have an OSHA approved clean-up kit for blood borne pathogens.

R432-300-17. Activity Program.

(1) The licensee must provide activities for the residents to encourage independent functioning.

(2) The licensee must complete a resident interest survey and, with the resident's involvement, develop a monthly activity calendar.

(3) The activity program must include the residents' needs and interests to include:

(a) socialization activities;

(b) independent activities of daily living; and

(c) physical activities;

(4) A resident may participate in community activities away from the facility.

R432-300-18. Food Service.

(1) The licensee must provide three meals a day plus snacks, seven days a week, to all residents.

(a) The licensee must maintain onsite a one-week supply of nonperishable food and a three day supply of perishable food as required to prepare the planned menus.

(b) Meals must be served with no more than a 14 hour interval between the evening meal and breakfast, unless a nutritious snack is available in the evening.

(c) The facility food service must comply with the following:

(i) All food must be of good quality and be prepared by methods that conserve nutritive value, flavor, and appearance.

(ii) All food served to residents must be palatable, attractively served, and delivered to the resident at the appropriate temperature.

(iii) Powdered milk may be used as a beverage only upon the resident's request. It may be used in cooking and baking at any time.

(2) A different menu must be planned and followed for each day of the week.

(a) All menus must be approved and signed by a certified dietitian.

(b) Cycle menus shall cover a minimum of three weeks.

(c) The current week's menu shall be posted for residents' viewing.

(d) Substitutions to the menu that are actually served to the residents must be recorded and retained for three months for review by the Department.

(3) Meals must be served in a designated dining area suitable for that purpose or in resident rooms upon request by the resident.

(4) Residents shall be encouraged to eat their meals in the dining room with other residents.

(5) The licensee must make available for review inspection reports by the local health department.

(6) If the licensee admits residents requiring therapeutic or special diets, an approved dietary manual must be available for reference when preparing meals. Dietitian consultation must be provided at least quarterly and documented for residents requiring therapeutic diets.

(7) While on duty in food service, the cook and other kitchen staff shall not be assigned concurrent duties outside the food service area.

(8) All personnel who prepare or serve food must have a current Food Handler's Permit.

(9) Food service must comply with the Utah Department of Health Food Service Sanitation Regulations, R392-100, which is adopted and incorporated by reference.

R432-300-19. Housekeeping and Maintenance Services.

(1) The licensee must provide housekeeping and maintenance services to maintain a safe, clean, sanitary, and healthful environment.

(2) Entrances, exits, steps, and outside walkways must be maintained and kept free of ice, snow, and other hazards.

(3) The licensee must implement a cleaning schedule to ensure that furniture, bedding, linens, and equipment are cleaned periodically and before use by another resident.

(4) The licensee must control odors by maintaining cleanliness and proper ventilation. Deodorizers may not be used to cover odors caused by poor housekeeping or unsanitary conditions.

(5) The licensee must provide laundry services to meet the needs of the residents.

(6) The licensee must ensure that all cleaning agents, bleaches, pesticides, or other poisonous, dangerous or flammable materials are stored in a locked area to prevent unauthorized access.

R432-300-20. Pets.

(1) The licensee may allow residents to keep household pets such as dogs, cats, birds, fish, and hamsters if permitted by local ordinance and by facility policy.

(2) Pets must be kept clean and disease-free.

(3) The pets' environment must be kept clean.

(4) Small pets such as birds and hamsters must be kept in appropriate enclosures.

(5) Pets that display aggressive behavior are not permitted in the facility.

(6) Pets that are kept at the facility or are frequent visitors must have current vaccinations.

(7) Upon approval of the administrator, family members may bring residents' pets to visit.

(8) Each facility with birds must have procedures which prevent the transmission of psittacosis.

(9) Pets are not permitted in central food preparation, storage, or dining areas or in any area where their presence would create a significant health or safety risk to others.

R432-300-21. Disaster and Emergency Preparedness.

(1) The licensee is responsible for the safety and well-being of residents in the event of an emergency or disaster.

(2) The licensee is responsible to develop and coordinate plans with state and local emergency disaster authorities to respond to potential emergencies and disasters. The plan shall outline the protection or evacuation of all residents, and include arrangements for staff response or provisions of additional staff to ensure the safety of any resident with physical or mental limitations.

(a) Emergencies and disasters include fire, severe weather, missing residents, death of a resident, interruption of public utilities, explosion, bomb threat, earthquake, flood, windstorm, epidemic, or mass casualty.

(b) The emergency and disaster response plan must be in writing and distributed or made available to all facility staff and residents to assure prompt and efficient implementation.

(c) The licensee must review and update the plan as necessary to conform with local emergency plans. The plan shall be available for review by the Department.

(3) The emergency and disaster response plan must address the following:

(a) the names of the person in charge and persons with decision-making authority;

(b) the names of persons who shall be notified in an emergency in order of priority;

(c) the names and telephone numbers of emergency medical personnel, fire department, paramedics, ambulance service, police, and other appropriate agencies;

(d) instructions on how to contain a fire and how to use the facility fire extinguishing equipment;

(e) assignment of personnel to specific tasks during an emergency;

(f) the procedure to evacuate and transport residents and staff to a safe place within the facility or to other prearranged locations including specialized training to assist a dependent resident;

(g) instructions on how to recruit additional help, supplies, and equipment to meet the residents' needs after an emergency or disaster;

(h) delivery of essential care and services to facility occupants by alternate means;

(i) delivery of essential care and services when additional persons are housed in the facility during an emergency; and

(j) delivery of essential care and services to facility occupants when personnel are reduced by an emergency.

(4) The facility must maintain safe ambient air temperatures within the facility.

(a) Emergency heating must have the approval of the local fire department.

(b) Ambient air temperatures of 58 degrees F. or below may constitute an imminent danger to the health and safety of the residents in the facility. The person in charge shall take immediate action in the best interests of the residents.

(c) The licensee must develop, and be capable of implementing, contingency plans regarding excessively high ambient air temperatures within the facility that may exacerbate the medical condition of residents.

(5) The licensee must ensure that staff and residents receive instruction and training in accordance with the plans to respond appropriately in an emergency. The licensee must:

(a) annually review the procedures with existing staff and residents and conduct unannounced drills using those procedures;

(b) hold simulated disaster drills semi-annually;

(c) hold simulated fire drills quarterly on each shift for staff and residents in accordance with Rule R710-3; and

(d) document all drills, including date, participants, problems encountered, and the ability of each resident to evacuate.

(6) The licensee must be in charge during an emergency. If not on the premises, the licensee must make every effort to report to the facility, relieve subordinates and take charge.

(7) The licensee must provide in-house equipment and supplies required in an emergency including emergency lighting, heating equipment, food, potable water, extra blankets, first aid kit, and radio.

(8) The licensee must post the following information in prominent locations throughout the facility:

(a) The name of the person in charge and names and

telephone numbers of emergency medical personnel, agencies, and appropriate communication and emergency transport systems; and

(b) evacuation routes including the location of exits and fire extinguishers.

R432-300-22. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-7 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

KEY: health care facilities
October 17, 2017 26-21-5
Notice of Continuation September 15, 2016 26-21-16

R432. Health, Family Health and Preparedness, Licensing.
R432-550. Birthing Centers.
R432-550-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-550-2. Purpose.

This rule provides health and safety standards for the organization, physical plant, maintenance and operation of birthing centers.

(1) Birthing centers shall consist of one to five birth rooms. Licensure is not required for birthing centers with only one birth room.

(2) Birthing centers provide quality care and services in a pleasing and safe environment to a select low risk population of healthy maternal patients who choose a safe and cost-effective alternative to the traditional hospital childbirth experience.

(3) Birthing center clinical staff assess the maternal patient's risk for obstetric complications through careful review of the patient's records for prenatal screening of potential problems.

(4) Birthing centers recognize the individual needs of, and provide service to, low risk maternal patients expected to have an uncomplicated labor and delivery.

R432-550-3. Time for Compliance.

Facilities governed by these rules shall be in full compliance with these rules at the time of licensure.

R432-550-4. Definitions.

(1) Common definitions R432-1-3.

(2) Special Definitions:

(a) "Birth room" means a room and environment designed, equipped and arranged to provide for the care of a maternal patient and newborn and to accommodate a maternal patient's support person during the process of vaginal birth and recovery. "Birth room" does not include rooms intended for pre-admittance or post-discharge accommodations of maternal patients and their newborns.

(b) "Birthing center" means a freestanding facility, receiving maternal patients and providing care during labor, delivery and immediately after delivery.

(c) Certification in Cardiopulmonary Resuscitation (CPR) refers to certification issued after completion of a course that is consistent with the most current version of the American Heart Association Guidelines for Health Care Provider CPR.

(d) "Patient" means a woman or newborn receiving care and services provided by a birthing center during labor, childbirth and recovery.

(e) "Clinical staff" means a licensed maternity care practitioner appointed by the governing authority to practice within the birthing center and governed by rules approved by the governing body.

(f) "Support person" means the individual or individuals selected or chosen by a patient to provide emotional support and to assist her during the process of labor and childbirth.

(g) "Vaginal birth" means the three stages of labor.

(h) "Licensed maternity care practitioner" means a person licensed to provide maternity care services including physicians licensed under Title 58, Chapters 67 and 68, Certified Nurse-Midwives licensed under Title 58, Chapter 44a, Naturopathic Physicians licensed under Title 58, Chapter 71, Licensed Direct-Entry Midwives licensed under Title 58, chapter 77, and others licensed to provide maternity, midwifery, or obstetric care under Title 58.

R432-550-5. General Construction Rules.

See R432-14 Birthing Center Construction Rules.

R432-550-6. Governing Body.

(1) The licensee shall appoint in writing an individual or group to constitute the facility's governing body. The governing body shall:

(a) comply with federal, state and local laws, rules and regulations;

(b) adopt written policies and procedures which describe the functions and services of the birthing center and protect patient rights;

(c) adopt a policy prohibiting discrimination because of race, color, sex, religion, ancestry, or national origin in accordance with Title 13, Chapter 7, Sections 1 through 4.

(d) develop an organizational structure establishing lines of authority and responsibility;

(e) when the governing body is more than one individual, conduct meetings in accordance with facility policy, but at least annually, and maintain written minutes of the meetings;

(f) appoint by name and in writing a qualified administrator;

(g) appoint by name and in writing a qualified director of the clinical staff;

(h) appoint members of the clinical staff and delineate their clinical privileges;

(i) review and approve at least annually a quality assurance program for birthing center operation and patient care provided.

(j) establish a system for financial management and accountability;

(k) provide for resources and equipment to provide a safe working environment for personnel;

(l) act on findings and recommendations of facility-created committees relevant to compliance with these birthing center rules;

(m) ensure that facility patient admission eligibility criteria are strictly applied by clinical staff and are evaluated through quality assurance review in accordance with R432-550-11.

(2) Written policies and procedures shall:

(a) clearly, accurately and comprehensively define the methods by which the facility will be operated to protect the health and safety of patients;

(b) provide for meeting the patient's needs;

(c) provide for continuous compliance with federal, state and local laws, rules and regulations.

(d) Written policies and procedures shall include:

(i) defining the term "low risk maternal patient" which shall include eligibility criteria for birth services offered in the birthing center;

(ii) defining specific criteria, which shall in normally anticipated circumstances render a maternal patient ineligible for birth services or continued care at the birthing center;

(iii) identifying and outlining methods for transferring patients who, during the course of labor or recovery, are determined to be ineligible for birthing center services or continued care at the birthing center, including;

(A) information required for proper care and treatment of the individual(s) transferred, including patient records; and

(B) security and accountability of the personal effects of the individual being transferred.

(iv) planning for consultation, back-up services, transfer and transport of a newborn and maternal patient to a hospital where necessary care is available;

(v) documenting the maternal patient has been informed of the eligibility requirements of an out-of-hospital birthing center labor and birth;

(vi) providing instructions in postpartum and newborn care to the patient and any other family or support person designated by the patient;

(vii) registering birth, fetal death or death certificates in accordance with Title 26, Chapter 2, Sections 5, 13, 14, 23 and rules promulgated pursuant thereto in R436.

(viii) prescribing and instilling a prophylactic solution approved by the Department of Health in the eyes of the newborn in accordance with R386-702-8, Special Measures for the Control of Ophthalmia Neonatorum;

(ix) performing phenylketonuria (PKU) and other disease tests in accordance with Department of Health Laboratory rules developed pursuant to Section 6;

(x) verifying prenatal laboratory screening to include:

(A) blood type and Rh Factor and provision for appropriate use of Rh immunoglobulin;

(B) hematocrit or hemoglobin;

(C) antibody screen;

(D) rubella; and

(E) syphilis;

(xi) providing for infection control to include:

(A) housekeeping;

(B) cleaning, sterilization, sanitization and storage of supplies and equipment; and

(C) prevention of transmission of infection in personnel, patients and visitors.

R432-550-7. Administrator.

(1) Direction.

(a) The administrator shall be responsible for the overall management and operation of the birthing center.

(b) The administrator shall designate in writing a competent employee to act as administrator in the temporary absence of the administrator.

(c) The administrator's designee shall have authority and responsibility to:

(i) act in the best interests of patient safety and well-being;

(ii) operate the facility in a manner which ensures compliance with these birthing center rules.

(2) Qualifications.

The administrator and administrator's designee shall be knowledgeable:

(a) by education, training or experience in administration and supervision of personnel and qualified as required by facility policy;

(b) in birthing center protocols;

(c) in applicable federal, state and local laws, rules and regulations.

(3) The administrator's responsibilities shall be included in a written job description available for Department review. The administrator shall:

(a) complete, submit and file records and reports required by the Department;

(b) develop and implement facility policies and procedures;

(c) review facility policies and procedures at least annually and report to the governing body on the review;

(d) employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority and who have the appropriate Utah license or certificate of completion;

(e) develop, for all employee positions, job descriptions that delineate functional responsibilities and authority; and

(f) review and act on incident or accident reports.

R432-550-8. Clinical Director.

(1) The clinical director shall be responsible for implementing, coordinating and assuring the quality of patient care services.

(2) The clinical director shall:

(a) be currently licensed to practice medicine or midwifery in Utah;

(b) have training and expertise in obstetric and newborn services offered to ensure adequate supervision of patient care services.

(3) The clinical director's responsibilities shall be included

in a written job description available for Department review. The clinical director shall:

(a) review and update facility protocols;

(b) review and evaluate clinical staff privileges and revise them as necessary;

(c) recommend, to the governing body, names of qualified licensed health care practitioners to perform approved procedures and the corresponding clinical staff privileges to be granted;

(d) coordinate, direct and evaluate clinical operations of the facility;

(e) evaluate and recommend to the administrator the type and amount of equipment needed in the facility;

(f) ensure that qualified staff are on the premises while patients are admitted to the facility;

(g) ensure clinical staff documentation is recorded immediately and reflects a description of care given;

(h) ensure that planned birthing center services are within the scope of privileges granted to the clinical staff; and

(i) recommend to the administrator appropriate remedial action and disciplinary action, when necessary, to correct violations of clinical protocols.

R432-550-9. Personnel.

(1) The administrator shall employ a sufficient number of qualified professional and support staff who are competent to perform their respective duties, services and functions.

(2) The facility shall maintain written personnel policies and procedures which shall be available to personnel and shall address the following:

(a) content of personnel records;

(b) job descriptions, qualifications and validation of licensure or certificates of completion as appropriate for the position held;

(c) conditions of employment; and

(d) management of employees.

(3) The facility shall maintain personnel records for employees and shall retain personnel records for terminated employees for a minimum of one year following termination of employment.

(4) The facility shall establish a personnel health program through written personnel health policies and procedures which shall protect the health and safety of personnel and patients commensurate with the services offered.

(5) An employee placement health evaluation shall include at a health inventory which shall be completed when an employee is hired. The health inventory shall obtain the employee's history of the following:

(a) conditions that predispose the employee to acquiring or transmitting infectious diseases; and

(b) conditions which may prevent the employee from performing certain assigned duties satisfactorily.

(6) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-702, Code of Communicable Disease Rules.

(7) Employee skin testing by the Mantoux method or other FDA approved in-vitro serologic test and follow-up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(a) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(i) initial hiring;

(ii) suspected exposure to a person with active tuberculosis; and

(iii) development of symptoms of tuberculosis.

(b) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(8) The birthing center personnel must receive documented orientation to the facility and the job for which they are hired.

(9) The birthing center personnel must receive documented ongoing in-service training to include:

(a) an annual review of facility policies and procedures; and

(b) infection control, personal hygiene and each employee's responsibility in the personnel health program.

(10) The birthing center Personnel shall have access to the facility's policy and procedure manuals when on duty.

(11) Personnel shall maintain current licensing, certification or registration appropriate for the work performed and as required by the Utah Department of Commerce.

(a) Personnel shall provide evidence of current licensure, registration or certification to the Department upon request.

(b) Failure to ensure personnel are licensed, certified or registered may result in sanctions to the facility license.

R432-550-10. Contracts.

(1) The licensee shall provide a written contract for any birthing center services that are not provided directly by the facility. The licensee shall ensure that the contracted entity:

(a) performs according to facility policies and procedures;

(b) conforms to standards required by laws, rules and regulations;

(c) provides services that meet professional standards and are timely.

(2) Contracts shall be available for Department review.

R432-550-11. Quality Assurance.

(1) The administrator shall establish a quality assurance committee and program. This committee shall review regularly clinic operations, protocols, policies and procedures, incident reports, infection control, patient care policies and safety.

(2) The quality assurance committee shall initiate action to resolve identified quality assurance problems by filing a written report of findings and recommendations with the licensee.

(3) The quality assurance committee shall meet as prescribed in facility policy or at least quarterly and shall keep written minutes available for department review.

(4) The quality assurance program shall include surveillance, prevention and control of infection.

R432-550-12. Emergency and Disaster.

(1) The facility shall assure the safety and well-being of patients in the event of an emergency or disaster. An emergency or disaster may include but is not limited to interruption of public utilities, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic and injury.

(2) The administrator shall educate, train and drill staff to respond appropriately in an emergency in accordance with NFPA 101, Life Safety Code.

(3) The administrator shall be responsible for the development of an emergency and disaster plan, coordinated with state and local emergency or disaster authorities, to respond to emergencies and disasters as appropriate. The plan shall:

(a) be in writing and personnel shall have ready access when on duty;

(b) be reviewed and updated at least annually by the administrator and the licensee; and

(c) address evacuation of occupants to a safe place within the facility or to another location.

(4) The facility must maintain safe ambient air temperatures within the facility.

(a) Emergency heating must have the approval of the local fire department.

(b) The facility shall have, and be capable of implementing contingency plans regarding excessively high or low ambient air

temperatures within the facility that may affect the health and safety of the patients.

R432-550-13. Patients' Rights.

(1) Written patients' rights shall be established and made available to the patient as determined by facility policy which shall include the following:

(a) to be fully informed, prior to or at the time of admission, and during stay, of these rights and of facility rules that pertain to the patient;

(b) to be fully informed, prior to admission, of the treatment to be received, potential complications and expected outcomes;

(c) to refuse treatment to the extent permitted by law and to be informed of the medical consequences of such refusal;

(d) to be informed, prior to or at the time of admission and during stay, of services available in the facility and of any expected charges for which the patient may be liable;

(e) to be afforded the opportunity to participate in decisions involving personal health care, except when contraindicated;

(f) to refuse to participate in experimental research;

(g) to be ensured confidential treatment of personal and medical records and to approve or refuse release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or third party payment contract;

(h) to be treated with consideration, respect and full recognition of personal dignity and individuality, including privacy in treatment and in care for personal needs.

R432-550-14. Clinical Staff and Personnel.

(1) Information identifying current clinical staff and on-call and emergency telephone numbers shall be readily available to birthing center personnel.

(2) Clinical staff and licensed personnel of the birthing center shall be trained in emergency and resuscitation measures for infants and adults, including but not limited to, cardiopulmonary resuscitation certification.

(3) A licensed maternity care practitioner shall be present at each birth and remain until the maternal patient and newborn are stable postpartum.

(4) A second member of the birthing center staff who is licensed or certified to give cardiopulmonary resuscitation shall be present at each birth.

(5) Clinical staff, licensed personnel and support staff shall be provided to meet patients' needs, to ensure patients' safety and to ensure that patients in active labor are attended.

R432-550-15. Clinical Staff.

(1) The attending member of the clinical staff shall ensure the supervision of, and quality of, care delivered to the patient admitted to the facility.

(2) Each patient shall be under the care of a member of the clinical staff.

(3) Clinical staff members shall comply with applicable professional practice laws and written birthing center protocols approved by the clinical director.

(4) The attending member of the clinical staff shall verify in writing that the patient conforms to facility eligibility criteria.

(5) The attending member of the clinical staff shall decide when transfer of a patient to a hospital is necessary and document in writing the conditions warranting the decision.

R432-550-16. Equipment and Supplies.

(1) The administrator shall provide necessary equipment in good working order to meet the patient's needs.

(2) The type and amount of equipment shall be indicated in facility policy and approved by the clinical director.

(3) An emergency cart or tray equipped to allow completion of emergency procedures defined by facility policy shall be readily available.

(a) The facility shall safely store the emergency cart or tray in a designated area that is accessible to authorized personnel.

(b) The facility shall maintain a written log of all upkeep of the emergency cart or tray.

(4) The inventory of supplies shall be sufficient to care for the number of patients registered for care.

(5) Properly maintained equipment and supplies for the maternal patient and the newborn shall include at least the following:

(a) furnishings suitable for labor, birth and recovery;

(b) oxygen with flow meters and masks or equivalent;

(c) bulb suction;

(d) resuscitation equipment to include resuscitation bags, laryngeal mask airways and oral airways;

(e) firm surfaces suitable for use in resuscitating patients;

(f) emergency medications and related supplies and equipment;

(g) fetal monitoring equipment, minimally to include a fetoscope or doppler;

(h) equipment to monitor and maintain the optimum body temperature of the newborn;

(i) a clock indicating hours, minutes and seconds;

(j) sterile suturing equipment and supplies;

(k) adjustable examination light;

(l) infant scale;

(m) a telephone or equivalent two-way communication device capable of reaching other facilities or emergency agencies; and

(n) a delivery log for recording birth data.

R432-550-17. Medications.

(1) Licensed personnel shall prescribe, order and administer medication in accordance with applicable professional practice acts, pharmacy and controlled substances laws.

R432-550-18. Anesthesia Services.

(1) The birthing center shall provide facilities and equipment for the provision of anesthesia services commensurate with the obstetric procedures planned for the facility.

(2) The clinical director shall ensure the safety of anesthesia services administered to patients by clinical staff through written policies and protocols approved by the clinical staff for anesthetic agents, delivery of anesthesia and potential hazards of anesthesia.

(3) A clinical staff member shall monitor patients who receive anesthesia or analgesics.

R432-550-19. Laboratory Services.

(1) The birthing center shall provide direct or contract laboratory and associated services according to facility policy and to meet the needs of patients.

(2) Laboratory reports or results shall be reported promptly to the attending clinical staff member and documented in the patient's medical record.

(3) Laboratory services shall be provided according to CLIA requirements.

R432-550-20. Medical Records.

(1) Medical records shall be complete, accurately documented and systematically organized to facilitate retrieval and compilation of information.

(2) An employee designated by the administrator shall be responsible and accountable for the processing of medical records.

(3) The medical record and its contents shall be safeguarded from loss, defacement, tampering, fires and floods.

(4) Medical records shall be protected against access by unauthorized individuals.

(a) Medical record information shall be confidential.

(b) The birthing center may disclose medical record information only to authorized persons in accordance with federal, state and local laws.

(c) The birthing center shall obtain consent from the patient before releasing client information identifying the client, including photographs, unless release is otherwise allowed or required by law.

(5) Medical records shall be retained for at least five years after the last date of patient care. Records of minors, including records of newborn infants, shall be retained for three years after the minor reaches legal age under Utah law, but in no case less than five years.

(6) The birthing center shall maintain an individual medical record for each patient which shall include but is not limited to written documentation of the following:

(a) admission record with demographic information and patient identification data;

(b) history and physical examination which shall be up-to-date upon the patient's admission;

(c) written and signed informed consent;

(d) orders by a clinical staff member;

(e) record of assessments, plan of care and services provided;

(f) record of medications and treatments administered;

(g) laboratory and radiology reports;

(h) discharge summary for mother and newborn to include a note of condition, instructions given and referral as appropriate;

(i) prenatal care record containing at least prenatal blood serology, Rh factor determination, past obstetrical history and physical examination and documentation of fetal status;

(j) monitoring of progress in labor with assessment of maternal and newborn reaction to the process of labor;

(k) fetal monitoring record;

(l) labor and delivery record, including type of delivery, record of anesthesia and operative procedures if any; and

(m) documentation that the patient is informed of the statement of patient rights.

(7) The records of newborn infants shall include the following:

(a) date and hour of birth, birth weight and length, period of gestation, gender and condition of infant on delivery including Apgar scores and resuscitative measures;

(b) mother's name or unique identification;

(c) record of ophthalmic prophylaxis; and

(d) the identification number of the screening kit used to screen for metabolic diseases, documentation that metabolic screening, genetic screening, PKU or other metabolic disorders reports were completed or refused by the client.

R432-550-21. Housekeeping Services.

(1) The facility shall provide adequate housekeeping services to maintain a clean and sanitary environment.

(2) The facility shall develop and implement written housekeeping policies and procedures.

R432-550-22. Laundry Services.

(1) The facility shall develop and implement written policies and procedures for storage and processing of clean and soiled linen.

(2) Clean linen shall be stored, handled and transported to prevent contamination. Linens shall be maintained in good repair.

(3) Soiled linen shall be handled, transported, stored and processed in a manner to prevent both leakage and the spread of infection.

R432-550-23. Maintenance, Physical Environment, and Safety.

(1) The facility shall provide adequate maintenance service to ensure that facility equipment and grounds are maintained in a clean and sanitary condition and in good repair.

(2) The facility shall develop and implement a written maintenance program which shall include a preventive maintenance schedule for major equipment and physical plant systems.

R432-550-24. General Maintenance.

(1) The facility shall maintain facility buildings, fixtures, equipment and spaces in operable condition.

(2) The facility shall provide a safe, clean and sanitary environment.

(3) The facility shall conduct a pest-control program that ensures the facility is free from vermin.

(4) Direct or contract pest-control programs shall comply with Title 4, Chapter 14.

(5) Documentation shall be maintained for Department review.

R432-550-25. Waste Processing Service.

Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques acceptable to the Department of Environmental Quality, and the local health department having jurisdiction.

R432-550-26. Lighting.

The facility shall provide adequate and comfortable lighting to meet the needs of patients and personnel.

R432-550-27. Limitations of Services.

(1) Birthing center policy shall establish a written risk assessment system to assess the individual risk for each maternal patient.

(2) A clinical staff member shall perform and document a risk assessment for each maternal patient to ensure the patient needs:

(a) fall within the scope of practice and standards of care included in the clinical staff member's professional practice act and within facility policy; and

(b) meet the eligibility requirements for a low risk maternal patient.

(3) Clients shall become ineligible for birthing center care upon development of:

(a) a clinical need for anesthesia or analgesia other than those used in a setting where anesthesia and analgesia are limited in accordance with the facility's written protocols; or

(b) any condition identified intrapartum or postpartum which will be likely to adversely affect the health of the maternal patient or infant and will require management in a general hospital.

R432-550-28. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in Title 26, Chapter 21, Section 11 and R432-3-7 and be punished for violation of a class A misdemeanor as provided in Title 26, Chapter 21, Section 16.

KEY: health care facilities
October 17, 2017 26-21-5
Notice of Continuation November 9, 2015 26-21-16

R432. Health, Family Health and Preparedness, Licensing.
R432-650. End Stage Renal Disease Facility Rules.
R432-650-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-650-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation and maintenance for End Stage Renal Disease (ESRD) facilities in order to provide safe and effective services.

R432-650-3. Definitions.

(1) The definitions in R432-1-3 apply to this rule.

(2) In addition:

(a) Certification in Cardiopulmonary Resuscitation (CPR) refers to certification issued after completion of a course that is consistent with the most current version of the American Heart Association Guidelines for Health Care Provider CPR.

(b) "Interdisciplinary team" means a team of qualified professionals who are responsible for conducting the patient assessment and developing the patient care plan. The requirements are described in 42CFR 494.80, 10-1-14 edition, which is adopted and incorporated by reference.

R432-650-4. Licensure.

License Required. See R432-2.

R432-650-5. Patient Care Services.

Each ESRD facility must comply with the conditions of participation set forth in the Code of Federal Regulations, Title 42, Part 494, which is adopted and incorporated by reference.

R432-650-6. Personnel Health.

(1) Each ESRD facility shall establish a written health surveillance and evaluation program for facility personnel commensurate with the services offered. The program must include applicable portions of:

(a) The Communicable Disease Rule, R386-702;

(b) Tuberculosis Control Rule, R388-804; and

(c) OSHA guidelines for Bloodborne Pathogens, 29 CFR 1910.1030.

(2) All employees shall undergo a health status examination as prescribed in the health surveillance and evaluation program upon hiring and may not be assigned to patient care duties until they are determined to be able to safely discharge their duties.

(3) Each ESRD facility must test all employees who provide direct patient care for Hepatitis B within the first two weeks of beginning employment.

(4) Employee skin testing by the Mantoux method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(a) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(i) initial hiring;

(ii) suspected exposure to a person with active tuberculosis; and

(iii) development of symptoms of tuberculosis.

(b) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

R432-650-7. Required Staffing.

(1) Each patient shall be under the continuing supervision of a physician. A physician shall be available in medical emergency situations through a current telephone call roster readily accessible to the nursing staff.

(2) Physician assistants and advanced practice registered nurses may provide services in ESRD facilities in association with the supervising or consulting nephrologist, and in accordance with state law.

(3) Each ESRD facility shall provide sufficient qualified clinical staff to meet patient care needs. A minimum of two clinical staff personnel, one a registered nurse for supervision of patient clinical care, shall be on duty whenever patients are receiving dialysis services.

(a) A registered nurse may not supervise the clinical care of more than 10 patients if arranged in an open setting, or 12 patients if arranged in three pods of four patients.

(b) A registered nurse may not supervise patient clinical care, or provide unsupervised patient clinical care until the nurse has completed training and demonstrated competency as determined by facility policy.

(c) Dialysis technicians and licensed practical nurses may not be assigned patient clinical care for more than four patients at a time.

(d) Dialysis technicians and licensed practical nurses must complete training and demonstrate competency according to facility policy prior to providing patient care.

(4) Each ESRD facility must orient all employees to specific job requirements and facility policies. The facility shall document initial and on-going employee orientation and training. Patient clinical care staff orientation and training shall include at least the following topics:

(a) patient rights and responsibilities;
(b) kidney disease processes;
(c) hemodialysis process;
(d) hemodialysis complications;
(e) dialysis access and management;
(f) psycho-social implications of dialysis on patient care;
(g) nutritional requirements;
(h) universal precautions;
(i) use of the medical emergency kit;
(j) use and function of facility equipment;
(k) emergency procedures;
(l) AAMI water treatment standards; and
(m) dialyzer re-use procedures, if offered.

(5) A registered nurse may delegate the following patient care activities to licensed practical nurses or dialysis technicians:

(a) cannulation of peripheral vascular access;

(b) administration of intradermal lidocaine, intravenous heparin and intravenous normal saline; and

(c) initiation, monitoring and discontinuation of the dialysis process.

(6) Each ESRD facility must ensure that all personnel are licensed, certified or registered as required by the Utah Department of Commerce.

(7) Each ESRD facility must ensure that on all shifts, staff are available who are CPR certified, trained in emergency procedures and basic first aid.

R432-650-8. Patient Care Plan.

(1) Each patient must have a care plan that is developed and implemented by the interdisciplinary team with the patient's consent within one month of beginning treatment.

(2) Each patient who receives treatment for more than 90 days must have a long-term care program that is developed and implemented by the interdisciplinary team with the patient's participation.

R432-650-9. Emergency Equipment.

(1) Each ESRD facility must have available on-site a medical emergency kit containing medications, equipment and supplies. The medical director shall determine and approve the contents of the kit.

(2) Each ESRD facility must have available on-site an

emergency supply of oxygen.

R432-650-10. Drug Storage.

(1) Each ESRD facility shall provide for controlled storage and supervised preparation and use of medications. Medications and food items may be stored in the same refrigerator if safely separated.

(a) Medications stored at room temperature shall be maintained within 59-80 degrees F (15-30 degrees C).

(b) Refrigerated medications shall be maintained within 36-46 degrees F (2-8 degrees C).

(c) Medications must be kept in the original container and may not be transferred to other containers.

(2) If a medication station is provided, the facility shall provide a work counter and hand washing facilities.

R432-650-11. Medical Records.

(1) Each ESRD facility must store and file medical records to allow for easy staff access.

(a) Medical records shall be safeguarded from loss, defacement, tampering, fires, and floods.

(b) Medical records shall be protected against access by unauthorized individuals.

(2) The licensee must retain medical records for at least seven years after the last date of patient care. Records of minors shall be retained until the minor reaches the age of majority plus an additional two years. In no case shall the record be retained less than seven years.

(3) All patient records shall be retained within the facility upon change of ownership.

R432-650-12. Water Quality.

(1) Water used for dialysis purposes shall comply with quality standards established by the Association for the Advancement of Medical Instrumentation (AAMI) as published in "Hemodialysis Systems," second edition, which is adopted and incorporated by reference.

(2) Each ESRD facility that utilizes in-center water systems must have bacteriologic quality analysis performed and documented at least monthly by a laboratory that adheres to AAMI standards.

(3) For home systems, the ESRD facility must conduct bacteriological quality analysis at least monthly using an approved home testing methodology as identified in the patient care plan.

(a) An alternate schedule of testing may be approved by the attending physician.

(b) The alternate schedule shall be specified in the patient care plan.

(4) If reverse osmosis or deionization devices are used for in-center or home systems, the ESRD facility must have chemical quality analysis performed and documented at least once every 12 months by a laboratory that adheres to AAMI standards.

(5) The ESRD facility must maintain and make available for Department review all water quality test results. In the case of home dialysis, test results shall become part of the patient record maintained by the ESRD facility.

R432-650-13. Continuous Quality Improvement Program.

(1) Each ESRD facility must implement a well-defined continuous quality improvement program to monitor and evaluate the quality of patient care services. The program shall be consistent with the scope of services offered and adhere to accepted standards of care associated with the renal dialysis community.

(2) The program shall include a review of patient care records, facility policies and practices to:

(a) identify and assess problems and concerns, or opportunities for improvement of patient care;

(b) implement actions to reduce or eliminate identified problems and concerns, and improve patient care; and

(c) document corrective actions and results.

(3) The administrator shall establish a committee to implement the continuous quality improvement program. The committee shall include the facility administrator or designee, the medical director, the nursing supervisor, and other individuals as identified in the program.

(4) The committee must meet at least quarterly and keep minutes and related records, which shall be available for Department review.

(5) The continuous quality improvement program may include more than one facility in scope only when the facilities are organized under the same governing body and the program addresses problems, concerns and issues at the individual ESRD facility level.

R432-650-14. Physical Environment.

The following standards apply for new construction and remodeling of ESRD facilities:

(1) R432-4-1 through R432-4-22 is adopted and incorporated by reference.

(2) ESRD Facilities shall comply with NFPA 101 Life Safety Code, Chapter 20 except that an essential electrical system is not required.

(3) The treatment area may be an open area and shall be separate from the administrative and waiting area. Individual treatment areas must contain at least 80 square feet. Each treatment area shall have the capacity for privacy for each patient for treatment related procedures or personal care.

(4) The dialysis treatment area must include a nurses station designed to provide visual observation of the patient treatment area.

(5) There shall be at least one hand washing facility serving no more than eight stations. All hand washing stations shall be convenient to the nurses station and treatment areas.

(6) A separate blood borne infectious isolation patient treatment room shall be provided and shall:

(a) be fully enclosed;

(b) contain a handwash sink;

(c) contain widows to permit observation of the patient from the nurse station and other treatment areas;

(d) contain space for clean and soiled gowns and supplies; and

(e) be dedicated to patients with blood borne diseases and shall not be used by patients without blood borne diseases.

(7) If an airborne infectious isolation room is required to control airborne infection, the airborne infectious isolation room shall have a separate hand washing facility and comply with R386-702, Communicable Disease Rule, and other applicable standards determined in the pre-construction plan review process. The room shall be tightly sealed and all air from the room shall be exhausted. Exhaust air shall be a minimum of 125 cubic feet per minute greater than supply air.

(a) The airborne infectious isolation rooms may be used for patients without airborne communicable disease when not in use as an isolation room.

(8) If the ESRD facility provides home dialysis training, a private treatment room of at least 120 square feet is required for patients who are being trained to use dialysis equipment at home. The room shall contain a counter, hand washing facilities, and a separate drain for fluid disposal.

(9) Each ESRD facility must provide a clean work area that is separate from soiled work areas. If the area is used for preparing patient care items, it must contain a work counter, hand washing facilities, and storage facilities for clean and sterile supplies. If the area is used only for storage and holding as part of a system for distribution of clean and sterile materials,

the work counter and hand washing facilities may be omitted.

(10) Each ESRD facility must provide a soiled work room that contains a hand washing sink, work counter, storage cabinets, waste receptacles and a soiled linen receptacle.

(11) If dialyzers are reused, a reprocessing room is required that is sized and equipped to perform the functions required and to include one-way flow of materials from soiled to clean with provisions for refrigerated temporary storage of dialyzers, a decontamination and cleaning area, sinks processors, computer processors and label printers, a packaging area, and dialyzer storage cabinets.

(12) If a nourishment station for dialysis service is provided, the nourishment station must contain a sink, a work counter, a refrigerator, storage cabinets, and equipment for serving nourishments as required.

(13) Each ESRD facility must have an environmental services closet immediately available to the treatment area. The closet must contain a floor receptor or service sink and storage space for housekeeping supplies and equipment.

(14) If an equipment maintenance service area is provided, the service area must contain hand washing facilities, a work counter and a storage cabinet.

(15) Each ESRD facility must provide a supply area or supply carts.

(16) Storage space out of the direct line of traffic shall be available for wheelchairs and stretchers, if stretchers are provided.

(17) Each ESRD facility must provide a clean linen storage area commensurate with the needs of the facility. The storage area may be within the clean work area, a separate closet, or distribution system. If a closed cart distribution system is used for clean linen, the cart must be stored out of the path of normal traffic.

(18) Each ESRD facility using central batch delivery system, must provide, either on premises or through written arrangements, individual delivery systems for the treatment of any patient requiring special dialysis solutions.

(19) Each ESRD facility must house water treatment equipment in an enclosed room at a sufficient distance from the patient treatment area to prevent machinery and operational noise from disturbing patients.

(20) Each ESRD facility must provide a patient toilet with hand washing facilities immediately adjacent to the treatment area.

(21) Each ESRD facility must provide lockers, toilets and hand washing facilities for staff.

(22) Each ESRD facility must provide a secure storage area for patients' belongings.

(23) A waiting area with seating accommodations shall be available or accessible to the dialysis unit. A toilet room with hand washing facilities, a drinking fountain, and a telephone for public use shall be available or accessible for use by persons using the waiting room.

(24) Office and clinical work space shall be available for administrative services.

(25) All finishes shall be tight fitting, easily maintained and cleanable, resistant to cleaning chemicals, and detailed to minimize the potential for microbial growth.

(26) The reprocessing room, water treatment room, supply rooms, clean and soiled work rooms, soiled holding rooms shall be lockable and restricted to authorized personnel only.

(27) The reprocessing room, soiled work, holding room, and environmental services closet shall have continuous exhaust ventilation at the rate of not less than 10 air changes per hour and sufficient to generate inward air flow.

(28) Patient and public toilet rooms and exam rooms shall be equipped with an emergency call system. The call system shall require only momentary contact to activate, shall identify the source of the call and shall be cancelable only at the source of the call. The call system in toilet rooms shall be accessible to a collapsed patient lying on the floor. Inclusion of a pull cord will satisfy this requirement.

R432-650-15. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-7 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health care facilities
October 6, 2017 26-21-5
Notice of Continuation September 15, 2016 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) "Certification in Cardiopulmonary Resuscitation" (CPR) refers to certification issued after completion of a course that is consistent with the most current version of the American Heart Association Guidelines for Health Care Provider CPR.

(c) "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.

(d) "Parent Home Health Agency" means the agency that has administrative control of branch offices.

(e) "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;

(j) 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
October 17, 2017 26-21-5
Notice of Continuation September 15, 2016 26-21-2.1

R432. Health, Family Health and Preparedness, Licensing.
R432-750. Hospice Rule.
R432-750-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-750-2. Purpose.

A hospice program provides support and care for persons with a limited life expectancy so that they might live as fully and comfortably as possible.

(1) A hospice program recognizes dying as a normal process resulting from disease or injury.

(2) A hospice service neither hastens nor postpones death.

(3) A hospice program exists in the hope and belief that, through appropriate care and the promotion of a caring community sensitive to their needs, patients and families may be free to attain a degree of mental and spiritual preparation for death that is satisfactory to them.

(4) The hospice program is a health care agency or facility which offers palliative and supportive services providing physical, psychosocial, spiritual and bereavement care for dying persons and their families.

(5) A hospice provides services through an interdisciplinary team of professionals and volunteers.

(6) Hospice services are available in both the home and an inpatient setting.

R432-750-3. Time for Compliance.

All hospice agencies shall be licensed and in full compliance with these rules by March 1, 1998.

R432-750-4. Definitions.

(1) See common definitions rule R432-1-3.

(2) Special definitions:

(a) "Appropriate" means especially suitable or compatible; fitting.

(b) "Bereavement" means the period of time, usually occurring within the first year after the loss, during which a person or group of people experiences, responds emotionally to, and adjusts to the loss by death of another person.

(c) "Care" means to perceive and respond to the needs of another.

(d) "Continuum" means the uninterrupted provision of services appropriate to the needs of the patient and family; these services are planned, coordinated, and made available by the hospice program.

(e) "Family" means a group of individuals living under one roof and under one head; a group of persons of common ancestry; a group of individuals having a personal commitment one to the another.

(f) "Grief" means the response to loss that often occurs in stages of varying length. Stages are differentiated by changes in feeling, thought, and behavior.

(g) "Hospice" means a public agency or private organization or subdivision of either of these that is primarily engaged in providing care to terminally ill individuals and their families.

(h) "Hospice Administrator" means a person who is appointed in writing by the governing body of the hospice organization and who shall be accountable and responsible for implementing the policies and programs approved by the governing body.

(i) "Hospice Care" means the care given to the terminally ill and their families which occurs in a home or in a health facility and which includes medical, palliative, psychosocial, spiritual, bereavement and supportive care and treatment.

(j) "Hospice Inpatient Facility" means a freestanding licensed hospice facility or designated hospice licensed hospice unit in an existing health care facility.

(k) "Interdisciplinary Team" means a team composed of physician (attending and medical director), nurse, social worker, pastoral care provider, volunteer, patient and family, and any other professionals as indicated.

(l) "Palliative Treatment" means treatment and comfort measures directed toward relief of symptoms and pain management rather than treatment to cure.

(m) "Palliative Care" means the care given to the terminally ill, focusing on relief of distressing symptoms

(n) "Pastoral Care Provider" means an individual who has received a degree from an accredited theological school, or an individual who by ordination or by ecclesiastical endorsement from the individual's denomination has been approved to function in a pastoral capacity. A Pastoral Care Provider may also be an individual who has received certification in Clinical Pastoral Education which meets the requirements for the College of Chaplains. The individual shall have experience in pastoral duties and be capable of providing for hospice patients' and families' spiritual needs.

(o) "Primary Care Giver" means the family member or other person designated by the family who assumes the overall responsibility for the care of the patient in the home.

(p) "Special Services" means those services not represented on the interdisciplinary team that may be valuable for specific patient and family needs, including but not limited to nurses, social workers, homemakers, certified nursing aide, recreation therapists, occupational therapists, respiratory therapists, pharmacists, dieticians, lawyers, certified public accountants, funeral directors, musical therapists, art therapists, speech therapists, physical therapists, and counselors.

(q) "Spiritual" means patient's and families' beliefs and practices as they relate to the meaning of their life, death, and their connection to humanity which may or may not be of a religious nature.

(r) "Terminal Illness" means a state of disease characterized by a progressive deterioration with impairment of function which without aggressive intervention, survival is anticipated to be six months or less.

(s) "Terminal Care" means the care provided to an individual during the final stage of their illness.

(t) "Unit of Care" means the individual to receive hospice services; since the term "unit" means a single, whole thing, hospice defines the patient and family to be the single whole, regardless of the degree of harmony or integration of the parts within that whole.

(u) "Volunteer" means an individual, professional or nonprofessional, who has received appropriate orientation and training consistent with acceptable standards of hospice philosophy and practice; one who contributes time and talent to the hospice program without economic remuneration.

R432-750-5. Licensure.

Hospice agencies shall include institutionally based hospice programs, freestanding public and proprietary hospice agencies, and any subdivision of an organization, public agency, hospital, or nursing home licensed to provide hospice services.

R432-750-6. Eligibility.

These provisions apply to a program advertising or presenting to be a hospice or hospice program of care, as defined in Section 26-21-2, which provides, directly or by contract hospice services to the terminally ill.

R432-750-7. Governing Body and Administration.

(1) The hospice agency shall be organized under a governing body that assumes full legal responsibility for the conduct of the agency.

(2) The administrative structure of the agency must be shown by an organization chart.

(3) The governing body is responsible to:

(a) comply with all federal regulations, state rules, and local laws;

(b) adopt policies and procedures which describe functions or services of the hospice and protect patient rights;

(c) adopt a statement that there will be no discrimination because of race, color, sex, religion, ancestry, or national origin (Sections 13-7-1 through 4);

(d) develop and implement bylaws which shall include at least:

(i) a statement of purpose,

(ii) a statement of qualifications for membership and methods to select members of the governing board,

(iii) a provision for the establishment, selection, and term of office for committee members and officers,

(iv) a description of functions and duties of the governing body officers and committees,

(v) a statement of the authority and responsibility delegated to the hospice administrator, and

(vi) a policy statement relating to conflict of interest of members of the governing body or employees who may influence agency decisions;

(e) meet at least annually, or more frequently as stated in the bylaws;

(f) appoint by name and in writing a qualified hospice administrator who is responsible for the agency's overall functions;

(g) notify the licensing agency in writing 30 days prior to any proposed change in the hospice administrator, identifying the name of the new hospice administrator and the effective date of the change;

(h) review the written annual evaluation report from the hospice administrator and document recommendations as necessary;

(i) make provision for resources and equipment to provide a safe working environment for personnel;

(j) establish a system of financial management and accountability.

(4) The hospice administrator is responsible for the overall management of the agency.

(a) The hospice administrator must designate in writing the name and title of a qualified person who shall act as hospice administrator in the temporary absence of the hospice administrator. This designee shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being.

(b) The hospice administrator or designee shall be available during the agency's hours of operation.

(c) The hospice administrator is responsible to:

(i) complete, submit, file, and make available all records, reports, and documentation required by the Department;

(ii) review agency policies and procedures at least annually and recommend necessary changes to the governing body;

(iii) implement agency policies and procedures;

(iv) organize and coordinate functions of the agency by delegating duties and establishing a formal means of staff accountability;

(v) appoint by name and in writing a physician or registered nurse to provide general supervision, coordination, and direction for professional services of the agency;

(vi) appoint by name and in writing a registered nurse to be the director of nursing services;

(vii) appoint by name and in writing the members and their terms of membership in the interdisciplinary quality assurance committee;

(viii) appoint other committees as deemed necessary, describe committee functions and duties, and make provision for selection, term of office, and responsibilities of committee members;

(ix) designate by name and in writing a person responsible for maintaining a clinical record system on all patients;

(x) maintain current written designations or letters of appointment in the agency;

(xi) employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority, and who have the appropriate license or certificate of completion;

(xii) develop a staff communication system that coordinates interdisciplinary team services, coordinates implementation of plans of treatment, utilizes services or resources to meet patient needs, and promotes an orderly flow of information within the organization;

(xiii) secure contracts for services not directly provided by the hospice;

(xiv) implement a program of budgeting and accounting;

(xv) establish, when appropriate, a billing system which itemizes services provided and charges submitted to the payment source; and

(xvi) conduct an annual evaluation of the agency's overall function and submit a written report of the findings to the governing body.

R432-750-8. Personnel.

The hospice administrator shall maintain qualified personnel who are competent to perform their respective duties, services, and functions.

(1) The agency shall develop and implement written policies and procedures that address the following:

(a) job descriptions, qualifications, and validation of licensure or certificates of completion as appropriate for the position held;

(b) orientation for direct and contract employees, and volunteers;

(c) criteria for, and frequency of, performance evaluations;

(d) work schedules; method and period of payment; fringe benefits such as sick leave, vacation, and insurance;

(e) frequency and documentation of in-service training; and

(f) contents of personnel files of employed and volunteer staff.

(2) Each employee must provide within 45 days of hire proof of registration, certification, or licensure as required by the Utah Department of Commerce.

(3) The agency shall establish and implement a policy and procedure for health screening of all agency personnel.

(a) An employee placement health evaluation to include at least a health inventory shall be completed when an employee is hired.

(b) The health inventory shall obtain at least the employee's history of the following:

(i) conditions that predispose the employee to acquiring or transmitting infectious diseases;

(ii) conditions which may prevent the employee from performing certain assigned duties satisfactorily;

(c) Employee health screening and immunizations components of personnel health programs shall be developed in accordance with R386-702 Communicable Disease Rule.

(d) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(i) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(A) initial hiring;

(B) suspected exposure to a person with active tuberculosis; and

(C) development of symptoms of tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(e) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-3.

(4) The hospice must document that all employees, volunteers, and contract personnel are oriented to the agency and the job for which they are hired.

(a) Orientation shall include:

(i) the hospice concept and philosophy of care;

(ii) the functions of agency employees and the relationships between various positions or services;

(iii) job descriptions;

(iv) duties for which persons are trained, hold certificates, or are licensed;

(v) ethics, confidentiality, and patients' rights;

(vi) information about other community agencies including emergency medical services;

(vii) opportunities for continuing education appropriate to the patient population served;

(viii) policies related to volunteer documentation, charting, hours and emergencies; and

(ix) reporting requirements when observing or suspecting abuse, neglect and exploitation pursuant to 62A-3-305.

(b) The hospice shall provide and document in-service training and continuing education for staff at least annually.

(i) Members of the hospice interdisciplinary team shall have access to in-service training and continuing education appropriate to their responsibilities and to the maintenance of skills necessary for the care of the patient and family.

(ii) The training programs shall include the introduction and review of effective physical and psychosocial assessment and symptom management.

(c) The hospice shall train all personnel in appropriate Centers for Disease Control (CDC) infectious disease protocols.

(5) The hospice administrator shall appoint a person to coordinate the activities of the interdisciplinary team. This individual shall:

(a) annually review and make recommendations where appropriate of agency policies covering admissions and discharge, medical supervision, care plans, clinical records and personnel qualifications;

(b) assure that on-going assessments of the patient and family needs and implementation of the interdisciplinary team care plans are accomplished;

(c) schedule adequate quality and quantity of all levels of hospice care; and

(d) assure that the team meets regularly to develop and maintain appropriate plans of care and to determine which staff will be assigned to each case.

(6) The hospice program shall provide access to individual and/or group support for interdisciplinary team members to assist with stress and/or grief management related to providing hospice care.

R432-750-9. Contracts.

(1) The hospice administrator shall secure a legally binding written contract for the provision of arranged patient services.

(2) The contract or agreement shall be available for review by the Department.

(3) The contract shall include:

(a) the effective and expiration dates of the contract;

(b) a description of goods or services provided by the contractor to the agency;

(c) provision for financial terms of the contract, including methods to determine charges, reimbursement, and the responsibility of contract personnel in the billing procedure;

(d) the method of supervision of contract personnel and the manner in which services will be controlled, coordinated, and evaluated by the agency;

(e) a statement that contract personnel shall perform according to agency policies and procedures, and shall conform to standards required by laws, rules, or regulations;

(f) a description of the contractor's role in the development of plans of treatment, and how to keep agency staff informed about the patient's needs or condition;

(g) a provision to terminate the contract; and

(h) a photocopy of the professional license of contract personnel, if applicable.

R432-750-10. Acceptance and Termination.

(1) The agency shall develop written acceptance and termination policies and make these policies available to the public upon request.

(2) The agency shall make available to the public, upon request, information regarding the various services provided by the hospice and the cost of the services.

(3) A patient will be accepted for treatment if there is reasonable expectation that the patient's needs can be met by the agency regardless of ability to pay for the services. The agency shall base the acceptance determination on the following:

(a) The patient, family or responsible person agrees that hospice care is appropriate and completes a signed informed consent document requesting hospice services. If no primary care person is available, the agency shall complete an evaluation to determine the patient's eligibility for service.

(b) The patient's attending physician must order hospice care.

(c) The hospice agency determines that the patient's place of residence is adaptable and safe for the provision of hospice services.

(4) The agency may terminate services to a patient if any of the following circumstances occur:

(a) The patient is determined to no longer be terminal.

(b) The family situation changes which affects the delivery of services.

(c) The patient or family is uncooperative in efforts to attain treatment objectives.

(d) The patient moves from the geographic area served by the agency.

(e) The physician fails to renew orders or the patient changes his physician and the agency cannot obtain orders for continuation of services from the new physician.

(f) The agency can no longer provide quality care in the existing environment due to safety of staff, patient, or family.

(g) The patient or family requests that agency services be discontinued.

(5) Upon transfer from a home program to an in-patient unit, or the reverse, the plan of care shall be forwarded to the receiving program.

R432-750-11. Patients' Rights.

(1) The agency shall establish and make available to the patient written patients' rights.

(a) Written patients' rights shall be made available to the, responsible party, next of kin, sponsoring agency, representative payee, and the public upon request.

(b) Agency policy may determine how patients' rights information is distributed.

(2) The agency shall insure that each patient receiving care has the following rights:

(a) to receive information on patient's rights and responsibilities;

(b) to receive information on services for which the patient or a third party payor may be responsible and to receive information on all changes in charges;

(c) to be informed of personal health conditions, unless medically contraindicated and documented in the clinical record, and to be afforded the opportunity to participate in the

planning of the hospice services, including referral to health care institutions or other agencies and to refuse to participate in experimental research;

(d) to refuse treatment to the extent permitted by law and to be informed of the medical consequences of such if refused;

(e) to be assured confidential treatment of personal and medical records and to approve or refuse the release of records to any individual outside the agency except in the case of transfer to another agency or health facility, or as required by law or third-party payment contract;

(f) to be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(g) to receive information about the hospice services required in order to assist in the course of treatment;

(h) to be assured the personnel who provide care are qualified through education and experience to carry out the services for which they are responsible;

(i) to receive proper identification by the individual providing hospice services;

(j) to permit the patient the right to discontinue hospice care at any time he or she chooses; and

(k) to receive information about advanced directives.

R432-750-12. Patient Records.

(1) The administrator shall develop and implement record keeping policies and procedures that address the use of patient records by authorized staff, content, confidentiality, retention, and storage.

(a) Records shall be organized in a uniform medical record format.

(b) The agency shall maintain an identification system to facilitate location of each patient's current or closed record.

(c) The hospice shall maintain an accurate, up-to-date record for every patient receiving service.

(d) Each hospice health care provider who has patient contact or provides a service shall insure that a clinical note entry of that contact or service is made in the patient's record.

(e) All entries must be dated and authenticated with the signature and title of the person making the entry.

(f) The hospice must document services provided and outcomes of these services in the individual patient record.

(2) Physician's orders shall be incorporated into the plan of care and renewed at least every 90 days.

(a) The orders shall include the physician signature and date.

(b) Orders faxed from the physician are acceptable provided that the original order is available upon request.

(3) Each patient's record shall contain at least the following information:

(a) demographic information including patient's name, address, age, date of birth, name and address of nearest relative or responsible person, name and telephone number of physician with primary responsibility for patient care, and if applicable, the name and telephone number of the person or family member who, in addition to agency staff, provides care in the place of residence;

(b) diagnosis;

(c) pertinent medical and surgical history if available;

(d) a written and signed informed consent to receive hospice services;

(e) orders by the attending physician for hospice services;

(f) medications and treatments as applicable;

(g) a written plan of care; and

(h) a signed, dated patient assessment which includes the following:

(i) a description of the patient's functional limitations;

(ii) a physical assessment noting chronic or acute pain and other physical symptoms and their management;

(iii) a psychosocial assessment of the patient and family;

(iv) a spiritual assessment; and

(v) a written summary report of hospice services provided.

(4) The hospice must send a copy of the summary required in subsection 12(3)(h)(v) to the patient's attending physician at least every 90 days. The summary shall become part of the patient's and family record as applicable.

(5) The person who is assigned to supervise or coordinate care for a patient must complete a discharge summary when services to the patient are terminated. The summary shall include:

(a) the reason for discharge; and

(b) the name of the facility or agency if the patient has been referred or transferred.

(6) The hospice shall safeguard clinical record information against loss, destruction, and unauthorized use.

(a) Written procedures shall govern the use and removal of records and conditions for release of patient information.

(b) A written consent is required for the release of patient/client information and photographing of recorded information.

(c) When a patient is transferred to another facility or agency, a copy of the record or abstract must be sent to that service agency.

(7) The agency shall provide an accessible area for filing and safe storage of medical records.

(a) Patient records shall be retained for at least seven years after the last date of patient care.

(b) Upon change of ownership, all patient records shall be transferred to new owners.

R432-750-13. Quality Assurance.

(1) The governing body shall evaluate the quality, appropriateness, and scope of services provided by the agency at least annually to determine if the agency has met the agency objectives.

(2) An interdisciplinary quality assurance committee shall evaluate patient services at least quarterly and maintain a written report of findings. Recommendations from each meeting shall be submitted to the hospice administrator and shall be maintained in the agency for review by the department.

(a) The administrator shall appoint the members of the quality assurance committee for a given term of membership.

(b) The quality assurance committee shall include a minimum of three individuals who represent three different health care services.

R432-750-14. Hospice Services.

(1) A hospice unit of care includes the patient and the patient's family. The patient and family (or other primary care person) participate in the development and implementation of the interdisciplinary care plan according to their ability.

(2) Hospice care includes responding to the scheduled and unscheduled needs of the patient and family 24 hours per day. Written policies and procedures shall include:

(a) a procedure for accepting referrals in accordance with the provisions of R432-750-10;

(b) a procedure for completing an initial assessment and developing the interdisciplinary care plan;

(c) providing for and documenting that the interdisciplinary team meets regularly to evaluate care and includes inpatient and in-home care staff;

(d) provision for the care plan to be available to team members for in-home and inpatient services;

(e) appropriate transfer of care from hospice in-home care to hospice inpatient care and vice-versa where available;

(f) provision for a clearly defined integrated administrative structure between in-home care and inpatient services; and

(g) coordination of care plan between in-home hospice and

inpatient hospice care.

(3) Hospice care shall be provided by the interdisciplinary team.

(a) The interdisciplinary team may include ancillary staff when appropriate.

(b) The interdisciplinary team shall meet at least twice a month to develop and maintain an appropriate plan of care.

(4) A care plan for each patient must be signed by the attending physician and include the following:

(a) the name of patient;

(b) all pertinent diagnoses;

(c) objectives, interventions, and goals of treatment, based upon needs identified in a comprehensive patient assessment;

(d) services to be provided, at what intervals and by whom; and

(e) the date plan was initiated and dates of subsequent reviews.

(5) No medication or treatment requiring an order may be given by hospice nurses except on the order of a person lawfully authorized to give such an order.

(a) Initial orders and subsequent changes in orders for the administration of medications shall be signed by the person lawfully authorized to give such orders and incorporated in the patient's record maintained by the program.

(b) Telephone orders must be received by licensed personnel and recorded immediately in the patient's medical record. Telephone orders must be countersigned by the initiator within 15 days of the date of issue.

(c) Orders for therapy services shall include the specific procedures to be used and the frequency and duration.

(d) The attending physician shall review, sign and date orders at least every 90 days.

(e) Only those hospice employees licensed to do so may administer medications to patients.

(f) Medications and treatments that are administered by hospice employees, must be administered as prescribed and recorded in the patients record.

R432-750-15. Physician Services.

(1) Each patient admitted for hospice services shall be under the care of a licensed physician.

(2) The physician shall provide the following:

(a) approval for hospice care;

(b) admitting diagnosis and prognosis;

(c) current medical findings;

(d) medications and treatment orders; and

(e) pertinent orders regarding the patient's terminal condition.

(3) The administrator shall appoint in writing a licensed physician to be the medical director. The Medical Director must be knowledgeable about the psychosocial and medical aspects of hospice care, on the basis of training, experience and interest. The medical director shall:

(a) act as a medical resource to the interdisciplinary team;

(b) coordinate services with each attending physician to ensure continuity in the services provided in the event the attending physician is unable to retain responsibility for patient care; and

(c) act as liaison with physicians in the community.

R432-750-16. Nursing Services.

(1) A registered nurse shall provide or direct nursing services.

(2) Registered nursing personnel shall perform the following tasks:

(a) make the initial nursing evaluation visit;

(b) re-evaluate the patient's nursing needs as required;

(c) initiate the plan of care and necessary revisions;

(d) provide directly or by contract skilled nursing care;

(e) assign, supervise and teach other nursing personnel and primary care person;

(f) coordinate all services provided with members of the interdisciplinary team;

(g) inform the physician and other personnel of changes in the patient's condition and needs;

(h) prepare clinical progress notes; and

(i) participate in in-service training programs.

R432-750-17. Medical Social Work Services.

(1) The agency shall provide social work services by a qualified social worker who has received a degree from an accredited school of Social Work.

(2) Social work services shall be provided by a social worker licensed under the Mental Health Professional Practice Act (Title 58, Chapter 60).

(3) The social worker shall participate in in-service training to meet the care needs of the patient and family.

R432-750-18. Professional Counseling Services.

(1) The agency shall provide counseling services to patients either directly or by contract. These services may include dietary and other counseling services deemed appropriate to meet the patients' and families' needs.

(2) Individuals who provide counseling services, whether employed or contracted by the agency, must be licensed, certified, registered, or qualified as to education, training, or experience according to law.

R432-750-19. Pastoral Care Services.

(1) The hospice shall provide pastoral services through a qualified staff person who has a working relationship with local clergy or spiritual counselors.

(2) Pastoral services shall include the following:

(a) spiritual counseling consistent with patient and family belief systems;

(b) communication with and support of clergy or spiritual counselors in the community as appropriate; and

(c) consultation and education to patients and families and interdisciplinary team members as requested.

R432-750-20. Volunteer Services.

Hospice volunteers provide a variety of services as defined by the policies of each program and under supervision of a designated and qualified hospice staff member.

(1) Volunteers must receive a minimum of 12 hours of documented orientation and training which shall include the following:

(a) the hospice services, goals, and philosophy of care;

(b) the physiological aspects of terminal disease;

(c) family dynamics, coping mechanisms and psychosocial and spiritual issues surrounding the terminal disease, death and bereavement;

(d) communication skills;

(e) concepts of death and dying;

(f) care and comfort measures;

(g) confidentiality;

(h) patient's and family's rights;

(i) procedures to be followed in an emergency;

(j) procedures to follow at time of patient death;

(k) infection control and safety;

(l) stress management; and

(m) the volunteer's role and documentation requirements.

(3) The hospice shall maintain records of hours of services and activities provided by volunteers.

(4) The agency shall have on file, a copy of certification, registration, or license of any volunteer providing professional services.

R432-750-21. Bereavement Services.

(1) Bereavement services shall address the family needs following the death of the patient. Services are available, as needed, to survivors for at least one year.

(2) Bereavement services shall be supervised by a person possessing at least a degree or documented training in a field that addresses psychosocial needs, counseling, and bereavement services.

(3) All volunteers and staff who deliver bereavement services shall receive bereavement training.

(4) Bereavement services shall include the following:

(a) survivor contact, as needed and documented, following a patient's death;

(b) an interchange of information between the team members regarding bereavement activities; and

(c) a process for the assessment of possible pathological grief reactions and, as appropriate, referral for intervention.

R432-750-22. Other Services.

(1) Other services may include but are not limited to:

(a) physical therapy;

(b) occupational therapy;

(c) speech therapy; and

(d) certified nursing aide.

(2) Services provided directly or through contract shall be ordered by a physician and documented in the clinical record.

R432-750-23. Freestanding Inpatient Facilities.

In addition to the requirements outlined in the previous sections of R432-750, freestanding inpatient hospice facilities shall meet the Construction and Physical Environment requirements of R432-4, R432-5 and R432-12, depending on facility size and type of patient admitted.

R432-750-24. Hospice Inpatient Facilities.

In addition to the requirements outlined in the previous sections of R432-750, inpatient hospice facilities shall meet the requirements of R432-750-25 through R432-750-40.

R432-750-25. Inpatient Staffing Requirements.

(1) The inpatient hospice must provide competent hospice trained nursing staff 24 hours per day, every day of the week to meet the needs of the patient in accordance with the patient's plan of care. Nursing services must provide treatments, medications, and diet as prescribed.

(2) A hospice-trained registered nurse must be on duty 24 hours per day to provide direct patient care and supervision of all nursing services.

R432-750-26. Inpatient Hospice Infection Control.

(1) The hospice shall develop and implement an infection control program to protect patients, family and personnel from hospice or community associated infections.

(2) The hospice administrator and medical director shall develop written policies and procedures governing the infection control program.

(3) All employees shall wear clean garments or protective clothing at all times, and practice good personal hygiene and cleanliness.

(4) The hospice shall develop and implement a system to investigate, report, evaluate, and maintain records of infections among patients and personnel.

(5) The hospice shall comply with OSHA Blood Borne Pathogen Standards, 29 CFR 1910.1030, July 1, 1998, which is adopted and incorporated by reference.

R432-750-27. Pharmaceutical Services.

(1) The hospice shall establish and implement written policies and procedures to govern the procurement, storage, administration and disposal of all drugs and biologicals in accordance with federal and state laws.

(2) A licensed pharmacist shall supervise pharmaceutical services. The pharmacist's duties shall include, but not be limited to the following:

(a) advise the hospice and hospice interdisciplinary team on all matters pertaining to the procurement, storage, administration, disposal, and record keeping of drugs and biologicals; interactions of drugs; and counseling staff on appropriate and new drugs;

(b) inspect all drug storage areas at least monthly; and

(c) conduct patient drug regiment reviews at least monthly or more often if necessary, with recommendations to physicians and hospice staff.

(3) The hospice shall establish and implement written policies and procedures for drug control and accountability. Records of receipt and disposition of all controlled drugs shall be maintained for accurate reconciliation.

(4) The pharmaceutical service must ensure that drugs and biologicals are labeled based on currently accepted professional principles, and include the appropriate accessory and cautionary instructions, as well as the expiration date when applicable.

(5) The hospice must provide secure storage for medications. Medications that require refrigeration must be maintained between 36 and 46 degrees F.

(6) The hospice must provide separately locked compartments for storage of controlled drugs as listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, as well as other drugs subject to abuse. Only authorized personnel, in accordance with State and Federal laws, shall have access to the locked medication compartments.

(7) Controlled drugs no longer needed by the patient shall be disposed of by the pharmacist and a registered nurse. The hospice must maintain written documentation of the disposal.

(8) An inpatient hospice shall maintain an emergency drug kit appropriate to the needs of the facility, assembled in consultation with the pharmacist and readily available for use. The pharmacist shall check and restock the kit monthly, or more often as necessary.

R432-750-28. Inpatient Hospice Patient's Rights.

(1) In addition to R432-750-11, the hospice shall honor each patient's rights as follows:

(a) the right to exercise his/her rights as a patient of the facility and as a citizen or resident of the United States;

(b) the right to be free of mental and physical abuse;

(c) the right to be free of chemical and physical restraints for the purpose of discipline or staff convenience;

(d) the right to have family members remain with the patient through the night;

(e) the right to receive visitors at any hour, including small children;

(f) the right for the family to have privacy after a patient's death;

(g) the right to keep personal possessions and clothing as space permits;

(h) the right to privacy during visits with family, friends, clergy, social workers, and advocacy representatives;

(i) the right to send and receive mail unopened; and have access to telephones to make and receive confidential calls;

(j) the right to have family or responsible person informed by the hospice of significant changes in the patient's condition or needs;

(k) the right to participate in religious and social activities of the patient's choice;

(l) the right to manage and control personal cash resources;

(m) the right to receive palliative treatment rather than

treatment aimed at intervention for the purpose of cure or prolongation of life;

(n) the right to refuse nutrition, fluids, medications and treatments; and

(o) the right to leave the facility at any time and not be locked into any room, building, or on the facility premises during the day or night; except that the hospice may lock doors at night for the protection of patients.

(2) The hospice must post patient rights in a public area of the facility.

(3) Restraints ordered to treat a medical condition must comply with the requirements of R432-150-14.

R432-750-29. Report of Death.

(1) The hospice shall have a written plan to follow at the time of a of patient's death. The plan shall include:

(a) recording the time of death;

(b) documentation of death;

(c) notification of attending physician responsible for signing death certificate;

(d) notification of next of kin or legal guardian;

(e) authorization and release of the body to the funeral home;

(2) The hospice must notify the Department of any death resulting from injury, accident, or other possible unnatural cause.

R432-750-30. First Aid.

(1) The hospice shall ensure that at least one staff person is on duty at all times who is certified in cardiopulmonary resuscitation and has training in basic first aid, the Heimlich maneuver and emergency procedures.

(2) Certification in Cardiopulmonary Resuscitation (CPR) refers to certification issued after completion of a course that is consistent with the most current version of the American Heart Association Guidelines for Health Care Provider CPR.

(3) Each hospice, except those attached to a medical unit, shall have a first aid kit available at a designated location in the facility.

(4) Each hospice shall have a current edition of a basic first aid manual approved by the American Red Cross, the American Medical Association, or a state or federal health agency.

R432-750-31. Safeguards for Patients' Monies and Valuables.

(1) The hospice must safeguard patients' cash resources, personal property, and valuables which have been entrusted to the licensee or hospice staff.

(2) A hospice is not required to handle patient's cash resources or valuables. However, if the hospice accepts a patient's cash resources or valuables, then the hospice must safeguard the patient's cash resources in accordance with the following:

(a) No licensee or hospice staff member may use patients' monies or valuables as his own or mingle them with his own. Patients' monies and valuables shall be separated, and intact and free from any liability that the licensee incurs in the use of his own or the institution's funds and valuables.

(b) The licensee must maintain accurate records of patients' monies and valuables entrusted to the licensee.

(c) Records of patients' monies which are maintained as a drawing account must include a control account for all receipts and expenditures, and an account for each patient and supporting receipts filed in chronological order.

(d) Each account shall be kept current with columns for debits, credits, and balance.

(e) Records of patients' monies and other valuables entrusted to the licensee for safekeeping shall include a copy of the receipt furnished for funds received.

(f) All money entrusted with the facility in a patient account in excess of $150 must be deposited in an interest-bearing account in a local financial institution within five days of receipt.

(3) Each inpatient hospice must maintain a separate account for patient funds specific to that inpatient hospice and shall not commingle with patient funds from another inpatient hospice.

(4) Upon discharge, a patient's money and valuables, which have been entrusted to the licensee, shall be returned to the patient that day. Money and valuables kept in an interest-bearing account shall be available to the patient within three working days.

(5) Within 30 days following the death of a patient, except in a medical examiner case, the patient's money and valuables entrusted to the licensee shall be surrendered to the responsible persons, or to the administrator of the estate.

R432-750-32. Emergency and Disaster.

(1) The hospice is responsible for the safety and well-being of patients in the event of an emergency or disaster.

(2) The licensee and the administrator are responsible to develop plans coordinated with the state and local emergency disaster authorities to respond to potential emergencies and disasters. The plan shall outline the protection or evacuation of all patients and include arrangements for staff response, or provisions of additional staff to ensure the safety of any patient with physical or mental limitations.

(a) Emergencies and disasters include fire, severe weather, missing patients, interruption of public utilities, explosion, bomb threat, earthquake, flood, windstorm, epidemic, or mass casualty.

(b) The emergency and disaster response plan shall be in writing and distributed or made available to all facility staff and patients to assure prompt and efficient implementation.

(c) The licensee and the administrator shall review and update the plan as necessary to conform with local emergency plans. The plan shall be available for review by the Department.

(3) The hospices's emergency and disaster response plans shall address the following:

(a) the names of the person in charge and persons with decision-making authority;

(b) the names of persons who shall be notified in an emergency in order of priority;

(c) the names and telephone numbers of emergency medical personnel, fire department, paramedics, ambulance service, police, and other appropriate agencies;

(d) instructions on how to contain a fire and how to use the facility alarm systems;

(e) assignment of personnel to specific tasks during an emergency;

(f) the procedure to evacuate and transport patients and staff to a safe place within the hospice or to other prearranged locations;

(g) instructions on how to recruit additional help, supplies, and equipment to meet the patients' needs after an emergency or disaster;

(h) delivery of essential care and services to facility occupants by alternate means;

(i) delivery of essential care and services when additional persons are housed in the hospice during an emergency;

(j) delivery of essential care and services to hospice occupants when personnel are reduced by an emergency; and

(k) maintenance of safe ambient air temperatures within the facility.

(i) Emergency heating must have the approval of the local fire department.

(ii) Ambient air temperatures of 58 degrees F. or below

may constitute an imminent danger to the health and safety of the patients in the hospice. The person in charge shall take immediate action in the best interests of the patients.

(iii) The hospice shall have, and be capable of implementing, contingency plans regarding excessively high ambient air temperatures within the hospice that may exacerbate the medical condition of patients.

(4) Personnel and patients shall receive instruction and training in accordance with the plans to respond appropriately in an emergency. The hospice shall:

(a) annually review the procedures with existing staff and patients;

(b) hold simulated disaster drills semi-annually; and

(c) document all drills, including date, participants, problems encountered, and the ability of each patient to evacuate.

(5) The administrator shall be in charge during an emergency. If not on the premises, the administrator shall make every effort to report to the hospice, relieve subordinates, and take charge.

(6) Each inpatient hospice shall provide in-house all equipment and supplies required in an emergency including emergency lighting, heating equipment, food, potable water, extra blankets, a first aid kit, and a radio.

(7) The hospice shall post the following information in appropriate locations throughout the facility:

(a) the name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, and appropriate communication and emergency transport systems; and

(b) evacuation routes, location of fire alarm boxes, and fire extinguishers.

(8) The hospice must post emergency telephone numbers at each nursing station.

(9) Fire drills and fire drill documentation shall be in accordance with R710-4, State of Utah Fire Prevention Board.

R432-750-33. Food Service.

(1) The hospice may provide dietary services directly, or through a written agreement with a food service provider.

(2) The hospice food service shall comply with the R392-100, Utah Department of Health Food Service Sanitation Rule.

(3) The hospice must maintain for Department review all inspection reports by the local health department.

(4) If the hospice accepts patients requiring therapeutic or special diets, the hospice shall have an approved dietary manual for reference when preparing meals.

(5) Dietary staff shall receive a minimum of four hours of documented in-service training each year.

(6) The hospice must employ or contract with a certified dietician to provide documented quarterly consultation if patients requiring therapeutic diets are admitted.

(7) The hospice must ensure that sufficient food service personnel are on duty to meet the needs of patients.

(8) While performing food service duties, the cook and other kitchen staff shall not perform concurrent duties outside the food service area.

(9) All persons who prepare or serve food shall have a current Food Handler's Permit.

R432-750-34. Nutrition and Menu Planning.

(1) The hospice shall provide at least three meals or their equivalent daily.

(2) Meals shall be served with no more than a 14-hour interval between the evening meal and breakfast, unless a substantial snack is available in the evening.

(3) The hospice must have between meal snacks of nourishing quality available on a 24 hour basis.

(4) A different menu shall be planned for and available for each day of the week.

(5) The hospice shall ensure that patients' favorite foods are included in their diets whenever possible.

(6) The hospice shall maintain at least a one-week supply of non-perishable food and a three-day supply of perishable food.

(7) All food shall be of good quality, palatable, and attractively served.

R432-750-35. Pets in the Facility.

(1) A hospice may permit patients to keep household pets such as dogs, cats, birds, fish, and hamsters if permitted by local ordinances.

(2) Pets must be clean and disease-free.

(3) The pets' environment must be kept clean.

(4) Small pets shall be kept in appropriate enclosures.

(5) Pets that are not confined shall be under leash control, or voice control.

(6) Pets that are kept at the facility shall have documented current vaccinations.

(7) Upon approval of the administrator, family members may bring patients' pets to visit. Visiting pets must have current vaccinations.

(8) Hospices with birds shall have procedures which prevent the transmission of psittacosis. Procedures shall ensure the minimum handling of droppings and placing of droppings into a closed plastic bag for disposal.

(9) Pets are not permitted in food preparation, storage or central dining areas, or in any area where their presence would create a significant health or safety risk to others.

R432-750-36. Laundry Services.

(1) The hospice must provide laundry services to meet the needs of the patients.

(2) If the hospice contracts for laundry services, the hospice must obtain a signed, dated agreement from the contracted laundry service that details all services provided. The contracted laundry service must meet the requirements of R432-750-36(3)(c) through (f).

(3) Each hospice that provides in-house laundry services must meet the following requirements:

(a) The hospice must maintain a supply of clean linen to meet the needs of the patients.

(b) Clean bed linens shall be changed as often as necessary, but no less than twice each week.

(c) Soiled linen and clothing shall be stored separate from clean linen and not allowed to accumulate in the facility.

(d) Laundry equipment shall be in good repair.

(e) The laundry area shall be separate and apart from any room where food is stored, prepared, or served.

(f) Personnel shall handle, store, process, and transport linens in a manner to minimize contamination by air-borne particles and to prevent the spread of infection.

R432-750-37. Maintenance Services.

(1) The hospice shall provide maintenance services to ensure that equipment, buildings, furnishings, fixtures, spaces, and grounds are safe, clean, operable, and in good repair.

(2) The hospice shall conduct a pest control program through a licensed pest control contractor or a qualified employee to ensure the absence of vermin and rodents. Documentation of the pest control program shall be maintained for Department review.

(3) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition with regard to ice, snow, and other hazards.

R432-750-38. Waste Storage and Disposal.

The hospice must provide facilities and equipment for the

sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes, if applicable, using techniques acceptable to the Department of Environmental Quality and the local health authority.

R432-750-39. Water Supply.

(1) Hot water provided to patient tubs, showers, whirlpools, and hand washing facilities shall be regulated for safe use within a temperature range of 105 - 120 degrees F.

(2) Thermostatically controlled automatic mixing valves may be used to maintain hot water at the above temperatures.

R432-750-40. Housekeeping Services.

(1) The hospice must provide housekeeping services to maintain a clean, sanitary, and healthful environment.

(2) If the hospice contracts for housekeeping services with an outside entity, the hospice must obtain a signed and dated agreement that details the services provided.

(3) The hospice must provide safe, secure storage of cleaners and chemicals. In areas with potential access by children or confused disoriented patients, cleaners and chemicals must be locked in a secure area to prevent unauthorized access.

(4) Personnel engaged in housekeeping or laundry services may not be concurrently engaged in food service or patient care.

(5) The hospice must establish and implement policies and procedures to govern the transition of housekeeping personnel to food service or direct patient care duties.

R432-750-41. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-7 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

KEY: health care facilities
October 6, 2017 **26-21-5**
Notice of Continuation September 15, 2016 **26-21-6**

R434. Health, Family Health and Preparedness, Primary Care and Rural Health.
R434-30. Primary Care Grant Program.
R434-30-1. Authority and Purpose.

This rule is required by Section 26-10b-104. It implements the primary care grant program under Title 26, Chapter 10b.

R434-30-2. Definitions.

The definitions as they appear in 26-10b-101 apply. In addition:

(1) "Equipment" under this program is defined as equipment costing $1,000 or more; has a life span of three years or more; is non-expendable material; is not consumed; and/or a group of items costing less than $1,000 each, when combined make up one functional unit with a combined cost of $1,000 or greater is considered one piece of equipment.

(2) "Office" means the Utah Department of Health, Division of Family Health and Preparedness, Bureau of Primary Care, Office of Primary Care and Rural Health.

R434-30-3. Grant Application Process and Content.

(1) The department shall solicit grant applications by issuing a request for grant applications. Applicants responding to the request for grant applications under this program shall submit their grant application as directed in the grant application guidance issued by the Office.

(2) The content of grant applications is defined in Section 26-10b-103.

R434-30-4. Additional Criteria for Awarding Grants.

(1) In addition to the criteria listed in Section 26-10b-104, the Office shall consider the:

(a) reasonableness of the cost of the services to be given;

(b) degree to which primary health care services are provided comprehensively, extent to which supplemental services are provided, and extent to which services are conveniently located;

(c) demonstrated ability and willingness of applicant to systematically review the quality of care;

(d) commitment of applicant to sustain or enhance primary health care capacity for underserved, disadvantaged, and vulnerable populations; and

(e) degree to which the grant application is feasible, clearly described, and ready to be implemented.

R434-30-5. Disbursement and Usage.

(1) Awards to applicants can be made for one year, or up to two consecutive years, however, the total maximum allowable award amount is $100,000.

(2) In State Fiscal Year 2015, which covers the period July 1, 2014 through June 30, 2015, applicants may request up to $25,000 of the award amount to be used to purchase equipment and supplies that will enhance their ability to provide expanded primary health care. A single equipment purchase cannot exceed $5,000.

R434-30-6. Eligibility.

(1) Recognized referral networks that provide primary health care are eligible to apply for grant funding under this Section, as funding permits, for up to a maximum of:

(a) $50,000 for two years at up to $25,000 per year; or

(b) $25,000 for one year.

(2) Grant applications will be open to public entities and community based organizations.

(3) Each applicant is only allowed one grant application.

KEY: primary health care, medically underserved, grants
August 21, 2014 26-10b-104(4)
Notice of Continuation October 12, 2017

R495. Human Services, Administration.
R495-861. Requirements for Local Discretionary Social Services Block Grant Funds.
R495-861-1. Authority and Purpose.

A. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111.

B. The purpose of this rule is to specify the allocation of the Local Discretionary Social Services Block Grant Funds.

R495-861-2. Requirements for Local Discretionary Social Services Block Grant Funds.

A. Social Services Block Grant funds allocated to local governments are distributed to either counties or associations of government. These funds must be used as allowed by the Social Services Block Grant. The following agencies receive local discretionary social services block grant funds: Bear River Association of Governments, Weber/Morgan Counties, Davis County, Salt Lake County, Tooele County, Mountainlands Association of Governments, Six County Association of Governments, Five County Association of Governments, Uintah Basin Association of Governments, Southeastern Utah Association of Governments, and San Juan County.

B. Social Services Block Grant funds identified for local discretionary use by the Department of Human Services shall be allocated annually to local governments based on the following formula:

1. Each area with less than 15,000 population will receive a base of $54,000.00.

2. Each area with less than 150,000 population will receive a base of $34,000.00.

3. The remainder of the money will be allocated based on the percentage each area population is to the state population.

C. Each local government shall provide non-federal local government funds of at least 25 percent of their award. The additional 25 percent must be used for Social Services Block Grant Purposes.

KEY: social services, match requirements
July 16, 2015 62A-1-114
Notice of Continuation October 17, 2017

R501. Human Services, Administration, Administrative Services, Licensing.
R501-1. General Provisions for Licensing.
R501-1-1. Authority and Purpose.

(1) This Rule is authorized by Utah Code Title 62A, Chapter 2.

(2) This Rule clarifies the standards for:

(a) approving or denying a human services program license application;

(b) approving, renewing, extending, placing conditions on, restricting admissions, suspending, or revoking a license for a human services program;

(c) inspecting, monitoring, and investigating a prospective or current human services program; and

(d) approving or denying a variance to the Human Services Administrative Rules, Title R501, regarding the licensing of human services programs.

R501-1-2. Definitions.

As used in this Title 501:

(1) "Abuse" includes, but is not limited to:

(a) attempting to cause harm;

(b) threatening to cause harm;

(c) causing non-accidental harm;

(d) unreasonable or inappropriate use of a restraint, medication, confinement, seclusion or isolation that causes harm;

(e) sexual exploitation, as defined in 78A-6-105;

(f) sexual abuse, including sexual contact or conduct with a client, or as defined in 78A-6-105;

(g) a sexual offense, as described in Title 76 Chapter 5; or

(h) domestic violence or domestic violence related to child abuse.

(i) "Abuse" does not include the reasonable discipline of a child, or the use of reasonable and necessary force in self-defense or the defense of others, as such force is defined in 76-2-4.

(2) "Applicant" is defined in 62A-2-101.

(3) "Associated with the Licensee" is defined in 62A-2-101.

(4) "Category" means the type of human service license described in 62A-2-101.

(5) "Client" is defined in 62A-2-101.

(6) "Critical Incident" means an occurrence that involves:

(a) abuse;

(b) neglect;

(c) exploitation;

(d) death;

(e) an injury requiring medical attention beyond basic first aid;

(f) an injury that is a result of staff or client assault, restraint or intervention;

(g) the unlawful or unauthorized presence or use of alcohol or substances;

(h) the unauthorized departure of a client from the program;

(i) outbreak of a contagious illness requiring notification of the local health department;

(j) the misuse of dangerous weapons; or

(k) unsafe conditions caused by weather events, mold, infestations, or other conditions that may affect the health, safety or well-being of clients.

(7) "Director(s)" means a person or persons ultimately responsible for day to day operations of a program; and may include medical, clinical, or those directing other aspects of the program.

(8) "Exploitation" includes, but is not limited to:

(a) the use of a client's property, labor, or resources without the client's consent or in a manner that is contrary to the client's best interests, or for the personal gain of someone other than the client; such as expending a client's funds for the benefit of another; or

(b) using the labor of a client without paying the client a fair wage or without providing the client with just or equivalent non-monetary compensation, where such use is consistent with therapeutic practices; or

(c) engaging or involving a client in any sexual conduct; or

(d) any offense described in 76-5-111(4) or Section 76-5b-201 and 202.

(9) "Foster Home" is defined in 62A-2-101 (18).

(10) "Fraud" means a false or deceptive statement, act, or omission that causes, or attempts to cause, property or financial damages, or for personal or licensee gain. Fraud includes the offenses identified as fraud in Utah Code Title 76 Chapter 6.

(11) "Harm" means physical or emotional pain, damage, or injury.

(12) "Human Services Program" is defined in 62A-2-101.

(13) "Initial License means the license issued to operate a human services program during the licensee's first year of licensure. This license is considered provisional and allows for the licensee to demonstrate sustained compliance with licensing rules prior to renewal.

(14) "Inspection" means announced or unannounced visit of the licensed site in accordance with 62A-2-118.

(15) "Licensee" is defined in 62A-2-101 and includes the person or persons responsible for administration and decision making for the licensed site or program. The term licensee may be used to describe a person or entity that has caused any of the violations described in 62A-2-112 that are related to the human services program.

(16) "Local Government" is defined in 62A-2-101.

(17) "Medication-Assisted Treatment" means the use of medications with counseling and behavioral therapies to treat substance use disorders and prevent opioid overdose.

(18) "Mistreatment" means emotional or physical mistreatment:

(a) emotional mistreatment is verbal or non-verbal conduct that results in a client suffering significant mental anguish, emotional distress, fear, humiliation, or degradation; and may include demeaning, threatening, terrorizing, alienating, isolating, intimidating, or harassing a client; and

(b) physical mistreatment includes:

(i) misuse of work, exercise restraint, or seclusion as a means of coercion, punishment, or retaliation against a client, or for the convenience of the licensee, or when inconsistent with the client's treatment or service plan, health or abilities;

(ii) compelling a client to remain in an uncomfortable position or repeating physical movements to coerce, punish, or retaliate against a client, or for the convenience of the licensee;

(iii) physical punishment.

(19) "Neglect" means abandonment or the failure to provide necessary care, which may include nutrition, education, clothing, shelter, sleep, bedding, supervision, health care, hygiene, treatment, or protection from harm.

(20) "Office" means the Utah Department of Human Services Office of Licensing.

(21) "Owner/Ownership" means any licensee, person, or entity that:

(a) is defined as a "member" in 62A-2-108; or

(b) is a person or persons listed on a foster home license; or

(c) possesses the exclusive right to hold, use, benefit-from, enjoy, convey, transfer, and otherwise dispose of a program; or

(d) retains the rights, participates in, or is ultimately responsible for operations and business decisions of program, or

(e) may or may not own the real property or building

where the facility operates; or

(f) a property owner is also an owner of the program if they operate or have engaged the services of others to operate the program.

(22) "Parent Program" means an applicant or licensee owning or directing multiple sites under the same general administrative organization.

(23) "Penalty" means the Office's denying, placing conditions on, suspending, or revoking a human services license due to noncompliance with statute or administrative rules, may include penalties outlined in 62A-2-112. A penalty does not include corrective action plans as used in this rule.

(24) "Pending Renewal License" means a temporary program license status that is assigned when an expiring license has a corrective action plan, penalty, or pending appeal. Pending renewal licenses may be granted only after submission of fees and application, and are valid for no more than 12 months.

(25) "Program" refers to a Human Services Program as defined herein.

(26) "Person" means an individual, agency, association, partnership, corporation, business entity, or governmental entity.

(27) "Renewal License" means a continuing program license issued based upon ongoing compliance with administrative rules and statutes. It is issued annually or biennially in compliance with 62A-2 108(4).

(28) "Restraint" means the involuntary method of physically restricting a person's freedom of movement, physical activity, or normal access to their body.

(29) "Seclusion" means the involuntary confinement of the individual in a room or an area away from the client community, where the individual is physically prevented from leaving.

(30) "Site" means a human services program identified by a single geographic location and must be linked to the parent program, if one exists.

(31) "Staff" means direct care employees, support employees, managers, directors, supervisors, administrators, agents, volunteers, owners, and contractors.

(32) "Variance" means the Office authorized deviation from the administrative rule.

(33) "Violation" means an act or omission by the licensee, or any person associated with the licensee, contrary to any administrative regulation, or local, state, or federal law applicable to the program.

R501-1-3. Licensing Application Procedures.

(1) Initial and Renewal Application

(a) An applicant shall not accept any fees, enter any agreements to provide client services, or provide any client services until they have received a license certificate issued by the Office.

(b) Applicants and licensees shall permit the Office to have immediate, unrestricted access to the site, all on and off-site program and client records, and all staff and clients.

(c) An applicant may withdraw their application for a license, in writing, at any time during the application process.

(d) An applicant seeking an initial or renewal license to operate a human services program shall submit:

(i) an application as provided by the Office; a renewal application that is not submitted at least thirty days prior to the expiration date of the current license may result in the license expiring;

(ii) the fee(s) required for each category of human service program license(s); except as excluded in R501-1-7-2;

(iii) a completed background screening application, fees and supporting documentation for each person associated with the human services program in accordance with 62A-2-120 and R501-14, except for those excluded in 62A-2-120(13);

(iv) the applicant's required policies and procedures per R-501-2. Renewal applicants may submit modifications made to previously submitted policies and procedures;

(v) name and contact information for all owners and directors, as defined in this chapter;

(vi) disclosure of any individual associated with the application who has been a licensee as defined in this rule that had a license revoked by the Office within the five years prior to the date on the application; and;

(vii) documentation verifying compliance with, or exemption from, local government zoning, health, fire, safety, and business license requirements.

(A) For residential treatment programs applying for initial licensure, a copy of its notice of intent to operate a residential treatment program, and proof of service, in accordance with 62A-2-108.2.

(2) Application Expiration

(a) A program initial application, other than an initial foster home application, that remains incomplete shall expire one year from the date it was first submitted to the Office.

(b) A foster home initial application that remains incomplete, or lacks required documentation may expire 90 days from the date is was first submitted to the Office unless the Office determines the applicant to be making active progress toward licensing compliance.

(c) An expired initial application is void and requires a new initial application and applicable fees for each category of license.

(3) Two Year Licenses

(a) A program may apply for a two year license if:

(i) the program has been licensed consecutively without penalty for two years prior to application;

(ii) there are no current corrective action plans, penalties or pending appeals at the time of application;

(iii) the program submits double the annual fees for their category/categories of licenses; and

(iv) the program submits a plan for maintaining continued compliance with background screenings as described in 62A-2-120.

R501-1-4. Licensing Determinations.

(1) Application Approval

(a) The Office shall issue a license for a human service program only after verifying compliance with applicable administrative rules and statutes.

(b) The Office may place individualized parameters on a program license in order to promote the health, safety, and welfare of clients. Such parameters may include, but are not limited to:

(i) age restrictions;

(ii) admission or placement restrictions; or

(iii) other parameters specific to individual sites and programs.

(c) A license certificate shall state the name, site address, license category, maximum client capacity if applicable, any specific parameters, and effective dates of the license.

(d) Licensee shall post the license certificate in a conspicuous location at the licensed site.

(e) A program shall not be issued an initial license while any other license within that program or parent program is under penalty, or has a pending appeal.

(2) Application Denial

(a) The Office may deny the application for a human service program if:

(i) the program has failed to achieve and maintain compliance with administrative rules and statutes. All inspections, investigations, and other information gathered during the licensed period shall contribute to the renewal determination;

(ii) the Office determines that, the program is not reasonably likely to provide services in accordance with

governing rules or statutes. The Office may consider the history of rule violations by the owner, licensee, or persons associated with the program; or

(iii) the Office determines that significant false or misleading information regarding the program has been provided to the Office, program clients, prospective clients, or the public.

(b) Previously denied applicants shall not reapply for at least three months from the date of denial.

(3) Renewing a License with Violations

(a) If a license has a penalty, pending appeal, or corrective action plan at the time of renewal, the license shall not be renewed per 62A-2-108(4), but shall be put in a pending renewal status until compliance or other resolution is achieved. Pending renewal status:

(i) provides an opportunity for the licensee to achieve compliance and qualify for full renewal per 62A-2-108(4);

(ii) is only issued after submission of renewal application and fees;

(iii) is valid for up to 12 months of the requested renewal period, and cannot be extended;

(iv) may be converted to a regular renewal license for the balance of the renewal period once compliance is verified; and

(v) will be designated on the license certificate.

(b) A license that does not achieve compliance or other resolution in that time shall be denied further renewal.

R501-1-5. Expiration, Extension, and Relinquishment.

(1) License Expiration

(a) A license that has expired is void and may not be renewed.

(b) A license expires at midnight on the expiration date listed on the license that is issued by the Office, unless:

(i) the license has been revoked by the Office,

(ii) the license has been extended by the Office,

(iii) the license has been placed in pending renewal status by the Office in accordance with 501-1-4-3, or

(iv) the license has been relinquished by the licensee.

(c) A program with an expired license shall not accept any fees, enter any agreements to provide client services, or provide any client services.

(d) A program with an expired license wishing to operate a human services program shall submit an application for an initial license in accordance with this rule.

(2) License Extension

(a) The Office may extend the current license of a human service program only when the renewal application and applicable fee have been submitted.

(b) A license may be extended one time, up to a maximum of 90 days past the current license expiration date, only if the Office determines there is a reasonable likelihood the program will achieve compliance prior to the expiration of the extension, and there are not current penalties or pending appeals.

(c) The application for a license that has been extended, but does not qualify for renewal within the timeframe of the extension, shall be denied.

(3) License Relinquishment; A licensee wishing to voluntarily relinquish its license shall submit a written notice to the Office.

R501-1-6. Program Changes.

(1) Name Change

(a) A licensee wishing to change only the name of the program or site does not need to submit an application or fee; they shall submit updated program documentation reflecting the new name to the Office at least ten days prior to the change.

(b) The Office may link the name of the former program to the new name on the licensing database, and on all license certificates and public websites, for two years following the change.

(2) Relocation

(a) A human services program wishing to relocate to a new address may serve clients at the new site, only after:

(i) submission of renewal application and renewal fees at least 30 days prior to the move;

(ii) submission of local government business license and applicable inspections and clearances, including but not limited to:

(A) health;

(B) fire; and/or

(C) as categorically required;

(iii) submission of insurance coverage at the new site,;

(iv) inspection by the Office; and

(v) receipt of the updated license certificate for the new site.

(b) A foster home that intends to relocate to a new site may have their license transferred to the new site only after:

(i) a request to relocate has been submitted to the Office at least 30 days prior to the move;

(ii) Office of Licensing inspection and approval of licensure at the new site which shall occur within two weeks, if a foster child is placed, and within 30 days if there are no current foster placements;

(A) if a foster child is placed, it is the responsibility of the licensed foster parent to ensure health and safety of the foster child during the transfer to the new site.

(c) Except for foster homes outlined in subsection (b), no clients may be present and no services may be provided at a relocation address until after the Office issues a new license in accordance with this Rule.

(3) Capacity Change

(a) A licensee seeking to increase the maximum client capacity of a program shall submit an application and renewal fee for a license renewal as categorically required.

(4) Add New License Category

(a) A program may request to add a new category of service to an existing licensed site by submitting application and fees for an initial license. All requirements for initial licensure must be verified.

(5) Add New Location

(a) A program may add an additional site of service by submitting an application and fees for an initial license. All requirements for initial licensure must be verified.

(6) Owner/Ownership Changes

(a) A program anticipating, or undergoing a change of ownership, or change in owner(s), shall submit in writing, prior to the change:

(i) any changes to the programming and services;

(ii) declaration regarding responsibility for records and records retention to include an agreement signed by both current and prospective owners and/or directors, detailing how all program staff and client records will be retained and remain available to the Office;

(iii) names and contact information of any new directors or owners;

(iv) documentation of continuous insurance coverage;

(v) updated business license.

(b) The status of a license at the time of a change of ownership shall continue.

(7) For any substantial change in this section, the Office may require new, initial application and fees for each license category.

(a) Substantial changes include:

(i) those resulting in direct client impact;

(ii) changes to programming;

(iii) changes in populations served;

(iv) severing ties with previous owner or staff affiliations; or

(v) disrupting continuity of record retention, etc.

R501-1-7. License Fees.

(1) The Office shall collect licensing fees in accordance with 62A-2-106, and Utah Code Title 63J Chapter 1 Part 5.

(2) No licensing fee shall be required from a foster home, or a Division, or Office, of the Department of Human Services.

(3) The Office is not required to perform an on-site visit, or document review until the applicant pays the licensing fee.

(4) A license application fee will expire after 12 months if a program has been unable to meet the license requirements.

(5) A fee shall not be transferred, prorated, reduced, waived, or refunded. Costs incurred by applicants in preparation for, or maintenance of licensure are the sole responsibility of the applicant.

(6) Separate initial license fees are required for each new category of human services program offered at each program site.

(7) Separate renewal license fees, and applicable capacity fees, are required for each license category that is renewed at each program site.

(a) Capacity fees are calculated according to the maximum licensed client capacity of the human service program, and not according to the number of clients actually served in the program.

(8) A human service program with more than one building, unit, or suite at one site, may choose to have its fees assessed and each category of license issued:

(a) so that each category of license will be issued to include all on-site buildings, units or suites as one; or

(b) so that separate licenses will be issued for each individual on-site building, unit or suite.

R501-1-8. Variances.

(1) A licensee shall not deviate from any administrative rule without first receiving written approval of a specific variance request signed by the Director of the Office, or the director's designee.

(2) The director of the Office, or the director's designee, may grant a variance if the director or the Director's designee determines a variance is not likely to compromise client health and safety, or provide opportunity for abuse, neglect, exploitation, harm, mistreatment, or fraud.

(3) A licensee seeking a variance must submit a written request to their licensing specialist, and specifically describe:

(a) the rule for which the variance is requested;

(b) the reason for the request;

(c) how the variance provides for the best interest of the client(s);

(d) what procedures will be implemented to ensure the health and safety of all clients; and

(e) the proposed variance start and expiration dates.

(4) The Office shall review the variance and notify the licensee of the approval, approval with modification, or denial of the variance, in writing, within 30 days.

(5) The licensee shall comply with the terms of a written variance, including any conditions or modifications contained within the approved written variance.

(6) A variance expires on the end date listed on the approval notice and terms of the variance are no longer permitted after that expiration date, unless a renewal of the variance is granted.

(7) A variance may be renewed by the office when the program is able to justify the request, and ensure ongoing health and safety of all clients.

R501-1-9. Monitoring.

(1) The Office shall conduct a minimum of one annual on-site inspection, but may conduct as many announced, or unannounced inspections as deemed necessary to monitor compliance, investigate alleged violations, monitor corrective action plans or penalty compliance, or to gather information for license renewal.

(2) On-site inspections shall take place during regular business hours, as defined in 62A-2-101.

(3) Applicants and licensees shall not restrict the Office's access to the site, clients, staff, and all program records.

(4) Licensees and staff shall not compromise the integrity of the Office's information gathering process by withholding or manipulating information, or influencing the specific responses of staff or clients.

(5) All on-site inspections shall contribute toward the renewal or denial of the license application at the end of the license period.

(6) The Office shall provide written findings to the Program identifying areas of non-compliance with licensing requirements after each on-site inspection.

(7) Except for reports made in relation to foster homes, the licensee shall make copies of inspection reports available to the public upon request per 62A-2-118(5).

(8) The Office may adopt a written inspection report from a local government, certifying, contracting, or accrediting entity to assist in a determination whether a licensee has complied with a licensing requirement.

(9) The Office shall be allowed access to all program documentation and staff that may be located at an administrative location, away from the licensed site.

R501-1-10. Investigations of Alleged Violations.

(1) Unlicensed Programs

(a) The Office shall investigate reports of unlicensed human service programs.

(b) Investigation of an unlicensed human service program may include interviewing anyone at the site, neighbors, or gathering information from any source that will aid the Office in making a determination as to whether or not the site should be licensed.

(c) An unlicensed human services program that meets licensure definition, but does not submit an application and fee, or fails to become licensed, shall be referred to the Office of the Attorney General, and the appropriate County Attorney.

(d) The Office may penalize a licensed program at all program sites when a program adds or operates an unlicensed site that requires licensure by the Office.

(2) Licensed Program Complaints and Critical Incidents

(a) The Office shall investigate critical incidents and complaints involving alleged licensing violations regarding a licensed human services program.

(b) Complaints about licensees can come to the Office via any means from any source.

(c) The Office retains discretion to decline investigation of a complaint that is anonymous, unrelated to current conditions of the program, or not an alleged violation of a rule or statute.

(d) Critical incidents shall be reported by the program to the Office by the end of the following business day, to legal guardians of involved clients, and to any other agencies as required by law, including:

(i) Child and Adult Protective Services; or

(ii) Law Enforcement.

(e) Pending investigations or those that result in no rule violation findings in regards to the complaints or critical incidents shall be classified as protected and only released in accordance with Utah Code title 63G chapter 2, Utah Government Access and Management Act.

(3) Investigative Process

(a) In-person, or electronic investigations may include, but are not limited to:

(i) a review of on or offsite records;

(ii) interviews of licensee(s), person(s), client(s), or staff;
(iii) the gathering of information from collateral parties; or
(iv) site inspections.
(b) The Office will prioritize investigations of reports of unlicensed programs, complaints regarding licensed programs, and critical incidents following an assessment of risk to client health and safety as follows:
(i) priority allegations, as administratively identified by the Office as a potential imminent risk to the health and safety of clients, will require initial on-site contact by the Office within three business days. The Office may utilize law enforcement, Child or Adult Protective services, or other protection agencies to meet priority in on-site response;
(ii) all other allegations will require that the Office initiate an investigation within ten business days.
(c) Licensees and staff shall cooperate in any investigation.
(d) The Office may report any allegations or evidence of abuse, neglect, exploitation, mistreatment, or fraud to clients, clients' legal guardians, law enforcement, insurance agencies, the insurance department, the Division of Occupational and Professional Licensing, or any other entity determined necessary by the Office.

R501-1-11. License Violations.
When the Office finds evidence of violations of statute or rule, the Office shall do one of the following:
(1) provide written notification of the violation requiring the licensee to correct violation(s) with no formal follow-up; or
(2) provide written notification of violation and request a licensee to submit a corrective action plan in response to a written notification of a violation;
(a) a licensee shall submit a written corrective action plan to the Office within ten calendar days of the request from the Office and the corrective action plan shall include:
(b) a statement of each violation identified by the Office;
(c) a detailed description of how the licensee will correct each violation and prevent additional violations;
(d) the date by which the licensee will achieve compliance with administrative rules and statutes; and
(e) the signature of program owners and directors, including each foster parent, if involving a licensed or certified foster home;
(i) the Office shall review the submitted corrective action plan and:
(A) inform the licensee that the corrective action plan is approved; or
(B) inform the licensee that the corrective action plan is not approved and provide explanation;
(ii) the Office may permit a licensee to amend and resubmit its corrective action plan within five additional calendar days;
(f) the Office shall issue a Notice of Agency Action imposing a penalty for violation(s) if the licensee fails to submit and comply with an approved corrective action plan.
(g) A corrective action plan is not a penalty. Programs have the right to refuse the corrective action plan process and may preserve their appeal rights by requesting a penalty through an Office initiated Notice of Agency Action.
(3) provide a written notice of agency action initiating a penalty, as follows:
(a) the Office may place a license on conditional status. Conditional status allows a program that is in the process of correcting violations to continue operation, subject to conditions established by the Office. Failure to meet the terms of the conditions, and time frames outlined on the notice, could result in further penalty;
(b) the Office may suspend a license for up to one year;
(i) a human services program that has had its license suspended is prohibited from accepting new clients, and may only provide the services necessary to maintain client health and safety during their transition; and
(ii) shall have and comply with written policies and procedures to transition clients into equivalent, safe, currently licensed programs or into the custody of their legal guardians;
(c) the Office may revoke a license;
(i) a human services program that has had its license revoked is prohibited from accepting new clients and may only provide the services necessary to maintain client health and safety during their transition, and
(A) shall have and comply with written policies and procedures to transition clients into equivalent, safe, currently licensed program or into the custody of their legal guardians;
(B) Names of licensees and programs who have had their licenses revoked shall be maintained by the Office for a period of five years, and shall not be associated in any way with a licensed program during that five-year period.
(d) A licensee whose license has been suspended or revoked is responsible for the program staffing and health and safety need of all clients while the suspension or revocation is pending.
(e) The Office may place conditions, such as restricted admissions, to be in immediate effect in the Notice of Agency Action, if necessary, to protect the health and safety of clients.
(f) The Office may utilize any other penalties pursuant to 62A-2, Subsections 112, 113 and/or 116.
(g) The Office may consider chronicity, severity, and pervasiveness of violations when determining whether to simply provide notification of violations with no follow-up requirement; to request a corrective action plan; or to apply a formal penalty to the program.
(h) Repeated violations of the same rule or statute, or failure to comply with conditions of a Notice of Agency Action may elevate the penalty level assessed.
(i) A licensee shall post the Notice of Agency Action on-site, and on the homepage of each of its websites, where it can be easily reviewed by all clients, guardians of clients, and visitors within five business days, and shall remain posted for 90 days, unless otherwise noted by the Office.
(j) A licensee shall notify all clients, guardians and prospective clients of a Notice of Agency Action issued by the Office within five business days. Prospective and new clients will be notified for as long as the Notice of Agency Action is in effect.
(k) Pending an appeal of a revocation, suspension or conditional license that restricts admissions, licensee shall not accept any new clients as outlined on the Notice of Agency Action, or while an appeal of a penalty is pending without prior written authorization from the Office.
(l) The Office shall electronically post Notices of Agency Action issued to a human services program, on the Office's website, in accordance with 62A-2-106.
(m) Due Process: A Notice of Agency Action shall inform the applicant or licensee of the right to appeal in accordance with Administrative Rule 497-100.

R501-1-12. Licensing Code of Conduct and Client Rights.
(1) Licensees and staff shall:
(a) accurately represent services, policies and procedures to clients, guardians, prospective clients, and the public;
(b) create, maintain, and comply with a written policy that addresses the appropriate treatment of clients, to include the rights of clients as outlined in this section;
(c) not abuse, neglect, harm, exploit, mistreat, or act in a way that compromises the health and safety of clients through acts or omissions, by encouraging others to act, or by failing to deter others from acting;
(d) not use or permit the use of corporal punishment and shall only utilize restraint as described in R501-2;

(e) maintain the health and safety of clients in all program services and activities, whether on or offsite;

(f) not commit fraud;

(g) provide an insurer the licensee's records related to any services or supplies billed, upon request by an insurer or the Office;

(h) require that any licensee or staff member who is aware of, or suspects abuse, neglect, mistreatment, fraud, or exploitation shall ensure that a report is made to the Office and applicable investigative agencies as outlined in R501-1-10-2, and in compliance with mandatory reporting laws, including 62A-4a-403 and 62A-3-305;

(i) any licensee or staff member who is aware of, or suspects a violation of this rule, shall ensure that a report is made to the Office of Licensing at 801-538-4242 or directly to the licensor of the specific program or site; and

(j) provide services and supervision that is commensurate with the skills, abilities, behaviors, and needs of each client.

(2) Clients have the right to:

(a) be treated with dignity;

(b) be free from potential harm or acts of violence;

(c) be free from discrimination;

(d) be free from abuse, neglect, mistreatment, exploitation, and fraud;

(e) privacy of current and closed records;

(f) communicate and visit with family, attorney, clergy, physician, counselor, or case manager, unless therapeutically contraindicated or court restricted;

(g) be informed of agency policies and procedures that affect client or guardian's ability to make informed decisions regarding client care, to include:

(i) program expectations, requirements, mandatory or voluntary aspects of the program;

(ii) consequences for non-compliance;

(iii) reasons for involuntary termination from the program and criteria for re-admission;

(iv) program service fees and billing; and

(v) safety and characteristics of the physical environment where services will be provided.

(3) clients shall be informed of these rights and a copy signed by the client or guardian shall be maintained in the client file.

(4) licensees shall train all staff annually on agency policies and procedures, Licensing rules, and the Licensing Code of Conduct. A document verifying this training shall be signed and dated by the trainer and staff member and maintained in the staff personnel file.

R501-1-13. Compliance.

(1) A licensee that is in operation on the effective date of this rule shall be given 60 days to achieve compliance with this rule.

KEY: licensing, human services
January 17, 2017 62A-2-101 et seq.
Notice of Continuation October 4, 2017

R501. Human Services, Administration, Administrative Services, Licensing.
R501-2. Core Rules.
R501-2-1. Definition.

Core Rules are required for Human Service Programs, listed in R501-2-14. Where there is duplication of review by another oversight agency, the Office of Licensing, shall accept that documentation as proof of compliance. Pursuant to 62A-2-106, the Office of Licensing will not enforce rules for licensees under contract to a Division in the Department of Human Services in the following areas:

A. the administration and maintenance of client and service records;

B. staff qualifications; and

C. staff to client ratios.

R501-2-2. Program Administration.

A. The program shall have a written statement of purpose to include the following:

1. program philosophy,

2. description of long and short term goals, this does not apply to social detoxification or child placing adoption agencies,

3. description of the services provided,

4. the population to be served,

5. fee policy,

6. participation of consumers in activities unrelated to treatment plans, and

7. program policies and procedures which shall be submitted prior to issuance of an initial licensing.

B. Copies of the above statements shall be available at all times to the Office of Licensing upon request. General program information shall be available to the public.

C. The program shall have a written quality assurance plan. Implementation of the plan shall be documented.

D. The program shall have clearly stated guidelines and appropriate administrative procedures, to include the following:

1. program management,

2. maintenance of complete, accurate and accessible records, and

3. record retention.

E. The governing body, program operators, management, employees, consultants, volunteers, and interns shall read, understand, follow and sign a copy of the current Department of Human Services Provider Code of Conduct.

F. The program shall comply with State and Federal laws regarding abuse reporting in accordance with 62A-4a-403 and 62A-3-302, and shall post copies of these laws in a conspicuous place within the facility.

G. All programs which serve minors or vulnerable adults shall submit identifying information for background screening of all adult persons associated with the licensee and board members who have access to children and vulnerable adults in accordance with R501-14 and R501-18.

H. The program shall comply with all applicable National Interstate Compact Laws.

I. A licensed substance abuse treatment program shall complete the National Survey of Substance Abuse Treatment annually. Substance abuse treatment programs shall also comply with Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2.

J. The program's license shall be posted where it is easily read by consumers, staff and visitors. See also R501-1-5-F. The program shall post Civil Rights License on Notice of Agency Action, abuse and neglect reporting and other notices as applicable.

K. The program shall not handle the major personal business affairs of a consumer, without request in writing by the consumer and legal representative.

L. Programs providing foster or proctor care services shall adhere to the following:

1. approve homes that comply with Foster Care Rules, R501-12. The agency shall be required to recruit, train, and supervise foster parents as defined by R501-12.

2. foster families meeting requirements shall be approved or certified by the agency. The agency must maintain written records of annual home approval. The approval process shall include a home study evaluation and training plan.

3. the agency must have a procedure to revoke or deny home approval.

4. the agency must have a written agreement with the foster parents which includes the expectations and responsibilities of the agency, staff, foster parents, the services to be provided, the financial arrangements for children placed in the home, the authority foster parents can exercise on children placed in the home, actions which require staff authorization.

5. planning, with participation of the child's legal guardian for care and services to meet the child's individual needs.

6. obtaining, coordinating and supervising any needed medical, remedial, or other specialized services or resources with the ongoing participation of the foster parents.

7. providing ongoing supervision of foster parents to ensure the quality of the care they provide.

R501-2-3. Governance.

A. The program shall have a governing body which is responsible for and has authority over the policies, training and monitoring of staff and consumer activities for all phases of the program. The governing body's responsibilities shall include the following:

1. to ensure program policy and procedures compliance,

2. to ensure continual compliance with relevant local, state and federal requirements,

3. to notify the Office of Licensing within 30 days of changes in program administration and purpose,

4. to ensure that the program is fiscally and operationally sound, by providing documentation by a financial professional that the program is a "going concern",

5. to ensure that the program has adequate staffing as identified on the organizational chart,

6. to ensure that the program has general liability insurance, professional liability insurance as appropriate, vehicle insurance for transport of consumers, and fire insurance, and

7. for programs serving youth, the program director or designee shall meet with the Superintendent or designee of the local school district at the time of initial licensure, and then again each year as the programs renews it's license to complete the necessary student forms including youth education forms.

B. The governing body shall be one of the following:

1. a Board of Directors in a non-profit organization; or

2. commissioners or appointed officials of a governmental unit; or

3. Board of Directors or individual owner or owners of a for-profit organization.

C. The program shall have a list of members of the governing body, indicating name, address and term of membership.

D. The program shall have an organization chart which identifies operating units of the program and their inter-relationships. The chart shall define lines of authority and responsibility for all program staff and identifies by name the staff person who fills each position on the chart.

E. When the governing body is composed of more than one person, the governing body shall establish written by-laws, and shall hold formal meetings at least twice a year, Child Placing Agencies must meet at least quarterly, maintain written minutes, which shall be available for review by the Office of

Licensing, to include the following:
1. attendance,
2. date,
3. agenda items, and
4. actions.

R501-2-4. Statutory Authority.

A. A publicly operated program shall document the statutory basis for existence.

B. A privately operated program shall document its ownership and incorporation.

R501-2-5. Record Keeping.

The program shall have, a written record for each consumer to include the following:

A. Demographic information to include Medicaid number as required,

B. Biographical information,

C. Pertinent background information, including the following;

1. personal history, including social, emotional, psychological and physical development,

2. legal status,

3. emergency contact with name, address and telephone number, and

4. photo as needed.

D. Health records of a consumer including the following:

1. immunizations, for children only,

2. medication,

3. physical examinations, dental, and visual examinations, and

4. other pertinent health records and information.

E. Signed consent forms for treatment and signed Release of Information form,

F. Copy of consumer's individual treatment or service plan,

G. A summary of family visits and contacts, and

H. A summary of attendance and absences.

R501-2-6. Direct Service Management.

A. Direct service management, as described herein, is not applicable to social detoxification. The program shall have on file for public inspection a written eligibility policy and procedure, approved by a licensed clinical professional to include the following:

1. legal status,

2. age and sex of consumer,

3. consumer needs or problems best addressed by program,

4. program limitations, and

5. appropriate placement.

B. The program shall have a written admission policy and procedure to include the following:

1. appropriate intake process,

2. age groupings as approved by the Office of Licensing,

3. pre-placement requirements,

4. self-admission,

5. notification of legally responsible person, and

6. reason for refusal of admission, to include a written, signed statement.

C. Intake evaluation.

1. At the time of intake an assessment shall be conducted to evaluate health and family history, medical, social, psychological and, as appropriate, developmental, vocational and educational factors.

2. In emergency situations which necessitate immediate placement, the intake evaluation shall be completed within seven days of admission.

3. All methods used in evaluating a consumer shall consider age, cultural background, dominant language, and mode of communication.

D. A written agreement, developed with the consumer, and the legally responsible person if applicable, shall be completed, signed by all parties, and kept in the consumer's record, with copies available to involved persons. It shall include the following:

1. rules of program,

2. consumer and family expectations,

3. services to be provided and cost of service,

4. authorization to serve and to obtain emergency care for consumer,

5. arrangements regarding absenteeism, visits, vacation, mail, gifts, and telephone calls, when appropriate, and

6. sanctions and consequences.

E. Consumer treatment plan shall be individualized, as applicable according to the following.

1. A staff member shall be assigned to each consumer having responsibility and authority for development, implementation, and review of the plan.

2. The plan shall include the following:

a. findings of intake evaluation and assessment,

b. measurable long and short term goals and objectives,

1) goals or objectives clearly derived from assessment information,

2) goals or objectives stated in terms of specific observable changes in behavior, skills, attitudes or circumstances,

3) evidence that consumer input was integrated where appropriate in identifying goals and objectives, and

4) evidence of family involvement in treatment plan, unless clinically contraindicated,

c. specification of daily activities, services, and treatment, and

d. methods for evaluation,

3. Treatment plans

a. plans shall be developed within 30 days of consumer's admission by a treatment team and reviewed by a clinical professional if applicable. Thereafter treatment plans shall be reviewed by the licensed clinical professional if applicable as often as stated in the treatment plan.

4. All persons working directly with the consumer shall be appropriately informed of the individual treatment plan.

5. Reports on the progress of the consumer shall be available to the applicable Division, the consumer, or the legally responsible person.

6. Treatment record entries shall include the following:

a. identification of program,

b. date and duration of services provided,

c. description of service provided,

d. a description of consumer progress or lack of progress in the achievement of treatment goals or objectives as often as stated in the treatment plan, and

e. documentation of review of consumer's record to include the following:

1) signature,

2) title,

3) date, and

4) reason for review.

7. Transfer and Discharge

a. a discharge plan shall identify resources available to consumer.

b. the plan shall be written so it can be understood by the consumer or legally responsible party.

c. whenever possible the plan shall be developed with consumers participation, or legally responsible party if necessary. The plan shall include the following:

1) reason for discharge or transfer,

2) adequate discharge plan, including aftercare planning,

3) summary of services provided,

4) evaluation of achievement of treatment goals or

objectives,

5) signature and title of staff preparing summary, and

6) date of discharge or transfer.

d. The program shall have a written policy concerning unplanned discharge.

8. Incident or Crisis Intervention records

a. The program shall have written policies and procedures which includes: reporting to program manager, documentation, and management review of incidents such as deaths of consumers, serious injuries, fights, or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect, unusual incidents, strip searches and other situations or circumstances affecting the health, safety, or well-being of consumers.

b. records shall include the following:

1) summary information,

2) date, time of emergency intervention,

3) action taken,

4) employees and management responsible and involved,

5) follow up information,

6) list of referrals,

7) signature and title of staff preparing report, and

8) records shall be signed by management staff.

c. the report shall be maintained in individual consumer records.

d. when an incident involves abuse, neglect, serious illness, violations of the Provider Code of Conduct or death of a consumer, a program shall:

1) notify the Office of Licensing, legally responsible person and any applicable agency which may include law enforcement.

2) a preliminary written report shall be submitted to the Office of Licensing within 24 hours of the incident.

R501-2-7. Behavior Management.

A. The program shall have on file for public inspection, a written policy and procedure for the methods of behavior management. These shall include the following:

1. definition of appropriate and inappropriate behaviors of consumers,

2. acceptable staff responses to inappropriate behaviors, and

3. consequences.

B. The policy shall be provided to all staff, and staff shall receive training relative to behavior management at least annually.

C. No management person shall authorize or use, and no staff member shall use, any method designed to humiliate or frighten a consumer.

D. No management person shall authorize or use, and no staff member shall use nor permit the use of physical restraint with the exception of passive physical restraint. Passive physical restraint shall be used only as a temporary means of physical containment to protect the consumer, other persons, or property from harm. Passive physical restraint shall not be associated with punishment in any way.

E. Staff involved in an emergency safety intervention that results in an injury to a resident or staff must meet with the clinical professional to evaluate the circumstances that caused the injury and develop a plan to prevent future injuries.

F. Programs using time out or seclusion methods shall comply with the following:

1. The program will have a written policy and procedure which has been approved by the Office of Licensing to include:

a. Time-out or seclusion is only used when a child's behavior is disruptive to the child's ability to learn to participate appropriately, or to function appropriately with other children or the activity. It shall not be used for punishment or as a substitute for other developmentally appropriate positive methods of behavior management.

b. Time-out or seclusion shall be documented in detail and provide a clear understanding of the incident which resulted in the child being placed in that time-out or seclusion.

c. If a child is placed in time out or seclusion more than twice in any twenty-four hour period, a review is conducted by the clinical professional to determine the suitability of the child remaining in the program.

d. Any one time-out or seclusion shall not exceed 4 hours in duration.

e. Staff is required to maintain a visual contact with a child in time-out or seclusion at all times.

f. If there is any type of emergency such as a fire alarm, or evacuation notification, children in time-out or seclusion shall follow the safety plan.

g. A child placed in time-out or seclusion shall not be in possession of belts, matches, weapons, or any other potentially harmful objects or materials that could present a risk or harm to the child.

2. Time-out or seclusion areas shall comply with the following:

a. Time-out or seclusion rooms shall not have locking capability.

b. Time-out or seclusion rooms shall not be located in closets, bathrooms, or unfurnished basements, attic's or locked boxes.

c. A time-out or seclusion room is not a bedroom, and temporary beds, or mattresses in these areas are not allowed. Time-out and seclusion shall not preclude a child's need for sleep, or normal scheduled sleep period.

d. All time-out or seclusion rooms shall measure at least 75 square feet with a ceiling height of at least 7 feet. They shall have either natural or mechanical ventilation and be equipped with a break resistant window, mirror or camera that allows for full observation of the room. Seclusion rooms shall have no hardware, equipment, or furnishings that obstruct observation of the child, or that present a physical hazard or a suicide risk. Rooms used for time out or seclusion shall be inspected and approved by the local fire department

G. The program's licensed clinical professional shall be responsible for supervision of the behavior management procedure.

R501-2-8. Rights of Consumers.

A. The program shall have a written policy for consumer rights to include the following:

1. privacy of information and privacy for both current and closed records,

2. reasons for involuntary termination and criteria for re-admission to the program,

3. freedom from potential harm or acts of violence to consumer or others,

4. consumer responsibilities, including household tasks, privileges, and rules of conduct,

5. service fees and other costs,

6. grievance and complaint procedures,

7. freedom from discrimination,

8. the right to be treated with dignity,

9. the right to communicate by telephone or in writing with family, attorney, physician, clergyman, and counselor or case manager except when contraindicated by the licensed clinical professional,

10. a list of people, whose visitation rights have been restricted through the courts,

11. the right to send and receive mail providing that security and general health and safety requirements are met,

12. defined smoking policy in accordance with the Utah Clean Air Act, and

13. statement of maximum sanctions and consequences,

reviewed and approved by the Office of Licensing.

B. The consumer shall be informed of this policy to his or her understanding verbally and in writing. A signed copy shall be maintained in the consumer record.

R501-2-9. Personnel Administration.

A. The program shall have written personnel policies and procedures to include the following:

1. employee grievances,
2. lines of authority,
3. orientation and on-going training,
4. performance appraisals,
5. rules of conduct, and
6. sexual and personal harassment.

B. The program shall have a director, appointed by the governing body, who shall be responsible for management of the program and facility. The director or designated management person shall be available at all times during operation of program.

C. The program shall have a personnel file for each employee to include the following:

1. application for employment,
2. applicable credentials and certifications,
3. initial medical history if directed by the governing body,
4. tuberculin test if directed by the governing body,
5. food handler permit, where required by local health authority,
6. training record,
7. annual performance evaluations,
8. I-9 Form completed as applicable,
9. comply with the provisions of R501-14 and R501-18 for background screening, and
10. a signed copy of the current Department of Human Services Provider Code of Conduct.

D. The program shall follow a written staff to consumer ratio, which shall meet specific consumer and program needs. The staff to consumer ratio shall meet or exceed the requirements set forth in the applicable categorical rules as found in R501-3, R501-7, R501-8, R501-11, and R501-16.

E. The program shall employ or contract with trained or qualified staff to perform the following functions:

1. administrative,
2. fiscal,
3. clerical,
4. housekeeping, maintenance, and food service,
5. direct consumer service, and
6. supervisory.

F. The program shall have a written job description for each position, which includes a specific statement of duties and responsibilities and the minimum level of education, training and work experience required.

G. Treatment shall be provided or supervised by professional staff, whose qualifications are determined or approved by the governing body, in accordance with State law.

H. The governing body shall ensure that all staff are certified and licensed as legally required.

I. The program shall have access to a medical clinic or a physician licensed to practice medicine in the State of Utah.

J. The program shall provide interpreters for consumers or refer consumers to appropriate resources as necessary to communicate with consumers whose primary language is not English.

K. The program shall retain the personnel file of an employee after termination of employment, in accordance with accepted personnel practices.

L. A program using volunteers, substitutes, or student interns, shall have a written plan to include the following:

1. direct supervision by a program staff,
2. orientation and training in the philosophy of the program, the needs of consumers, and methods of meeting those needs,
3. background screening,
4. a record maintained with demographic information, and
5. signed copy of the current Department of Human Services Provider Code of Conduct.

M. Staff Training

1. Staff members shall be trained in all policies of the program, including the following:
   a. orientation in philosophy, objectives, and services,
   b. emergency procedures,
   c. behavior management,
   d. current program policy and procedures, and
   e. other relevant subjects.
2. Staff shall have completed and remain current in a certified first aid and CPR, such as or comparable to American Red Cross.
3. Staff shall have current food handlers permit as required by local health authority.
4. Training shall be documented and maintained on-site.

R501-2-10. Infectious Disease.

The program shall have policies and procedures designed to prevent or control infectious and communicable diseases in the facility in accordance with local, state and federal health standards.

R501-2-11. Emergency Plans.

A. The program shall have a written plan of action for disaster and casualties to include the following:

1. designation of authority and staff assignments,
2. plan for evacuation,
3. transportation and relocation of consumers when necessary, and
4. supervision of consumers after evacuation or relocation.

B. The program shall educate consumers on how to respond to fire warnings and other instructions for life safety including evacuation.

C. The program shall have a written plan which personnel follow in medical emergencies and arrangements for medical care, including notification of consumer's physician and nearest relative or guardian.

R501-2-12. Safety.

A. Fire drills in non-outpatient programs, shall be conducted at least quarterly and documented. Notation of inadequate response shall be documented.

B. The program shall provide access to an operable 24-hour telephone service. Telephone numbers for emergency assistance, i.e., 911 and poison control, shall be posted.

C. The program shall have an adequately supplied first aid kit in the facility such as recommended by American Red Cross.

D. All persons associated with the program who have access to children or vulnerable adults and who also have firearms or ammunition shall assure that they are inaccessible to consumers at all times. Firearms and ammunition that are stored together shall be kept securely locked in security vaults or locked cases, not in glass fronted display cases. Firearms that are stored in display cases shall be rendered inoperable with trigger locks, bolts removed, or other disabling methods. Ammunition for those firearms shall be kept securely locked in a separate location. This does not restrict constitution or statutory rights regarding concealed weapons permits, pursuant to UCA 53-5-701 et seq.

R501-2-13. Transportation.

A. The program shall have written policy and procedures for transporting consumers.

B. In each program or staff vehicle, used to transport

consumers, there shall be emergency information which includes at a minimum, the name, address and phone number of the program and an emergency telephone number.

C. The program shall have means, or make arrangement for, transportation in case of emergency.

D. Drivers of vehicles shall have a valid drivers license and follow safety requirements of the State.

E. Each vehicle shall be equipped with an adequately supplied first aid kit such as recommended by American Red Cross.

R501-2-14. Categorical Rules.

In addition to Core Rules, Categorical Rules are specific regulations which must be met for the following:

A. Child Placing Adoption Agencies R501-7,

B. Day Treatment R501-20,

C. Intermediate Secure Treatment Programs for Minors R501-16,

D. Outdoor Youth Programs R501-8,

E. Outpatient Treatment R501-21,

F. Foster Care R501-12,

G. Residential Treatment R501-19,

H. Residential Support R501-22,

I. Social Detoxification R501-11 and

J. Assisted Living for DSPD Residential R710.

R501-2-15. Single Service Program Rules.

Core Rules of the Office of Licensing do not apply to single service programs.

Single services program Rules are the regulations which must be met for the following:

A. Adult Day Care, which Rules are found in R501-13,

B. Adult Foster Care, which Rules are found in R501-17.

KEY: licensing, human services
March 17, 2004 62A-2-101 et seq.
Notice of Continuation October 4, 2017

R501. Human Services, Administration, Administrative Services, Licensing.
R501-7. Child Placing Adoption Agencies.
R501-7-1. Authority and Purpose.

A. This rule is authorized under Section 62A-2-106.

B. This rule establishes standards for licensing agencies to provide child placing adoption services.

R501-7-2. Definitions.

A. "Adoption" is defined in Section 78B-6-103.

B. "Child placing adoption agency" means an individual, agency, firm, corporation, association or group children's home that engages in child placing.

C. "Adoption Services" means evaluating, advising, or counseling children, birth parents or adoptive families, placing children for adoption; monitoring or supervising placements until the adoption is finalized; conducting adoption studies or preparing adoption reports; or arranging for foster care.

D. "Birth Parent" is defined in Section 78B-6-103.

E. "Child placing" means receiving, accepting, or providing custody or care for a child for the purpose of finding a person to adopt the child or placing a child in a home for adoption.

F. "Confinement" means the time period when a woman is hospitalized or medically restricted due to her pregnancy and childbirth.

G. "Disruption" means the termination of an adoptive placement prior to the issuance of a final decree of adoption.

H. "Foster Care" means family care in the residence of a foster parent who is licensed or certified pursuant to R501-12.

I. "Genetic and Social History" is defined in Section 78B-6-103.

J. "Health History" is defined in Section 78B-6-103.

K. "Intercountry Adoption" means the adoption of a child from a foreign country, whether the adoption is completed in the child's native country or in this State.

L. "Legal risk placement" means at the time the placement is made, one or more of the child's biological parents or putative legal parents has not executed a legal relinquishment or consent to the adoption, their parental rights have not been lawfully terminated, or they have expressed their intention to exercise parental rights or contest the adoption.

M. "Mental Health Therapist" is defined in Section 58-60-102.

N. "Sliding Scale" means an established fee schedule that varies according to an individual's annual income.

O. "Special needs" is defined in Section 62a-4a-902(2).

P. "Unmarried biological father" is defined in Section 78B-6-103(17).

R501-7-3. Legal Requirements.

A. In addition to this rule, all child placing adoption agencies shall comply with R495-876, R501-1, R501-2-1 through 501-2-5, R501-2-8 through R501-2-14, R501-14; Title 58, Chapter 60; title 62A, Chapters 2 and 4a; Section 76-7-203; 78A-6; 78B-6 and 78B-13; and other applicable local, State and Federal laws.

B. Child placing adoption agencies that do not provide housing for birth mothers are exempt from R501-2-5, 10, 11, and 12.

C. A child placing adoption agency shall not:

a. delay or deny the placement of a child or the opportunity to become an adoptive parent on the basis of race, color, ethnicity, cultural heritage, or national origin. A child placing adoption agency shall comply with all State and Federal laws regarding discrimination.

D. A child placing adoption agency shall be legally responsible for the child following relinquishment of the child to the adoption agency until the adoption is finalized, unless a court of competent jurisdiction places legal responsibility with another party, in accordance with Section 78B-6-134.

E. A child placing adoption agency which serves Indian children shall comply with the Indian Child Welfare Act.

F. A child placing adoption agency that provides foster care shall comply with R501-12.

H. A child placing adoption agency shall comply with the Interstate Compact for Placement of Children, in accordance with Section 62A-4a-701 et seq.

I. A child placing adoption agency shall ensure that its employees, contractors, volunteers and agents comply with all laws relating to adoption services.

R501-7-4. Administrative Requirements.

A. A child placing adoption agency shall have at least one social work supervisor responsible for directly supervising all staff and volunteers who provide adoption services to clients.

1. Each social work supervisor shall be licensed in this state as a mental health therapist, shall comply with the Utah Mental Health Professional Practice Act, and shall have at least one year of full time, paid, professional experience in a licensed child placing adoption agency.

2. A social work supervisor may not supervise more than eight staff and volunteers who provide adoption services to clients.

3. An Executive Director who is licensed in this state as a mental health therapist, complies with the Utah Mental Health Professional Practice Act, and has at least one year of full time, paid, professional experience in a licensed child placing agency may serve as a social work supervisor, but may not supervise more than four staff and volunteers who provide adoption services to clients.

B. Individuals who provide adoption services to birth parents, children, or adoptive applicants shall maintain a current professional license as required by the Utah Mental Health Professional Practice Act and shall comply with the Utah Mental Health Professional Practice Act.

C. A child placing adoption agency shall notify the Office Of Licensing of any changes it makes to its policies or procedures and shall provide a written copy of any changes no later than five business days after the change.

D. A child placing adoption agency shall provide at least 30 days' prior written notice to the Office of Licensing that the agency is:

1. dissolving or ceasing to provide child placing services,

2. adding or eliminating in-state, out-of-state, special needs, or international services, or

3. changing ownership or name.

R501-7-5. Ethical Conduct.

A. A child placing adoption agency shall:

1. not give preferential treatment to its board members, employees, volunteers, agents, consultants, independent contractors, donors, or their respective families with regard to child placing decisions;

2. not provide or accept any payment or other considerations for any referral;

3. work only with agencies, entities or individuals that are authorized to provide child placing adoption services by the laws of this state or the jurisdiction in which that agency, entity or individual performs child placing adoption services;

4. not permit its employees, volunteers, agents, consultants, or independent contractors to provide adoption services to both the birth parents and the adoptive parents unless all parties are made aware of potential conflicts of interest and sign a voluntary consent;

5. not require its clients to use or pay for specified attorneys or other service providers, shall inform clients that they are free to select independent attorneys and other service

providers, and shall not charge clients fees for services that clients obtain independently;

6. not refer or steer any individual to any private practice in which the agency's board members, volunteers, employees, agents, consultants, independent contractors, or their respective families are engaged, without first disclosing any potential conflicts of interest and informing said individuals that they are free to select independent service providers; and

7. not misrepresent or withhold any facts or information relating to its services, any individual, or the applicable law.

B. The members of the governing body of a child placing adoption agency shall disclose, in writing, to the chairperson of the governing body, any direct or indirect financial interest in the agency.

C. The child placing adoption agency, its board members, volunteers, employees, or agents shall not solicit donations from an adoptive family that is under consideration for placement of a child. A generalized mass solicitation through newsletters or the media shall not constitute a violation under this rule.

D. The child placing adoption agency, its board members, volunteers, employees, or agents shall not accept donations from an adoptive family that is under consideration for placement of a child.

R501-7-6. Fees.

A. A child placing adoption agency shall provide a written disclosure of all fees and expenses prospective adoptive parents may incur before the agency accepts any payments or processes any application from, or enters any agreement with, the prospective adoptive parents.

1. The disclosure shall identify the services associated with each fee, and specify both the average cost for that service for the preceding two fiscal years, and the maximum fee that may be charged for each service.

2. A child placing adoption agency shall not charge adoptive parents for any fees or expenses that exceed or were not included in the written disclosure.

3. A child placing adoption agency shall identify which fees may be non-refundable.

B. A child placing adoption agency may charge adoptive parents an agency fee, which shall include all administrative and professional services provided on behalf of the adoptive parents, including but not limited to pre-adoption evaluations, home studies, personnel, counseling, overhead, and training.

C. A child placing adoption agency may charge adoptive parents for the actual and reasonable costs of maternity, medical, and necessary pre-natal living expenses of the birth mother in accordance with Section 76-7-203.

1. The agency shall retain receipts documenting the actual costs of goods and services provided which exceed twenty-five dollars.

2. A child placing adoption agency shall not charge adoptive parents for the travel expenses of any person other than the birth mother.

3. A child placing adoption agency shall not charge the adoptive parents for the living expenses of any person other than the birth parents.

4. A child placing adoption agency shall not charge the adoptive parents for the birth parents' post-confinement living expenses.

D. The agency shall maintain an itemized accounting of the actual expenditures made on behalf of a birth mother. The accounting shall be verified and signed by the agency and adoptive parents, and filed with the court and the Office of Licensing in accordance with Section 78B-6-140.

1. The agency shall utilize an affidavit form provided by the Office of Licensing or a substantially similar form including the same information.

2. The agency shall require the birth mother to verify that she received all of the itemized goods and services by signing a file copy of the accounting.

E. The agency may delegate the responsibility for a child's care, maintenance, and support to the adoptive applicant only when the applicant has received the child into the applicant's home, in accordance with Section 78B-6-134.

F. A birth mother who decides not to place her child shall not be responsible for reimbursing the costs of any goods or services provided to her by the prospective adoptive parents or the child placing adoption agency during her pregnancy unless she is first convicted of fraud.

R501-7-7. Documentation.

A. A child placing adoption agency shall maintain a policy and procedure manual describing how it shall comply with all licensing rules and local, state and federal laws applicable to the type of services offered.

B. A child placing adoption agency shall maintain a policy and procedure manual demonstrating how it shall:

1. train and supervise employees and volunteers;

2. identify a child who may be available for adoption;

3. identify or refer a person who is considering relinquishing a child for adoption;

4. provide services in cases where the agency does not obtain legal custody of a child;

5. verify the credentials of other individuals and agencies it works with to obtain relinquishments and place a child;

6. offer counseling services by a licensed mental health therapist to a person who is considering relinquishing a child for adoption or adopting a child;

7. inform birth parents and adoptive parents of their rights and responsibilities in writing;

8. monitor who has legal and physical responsibility for the child at all times;

9. secure the necessary relinquishments and facilitate the termination of parental rights;

10. recruit and assist adoptive families to meet the needs of available children, including but not limited to special needs children;

11. obtain a background study on a child or a home study on a prospective adoptive parent;

12. evaluate prospective adoptive parents;

13. process appeals of home study denials;

14. assess the best interests of a child and the appropriate adoptive placement for the child;

15. monitor a case post-placement until the adoption is final;

16. ensure the child is receiving all necessary services prior to finalization of adoption;

17. assume custody and provide any needed services for the child when necessary because of disruption;

18. arrange to provide foster care prior to placing the child in an adoptive home;

19. preserve the confidentiality of client files;

20. respond to requests for information from birth families, adoptees, adoptive families, and others;

21. preserve client records when a case is closed and in the event that the agency changes ownership or ceases to provide child placement adoption services, and notify the Office of Licensing and each client where the records shall be stored; and

22. enable record retrieval by individuals with a right to access them.

C. A child placing adoption agency shall provide documentation demonstrating its compliance with each subsection in R501-7-7(B).

D. A child placing adoption agency shall maintain a case file for the birth parents, and the prospective adoptive parents, and for each child who is more than 90 days old at the time of placement or who has been in the legal custody of someone

other than the birth mother. Each case file shall cross-reference related files. Each case file shall include:

1. application for service;

2. all studies and evaluations, whether or not finalized, including but not limited to those required by Section 78B-6-128;

3. needs assessment;

4. case notes describing services provided;

5. the individual's adjustments, interactions and relationships;

6. original or certified copies of government and religious birth records;

7. original or certified copies of relinquishment or transfer of birth mother's and birth father's rights;

8. original or certified copies of decree of termination of birth mother's and birth father's rights;

9. certified copies of marriage certificates, divorce papers, custody and visitation orders, if any;

10. certified copies of death certificates, if any, of birth parents;

11. original or certified copy of affidavit that birth mother's husband is not the child's father, if applicable;

12. waiver of confidentiality or release of information authorization, if applicable;

13. statements of birth and adoptive parents regarding any agreements to exchange information or maintain contact;

14. current and historical physical, psychological, genetic and developmental health information;

15. original or certified copy of the order of adoption; and

16. in the event that any records identified in this rule are not obtained, the child placing adoption agency shall provide documentation of its efforts to obtain those records.

E. A child placing adoption agency shall maintain current health, fire, zoning, business, and other permits, certificates, or licenses at each facility it operates, as required by state or local law;

F. All case files shall be retained for a minimum of 100 years from the date the case is closed.

G. All adoption records shall be confidential and shall be maintained in a locked file when not in active use. Adoption records shall be accessible only by authorized agency employees. No information shall be shared with any person without the appropriate consent forms, except as required by law.

H. A child placing adoption agency shall maintain and provide accurate annual statistics describing the number of applications received, services provided, the number of children, birth parents, and adoptive parents served, and the number of adoptions and disruptions, and the number of children in agency custody.

R501-7-8. Services for Birth Parents.

A. Child placing adoption agencies shall offer counseling sessions prior to consent or relinquishment. Prior to consent or relinquishment, the agency shall inform birth parents that:

1. their decision to sign the consent or relinquishment must be voluntary; and

2. their decision is permanent and may not be revoked after the consent or relinquishment is signed.

B. Birth parents shall be provided complete and accurate information and their decision to consent or relinquish, or not to consent or relinquish their child shall be supported.

1. Child placing adoption agencies shall not induce or persuade a birth parent to consent to adoption or to relinquish a child through duress, undue influence, misrepresentation, or deception.

C. A child placing adoption agency shall wait at least 24 hours after the birth of a child before taking the birth mother's relinquishment of parental rights or legal consent to the adoption of her child, in accordance with Section 78B-6-125.

D. Birth parents shall be assisted in considering whether they want to disclose their identity to the adoptee or the adoptive family, or hear about or from the child, directly or indirectly, in the future.

E. Birth parents shall be offered non-identifying information on the potential adoptive parents, such as age, physical characteristics, educational achievement, family members, profession, nationality, health, and reason for adopting.

F. A child placing adoption agency shall inform birth parents that a detailed, non-identifying health history and a genetic and social history of the child shall be provided to the adoptive parents in accordance with Section 78B-6-143, and shall inform birth parents of Utah's Mutual Consent Voluntary Adoption Registry, Section 78B-6-144.

G. A child placing adoption agency's policies regarding the consideration of religion and marital status in the selection of adoptive families shall be clearly stated in its initial consultation with birth parents and shall also be clearly stated in writing on the birth parents' application for services forms.

H. A child who has already established some identification with a particular religious faith shall have the right to have such identification respected in any adoptive placement. Efforts shall be made to place the child within that religious faith. This information shall be documented.

I. A child placing adoption agency shall initiate proceedings to terminate or determine parental rights when required by Utah law.

J. Child placing adoption agencies that provide housing for expectant birth mothers shall assure that such housing complies with the following minimum standards:

1. housing is in compliance with health, fire, zoning, and other applicable laws and regulations;

2. housing is clean, well-maintained and adequately furnished;

3. birth mothers shall have private bedrooms;

4. laundry equipment and supplies shall be available; and

5. adequate nutritious food, or resources to obtain food, is available.

K. Child placing adoption agencies that provide or pay for birth mothers' transportation to the State of Utah shall also ensure that the birth mothers' return transportation to their home state is provided, regardless of whether the birth mother decides to relinquish parental rights.

L. The placement decision shall be in writing, signed by the child placing adoption agency and the birth parents, and a copy shall be maintained in the case record of the birth parents, the adoptive parents, and the child.

R501-7-9. Services for Children.

A. After the birth parents determine that adoption is the best plan for their child, an assessment shall be made within 30 days, or within the timeframe ordered by the court, to obtain information to assist in the placement process.

B. A determination shall be made regarding what kind of adoptive family should be selected for the child. The selection of the adoptive family for a specific child shall be based on the family's ability to meet the individual needs of the child. The wishes of the birth parents, the adoptive parents, and when applicable, the child, shall be considered.

C. The assessment shall be used to assist prospective adoptive families to make their decision about the child and birth family.

D. A complete developmental history of the child shall be obtained from the birth parent. If the child has been in an out-of-home placement prior to being placed in an adoptive home, information obtained from caseworker observation, pediatrician, foster parents, nurses, psychologists, and other consultants shall

be included. The developmental history shall include:

1. birth and health history, and all evaluations;

2. descriptions of fine and gross motor skills, social, emotional, and cognitive development;

3. the child's adaptation to previous living experiences and situations;

4. the child's experience prior to adoptive placement, particularly maternal attitudes during the pregnancy and early infancy, continuity of care and affection, foster placements, description of the child's behavior and separation experiences;

5. a description of the child's cultural and ethnic background;

6. the child's language skills, educational records, talents and interests.

E. A medical examination by a qualified physician shall be conducted to determine the state of the child's health, and any known or potentially significant factors that may interfere with normal development or may signal any potential medical problems. At a minimum, the following shall be documented and shared with parents, potential adoptive parents, and the assigned agency caseworker prior to placement:

1. evaluation of the child that includes a correlation and interpretation of all available information, including but not limited to genetic and laboratory test results;

2. the medical care and immunizations received to date;

3. the nature and degree of any disability;

4. treatment and support programs that should be provided to the child and adoptive parents, extra costs of medical care that can be anticipated, and plans to subsidize the health care.

F. Psychological testing for children should be used selectively and as a tool for observation and diagnosis.

G. A child placing adoption agency shall obtain information about the birth parents and their family backgrounds to:

1. provide the adoptive family with the birth family's medical, genetic, social, and mental health history;

2. provide the adoptive family with information about the talents, interests, and education of the birth parents;

3. provide the adoptive family with non-identifying information about other children born to either of the birth parents; and

4. identify characteristics which should be given consideration in selecting and preparing a child for an adoptive family.

H. An interdisciplinary approach based upon the needs of the child is to be used in the selection of a placement either by asking other professionals to submit written recommendations or by inviting them to participate as a member of the placement committee. A child placing adoption agency shall attempt to place siblings together.

I. A child shall be placed with the adoptive family at the earliest time possible after being freed for adoption.

J. A child's needs shall be assessed and a written plan shall be developed to ensure that the adoptive parents are prepared to meet the child's needs and necessary services are provided.

K. A child awaiting placement with an adoptive family shall be placed in a licensed foster or residential home or facility.

1. A child placing adoption agency shall contract with a licensed foster care program or obtain a license to provide foster care services for children in its custody, in accordance with R501-12.

2. A child awaiting adoptive placement shall be placed in a licensed group or residential treatment program when the child's needs can be met only in such a setting.

3. A child placing adoption agency shall obtain a copy of the foster home or facility license prior to placing a child, and shall retain the license in the child's case file.

L. A child placing adoption agency shall have an individualized written adoptive placement plan for each child, which shall include:

1. providing the family and child services or service referrals after the adoption is finalized; and

2. the financial and social service responsibilities of each agency and individual.

M. A social worker shall supervise the child's placement until finalization of the adoption to assist with the transition and assist the family in obtaining any needed services.

1. A minimum of one supervisory visit shall be made prior to finalization of the adoption.

N. A child placing adoption agency having a child available for adoption who has not been placed within 60 days after relinquishment or after being determined to be available for adoption by the court shall document its efforts to screen the child with other child placing agencies and shall list the child with local, regional, and inter-state adoption exchanges.

O. The needs of the child shall determine the amount of time taken to prepare the child for placement. The child shall be counseled regarding the adoptive placement and shall be protected from emotional disturbances associated with sudden separation from a known situation.

P. A child placing adoption agency shall develop a written plan with the child's current caregivers, the adoptive parents, and the child, to facilitate the child's transition into the adoptive family. The child's stated preferences shall be considered and if possible, honored.

R501-7-10. Services to Adoptive Parents.

A. Child placing adoption agencies shall provide prospective adoptive parents with a written description of their services, policies and procedures.

B. A child placing adoption agency shall explain the adoption process and the birth parents' rights, including the status of the putative father, to the prospective adoptive parents.

C. A child placing adoption agency shall provide all available non-identifying information on children who may be available for adoptive placement and their birth families, including but not limited to physical descriptions, special abilities, developmental and behavioral history, personality and temperament, medical and genetic history, ethnic and cultural background, and prior placement history.

D. A child placing adoption agency shall inform prospective adoptive parents of the availability of non-identifying health, genetic and social histories in accordance with Section 78B-6-143, and Utah's Mutual Consent Voluntary Adoption Registry, Section 78B-6-144.

E. A child placing adoption agency shall provide individual or group counseling to help the prospective adoptive parents evaluate and develop their capacities to meet the ongoing needs of the child.

F. A child placing adoption agency shall review all available information about the birth parents and child with the prospective adoptive parents and encourage the selection of a child whose needs the adoptive parents will be able to meet.

G. A child placing adoption agency shall prepare the child and adoptive family for the placement of the child in the home.

H. A child placing adoption agency shall inform each prospective adoptive parent that information about individual children in the custody of the state who are available for adoption may be obtained by contacting the Division of Child and Family Services or its internet site and shall provide a pamphlet prepared by the Division of Child and Family Services regarding adoption of children in the State's custody. The agency shall inform each prospective adoptive parent that assistance may be available when adopting children in the custody of the state, including:

1. Medicaid coverage for medical, dental, and mental health services;

2. tax benefits, adoption subsidies, or other financial assistance to defray the costs of adoption; and

3. training and ongoing support for the adoptive parents.

I. A child placing adoption agency shall inform adoptive parents when a child may be eligible for an adoption subsidy or benefit, including but not limited to SSI, and shall coordinate with Division of Child and Family Services to apply for the subsidy or benefit.

J. A child placing adoption agency shall have written procedures and standards for the evaluation and approval or denial of applications from prospective adoptive parents.

K. The home study shall include:

1. interviews with the adoptive applicants, their children, and other individuals living in the home;

2. criminal background and child abuse screening of adoptive applicants and other adults living in the home in accordance with R501-14, R501-18, and Sections 53-10-108(4) and 78B-6-128;

3. written statements from references identified by the applicants. The applicants shall supply names of at least two non-related and one related individuals who shall provide information directly to the agency regarding the applicant's qualifications for parenting an adoptive child;

4. a medical history and a doctor's report, based upon a doctor's physical examination of each applicant, made within six months prior to the date of the application; and

5. inspections of the home, to determine whether sufficient space and facilities to meet the needs of the child exist and whether basic health and safety standards are maintained.

L. The adoptive applicants shall be informed, in writing, and within five business days after the decision is made, as to the acceptance or the reasons for the denial of their home study. The agency shall provide applicants with a written copy of the agency's appeal process, which shall include the right to submit a written appeal and request for reconsideration, and the right to request an additional evaluation, upon order of the court in accordance with Section 78B-6-128.

M. A child placing adoption agency shall select applicants who:

1. are able to provide the continuity of a caring relationship;

2. are informed with regard to a child's ethnic, religious, cultural, and racial heritage; and

3. understand the needs of a child at various developmental stages.

N. A child placing adoption agency's policies regarding the consideration of religion and marital status in the selection of adoptive families shall be clearly stated in its initial consultation with prospective adoptive parents. This disclosure shall also be clearly stated in writing on the adoptive parents' application for services forms.

O. A child placing adoption agency shall verify that an applicant's income is sufficient to provide for a child's needs.

P. A child placing adoption agency shall not reject an applicant solely based upon the applicant's choice to work outside the home. Applicants who work outside the home shall provide a written plan describing how they shall provide security and responsible child care to meet the individual child's needs.

Q. A child placing adoption agency shall not make a legal risk placement unless the prospective adoptive parents have first given their written consent, indicating that they have been fully informed of the specific risks involved.

R. Except when authorized by court order pursuant to Section 78B-6-128, a child placing adoption agency shall not place a child in an adoptive home until the home study and each adult's criminal and abuse background screenings have been approved.

S. A child placing adoption agency shall provide continuing support to the child and the adoptive family after placement and before finalization of the adoption, including but not limited to:

1. providing or making referrals to services such as counseling, crisis intervention, respite care, and support groups;

2. monitoring the child's adjustment and development;

3. assisting the family in helping the child, friends, family members, extended family members, neighbors, schools, and others understand the adoption process; and

4. assisting the family in understanding their feelings, understanding the child, and adjusting to the family composition.

T. The frequency of home visits, office contacts, telephone calls, and other contacts by the child placing adoption agency shall depend on the needs of the child and the adoptive family and may vary depending whether the child is an infant, an older child, or a child with medical or other difficulties, and whether the adoptive parents are faced with unanticipated problems.

1. The first contact after placement shall take place within two weeks of placement.

2. A minimum of one face-to-face supervisory home visit shall take place before finalization.

U. A child placing adoption agency shall provide assistance in finalizing the adoption, unless the agency removes the child due to circumstances that may impair the child's security in the family or jeopardize the child's physical and emotional development, including but not limited to incompatibility; mental illness; seriously incapacitating illness; the death of one of the adoptive parents; the separation or divorce of the adoptive parents; the abuse, neglect, or rejection of the child; the lack of attachment to the child; or a request by the adopting parents to remove the child.

1. If a child is removed from an adoptive home by a child placing adoption agency, the adoptive parents shall be entitled to appeal the removal decision. The agency shall provide the adoptive parents written notice of their right to appeal and the procedure for appeal.

R501-7-11. Intercountry Adoptions.

A. In addition to complying with all other rules regarding adoption, a child placing adoption agency that provides inter-country adoption services shall document that it has complied with all applicable laws and regulations of the United States and the child's country of origin, and shall document that:

1. the child is legally freed for adoption in the country of origin;

2. information was provided to the adopting parents about naturalization proceedings.

B. A child placing adoption agency that provides intercountry adoption services shall:

1. establish an official and recorded method of fund transfers to avoid, when possible, the use of direct cash transactions to pay for adoption services in other countries;

2. identify, in writing and in advance of accepting any payment or signing any agreement, the total cost of providing adoption services in the child's country, including but not limited to the cost of care for the child, personnel, overhead, training, communication, obtaining any necessary documents, translation, the child's passport, notarizations and certifications, with disclosure of whether the prospective adoptive parents shall pay such costs directly in the child's country or indirectly through the child placing adoption agency;

3. itemize the costs, if any, of mandatory payments to child protection or child welfare programs in the child's country of origin, including but not limited to a description of:

a. a fixed contribution amount identified in advance and in writing to the prospective adoptive parents;

b. the intended use of the payment; and

c. the manner in which the transaction will be recorded

and accounted for;

4. provide all applicants with written policies governing refunds.

C. A child placing adoption agency that provides intercountry adoption services shall notify adoptive applicants within ten business days when information is received that a foreign country is suspending its adoption program.

D. A child placing adoption agency that provides intercountry adoption services shall verify and maintain documentation regarding the credentials and qualifications of agents working in their behalf in foreign countries.

KEY: licensing, human services, child placing
November 27, 2013 62A-2-101 et seq.
Notice of Continuation October 4, 2017

R501. Human Services, Administration, Administrative Services, Licensing.
R501-8. Outdoor Youth Programs.
R501-8-1. Outdoor Youth Programs.

(1) The Office of Licensing in the Department of Human Services, shall license outdoor youth programs according to standards and procedures established by this rule.

R501-8-2. Authority and Purpose.

(1) Pursuant to 62A-2-101 et seq., the purpose of this rule is to define standards and procedures by which the Office of Licensing shall license outdoor youth programs. Programs designed to provide rehabilitation services to adjudicated minors shall adhere to these rules as established by the Division of Juvenile Justice Services, in accordance with 62A-7-104-11.

R501-8-3. Definitions.

(1) In addition to terms defined and used in Section 62A-2-101(20), Utah Code:

(a) "Consumer" means the minor being provided the service by the program, not the parent or contracting agent that has enrolled the minor in the program.

(b) "Field Office" means the office where all coordination of field operations take place.

(c) "Administrative Office" means the office where business operations, public relations, and the management procedures take place.

R501-8-4. Administration.

(1) In addition to the following standards and procedures, all outdoor youth programs shall comply with R501-2, Core Standards.

(2) Records of enrollment of all consumers shall be on file at the field office at all times.

(3) Information provided to parents, community, and media shall be accurate and factual.

(4) Programs shall provide an educational component as determined by the Utah State Board of Education for consumers up to 18 years of age who have been removed from their educational opportunities for more than one month. The administrators of the program shall meet and cooperate with the local Board of Education.

(5) Programs which advertise as providing educational credit to consumers shall be approved by the Utah State Board of Education.

(6) The program shall have written procedures for handling any suspected incident of child abuse or Department of Human Services, hereinafter referred to as DHS, Provider Code of Conduct violation, including the following:

(a) a procedure for ensuring that the staff member involved does not work directly with the youth involved or any other youth in the program until the investigation is completed or formal charges filed and adjudicated,

(b) a procedure for ensuring that a director or member of the governing body involved in or suspected of abuse shall be relieved of their responsibility and authority over the policies and activities of the program, or any other youth program, as well as meet the sanctions as described in (a) above, until the investigation is completed or formal charges are filed and adjudicated, and

(c) a procedure for disciplining any staff member or director involved in an incident of child abuse or DHS Provider Code of Conduct violation, including termination of employment if found guilty of felony child abuse, or loss of position, including directorship if found guilty of misdemeanor child abuse.

(7) If any director or person in a management position is involved in or suspected of child abuse or neglect, the program shall submit to an extensive review by DHS or law enforcement officials to determine or establish the continued safe operation or possible termination of the program. The licensing review shall be completed within 72 hours.

(8) Failure to implement and comply with (6)(a) through (c), and (7). above will be grounds for immediate suspension or revocation of program license.

(9) Until charges of abuse, neglect or licensing violations are resolved, no license shall be issued to any program with owners, silent owners, or any staff management personnel that were prior owners or staff management personnel in a program against which the above charges were alleged.

(10) If charges result in a criminal conviction or civil or administrative findings that allegations were true, no license shall be issued to any program with owners, silent owners, or staff management personnel from the prior program.

R501-8-5. Program Requirements.

(1) Programs that operate in Utah and one or more other states shall meet the requirements for licensure as established for each of the states.

(2) There shall be a written plan for expedition groups, developed and approved by the program field director, and by the program executive director, and governing body, which shall not expose consumers to unreasonable risks.

(3) The program shall inventory all consumer personal items and shall return all inventoried items, except contraband, to the consumer following program completion. The consumer shall sign the inventory list at the time of inventory and again when items are returned.

(4) The Office of Licensing shall review and approve the program's training plan governing consequences for consumer conduct.

(5) Each consumer shall have clothing and equipment to protect the consumer from the environment. This equipment shall never be removed, denied, or made unavailable to a consumer. If a consumer refuses or is unable to carry all of his or her equipment, the group shall cease hiking, and reasons for refusal or inability to continue will be established and resolved before hiking continues. Program directors are responsible to train staff regarding this standard and to regularly monitor compliance. There shall never be a deprivation of any equipment as a consequence. Such equipment shall include the following:

(a) sunscreen; the program staff shall ensure appropriate consumer usage,

(b) insect repellent,

(c) with frame or no frame backpack weight to be carried by each consumer shall not exceed 20 percent of the consumer's body weight. If the consumer is required to carry other items, the total of all weight carried shall not exceed 30% of the consumer's body weight,

(d) personal hygiene items,

(e) female hygiene supplies,

(f) sleeping bags rated for the current seasonal conditions when the average nighttime temperature is 40 degrees F. or warmer,

(g) sleeping bags rated for the current seasonal conditions, shelter and ground pad for colder months when the average nighttime temperature is 39 degrees F. or lower, and

(h) basic clothing list to ensure consumer protection against seasonal change in the environment.

(6) The program shall provide consumers with clean clothing at least weekly and shall provide a means for consumers to bathe or otherwise clean their bodies a minimum of twice weekly. Female consumers shall be issued products for hygiene purposes.

(7) Hiking shall not exceed the physical capability of the weakest member of the group. Hiking shall be prohibited at temperatures above 90 degrees F. or at temperatures below 10

degrees F. Field staff shall carry thermometers, which accurately display current temperature. If a consumer cannot or will not hike, the group shall not continue unless eminent danger exists.

(8) The expedition plan including map routes, and anticipated schedules and times shall be carried by the field staff and recorded in the field office.

(9) Field staff shall maintain a signed, daily log or dictate a recorded log to be transcribed and signed immediately following termination of the activity.

(a) The log shall contain the following information; accidents, injuries, medications, medical concerns, behavioral problems, and all unusual occurrences.

(b) All log entries shall be recorded in permanent ink.

(c) These logs shall be available to state staff.

(10) Incoming and outgoing mail to parents, guardians, and attorneys shall not be restricted but shall be delivered in as prompt a manner as the location and circumstances dictate.

(11) Incoming and outgoing U.S. postal mail to parents, guardians, and attorneys shall not be restricted but shall be delivered in as prompt a manner as the location and circumstances dictate.

(12) Incoming mail from parents or guardians shall not be read or censored without written permission from a parent or guardian.

(13) All other mail may be restricted only by parental request in writing.

(14) All incoming mail may be required to be opened in the presence of staff. Contraband shall be confiscated.

(15) All local, state, and federal regulations and professional licensing requirements shall be met.

(16) Each program staff shall be required to carry with them a reliable time piece, which may include a wrist watch or pocket watch for the purpose of accurately reflecting the time of day, and for documentation purposes, such as recording the time of day in log notes and incident reports.

(17) The program shall have policy and procedure for suicide ideation that includes a review of any placement of a suicide watch on a consumer, by the program's clinical professional.

R501-8-6. Staff, Interns, and Volunteers.

(1) All staff, interns, and volunteers shall meet the provisions of R501-14.

(2) Each program shall have a governing body and an executive director who shall have responsibility and authority over the policies and activities of the program. and shall coordinate office and support services, training, etc,. The executive director shall have, at a minimum, the following qualifications:

(a) be at least 25 years of age,

(b) have a BA or BS degree or equal training and experience in a related field,

(c) have a minimum of two years of outdoor youth program administrative experience,

(d) have a minimum of 30 semester or 45 quarter hours education in recreational therapy or related experience or one year Outdoor Youth Program field experience,

(e) demonstrate complete knowledge and understanding of relevant licensing rules, and

(f) have completed an initial staff training, see R501-8-8.

(3) Each program shall have a program or field director who coordinates field operations, manages the field staff, and operates the field office. The program or field director shall meet, at a minimum, the following qualifications:

(a) be at least 25 years of age,

(b) have a BA or BS degree or equal training and experience in a related field,

(c) have minimum of two years of outdoor youth program field experience,

(d) have a minimum of 30 semester or 45 quarter hours education in recreational therapy or related field, or one year Outdoor Youth Program field experience,

(e) demonstrate complete knowledge and understanding of relevant licensing rules,

(f) have primary responsibility for field activities and visit in the field a minimum of two days a week with no more than five days between visits,

(g) prepare reports of each visit, document conditions of consumers, document interactions of consumers and staff, and ensure compliance with rules,

(h) be annually trained and certified in CPR and currently certified in standard first aid, and

(i) have completed an initial staff training, see R501-8-8.

(4) Each program shall have field support staff responsible for delivery of supplies to the field, mail delivery, communications, and first aid support. The field support staff shall meet, at a minimum, the following qualifications:

(a) be at least 21 years of age,

(b) have a high school diploma or equivalency,

(c) be annually trained and certified in CPR and currently certified in standard first aid, and

(d) have completed an initial staff training and field course, see R501-8-8.

(5) Each program group shall have senior field staff working directly with the consumer who shall meet, at a minimum, the following qualifications:

(a) be at least 21 years of age,

(b) have an associate degree or high school diploma with 30 semester or 45 quarter hours education and training or comparable experience and training in a related field,

(c) have six months outdoor youth program field experience or comparable experience which shall be documented in the individual's personnel file,

(d) be annually trained and certified in CPR and currently certified in standard first aid,

(e) have completed an initial staff training, see R501-8-8, and

(6) Each program shall have a field staff working directly with the consumers who shall meet, at a minimum, the following qualifications:

(a) be a minimum of 20 years of age,

(b) have a high school diploma or equivalency,

(c) have forty-eight field days of outdoor youth program experience or comparable experience which shall be documented in the individual's personnel file,

(d) exhibit leadership skill,

(e) be annually trained and certified in CPR and currently certified in standard first aid, and

(f) have completed an initial staff training.

(7) Each program shall have assistant field staff to meet the required consumer to staff ratio. Assistant field staff shall meet, at a minimum, the following qualifications:

(a) be a minimum of 19 years of age,

(b) have a high school diploma or equivalency,

(c) have twenty-four field days of outdoor youth programs experience,

(d) exhibit leadership skill,

(e) be annually trained and certified in CPR and currently certified in standard first aid, and

(f) have completed an initial staff training

(8) Each program shall have a multi-disciplinary team, accessible to consumers which shall include, at a minimum, the following:

(a) a licensed physician or consulting licensed physician,

(b) a treatment professional who may be one of the following:

(i) a licensed psychologist,

(ii) a licensed clinical social worker,
(iii) a licensed professional counselor,
(iv) a licensed marriage and family counselor, or
(v) a licensed school counselor
(c) All clinical and therapeutic personnel shall be licensed or working under a DOPL training program certified by the State of Utah.
(9) Each program may have academic and clinical interns who are learning the program practices while completing educational requirements.
(a) Interns shall be a minimum of 19 years of age.
(b) Initial training program shall be completed by all incoming staff including interns regardless of background experience.
(c) Clinical interns pursuing licensure shall be under the supervision of a licensed therapist.
(d) Academic interns shall be supervised by program staff.
(e) Interns shall not supervise consumers at any time.
(10) Each program may have program volunteers.
(a) Volunteers shall be under direct, constant supervision of program staff.
(b) Volunteers shall not be left in the role of supervising consumers at any time.
(c) Volunteers shall be at least 18 years of age and meet program guidelines.

R501-8-7. Staff to Consumer Ratio.
(1) Each youth group shall be supervised by at least two staff members at all times, one of which must be a senior field staff.
(2) In a mixed gender group, there shall be at least one female staff and one male staff.
(3) Expedition group size, including staff members, cannot exceed sixteen people with a minimum of a one to four staff to consumer ratio.
(4) Volunteers shall be counted as a consumer in figuring staff to consumer ratios.
(5) Expedition group size shall not exceed the number specified by federal, state, or local agencies in whose jurisdiction the program is operated.

R501-8-8. Staff Training.
(1) The program shall provide a minimum of eighty hours initial staff training.
(2) Initial staff training shall not be considered completed until the staff have demonstrated to the field director proficiency in each of the following:
(a) counseling, teaching and supervisory skills,
(b) water, food, and shelter procurement, preparation and conservation,
(c) low impact wilderness expedition and environmental conservation skills and procedures,
(d) consumer management, including containment, control, safety, conflict resolution, and behavior management,
(e) instruction in safety procedures and safe equipment use; fuel, fire, life protection, and related tools,
(f) instruction in emergency procedures; medical, evacuation, weather, signaling, fire, runaway and lost consumers,
(g) sanitation procedures; water, waste, food, etc.,
(h) wilderness medicine, including health issues related to acclimation, exposure to the environment, and environmental elements,
(i) CPR, standard first aid, first aid kit contents and use, and wilderness medicine,
(j) navigation skills, including map and compass use and contour and celestial navigation,
(k) local environmental precautions, including terrain, weather, insects, poisonous plants, response to adverse situations and emergency evacuation,
(l) leadership and judgment,
(m) report writing, including development and maintenance of logs and journals, and
(n) Federal, state, and local regulations, including Department of Human Services, Bureau of Land Management, United States Forest Service, National Parks Service, Utah State Department of Fish and Game.
(3) The completion of the minimum eighty hours initial staff training shall be documented and maintained in each personnel file.
(4) The field director shall document in each personnel file that the staff have demonstrated proficiency in each of the required topic areas as listed in (2). above.
(5) The initial staff training and demonstration of proficiency must be completed and documented before the staff person may count in the staff consumer ratio.
(6) The program shall also provide on-going training to staff in order to improve proficiency in knowledge and skills, and to maintain certifications. This training shall also be documented.

R501-8-9. Staff Health Requirements.
(1) Prior to engaging in any field activity, all staff shall adhere to the following:
(a) All field staff, interns, and volunteers shall have an annual physical examination and health history signed by a licensed medical professional. A recognized physical stress assessment shall be completed as part of the physical examination.
(b) Physical examinations shall be reviewed and maintained by the provider in the staff personnel file.
(c) All program staff, interns, and volunteers shall agree to submit to drug and alcohol screening as provided for by federal and state law.

R501-8-10. Consumer Admission Requirements.
(1) Consumers shall be at least 13 through 17 years of age and have a current health history which includes notation of limitations and prescriptive medications, completed and submitted within 30 days prior to entrance into the field program and verified by a parent or legal guardian.
(2) Admissions screening shall be supervised by a treatment professional before consumer entrance into the field program and shall include the following:
(a) a review of consumer social and psychological history with the parent or legal guardian prior to enrollment,
(b) an interview with the consumer prior to entrance into the field program, and
(c) a review of consumer's health history and physical examination by a licensed medical professional prior to entrance into the field program.
(3) Consumer shall have a physical examination within 15 days prior to entrance to field program. Documentation of the examination, on a form provided by the program and signed by a licensed medical professional, shall be submitted to the program within 15 days prior to entrance to field program.
(4) A physical examination form shall be provided to the licensed medical professional by the program and the form shall clearly state a description of the physical demands and environment of the program, and require the following information:
(a) urinalysis drug screen,
(b) CBC, blood count,
(c) urinalysis for possible infections,
(d) CMP, complete metabolic profile,
(e) pregnancy test for all female consumers,
(f) physical stress assessment,
(g) determination by the physician if detoxification is

indicated for consumer prior to entrance into field program,

(h) and any other tests as deemed to be indicated.

(5) Copies of consumer's medical forms shall be maintained at the field office and another copy carried by staff members in a waterproof container throughout the course.

(6) Prior to placement in the program, psychological evaluations for consumers as indicated, who have a history of chronic psychological disorders.

(7) Upon admission and for a period of no fewer than three days staff shall closely monitor the consumers for any health problems that may be a result of becoming acclimated to the environment.

R501-8-11. Water and Nutritional Requirements.

(1) Six quarts of potable water shall be available per person, per day, minimum, plus one additional quart per person for each five miles hiked. Although it is not required that the entire amount be hand carried, access to water shall be available at all times during hiking.

(2) In temperatures above 90 degrees F., staff shall make sure consumer intake is a minimum of three quarts of water per day, electrolyte replacement shall be available with the expeditionary group at all times.

(3) In temperatures above 80 degrees F., water shall be available for coating consumer's body, and other cooling down techniques shall be available for the purpose of cooling as needed.

(4) Water shall be available at each campsite. Water cache location information shall be verified with field staff before the group leaves camp each day.

(5) Expedition group shall not depend on aerial drops for water supply. Aerial water drops shall be used for emergency situations only.

(6) All water from natural sources shall be treated for sanitation to eliminate health hazards.

(7) Each program shall have a written menu describing food supplied to the consumer which shall provide a minimum of 3000 calories per day. There must be fresh fruit and vegetables at least twice a week. Food shall never be withheld from a consumer for any reason. Food may not be withheld as a punishment. If no fire is available, other food of equal caloric value, which does not require cooking shall be available.

(a) The menu shall adjust to provide 30-100 percent increase in minimum dietary needs as energy expenditure such as exercise increases, or climate conditions such as cold weather dictate.

(b) Food shall be from a balance of the food groups.

(c) Forage items shall not be used toward the determination of caloric intake.

(d) There shall be no program fasting for more than 24 hours per expeditionary cycle.

(e) Multiple vitamin supplements shall be offered daily.

R501-8-12. Health Care.

(1) First aid treatment shall be provided in a prompt manner.

(2) When a consumer has an illness or physical complaint which cannot be treated by standard first aid, the program shall immediately arrange for the consumer to be seen and treated as indicated by a licensed medical professional.

(3) Each consumer shall be assessed at least every 14 days for his physical condition by a qualified professional such as a Utah EMT. Blood pressure, heart rate, allergies, and general physical condition will be checked and documented. Any assessment concerns will be documented, and the consumer will be taken to the appropriate medical professional for treatment. Medical treatment shall be provided by medical personnel and medication provided as needed. There shall be no consequences to a consumer for requesting to see a health care professional or for anything said to a health care professional.

(4) All prescriptive and over the counter medications shall be kept in the secure possession of designated staff and provided to consumers to be used as prescribed.

(5) Prescriptive medication shall be administered as prescribed by a qualified medical practitioner who is licensed. Staff shall be responsible for the following:

(a) supervise the use of all medication,

(b) record medication, including time and dosage, and

(c) record effects of medication, if any.

(d) document any incidents of missed prescriptive medication, and

(e) document any lost or missing prescriptive medication.

(6) A foot check will be conducted at least twice daily and documented.

R501-8-13. Safety.

(1) First aid kits shall include sufficient supplies for the activity, location, and environment and shall be available during all field activities.

(2) Program shall have a support system that meets the following criteria:

(a) Reliable daily two-way radio communications with additional charged battery packs, and a reliable backup system of contact in the event the radio system fails.

(b) The support vehicles and field office shall be equipped with first aid equipment.

(c) The support personnel shall have access to all contacts, i.e., telephone numbers, locations, contact personnel, and procedures for an emergency evacuation or field incident.

(d) A.M. and P.M. contacts between field staff and support staff are to be relayed to the field office. Contact shall be available from field staff to field office on a continuous basis.

R501-8-14. Field Office.

(1) Each program shall maintain a field office.

(2) Communication system to the field office shall be monitored 24-hours a day when consumers are in the field.

(3) Support staff shall respond immediately to any emergency situation.

(4) Support staff on duty shall be within 1 hour of the field.

(5) When staff are not present in the field office a contact telephone number shall be posted on the field office door, and the field director shall designate responsible on-call staff who shall continually monitor communications and will always be within 15 minutes travel time of the field office.

(6) field office staff shall adhere to the following:

(a) maintain current staff and consumer files which include demographics, eligibility criteria, and medical forms as a minimum,

(b) maintain a current list of names of staff and consumers in each field group,

(c) maintain a master map of all activity areas,

(d) maintain copies of each expeditionary route with its schedule and itinerary, of which copies shall be sent to the Office of Licensing and local law enforcement, as requested by these agencies,

(e) maintain a log of communications,

(f) be responsible for training and orientation, management of field personnel, related files, and records,

(g) be responsible for maintaining communications, equipment inspection, and overseeing medical incidents, and

(h) provide all information as requested for review by state staff.

R501-8-15. Environmental Requirements.

(1) All programs shall adhere to land use agencies requirements relative to sanitation and low impact camping.

(2) Consumers shall be instructed daily in the observance of low-impact camping requirements.

(3) Personal hygiene supplies shall be of biodegradable materials.

R501-8-16. Emergencies.

(1) Each program shall have a written plan of action for disaster and casualties to include the following:

(a) designation of authority and staff assignments,

(b) plan for evacuation,

(c) transportation and relocation of consumers when necessary, and

(d) supervision of consumers after evacuation or relocation.

(2) The program shall have a written plan which personnel follow in medical emergencies and arrangements for medical care, including notification of consumer's physician and nearest relative or guardian.

(3) The program shall have a written agreement for medical emergency evacuation as needed.

(4) Emergency evacuation equipment shall be on stand-by.

(5) The program shall make prior arrangements with local rescue services in preparation for possible emergency evacuation needs, which shall be reviewed every six months.

R501-8-17. Infectious Disease Control.

(1) The program shall have policies and procedures designed to prevent or eliminate the spread of infectious and communicable diseases in the program.

R501-8-18. Transportation Services.

(1) The program shall have policies and procedures which ensures the safe and humane transport of consumers between their homes and the program.

(2) "Escort transportation services" means: The charging of a fee for having a responsible adult accompany the consumer during transportation from the consumers home to the program or back to their home.

(3) Escort transportation services whether provided by the program or by an independent transportation service shall not be a requisite to enrollment in the program, but shall be the choice of the consumer's parent or guardian.

(4) Programs that provide escort transportation services shall provide parents or guardians with the contact information of at least two other escort transportation services to allow them to have an informed decision.

R501-8-19. Transportation.

(1) There shall be written policy and procedures for transporting consumers.

(2) There shall be a means of transportation in case of emergency.

(3) Drivers of vehicles shall have a valid drivers license and follow safety requirements of the State.

(4) Each vehicle shall be equipped with an adequately supplied first aid kit.

(5) When transporting any consumer for any reason, there shall be two staff present at all times, one of which shall be of the same sex as the consumer, except in emergencies.

(6) Staff shall adhere to local, state, and federal laws concerning the operation of motor vehicles.

(7) Staff and consumers shall wear seat belts at all times while the vehicle is moving.

R501-8-20. Evaluation.

(1) Following the wilderness experience, each consumer shall receive a debriefing to include a written summary of the consumer's participation and the progress they achieved.

(2) Parents, consumers, and other involved individuals shall be provided the opportunity and encouraged to submit a written evaluation of the wilderness experience, which shall be retained by the program for a period of two years.

R501-8-21. Solo Experiences.

(1) If an Outdoor Youth Program conducts a solo component for consumers as part of the program they shall have and follow written policies and procedures, which shall include the following:

(a) A written description of the solo component to ensure that the consumers are not exposed to unreasonable risks.

(b) Staff shall be familiar with the site chosen to conduct solos.

(c) Plans for supervision shall be in place during the solo.

(d) Solo emergency plans.

R501-8-22. Stationary Camp Sites.

(1) An outdoor youth program that maintains a designated location for the housing of consumers is considered stationary and shall be subject to additional fire, health and safety standards.

(a) A stationary Outdoor Youth Program camp shall be inspected by a state certified fire inspector before being occupied and on an annual basis thereafter. A copy of the inspection shall be maintained at the Outdoor Youth Program camp.

The inspection shall require:

(i) Fire Extinguishers. One (1) 2-A-10BC type fire extinguisher shall at minimum be in each of the following locations as required by the fire inspector:

(A) On each floor in any building that houses consumers;

(B) In any room where cooking or heating takes place;

(C) In a group of tents within a seventy-five (75) foot travel distance; and

(D) Each fire extinguisher shall be inspected annually by a fire extinguisher service agency.

(ii) Smoke Detectors. A smoke detector shall be in buildings where consumers sleep.

(iii) Escape Routes. A minimum of two (2) escape routes from buildings where consumers sleep.

(iv) Flammable Liquids. Flammable liquids shall not be used to start fires, be stored in structures that house consumers, or be stored near ignition sources. If generators are used, they will only be refueled by staff when the generator is not running and cool to the touch.

(v) Electrical. Wiring shall be properly attached and fused to prevent overloads.

(b) A stationary Outdoor Youth Program camp shall be inspected by the Local Health Department before being occupied and on an annual basis thereafter. A copy of the inspection shall be maintained at the site of the camp. The inspection shall require the following:

(i) Food. Food be stored, prepared and served in a manner that is protected from contamination.

(ii) Water Supply. The water supply shall be from a source that is accepted by the local health authority according to UAC R392-300 "Rules for Recreation Camp Sanitation," at the time of application and for annual renewal of such licenses.

(iii) Sewage Disposal. Sewage shall be disposed of through a public system, or in absence of a public system, in a manner approved by the local health authority, according to UAC R392-300 "Rules for Recreation Camp Sanitation".

R501-8-23. Non-Compliance With Rules.

(1) Due to the difficulty of monitoring outdoor programs and the inherent dangers of the wilderness, a single violation of the foregoing life and safety rules may result in immediate revocation of the license and removal of consumers from programs pursuant to General Provisions as found in R501-1.

KEY: licensing, human services, youth
January 17, 2003 **62A-2-101 et seq.**
Notice of Continuation October 4, 2017

R501. Human Services, Administration, Administrative Services, Licensing.
R501-11. Social Detoxification Programs.
R501-11-1. Authority.

Pursuant to 62A-2-101 et seq., the Office of Licensing, shall license social detoxification programs according to the following rules.

R501-11-2. Purpose.

A social detoxification program offers room, board and specialized rehabilitation services to persons who are in an intoxicated state, or withdrawing from alcohol or drugs. In social detoxification, individuals are assisted in acquiring the sobriety and a drug free condition necessary for living in the community and the program places an emphasis on helping the individual obtain further care after detoxification.

R501-11-3. Definition.

Social detoxification Program means a short-term non-medical treatment service for individuals unrelated to the owner or provider in accordance with 62A-2-101(18).

R501-11-4. Administration.

A. In addition to the following rules, all social detoxification programs shall comply with R501-2, Core Rules.

B. A current list of enrollment of all registered consumers shall be on-site at all times.

R501-11-5. Staffing.

A. Each program shall have an employed manager who is responsible for the day to day resident supervision and operation of the facility. The responsibilities of the manager shall be clearly defined. Whenever the manager is absent there shall be a substitute available.

B. Professional staff shall include at least one of the following individuals who have received training to work with substance abusers:

1. a licensed physician, or a consulting licensed physician, or

2. a licensed mental health therapist, or a consulting licensed mental health therapist, or

3. a licensed psychologist or consulting licensed psychologist, and

4. a licensed substance abuse counselor or unlicensed staff who work with substance abusers shall be supervised by a licensed clinical professional.

C. The program shall have a staff person trained, by a certified instructor in standard first aid and CPR, on duty with the consumers at all times. Training shall be updated as required by the certifying agency.

R501-11-6. Direct Service.

Program service records shall contain the following:

A. name, address, telephone number and admission date,

B. emergency information with names, addresses and telephone number, of a preferred individual and next of kin. Services will not be refused if a person is too intoxicated to provide accurate and detailed emergency information. The program shall obtain thorough information as soon as the client is able to report, and

C. a statement indicating that the consumer meets the admission criteria.

R501-11-7. Physical Environment.

A. The program shall maintain appropriate documentation of compliance with the following items as applicable:

1. local zoning ordinances, for "I" occupancies only,
2. local business license,
3. local building codes,
4. local fire safety regulations, and
5. local health codes.

B. The program shall provide written approval from the appropriate local government agency for new program services or increased consumer capacity.

C. Building and Grounds

1. The program shall insure that the appearance and cleanliness of the building and grounds are maintained.

2. The program shall take reasonable measures to ensure a safe physical environment for consumers and staff.

R501-11-8. Physical Facility.

A. Staff Quarters: A 24 hour live-in staff shall have separate living space with a private bathroom.

B. The program shall have space to serve as an administrative office for records, secretarial work and bookkeeping.

C. Sleeping Space.

1. Large rooms may be used as dormitory style bedrooms.

2. A minimum of 50 square feet per consumer shall be provided in a multiple occupant bedroom. Storage space shall not be counted.

3. A minimum of 70 square feet per individual shall be provided in a single occupant bedroom. Storage space shall not be counted.

4. Sleeping areas shall have a source of natural light, and shall be ventilated by mechanical means or equipped with a screened window that opens.

5. There shall be an escape window for each sleeping room unless there are two ways to exit the room.

6. Each bed, none of which shall be portable, shall be solidly constructed and be provided with clean linens after each consumer stay and at least weekly.

7. Sleeping quarters serving male and female residents shall be structurally separated.

D. Bathrooms

1. Bathrooms shall meet a minimum ratio of one toilet, one lavatory, and one tub or shower for each eight residents. These shall be maintained in good operating order and in a clean and safe condition.

2. Toilets and baths or showers shall allow for individual privacy. They shall also accommodate consumers with physical disabilities, as required by the state building code.

3. Bathroom mirrors shall be secured to the walls at convenient heights.

4. Each bathroom shall be properly equipped with toilet paper, towels, soap and other items required for personal hygiene.

5. Bathrooms shall be ventilated by mechanical means or equipped with a screened window that opens.

R501-11-9. Equipment.

A. Furniture and equipment shall be of sufficient quantity, variety and quality to meet program and consumer needs.

B. All furniture and equipment shall be maintained in a clean and safe condition.

R501-11-10. Laundry Service.

A. Programs which provide for common laundry of linens and clothing, shall provide containers for soiled laundry separate from storage for clean linens and clothing.

B. Laundry appliances shall be maintained in good operating order and in a clean and safe condition.

R501-11-11. Food Service.

A. One person shall be responsible for food service. If this person is not a professionally qualified dietician, annual consultation with a qualified dietitian shall be obtained.

B. The person responsible for food service shall maintain

a current list of consumers with special nutritional needs, record in the consumer's service record information relating to special nutritional needs, and provide nutrition counseling where indicated.

C. Kitchens shall have clean and safe operational equipment for the preparation, storage, serving and clean up of all meals.

R501-11-12. Medication.

A. The program shall have locked storage for medications.

B. The program shall have locked storage for hazardous chemicals and materials according to the direction of the local fire authorities. Any flammable or hazardous chemicals or materials shall be stored in appropriate well-ventilated storage area.

C. The program shall have designated qualified staff, who shall be responsible to:

1. administer or supervise medication,
2. supervise self-medication,
3. record medication, including time and dosage, according to prescription, and
4. record effects of medication.

R501-11-13. Specialized Services.

A. The program shall not admit those who are currently experiencing convulsions, in shock, delirium tremens, in a coma, or unconscious.

B. The program shall complete a preliminary screening at the time an individual presents for service to determine appropriateness for social model detox. The intake evaluation is completed within seven days.

C. Consumers shall demonstrate recent evidence of a Tuberculosis screening or be tested for Tuberculosis within one weeks. Clients who exhibit signs of possible active tuberculosis will be screened immediately with assistance from the local health department. Health department recommendations will be followed. Program staff will be tested every six months.

D. Once the client has completed the acute detox period as demonstrated by reasonable physical and psychological stability, case managers will conduct an evaluation to determine the treatment referral.

KEY: licensing, human services, substance abuse
January 30, 2003 62A-2-101 et seq.
Notice of Continuation October 4, 2017

R501. Human Services, Administration, Administrative Services, Licensing.
R501-12. Foster Care Services.
R501-12-1. Authority.

This Rule is authorized by Sections 62A-2-101 et seq.

R501-12-2. Purpose Statement.

(1) This Rule establishes standards for the licensure of foster parents for children in the custody of DHS, inclusive of its Divisions.

(2) This Rule establishes standards that must be utilized by child-placing foster agencies for the certification of foster parents to provide care for foster children.

(3) This Rule establishes compliance standards for licensed and certified foster parents.

R501-12-3. Definitions.

As used in this Rule:

(1) "Abuse" includes but is not limited to:

(a) actual, attempted, or threatened non-accidental harm, to the physical, psychological, or emotional health of a child;

(b) the use of confinement, physical restraint, medication, or isolation that causes or may cause harm to a child;

(c) the deprivation of treatment, food, or hydration to a child;

(d) causing physical injury or pain, including but not limited to bleeding, bruising, swelling, dislocation, contusion, laceration, burning, bone fracture, bodily damage, or death;

(e) corporal punishment, including but not limited to hitting or slapping;

(f) domestic violence related abuse;

(g) sexual abuse or sexual exploitation; or

(h) severe emotional abuse, severe physical abuse, or emotional or psychological abuse, as these terms are defined in section 62A-4a-101.

(2) "Agency" means a child-placing foster agency licensed by the DHS Office of Licensing to certify foster parents.

(3) "Chemical restraint" means any drug or substance used to control a child's behavior or movement that is not prescribed and monitored by the child's personal physician.

(4) "Child" means a person under 18 years of age or a person under 21 years of age who remains subject to the continuing jurisdiction of the Utah Juvenile Court.

(5) "Child care" is defined in Section 26-39-102.

(6) "DCFS" means the DHS Division of Child and Family Services.

(7) "DHS" means the Utah Department of Human Services.

(8) "Direct access" is defined in section 62A-2-101.

(9) "DJJS" means the DHS Division of Juvenile Justice Services.

(10) "Foster care" means the temporary provision of family based care for a foster child by a foster parent.

(11) "Foster parent" means a substitute parent licensed by the DHS Office of Licensing or certified by a licensed child-placing foster agency, and includes the spouse of the primary applicant. Foster parents may also be referred to by other titles, including but not limited to proctor foster parents, professional foster parents, resource families, or kinship caregivers.

(12) "Hazardous material" means any substance that if ingested, inhaled, ignited, used, or touched may cause significant injury, illness, or death. These substances include but are not limited to:

(a) pesticides;
(b) gasoline;
(c) bleach, including bleach based cleansers;
(d) compressed air
(e) ammonia, including ammonia based cleansers;
(f) chemical drain openers;
(g) hair relaxers/permanents;
(h) kerosene;
(i) spray paint;
(j) paint thinner;
(k) automotive fluids;
(l) toxic glues (excludes non-toxic glues;
(m) oven cleaners;
(n) matches/lighters/lighter fluid;
(o) cleaning aerosols;
(p) medications; and
(q) ultra and concentrated detergent capsules.

(13) "Home study" means the written assessment of an applicant's ability to:

(a) comply with all applicable statutes and administrative rules related to providing foster care;

(b) meet the physical and emotional needs of a child in foster care; and

(c) actively engage in achieving the custodial agency's identified outcomes for foster children.

(14) "Human services program" is defined in Section 62A-2-101.

(15) "Maltreatment" includes but is not limited to group punishments for the misbehavior of individuals; disrespecting, bullying, provoking, intimidating, or agitating a child; violating the child's rights as described in R501-12-13; unreasonably withholding emotional response or stimulation; or the actual, attempted, or threatened denial of access to the child's foster home for any purpose unrelated to safety.

(16) "Mechanical restraint" means any device used to control or restrict a child's free movement, including but not limited to a locked door that the child cannot open, a locked window that the child cannot open, handcuffs, belts, straps, ties, or restraint jackets. Mechanical Restraints do not include clothing or safety devices used for their intended purposes, such as belts and seatbelts.

(17) "Medication" means any over-the-counter or prescription drug, vitamin, or supplement in any form.

(18) "Neglect" includes but is not limited to actual, attempted, or threatened failure to provide sufficient nutrition, hydration, sleep, clothing, bedding, shelter, medical services, dental services, educational services, supervision, or the care or treatment prescribed by the child's service or treatment plan.

(19) "Passive physical restraint" means non-violent holding techniques that temporarily restrict a child's free movement, and are used solely to prevent the child from harming any person, animal, or property, or to allow the child to regain physical or emotional control.

(20) "Poverty Guidelines" means the current US Department of Health and Human Services listing of poverty levels as determined by the number of members of a family (see http://www.direct.ed.gov/RepayCalc/poverty.html).

(21) "Reside" Anyone living in the home for thirty days.

(22) "Respite care" means the short term provision of family based care for a foster child by one foster parent in order to provide relief to another foster parent.

(23) "Restraint" means the use of physical force or a mechanical device to restrict a child's freedom of movement or a child's normal access to his or her body, and includes the use of a drug or substance that is not prescribed by the child's physician, and is used to control the child's behavior or restrict the child's freedom of movement.

(24) "Sexual abuse" includes but is not limited to actual, attempted, or threatened sexual contact with a child, or a sexual offense described in Title 76 Chapter 5, Offenses Against the Person.

(25) "Sexual exploitation" includes but is not limited to employing, using, persuading, inducing, enticing, or coercing a child to pose in the nude, to observe or participate in sexual acts, or to engage in any sexual or simulated sexual conduct.

(26) "Siblings" means children with a common parent or grandparent, regardless of whether their legal relationship has been severed, including biological siblings, half-siblings, step-siblings, adopted siblings, and cousins.

(27) "Sick" means to have a fever, to be experiencing ongoing or severe diarrhea, unexplained lethargy, respiratory distress, ongoing or severe vomiting, or pain or other symptoms that are ongoing or severe enough to impair a child's ability to participate in normal activity.

R501-12-4. Initial, Renewal, and Reapplication Process.

(1) Initial Application for Licensure or Certification: An individual or legally married couple age 21 or over may apply to be a foster parent. The applicant shall provide:

(a) Application Forms: A completed Office of Licensing or Agency foster care application that lists each member of the applicant's household must be submitted, including the following documents signed by the applicant/s:

(i) a confidentiality agreement;

(ii) a DHS Provider Code of Conduct signature form; and

(iii) a verification that the applicant/s have read and understand R501-12 Foster Care Services;

(b) Background Screening: a completed background screening application for each member of the household who is 18 years of age or older, including any supplemental documentation that the application requires;

(c) Financial Viability: a written statement of household income and expenses, together with consecutive current pay stubs or income tax forms;

(i) The Office of Licensing or Agency may consider poverty guidelines when evaluating the dependence of a foster parent on foster payments for their own expenses.

(ii) The Office of Licensing or Agency may require supporting documentation of household income and expenses in order to verify the foster parent will not be dependent on foster care reimbursement for their own expenses.

(d) Training:

(i) Verification of successful completion of agency approved pre-service training by each applicant within the past 24 months, and

(ii) Verification of current CPR/first aid training for each prospective foster parent. Examples of accepted training include but are not limited to: Heart Savers, American Red Cross, and American Heart Association Friends and Family.

(2) Medical Assessment:

(a) Each applicant shall authorize their current licensed physician, physician's assistant or nurse practitioner to complete and send a signed medical reference report directly to the Office of Licensing or Agency. Medical reference reports must assess the ability of the individual to be a foster parent.

(b) A professional mental health examination of a prospective or current foster parent may be required by the Office of Licensing or the Agency if there are concerns regarding the individual's mental status which may impair functioning as a foster parent. These concerns may be based upon any information gathered during the licensing/certifying and monitoring process.

(i) The type of professional mental health examination required shall be determined by the Office of Licensing or Agency based on the nature of the presenting concerns.

(ii) Determination of need and type of examination will be made collaboratively involving the licensor, Agency or Office of Licensing administration, and clinical staff from within the Department of Human Services or Agency.

(iii) The prospective or current foster parent shall authorize the release of examination information to the Office of Licensing or Agency, including a signed report that assesses the ability of the individual to parent vulnerable children full time as a foster parent.

(c) Medical and mental health examinations shall be paid for by the prospective or current foster parent.

(d) The Agency or the Office of Licensing may, in the exercise of their professional judgment, deny or revoke an application or license if a medical reference report or other examination reveals reasonable concerns regarding an applicant's ability to provide foster care services, or if the required examination is not completed and provided to the Agency of the Office of Licensing.

(3) References:

(a) At the time of initial application, the applicant/s shall submit the names, mailing address, email addresses, and phone numbers of no more than four individuals who will be contacted by the agency or the Office of Licensing and asked to provide a reference letter. These individuals shall be knowledgeable regarding the ability of the applicant/s to provide a safe environment and to nurture foster children. No more than one reference may be a relative of the applicant. Only the four original reference individuals submitted will be considered.

(b) A minimum of three out of the four individuals must submit reference letters directly to the Agency or the Office of Licensing. A minimum of three reference letters received must be acceptable to the Agency or the Office of Licensing.

(c) The Agency or the Office of Licensing may, in the exercise of their professional judgment, deny an application if a reference reveals reasonable concerns regarding an applicant's ability to provide foster care services.

(4) Background Screening:

(a) Each applicant and all persons 18 years of age or older residing in the home shall submit a background screening application as part of the initial application. A background screening application is also required at the point any new individual over the age of 18 moves into the home. A foster parent shall not be licensed or certified unless the background screening applications of all persons 18 years of age or older who reside in the home are approved by the Office of Licensing in compliance with Section 62A-2-120 and R501-14.

(b) A background screening approval shall not be transferred from one Agency to another Agency.

(c) A foster parent shall not permit any adult in the foster parent's home to have unsupervised direct access to a foster child unless the adult's background screening application is approved by the Office of Licensing.

(d) A foster parent shall immediately notify the Office of Licensing or Agency if any person in the home is charged with or under investigation for any criminal offense or allegation of abuse, neglect, or exploitation of any child or vulnerable adult.

(e) Pursuant to section 62A-4a-1003(2). Licensing shall review and evaluate information from the Division of Child and Family Services Management Information System for the purpose of licensing and for the purpose of monitoring all individuals who reside in the foster parents' home. When, in the professional judgment of the Office of Licensing, a supported or substantiated finding against any individual who resides in the foster parents' home may pose a risk of harm to a foster child, the Office of Licensing may issue a safety plan or a sanction on the license of the foster parent or Agency

(5) Home Study:

(a) The Office of Licensing or Agency is not required to perform a home study until after the background screening applications of all persons 18 years of age or older who reside in the home are approved.

(b) A narrative home study shall be completed by a Licensing Specialist in the Office of Licensing or a licensed social worker or mental health worker (SSW or higher) licensed by the State of Utah.

(c) The home study shall include, but not be limited to:

(i) background and current information of each caregiver, including but not limited to information regarding family of

origin, discipline used by parents, family history or presence of abuse or neglect, use of substances, education, employment, relationship with extended family, mental and physical health history, stress reduction techniques, values, and interests;

(ii) marital relationship information, including but not limited to areas of conflict, communication, how problems are resolved, and how responsibilities are shared;

(iii) family demographical information, including but not limited to ages, ethnicity, languages spoken, dates of birth, gender, relationships, and history of adoption;

(iv) family characteristics including but not limited to functioning, cohesion, interests, work/life balance, family activities, ethnicity, culture, and values;

(v) child care and supervision arrangements;

(vi) physical characteristics of the home, including neighborhood and school information;

(vii) motivation for doing foster care, including assessment of interest in adoption vs. foster care only;

(viii) assessment of understanding and expectations of children in foster care;

(ix) previous experience caring for children;

(x) current and planned methods of discipline, use of privileges, family rules;

(xi) previous experience with children with special needs or trauma histories;

(xii) assessment of informal and formal supports;

(xiii) assessment of willingness and ability to access support and resources;

(xiv) finances, including bankruptcies;

(xv) applicant strengths and weaknesses;

(xvi) applicant history of any and all previous applications, home studies, or licenses/certifications related to providing foster care;

(xvii) assessment of ability to actively engage in achieving the custodial agency's identified outcomes for foster children; and

(xviii) recommendations for child matching, capacity, training, and support needs.

(xix) query results of the home address on the Utah Sex Offender Registry and address how potential threats will be mitigated.

(6) Foster Parent Annual Renewal Application: A foster parent who wishes to remain authorized to provide foster care services shall submit renewal paper work at least 30 days and no longer than 90 days prior to license or certification expiration. Background screening approvals and renewal activities have to be completed prior to license expiration. Foster parent shall provide or otherwise submit to the following annually:

(a) Signed renewal application, including a signed confidentiality agreement, a signed DHS Provider Code of Conduct signature form, and a signed verification that the applicant/s have read and understand R501-12 Foster Care Services.

(b) Health Statement: Each foster parent shall submit a personal health status statement together with their renewal application; including new medical references if there have been changes to a foster parent's health status over the past year.

(c) Background Screening: Each foster parent and all persons 18 years of age or older residing in the home shall submit a background screening application with each renewal application. A background screening application is also required at the point any new individual over the age of 18 moves into in the home. A foster parent shall not be licensed or certified unless the background screening applications of all persons 18 years of age or older who reside in the home are approved by the Office of Licensing in compliance with Section 62A-2-120 and R501-14.

(d) Financial Viability: a written statement of household income and expenses, together with consecutive current pay stubs or income tax forms.

(i) The Office of Licensing or Agency may consider poverty guidelines when evaluating the dependence of a foster parent on foster payments for their own expenses.

(ii) The Office of Licensing or agency may require supporting documentation of household income and expenses in order to verify the foster parent will not be dependent on foster care reimbursement for their own expenses.

(e) Proof of current CPR/first aid certification.

(f) The home study shall be updated in writing annually after a home visit and safety inspection by a Licensing Specialist in the Office of Licensing or a licensed social worker or mental health worker (SSW or higher) licensed by the State of Utah. Updates should address all changes to the required home study information outlined in this rule, and an assessment of the family's experience over the past year as a foster parent.

(7) Reapplication: A previously licensed or certified foster home is subject to the same requirements as an initial application, with the following exceptions:

(a) Each applicant shall disclose all previous foster care licenses and certifications, including those outside the State of Utah.

(b) Previously licensed homes shall request a written reference from the DCFS region, or out-of-state equivalent, where they last held a foster care license to be sent directly to the Office of Licensing or Agency. Previously certified homes shall request a written reference letter from the last agency where they were certified, and every agency they have been certified by within the past 3 years, to be sent directly to the Office of Licensing or Agency.

(c) Each applicant shall sign releases of information for any agency where they previously provided certified or licensed foster care.

(d) Reapplication of previously licensed or certified homes may utilize an update of the previous home study as long as the home study was created by the same agency currently relicensing or recertifying the home.

(e) If 12 months or less since lapse of any license or certification, non-agency references will be waived.

(f) If 12 months or less since lapse of any license or certification, physician's statement shall be waived. Personal Health statement is still required.

(g) If 24 months or less since lapse of any license or certification, initial training requirements will be waived as long as there is not a change in licensing/certifying agency. A change in agency requires new initial training.

(8) Approval or Denial:

(a) The decision to approve or deny the applicant to provide foster services shall be made on the basis of facts, health and safety factors, and the professional judgment of the Agency or the Office of Licensing.

(b) No person may be denied a foster care license or certification on the basis of the religion, race, color, or national origin of any individual.

(e) The approval of a license or certification is not a guarantee that a foster child will be placed or retained in the foster parent's home.

(f) Foster parents shall not be licensed or certified to provide foster or respite care services in the same home in which they are providing child care or another licensed or certified human services program.

(g) In order to promote health and safety, the Office of Licensing or Agency may issue a license or certification that includes additional restrictions unique to the circumstances of the license.

(h) If a license or certification is denied, an applicant may not reapply for a minimum of 90 days from the date of denial.

R501-12-5. Foster Parent Requirements.

(1) Foster parents shall:
(a) be in good health and emotionally stable;
(b) be able to provide for the physical, social, mental health, and emotional needs of the foster child;
(c) be responsible persons who are 21 years of age or older;
(d) provide documentation of legal residential status;
(e) have the ability to help the foster child thrive;
(f) not be dependent on foster care reimbursement for their own expenses, outside of those expenses directly associated with providing foster care services; and
(g) provide updated medical, social, financial, or other family information when requested by the Office of Licensing or Agency.
(2) DHS employees shall not be licensed or certified as foster parents for children in the custody of their respective Divisions, unless they qualify as kinship providers for the child in accordance with Utah Code Ann. Section78A-6-307. An employee may provide foster services for children in the custody of a different Division only with the prior written approval of both Divisions' Directors in accordance with DHS conflict of interest policy.
(3) Agency owners, directors, managers, and members of the governing body shall not be certified to provide foster care services for children placed with or by the Agency.
(4) Foster parents shall cooperate with the Office of Licensing, Agency, courts, and law enforcement officials.
(5) Each foster parent shall read, sign, and comply with the DHS Provider Code of Conduct.
(a) A foster parent shall not abuse, neglect, or maltreat a child through any act or omission.
(b) A foster parent shall not encourage or fail to deter the acts or omissions of another that abuse, neglect, or maltreat a child.
(6) No more than two children under the age of two, including children who are members of the household and foster children, shall reside in a foster home.
(7) No more than two non-ambulatory children, including children who are members of the household and foster children, shall reside in a foster home.
(8) Except as provided by Section 62A-2-101(17)and R501-12-5-9, no more than four foster children shall reside in a licensed foster home and no more than three children shall reside in a certified foster home.
(9) Foster parents may provide respite care in their home as long as they remain in compliance with licensing rules in regards to each child placed for foster and respite care. Foster parents may provide respite care when the additional foster child(ren) exceed their licensed capacity only as follows:
(a) Respite care is limited to a maximum of 10 days within any 30 day period.
(i) For foster children who are not siblings, each day of respite for each individual child counts as one day of respite care.
(ii) For foster children who are siblings, each day of respite for a sibling group receiving respite in the same foster home at the same time counts as one day of respite care.
(b) The foster home must have no licensing sanctions currently imposed, including corrective action plans or conditional licenses.
(c) Total number of foster and respite children in a home at one time shall not exceed six unless all but one or two of the children are part of a single sibling group.
(10) A foster parent shall report all major changes or events to the Office of Licensing or Agency within 48 hours. The Office of Licensing or Agency shall evaluate major changes to determine whether the foster parent remains able to provide foster care services. A major change in the lives of foster parents includes, but is not limited to:
(a) the death or serious illness of a member of the foster parent's household;
(b) change in marital status;
(c) loss of employment;
(d) change in household composition, such as the birth or adoption of a child, addition of household members, or tenants; or
(e) allegations of abuse or neglect of any child or vulnerable adult against any member of the foster parent's household.
(11) A foster parent shall report any potential change in address in advance to their licensor or agency.
(a) Licenses and certifications are site specific.
(b) An adjoining dwelling with a separate address that is not accessible from the foster home is not considered part of the foster home site.
(c) A foster child shall not be moved into a home that is not licensed or certified to provide foster care.

R501-12-6. Physical Aspects of Home.
(1) All indoor and outdoor areas of the home shall be maintained to ensure a safe physical environment.
(2) The home shall be free from health and fire hazards.
(3) The home shall have a working smoke detector and a working carbon monoxide detector on each separated level.
(4) The home shall have at least one approved, fully charged fire extinguisher readily accessible to the main living area. An approved fire extinguisher shall be a minimum of 2A:10BC five point, rated multi-purpose, dry chemical fire extinguisher.
(5) Each bathroom shall have a lock sufficient to preserve the privacy of the occupant.
(6) The home shall have sufficient bedroom space to provide for the following:
(a) a bedroom shall not be shared by children of the opposite sex unless each child sharing the room is under two years of age;
(b) a foster parent's bedroom may only be shared with foster children who are under the age of two years;
(c) a foster parent's bedroom shall not be considered in calculating the allowable bedroom space for foster children;
(d) a foster child shall not share a bedroom with other adults in the home;
(e) each child in foster care must have an individual bed/crib, mattress, and linens that meet the child's needs and are comparable to other similarly utilized sleeping accommodations in the household;
(f) a minimum of 40 square feet per child, excluding adjoining bathrooms and storage space;
(g) no more than four children are housed in a single bedroom that houses at least one foster child;
(h) bedrooms used for foster children shall be comparable to other similarly utilized bedrooms in the home, including but not limited to access, location, space, finishings, and furnishings; and
(i) bedrooms used by foster children shall have a source of natural light and shall be equipped with a screened window that opens and provides egress to the outdoors.
(7) Closet or dresser space shall be provided within the bedroom for the foster child's personal possessions and for a reasonable degree of privacy.
(8) The home shall have space or access to common areas for recreational activities.
(9) Foster parents shall offer nutritious, balanced meals that meet each foster child's individual needs.
(10) The home shall be maintained at a reasonable temperature when occupied by a foster child. The age and needs of the child and other residents may be considered. Generally, reasonable temperatures range between 65-82 degrees

Fahrenheit.

(11) The home shall have a working refrigerator, cooking appliances, and functional indoor plumbing.

(12) Hazards on the property shall be abated. These areas include but are not limited to fall hazards of 3 feet or greater (steep grades, cliffs, open pits, window wells, stairwells, elevated porches, retaining walls, etc), drowning hazards (swimming pools, hot tubs, water features, ponds or streams, etc), burn hazards (fireplaces, candles, radiators, water, etc), unstable heavy items (televisions, bookshelves, etc), high voltage boosters, or dangerous traffic conditions. These hazards shall be mitigated through the use of protective hardware, fences, banisters, railings, grates, natural barriers, or other licensor approved methods.

(13) The home and its contents shall be maintained in a clean and safe condition. Food, clothing, supplies, furniture, and equipment shall be of sufficient quantity, variety, and quality to meet the foster child(ren)'s needs.

(14) Exits: There shall be at least two exits on each accessible floor of the home. Each exit shall be accessible and adequately sized for emergency personnel. Multiple-level homes shall have a functional, automatic fire suppression system or an escape ladder, stairway, or other exterior egress to ground level accessible from each of the upper levels.

(15) Foster parents shall have and use child safety devices appropriate to the needs of the foster child, including but not limited to safety gates and electrical outlet covers.

(16) Home address is clearly visible and location is accessible.

(17) Water and sewage disposal systems other than public systems must be approved by the appropriate authorities.

(18) Swimming pools will be secured in order to prevent unsupervised access and comply with applicable community ordinances.

R501-12-7. Safety.

(1) A foster parent shall not smoke any substance in the foster home or when a foster child is present. All smoking materials shall be inaccessible to foster children.

(2) Foster parents shall provide training to children regarding response to fire warnings and other instructions for life safety upon the initial placement of a child and annually thereafter. This includes an evacuation plan that also anticipates the evacuation of a child who is non-ambulatory or who has a disability.

(3) The home shall have a telephone on-site during all times that a foster child is present. This may be a land line or a mobile phone, but must be able to receive and make calls and be recognized by the 911 system. Telephone numbers for emergency assistance and the address of the home shall be posted next to the telephone or in a central location visible to the child.

(4) The home shall have a fully supplied first aid kit such as recommended by the American Red Cross.

(5) Foster parents shall inform the Office of Licensing or the Agency if they possess or use a firearm or other weapon.

(6) Firearms, ammunition, and other weapons shall be inaccessible to children. Foster parents shall not provide a weapon to a child or permit a child to possess a weapon except as outlined in Sections 76-10-509 through 76-10-509.7.

(a) Foster parents do not have the authority of a parent or guardian under Section 76-10-509.

(b) Firearms may be stored together with ammunition only in a locked container commercially manufactured for the secure storage of firearms.

(c) Firearms not stored in a locked container commercially manufactured for the secure storage of firearms shall be unloaded and securely locked. Ammunition for these firearms shall be kept securely locked in a separate location.

(i) The locked storage for firearms and ammunition shall not be accessible through the same keys or combinations.

(ii) Keys and combinations utilized to open locked storage for firearms and ammunition shall not be accessible to a foster child.

(d) Firearms may be stored in display cases only if unloaded and rendered inoperable through the effective use of trigger locks, bolts removed, or other disabling methods.

(e) This does not restrict an individual's rights regarding concealed weapons permits pursuant to UC 53-5-704.

(7) Foster parents who have alcoholic beverages in their home shall ensure that the beverages are closely monitored and inaccessible to children at all times.

(8) Hazardous materials shall be stored securely and remain locked when not in active use, and closely monitored while in active use.

(i) Hazardous materials shall be stored in the manufacturer's original packaging together with the manufacturer's directions and warnings; or

(ii) a container that complies with the manufacturer's directions and warnings and is clearly labeled with the contents, manufacturer's directions and warnings.

(9) Flammable substances, including but not limited to gasoline and kerosene, shall be locked in a ventilated storage area separate from living areas. This requirement does not include substances contained within the storage tanks of equipment, including but not limited to automobiles, lawnmowers, ATV's, boats and snow blowers.

(10) General, common use, household items (excluding those identified as hazardous materials) shall be stored responsibly in consideration of the age, behavior, history, and cognitive and physical ability of each foster child in the home. The foster parent is responsible for consulting with the caseworker and child and family team regarding individual restrictions. General, common use, household items include, but are not limited to the following:

(a) oral hygiene products;
(b) hair and cosmetic products;
(c) facial and skin hygiene products;
(d) cutlery;
(e) laundry and dish detergent (excluding concentrated pods);
(f) cleaning wipes;
(g) rubbing alcohol;
(h) nail polish remover;
(i) laundry stain remover;
(j) propane attached to a grill;
(k) air fresheners and deodorizers; and
(l) spray furniture polish.

(11) Foster parents shall comply with all laws regarding the care and number of animals on their property.

(12) Foster parents shall ensure that the foster child has the safety equipment, supervision, and training necessary for the child to safely participate in an activity that has an inherent risk of bodily harm, injury, or death.

(a) These activities include but are not limited to participation in rock climbing, swimming, hunting, target practice, camping, hiking, use of recreational vehicles, and sports.

(b) Every precaution must be taken to participate in the respective activity as safely as possible. This includes, but is not limited to: wearing DOT/Snell approved helmets when riding off-highway vehicles (OHV), completing OHV education, personal watercraft or boating education, wearing Coast Guard approved lifejackets, and completing hunter's education.

(c) Foster parents shall follow any applicable statute pertaining to minors operating OHV's, personal watercraft, boats, and firearms.

(d) Foster parents shall not permit a foster child any access

to firearms without first obtaining the written approval of the child's caseworker.

(13) Foster parents shall comply with any written safety plan required by the Office of Licensing or Agency which establishes additional safety requirements to protect the child from hazardous conditions on the foster parent's property. A safety plan shall not waive any requirement of this R501-12.

(14) Verification of compliance with the Utah Department of Health's recommended immunization schedules shall be provided for each individual residing in the home who is not a foster child.

(a) Recommended influenza immunizations are optional unless a foster child in the home has an immunocompromised condition.

(b) If compliance of all residents in the home cannot be verified, the license shall be restricted to only placements of children who are over the age of 2 months and who are immunized in accordance with the Utah Department of Health's recommendations for their age.

(i) Foster parents must disclose if any individual residing in the home is not in compliance with the Utah Department of Health's recommended immunization schedules to the child placing agency prior to accepting a placement.

(ii) Newborn infants must reach the required age and receive their first dose of required vaccinations to be considered appropriately immunized for their age.

(15) Foster parents shall not accept the placement of a child into their home in violation of any license conditions.

R501-12-8. Emergency Plans.

(1) Foster parents shall have a written plan of action for emergencies and disaster to include the following:

(a) evacuation with a pre-arranged site for relocation;

(b) transportation and relocation of foster children when necessary;

(c) supervision of foster children after evacuation or relocation; and

(d) notification of appropriate authorities.

(2) Foster parents shall have a written plan for medical emergencies, including arrangements for medical transportation, treatment and care.

(3) Foster parents shall immediately report any serious illness, injury, or death of a foster child to the appropriate Division or Agency and the Office of Licensing.

R501-12-9. Infectious Disease.

(1) In the event of an infectious or communicable disease outbreak, foster parents shall follow specific instructions given by the local health department.

R501-12-10. Medication and Medical Emergencies.

(1) Foster parents shall ensure that prescribed medication is administered according to the written directions of the foster child's health provider.

(a) Foster parents shall ensure that the foster child actually consumes the medication.

(b) Foster parents shall report any severe or unexpected side effects or reactions to the foster child's health provider.

(2) Medication shall only be given to the foster child for whom it was prescribed.

(3) Medication shall not be discontinued without the approval of the foster child's health provider.

(4) Non-prescription medications may be administered by foster parents according to manufacturer's instructions unless otherwise directed by the child's health provider.

(5) Medications shall not be administered or carried by the foster child unless approved in writing by the child's health provider.

(6) Medication shall not be used for behavior management or restraint unless prescribed in writing by the foster child's health provider and after notification to the Division or Agency worker.

(7) Medication shall remain locked at all times they are not in immediate, active use.

(a) Foster parents shall not leave medications in active use unattended.

(b) If a foster child requires immediate access to the child's medication, including but not limited to a child with asthma or diabetes, foster parents may carry a single dose of medication for active use on the foster parent's person.

(8) Medications shall remain in the original pharmacy or manufacturer's packaging.

(a) Foster parents shall not repackage medications or divide doses into alternative containers.

(b) Foster parents should partner with the pharmacy regarding any needed divisions of medication.

(9) Foster parents shall promptly take a foster child who has a medical emergency, who is sick, or who is injured, for an assessment by a medical practitioner.

(10) Foster parents shall comply with the treatment orders of the foster child's health provider.

(11) When a foster child is no longer placed in the foster parent's home, all unused medications shall be transferred to the caseworker or Agency.

R501-12-11. Transportation.

(1) Drivers of vehicles carrying foster child/ren shall have a valid, current driver's license and valid, current vehicle insurance, and comply with all traffic regulations.

(2) Transportation of foster children shall be provided in an enclosed, registered vehicle that has functional seatbelts. Foster parents shall ensure that foster children properly utilize seatbelts and other safety equipment, including age and size appropriate car/booster seats. Recreational vehicles, including motorcycles, shall not be used for transportation.

(3) Emergency contact information, including but not limited to caseworker and agency information, shall be provided and accessible in each vehicle used to transport foster children.

(4) Each vehicle shall be equipped with a first aid kit.

R501-12-12. Behavior Management.

(1) Foster parents shall provide supervision appropriate to the age and needs of each foster child.

(2) Foster parents shall not use, nor permit the use of corporal punishment including but not limited to physical, mechanical, or chemical restraint, physical force, infliction of bodily harm or pain, deprivation of meals, rest or visits with family, or humiliating or frightening methods to discipline, coerce, punish, or retaliate against a child.

(3) Foster parents shall only use behavior management techniques appropriate for the child's age, behavior, needs, developmental level, and past experiences.

(4) Foster parents shall use the least restrictive method of behavior management available to control a situation.

(5) Foster parents shall only use behavior management techniques that are positive, consistent, and that promote self-control, self-esteem, and independence.

(6) Foster parents shall not use physical work assignments or activities that inflict pain as behavior management techniques. A physical work assignment or activity that results in minor sore muscles does not violate this subsection.

(7) Foster parents shall not abuse, threaten, ridicule, intimidate, or degrade a child.

(8) Foster parents shall not deny a child medical care, nutrition, hydration, clothing, bedding, sleep, or toilet and bathing facilities.

(9) Passive physical restraint shall be applied only by individuals who are trained in accordance with the non-violent

intervention strategies of a state, regional, or nationally recognized behavior management program. Documentation of passive physical restraint training certification shall be submitted to the Office of Licensing or Agency with the initial and each renewal application.

R501-12-13. Child's Rights in Foster Care.

(1) Foster parents shall not violate a foster child's right to:

(a) eat nutritious meals with the family;

(b) eat the same food as the family, except when the child is provided with alternative food ordered by the child's physician;

(c) participate in family and school activities;

(d) privacy, including but not limited to maintaining the confidentiality of information about the child and not retaining copies of the child's records once the child is no longer placed there;

(e) be informed of the child's responsibilities, including household tasks, privileges, and rules of conduct;

(f) be protected from discrimination based upon the child's race, color, national origin, culture, religion, sex, sexual orientation, age, political affiliation, or disability;

(g) be protected from harm or acts of violence, including but not limited to protection from physical, verbal, sexual, or emotional abuse, neglect, maltreatment, exploitation, or inhumane treatment;

(h) be treated with courtesy and dignity, including but not limited to reasonable personal privacy and self-expression;

(i) communicate with and visit the child's family, attorney, physician, and clergy, except as restricted by court order;

(j) have clean clothes and personal hygiene needs met;

(k) participate in their own cultural traditions; and

(l) receive prompt medical care when sick or injured.

(m) be free from media content that is likely harmful considering the child's age, behavior, needs, developmental level, and past experiences.

R501-12-14. Additional Child Placing Agency Considerations.

(1) The Agency shall comply with all Office of Licensing rules that relate to their Child Placing Foster license.

(2) The Agency shall comply with Background Screening Rules, R501-14.

(3) The Agency shall recruit, train, certify, and supervise foster parents.

(4) The Agency shall verify completion of all of a foster parent's training requirements, including but not limited to CPR/First Aid training and training regarding the requirements of R501-12, prior to issuing an initial or renewal certification and prior to placing a foster child in the home.

(5) The Agency shall train each foster parent regarding the Agency's policies and procedures prior to placing a foster child in the home.

(6) The Agency shall provide the Department with identifying information of all certified foster homes via the DHS/DCFS Provider website located on the Human Services DHS/DCFS Employee website.

(7) The Agency shall maintain documentation of the initial and annual home studies of the foster parent's home.

(8) The Agency shall have a signed written agreement or contract with each foster parent that clarifies each party's expectations, obligations and responsibilities, including but not limited to the services to be provided to and by the foster parent, the provision of medical, remedial, treatment, and other specialized services to the child, limitations of authority, and financial arrangements.

(9) The Agency shall monitor and keep detailed documentation regarding foster parents' compliance with R501-12, including one unannounced visit to the foster home annually for the purposes of safety and compliance assessment annually in addition to any initial and renewal visits to the home.

(10) The Agency shall investigate all complaints and alleged violations of this rule. The Agency shall provide documentation to the Office of Licensing of any investigations into complaints and alleged violations of R501-12.

(11) The Agency shall provide written notification to each foster parent that informs the foster parent of the rights and responsibilities assumed by a foster parent who signs as the responsible adult for a foster child to receive a driver license, as described in Section 53-3-211. The Agency shall maintain documentation in the foster parent's file, signed and dated by the foster parent, acknowledging receipt of a copy of this written notification.

(12) The Agency shall have and comply with written policies and procedures regarding the denial, suspension, and revocation of a foster parent's certification to provide foster care services, which must include written notification of the foster parent's appeal process.

(13) The Agency shall provide documentation to the Office of Licensing and DCFS of any denial, suspension, revocation or other agency-initiated termination of a foster parent's certification. Documentation shall be provided within two weeks of the action.

(14) The Agency shall not grant any variance to this R501-12 or any other regulation without the prior written consent of the Director of the Office of Licensing.

(15) The Agency shall certify foster parent/s for a specific time period that does not exceed one year prior to placing any foster children in the home. Documentation of certification dates shall be made available to the Office of Licensing as requested.

(16) The Agency must have a written agreement with the foster parent/s which includes the expectations and responsibilities of the agency, staff, foster parents; the services to be provided; the financial arrangements for children placed in the home; the authority foster parents can exercise on children placed in the home; and actions which require staff authorizations.

(17) The Agency shall provide ongoing supervision of certified foster parents to ensure the quality of care they provide.

(18) The Agency shall participate with the child's legal guardian and the foster home to obtain, coordinate, and supervise care and services necessary to meet the needs of each child in their care.

R501-12-15. Additional DCFS Kinship and Specified Home Licensure Considerations.

(1) An applicant may be licensed for the placement of a specific foster child or sibling group.

(2) The home study shall be conducted by an approved DCFS kinship home study specialist or by the Office of Licensing.

(3) A minimum of two reference letters received must be acceptable to the Agency or the Office of Licensing.

(4) The home study safety inspection and background screening approvals shall be successfully completed prior to the placement of the child in the home.

(5) A kinship or specific home license may not be utilized for the placement of any foster child other than the child designated on the license, and may not be utilized for respite care.

(6) If a kinship or specific home desires to provide general foster care services, they will close their specific license and submit to the requirements of a general foster care license.

(7) The Office of Licensing recognizes the importance of preserving family and cultural connections for children in foster care. In accordance with 62A-2-117.5 and the Indian Child Welfare Act, the Office of Licensing may issue a waiver of any

rule in regards to a kinship/specific home that does not impact the health and safety of the specific child or sibling group. This requires prior written approval by the Director of the Office of Licensing.

R501-12-16. Special Considerations for Siblings.

(1) Except as described below, a sibling group may not be placed in a foster home that already has more than one foster child placed in the home when the addition of the sibling group would exceed four foster children in a licensed foster home or exceed three foster children in a certified foster home

(a) The sibling(s) of a child already living in a foster home may be placed in the foster home for the purpose of reuniting the siblings, even if the addition of the sibling or sibling group would exceed four or more foster children in a licensed foster home or three or more foster children in a certified foster home.

(b) A foster home may provide for a sibling or a sibling group beyond the allowable four foster child limit for licensed foster care and three foster care limit for certified foster care only when they remain in compliance with licensing rules in regards to each child.

R501-12-17. Compliance.

Any active license on the effective date of this rule shall be given 30 days to achieve compliance with this rule with the exception of R501-12-7(14)which will be given 60 days to achieve compliance.

KEY: licensing, human services, foster care, certified foster care
October 23, 2015 62A-2-101 et seq.
Notice of Continuation October 4, 2017

R501. Human Services, Administration, Administrative Services, Licensing.
R501-13. Adult Day Care.
R501-13-1. Authority.

Pursuant to 62A-2-101 et seq., the Office of Licensing, hereinafter referred to as Office, shall license adult day care programs according to the following rules.

R501-13-2. Purpose.

Adult day care is designed to meet the needs of functionally impaired adults through a comprehensive program that provides a variety of social, recreational and related support services in a protective setting.

R501-13-3. Definition.

Pursuant to 62A-2-101(1) adult day care means continuous care and supervision for three or more adults 18 years of age and over for at least four but less than 24 hours a 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.

R501-13-4. Governance.

A. The program shall have a governing body which has responsibility for and authority over the policies, procedures and activities of the program.

B. The governing body shall be one of the following:

1. a Board of Directors in a nonprofit organization; or

2. commissioners or appointed officials of a governmental unit; or

3. Board of Directors or individual owners of a for-profit organization.

C. The program shall have a list of members of the governing body, indicating name, address and term of membership.

D. The program shall have an organization chart which identifies operating units of the program and their interrelationship. The chart shall define lines of authority and responsibility for all program staff.

E. When the governing body is composed of more than one person, the governing body shall establish bylaws, and shall hold formal meetings at least twice a year to evaluate quality assurance. A written record of meetings including date, attendance, agenda and actions shall be maintained on-site.

F. The responsibilities of the governing body shall be as follows:

1. to ensure program policy and procedure compliance,

2. to ensure continual compliance with relevant local, state and federal requirements,

3. to notify the Office within thirty days of changes in program administration or purpose, and

4. to ensure that the program is fiscally sound.

R501-13-5. Statutory Authority.

A. A publicly operated program shall document the statutory basis for existence.

B. A privately operated program shall document ownership or incorporation.

R501-13-6. Program Administration.

A. A qualified Director shall be designated by the governing body to be responsible for day to day program operation.

B. Records as specified shall be maintained on-site.

C. Program personnel shall not handle consumer finances.

D. There shall be a written statement of purpose to include the following:

1. mission statement,

2. description of services provided,

3. description of services not provided,

4. description of population to be served,

5. fees to be charged, and

6. participation of consumers in activities related to fund raising, publicity, research projects, and work activities that benefit anyone other than the consumer.

E. The statement of purpose shall be provided to the consumer and the responsible person and shall be available to the Office, upon request. Notice of such availability shall be posted.

F. There shall be a quality assurance plan to include a description of methods and standards used to assure high quality services. Implementation of the plan shall be documented and available for review by the Office, the consumer, and the responsible person.

G. There shall be written reports of all grievances and their conclusion or disposition. Grievance reports shall be maintained on-site.

H. The program shall have clearly stated guidelines and administrative procedures to ensure the following:

1. program management,

2. maintenance of complete and accurate accounts, books, and records, and

3. maintenance of records in an accessible, standardized order and retained as required by law.

I. All program staff, consultants, volunteers, interns and other personnel shall read, understand, and sign the current Department of Human Services, hereinafter referred to as DHS, Provider Code of Conduct.

J. The program shall post their license in a conspicuous place on the premises.

K. Each program shall comply with State and Federal laws regarding abuse, shall post a copy of State Law 62A-3-301, and provide an informational flyer to each consumer and the responsible person.

L. The program shall meet American Disabilities Act,(ADA) guidelines and make reasonable accommodation for consumers and staff. ADA guidelines and reasonable accommodation shall be determined by the authority having jurisdiction.

M. The program shall comply with local building code enforcement for disability accessibility.

R501-13-7. Record Keeping.

A. The Director shall maintain the following information on-site at all times:

1. organizational chart,

2. bylaws of the governing body if applicable,

3. minutes of formal meetings,

4. daily consumer attendance records,

5. all program related leases, contracts and purchase-of-service agreements to which the governing body is a party,

6. annual budgets and audit reports,

7. annual fire inspection report and any other inspection reports as required by law, and

8. copies of all policies and procedures.

B. The Director shall have written records onsite for each consumer, to include the following:

1. demographic information,

2. Medicaid and Medicare number, when appropriate,

3. biographical information,

4. pertinent background information,

a. personal history, including social, emotional, and physical development,

b. legal status, including consent forms for dependent consumers, and

c. an emergency contact with name, address and telephone number,

5. consumer health records including the following,

a. record of medication including dosage and administration,

b. a current health assessment signed by a physician, and

c. signed consent form,

6. intake assessment,

7. signed consumer agreement, and

8. copy of consumers' service plan.

C. The Director shall have an employment file on-site for each staff person.

D. The Office shall have the authority to review program records at anytime.

R501-13-8. Direct Service Management.

A. The program shall have a written eligibility, admission and discharge policy and procedure to include the following:

1. intake process,

2. self-admission,

3. notification of the responsible person,

4. reasons for admission refusal which includes a written, signed statement, and

5. reasons for discharge or dismissal.

B. Intake Assessment

1. Before a program admits a consumer, a written assessment shall be completed to evaluate current health and medical history, legal status, social, psychological and, as appropriate, developmental, vocational or educational factors.

2. In emergency drop-in care situations which necessitate immediate placement, the assessment shall be completed on the same day of service in all situations.

3. All methods used during intake shall consider age, cultural background, dominant language, and mode of communication.

4. During intake, the consumer's legal status, according to State Law, shall be determined as it relates to the responsible person who may have legal authority to make decisions on the consumer's behalf.

C. Consumer Agreement

A written agreement, developed with the consumer, the responsible person and the Director or designee, shall be completed, signed by all parties, and kept in the consumer's record. It shall include the following:

1. rules of program,

2. consumer and family expectations as appropriate and agreed upon,

3. services to be provided and not provided and cost of service, including refunds,

4. authorization to serve and to obtain emergency medical care, and

5. arrangements regarding absenteeism, visits, vacation, mail, gifts, and telephone calls, as appropriate.

D. Individual Consumer Service Plan

1. A program staff member in collaboration with the Director, shall be assigned to each consumer and have responsibility and authority for development, implementation, and review of the individual consumer service plan.

2. The plan shall include the following:

a. findings of the intake assessment and consumer records,

b. individualized program plan to enhance consumer well-being,

c. specification of daily activities and services,

d. methods for evaluation, and

e. discharge summary.

3. Individual consumer service plans shall be developed within three working days of admission and evaluated within 30 days of admission and every 90 days thereafter or as changes occur.

4. All persons working directly with the consumer shall review the individual consumer service plan.

E. Incident or Crisis Intervention Reports

1. There shall be written reports to document consumer death, injuries, fights, or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect, unusual incidents, and other situations or circumstances affecting the health, safety, or well-being of a consumer while in care.

2. The report shall include the following:

a. summary information,

b. date and time of emergency intervention,

c. list of referrals if any,

d. follow-up information, and

e. signature of person preparing report and other witnesses confirming the contents of the report.

3. The report shall be completed within 48 hours of each occurrence and maintained in the individual consumer's record.

4. When an incident or crisis involves abuse, neglect or death of a consumer, the Director or designee shall document the following:

a. a preliminary written report within 24 hours of the incident, and

b. immediate notification to the Office, the consumer's legally responsible person, the nearest Human Services office, and as appropriate a law enforcement authority.

R501-13-9. Direct Service.

A. Adult day care activity plans shall be prepared to meet individual consumer and group needs and preferences. Daily activity plans may include, community living skills, work activity, recreation, nutrition, personal hygiene, social appropriateness, and recreational activities that facilitate physical, social, psychological, and emotional development.

B. Activity plans shall be written, staff shall be oriented to their use, and shall be maintained on file at the program.

C. There shall be a daily schedule, posted and implemented as designed.

D. Each consumer shall have the opportunity to use at least four of the following activity areas each day: general activities, sedentary activities, specialized activities, rest area, self care area, appointed outdoor area, kitchen and nutrition area, and reality orientation area.

E. A sufficient amount of equipment and materials shall be provided so that consumers can participate in a variety of activities simultaneously.

F. Consumers shall receive direct supervision at all times and be encouraged to participate in activities.

G. All consumers shall receive the same standard of care regardless of funding source.

R501-13-10. Behavior Management.

A. There shall be a written policy and procedure for methods of behavior management to include the following:

1. definition of appropriate and inappropriate consumer behaviors, and

2. acceptable staff responses to inappropriate behaviors.

B. The policy shall be provided to all staff prior to working with consumers and staff shall receive annual training relative to behavior management.

C. No staff member shall use, nor permit the use of physical restraint, humiliating or frightening methods of punishment on consumers at anytime.

D. Passive physical restraint shall be used only in behavioral related situations as a temporary means of physical containment to protect the consumer, other persons, or property from harm. Passive physical restraint shall not be associated with punishment in any way.

R501-13-11. Rights of Consumers.

A. The program shall have a written statement of consumers' rights to include the following:

1. privacy of information and privacy for both current and closed consumers' records,

2. reasons for involuntary termination and criteria for readmission to the program,

3. potential harm or acts of violence to consumers or others,

4. consumers' responsibilities including household tasks, privileges, and rules of conduct,

5. service fees and other costs,

6. grievance and complaint procedures,

7. freedom from discrimination,

8. the right to be treated with dignity, and

9. the right to communicate with family, attorney, physician clergyman, and others.

B. The consumer and the responsible person shall be informed of the consumer rights statement to his or her understanding verbally and in writing.

R501-13-12. Personnel Administration.

A. There shall be written policies and procedures to include the following:

1. staff grievances,

2. lines of authority,

3. orientation and ongoing training,

4. performance appraisals, and

5. rules of conduct.

B. Individual staff and the Director shall review policy together.

C. The program shall have a Director, appointed by the governing body, who shall be responsible for day to day program and facility management.

D. The Director or designee shall be on-site at all times during program operating hours.

E. The program shall employ a sufficient number of trained, licensed, and qualified staff in order to meet the needs of the consumers, implement the service plan, and comply with licensing rules.

F. The program shall have a written job description for each position, to include a specific statement of duties and responsibilities and the minimum required level of education, training and work experience.

G. The governing body shall ensure that all staff are certified or licensed as legally required and appropriate to their assignment.

H. The program shall have access to a physician licensed to practice medicine in the State of Utah.

I. The Director shall have a file on-site for each staff person to include the following:

1. application for employment, including record of previous employment with references,

2. applicable credentials and certifications,

3. initial health evaluation including medical history,

4. Tuberculin test,

5. food handler permit as required,

6. training record, including first aid and CPR,

7. performance evaluations, and

8. signed copy of Code of Conduct.

J. Provisions of R501-14 and R501-18 shall be met.

K. Staff shall have access to his or her staff file and shall be allowed to add written statements to the file.

L. Staff files shall be retained for a minimum of two years after termination of employment.

M. A program using volunteers, student interns or other personnel, shall have a written policy to include the following:

1. direct supervision by a paid staff member,

2. orientation and training in the philosophy of the program, the needs of consumers, and methods of meeting those needs,

3. character reference checks, and

4. all personnel shall complete an employment application and shall read and sign the current Provider Code of Conduct. The application shall be maintained on-site for two years.

N. Staff Training:

1. Staff members shall be trained in all program policies and procedures.

2. Staff shall have Food Handler permits as required to fulfill their job description. The program shall have a staff person trained, by a certified instructor, in first aid and CPR on duty with the consumers at all times.

3. DHS may require further specific training, which will be defined in applicable State contracts.

4. Training shall be documented and maintained in individual staff files.

R501-13-13. Staffing.

A. Adult Day Care Staffing Ratios

1. When eight or fewer consumers are present, one staff person shall provide direct supervision at all times with a second staff person meeting minimum staff requirements immediately available.

2. When nine to 16 consumers are present, two staff shall provide direct supervision at all times. The ratio of one staff person per eight consumers will continue progressively.

3. In all programs where one-half or more of the consumers are diagnosed by a physician's assessment with Alzheimer, or related dementia, the ratio shall be one staff for each six consumers.

4. Staff supervision shall be provided continually throughout staff training periods.

5. For programs with nine or more consumers, administrative and maintenance staff shall not be included in staff to consumer ratio.

B. The Director shall meet one of the following credentials:

1. a licensed nurse,

2. a licensed social worker,

3. a licensed psychologist,

4. a recreational, or physical therapist, properly licensed or certified,

5. other licensed professionals in related fields who have demonstrated competence in working with functionally impaired adults, or

6. a person that has received verifiable training to work with functionally impaired adults, and is in consultation on an ongoing basis with a licensed or certified professional with Director credentials.

C. Directors shall obtain 10 hours of related training on an annual basis.

D. Minimum Staff Requirements

1. Staff shall be 18 years of age or older and demonstrate competency in working with functionally impaired adults.

2. Staff shall receive eight hours of initial orientation training designed by the Director to meet the needs of the program, plus 10 hours of work related training on a yearly basis.

R501-13-14. Physical Facility.

A. The governing body shall provide written documentation of compliance with the following:

1. local zoning,

2. local business license,

3. local building codes,

4. local fire safety regulations, and

5. local health codes, as applicable, including but not limited to Utah Food Service and Sanitation Act.

B. In the event of ownership change, structural remodeling or a change in category of service, the Office and other regulatory agencies shall be immediately notified.

C. Building and Grounds

1. The program shall ensure that the appearance and cleanliness of the building and grounds are maintained.

2. The program shall take reasonable measures to ensure a safe physical environment for its consumers and staff.

R501-13-15. Physical Environment.

A. There shall be a minimum of fifty square feet of indoor floor space per consumer designated specifically for adult day care during program operational hours. Hallways, office, storage, kitchens, and bathrooms shall not be included in computation.

B. Outdoor recreational space on or off site and compatible recreational equipment shall be available to facilitate activity plans.

C. All indoor and outdoor areas shall be maintained in a clean, secure and safe condition.

D. Areas determined to be unsafe, including steep grades, cliffs, open pits, swimming pools, high voltage boosters, or high speed roads, shall be fenced off.

E. Space shall be used exclusively for adult day care during designated hours of operation.

F. Bathrooms

1. There shall be at least one bathroom exclusively for consumers use during business hours. For facilities serving more than ten consumers there shall be separate male and female bathrooms exclusively for consumer use.

2. Adult day care programs shall provide the following:

TABLE 1

Toilets		Sinks	
Male	1:15	Female	1:15
Female	1:15	Male	1:15

3. Bathrooms shall accommodate physically disabled consumers.

4. Each bathroom shall be properly supplied with toilet paper, individual disposable hand towels or air dryers, soap dispensers, and other items required for personal hygiene. Consumers' personal items shall be labeled and stored separately for each consumer.

5. Toilet rooms shall be ventilated by mechanical means or equipped with a screened window that opens. Toilet rooms shall be maintained in good operating order and in a clean and safe condition.

6. Each toilet shall be individually stalled with closing doors for privacy.

G. Safety

1. All furniture and equipment shall be maintained in a clean and safe condition. Equipment shall be operated and maintained as specified by manufacturer instructions.

2. Grade level entrance, approved ramps, handrails and other safety features shall be provided as determined by local, state and federal regulations and fire authorities in order to facilitate safe movement.

3. Provisions of the Utah Clean Air Act shall be followed if smoking is allowed in the building.

4. Use of restrictive barriers shall be approved by fire authorities.

5. Use of throw rugs is prohibited.

6. Hot water accessible to consumers shall be maintained at a temperature that does not exceed 110 Fahrenheit.

7. A secured storage area, inaccessible to consumers, shall be used for volatile and toxic substances.

8. Heating, ventilation, and lighting shall be adequate to protect the health of the consumers. Indoor temperature shall be maintained at a minimum of 70 Fahrenheit.

H. Food Service

1. Meals provided by program:

a. Kitchens used for meal preparation shall be provided with the necessary equipment for the preparation, storage, serving and clean up of all meals. All equipment shall be maintained in working order. Food preparation areas shall be maintained in a clean and safe condition.

b. One person shall be responsible for food service.

c. The person responsible for food service shall maintain a current list of consumers with special nutritional needs or allergies. Records of consumer special nutritional needs shall be kept in the consumer's service records. Food shall be prepared and served in accordance with special nutritional needs.

2. Food activities in which consumers participate shall be directly supervised by staff with a food handlers permit.

3. Catered foods and beverages provided from outside sources shall have adequate on-site storage and refrigeration as well as a method to maintain adequate temperature control.

4. Dining space shall be designated and maintained in a clean and safe condition.

5. Menus shall be approved by a registered dietitian unless the program is participating in the Federal Adult and Child Nutrition program administrated through the State Office of Education.

6. Consumers shall receive meals or snacks according to the following:

TABLE 2

Hours in Care	Meals/Snacks That Shall Be Served
8 or more hours	1 meal and 2 snacks or 2 meals and 1 snack
4 hours but less than 8 hours	1 meal and 2 snacks
4 hours or less	1 snack

7. Sufficient food shall be available for second servings.

8. There shall be no more than three hours between snack or meal service.

9. Powdered milk shall be used for cooking only.

I. Medication

1. All prescribed and over the counter medication shall be provided by the consumer, the responsible person or by special arrangement with a licensed pharmacy.

2. All medications shall be clearly labeled. Medication shall be stored in a locked storage area. Refrigeration shall be provided as needed with medication stored in a separate container.

3. There shall be written policy and procedure to include self administered medication, medication administered by persons with legal authority to do so and the storage, control, release, and disposal of medication in accordance with federal and state law.

4. Any assisted administration of medication shall be documented daily by the Director or designee.

R501-13-16. Infectious Disease and Illness.

A. The program shall have policies and procedures designed to prevent or control infectious and communicable diseases in the facility.

B. If a consumer shows signs of illness after arrival, staff shall contact the family or the responsible person immediately. The consumer shall be isolated.

C. No consumer shall be admitted for care or allowed to remain at the program if there are signs of vomiting, diarrhea, fever or unexplained skin rash.

D. Staff shall follow Department of Health rules in the event of suspected communicable and infectious disease.

R501-13-17. Emergency Plans and General Safety.

A. Each program shall have a written plan of action for disaster developed in coordination with local emergency planning services and agencies.

B. Consumers and staff shall receive instructions on how to respond to fire warnings and other instructions for life safety.

C. The program shall have a written plan which staff follow in medical emergencies and in arrangements for medical care, including notification of consumers' physician and the responsible person.

D. Fire drills shall be conducted at least monthly at different times during hours of operation, and documented. Notation of inadequate response shall be documented.

E. The program shall have immediate access to 24 hour telephone service. Telephone numbers for emergency assistance shall be posted by the telephone.

F. The program shall have an adequately supplied first aid kit on-site, appropriate to program size.

R501-13-18. Transportation.

A. There shall be written policy and procedures for transporting consumers.

B. A list of all occupants or consumers, and the name, address and phone number of the program shall be maintained in each vehicle.

C. There shall be a means of transportation in case of emergency.

D. Vehicle drivers shall have a drivers license valid in the State of Utah and follow safety requirements of State Motor Vehicles and Public Safety. Drivers shall have certified first aid and CPR training.

E. Each vehicle shall be equipped with an adequately supplied first aid kit.

F. A belt cutter shall be kept in all vehicles used to transport consumers. The belt cutter shall be located in an easily accessible, safe place.

G. Loose items shall be secured within the vehicle to reduce the danger of flying objects in an emergency.

KEY: human services, licensing
April 15, 2000 62A-2-101 et seq.
Notice of Continuation October 4, 2017 62A-4

R501. Human Services, Administration, Administrative Services, Licensing.
R501-16. Intermediate Secure Treatment Programs for Minors.
R501-16-1. Definition.

Intermediate Secure Treatment Program means a 24-hour group living environment for four or more individuals unrelated to the owner or provider, in a facility designed to physically restrict a person's ability to leave the program at their own free will.

R501-16-2. Purpose.

The program offers room and board and provides for or arranges for the provision of specialized treatment, rehabilitation or habilitation services. In intermediate secure treatment, each is assisted in acquiring the social and behavioral skills necessary for living in the community.

R501-16-3. Administration.

A. Records of enrollment of all registered consumers shall be on-site at all times.

B. The program shall document operational costs and revenue according to common and accepted accounting principles.

C. The program shall have fire, liability, and vehicle insurance.

D. The program shall have copies of any contracts or agreements with other service agencies or individuals providing services to the consumers of the program.

E. The program shall not handle the major personal business affairs of a consumer, without request in writing by the consumer and legal representative.

F. Providers receiving consumers into the program from outside the boundaries of the State of Utah shall initiate the Interstate Compact prior to the placement.

R501-16-4. Staffing.

A. The program shall have an employed manager who is responsible for the day-to-day resident supervision and operation of the facility. The manager shall be at least 25 years of age, have a BA or BS degree or equivalent training in a human services related field; and have at least 3 years management experience in a secure treatment setting. The responsibilities of the manager shall be clearly defined. Whenever the manager is absent, there shall be a trained qualified substitute to assume managerial responsibility.

B. The program shall have all direct care staff maintain first aid and CPR certification.

C. Programs that utilize students and volunteers, who work with consumers, shall provide them with necessary training and evaluation. Those who work with consumers shall be informed verbally and in writing of program objectives and scope of service.

D. Programs shall comply with R501-14 and R501-18, BCI/MIS clearance requirements.

E. Professional staff shall include the following who have received training in the specific area of care:

1. a licensed physician, or consulting licensed physician,

2. a licensed psychologist, or consulting licensed psychologist,

3. a licensed mental health therapist, and

a. programs with an enrollment of 20 to 39 consumers shall employ one or more licensed professional therapists to provide a minimum of 20 hours service per week,

b. programs with an enrollment of 40 to 59 consumers shall employ one or more licensed professional therapists to provide a minimum of 30 hours service per week, and

c. programs with an enrollment of 60 or more consumers shall employ one or more licensed professional therapists to provide a minimum of 40 hours service per week,

4. a licensed registered nurse, or a consulting licensed registered nurse,

a. programs with an enrollment of 20 to 39 consumers shall employ one or more registered nurses to provide a minimum of 20 hours service per week,

b. programs with an enrollment of 40 to 59 consumers shall employ one or more registered nurses to provide a minimum of 30 hours service per week, and

c. programs with an enrollment of 60 or more consumers shall employ one or more registered nurses to provide a minimum of 40 hours service per week.

F. Unlicensed staff who are trained to work with youth who are chemically dependant or emotionally disturbed or behaviorally disturbed or conduct disordered, shall work under the supervision of a licensed clinical professional.

G. The Program shall maintain a minimum staff ratio of one staff to every five consumers, but shall never have less than two staff on duty at any time. During night time sleeping hours the required minimum of two staff shall be maintained for programs up to twenty-five consumers; three staff for up to fifty consumers; four staff for up to seventy-five consumers; five staff for up to one hundred consumers; and six staff for over one hundred consumers.

H. A program with a mixed gender population shall have at least one male and one female staff on duty at all times.

I. Unlicensed Direct Care Staff Training:

1. Staff shall receive 20 hours of pre-service training and orientation before being responsible for the care of consumers that shall include at a minimum, the following topics:

a. crisis intervention,

b. program policies and procedures,

c. rights and responsibilities of consumers and grievance procedures,

d. passive restraint and security procedures, and

e. fire emergency procedures.

2. Staff shall receive 30 hours of additional training annually that shall include at a minimum, the following topics:

a. human relations and communication skills,

b. special needs of youth and families,

c. problem solving and guidance,

d. consumer rules and regulations,

e. documentation and legal requirements,

f. safety in a secure setting, and

g. universal precautions for blood borne pathogens.

R501-16-5. Direct Service.

Treatment plans shall be reviewed and signed by a licensed clinical professional.

R501-16-6. Physical Environment.

A. The program shall provide documentation of compliance with:

1. local zoning ordinances,

2. local business license requirements,

3. local building codes, specific to an intermediate secure facility,

4. local fire safety regulations as required for an intermediate secure facility,

5. local and state health codes,

B. The program shall provide documentation of acknowledgment from the appropriate government agency for new program services or increased consumer capacity.

C. Building and Grounds

1. The program shall insure that the appearance and cleanliness of the building and grounds are maintained.

2. The program shall ensure a safe physical environment for consumers and staff.

3. The facility shall incorporate the use of fixtures, and

furnishings that aid in preventing occurrence of suicide, such as: plexiglass or safety glass, recessed lighting or sealed light fixtures, non exposed fire sprinkler heads, pressure release robe hooks.

4. Consumers are not to be locked in their sleeping rooms.

R501-16-7. Physical Facilities.

A. Live-in staff shall have separate living space with a private bathroom, bedroom and kitchen.

B. The program shall have space to serve as an administrative office for records, secretarial work and bookkeeping.

C. Indoor space for free and informal activities of consumers shall be available.

D. Provision shall be made for consumer privacy.

E. Space shall be provided for private and group counseling sessions.

F. Sleeping Space:

1. No more than four persons shall be housed in a bedroom.

2. A minimum of sixty square feet per consumer shall be provided in a multiple occupant bedroom. Storage space shall not be counted.

3. A minimum of eighty square feet per individual shall be provided in a single occupant bedroom. Storage space shall not be counted.

4. Sleeping areas shall have a source of natural light, and shall be ventilated by mechanical means or equipped with a screened window that opens.

5. Each bed shall be solidly constructed, no portable beds, and be provided with clean linens.

6. Sheets and pillowcases shall be changed and cleaned at least weekly.

7. Sleeping quarters serving male and female consumers shall be structurally separated.

8. Consumers shall be allowed to decorate and personalize bedrooms in accordance with individual treatment plans, with respect for other residents and property.

G. Bathrooms

1. The program shall have separate bathrooms for males and females. These shall be maintained in good operating order and in a clean and safe manner.

2. Each consumer shall be supplied with toilet paper, towels, soap and other items required for personal hygiene.

3. Bathrooms shall be ventilated by mechanical means or equipped with a screened window that opens.

4. Bathrooms shall meet a minimum ratio of one toilet, one lavatory and one tub or shower for each six residents.

5. There shall be toilets and baths or showers that allow for individual privacy.

6. There shall be safety mirrors secured to the walls at convenient heights.

7. Bathrooms shall be located to allow access without disturbing other residents during sleeping hours.

H. There shall be indoor and outdoor space adequate to accommodate exercise and recreation.

R501-16-8. Equipment.

A. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet program and consumer plans.

B. All furniture and equipment shall be maintained in a clean and safe manner.

R501-16-9. Laundry Service.

A. Programs that permit individuals to do their own laundry shall provide equipment and supplies.

B. Programs that provide for common laundry of linens and clothing shall provide containers for soiled laundry that are separate from clean linens and clothing.

C. Laundry appliances shall be maintained in a clean and safe condition.

R501-16-10. Food Service.

A. One person shall be responsible for food service. If this person is not a licensed dietitian, regularly scheduled consultation with a licensed dietitian shall be obtained and the meals served shall be from the dietitian's approved menus.

B. The person responsible for food service shall maintain a current list of consumers with special nutritional needs and record in the consumer's service record information relating to special nutritional needs and provide for nutrition counseling where indicated.

C. The program shall establish and post kitchen rules and privileges according to consumer needs.

D. Consumers present in the facility for four or more consecutive hours shall be provided nutritious food.

E. Meals may be prepared at the facility or catered.

F. Kitchens shall have clean, operational equipment for the preparation, storage, serving, and clean up of all meals.

G. Adequate dining space shall be provided for consumers. The dining space shall be maintained in a clean and safe manner.

H. When meals are prepared by consumers there shall be a written policy to include:

1. rules of kitchen privileges,
2. menu planning and procedures,
3. nutritional and sanitation requirements, and
4. schedule of responsibilities.

R501-16-11. Storage.

A. The program shall have locked storage for medications.

B. The program shall have locked storage for toxic and hazardous chemicals and materials.

R501-16-12. Medication.

A. Prescriptive medication shall be provided as prescribed by a licensed medical professional.

B. The program staff shall:

1. assist with the self-administration of medication,
2. observe the taking of medication,
3. record medication, including time and dosage, according to prescription, and
4. record effects of medication.

R501-16-13. Specialized Services.

A. The program shall not admit those who are currently experiencing convulsions, in shock, delirium tremens, or unconscious.

B. Provisions shall be made for children and youth to continue their education with a curriculum approved by the State Office of Education.

C. Programs that provide their own school shall be recognized by an educational accreditation organization, i.e., State Board of Education or the National School Accreditation Board.

D. Unless the individual treatment plan specifies otherwise, the following therapies shall be provided to each child or youth at a minimum:

1. one individual therapy session weekly,
2. one group therapy session weekly, and
3. one family or couple therapy session monthly.

E. Consumers record files shall have documentation of time and date of the session with the signature of the provider.

F. An accurate record shall be kept of all funds deposited and withdrawn with the residential facility for use by a consumer. Consumer purchases of over $20.00 per item, shall be substantiated by receipts signed by consumer and appropriate staff.

G. Daily program schedules shall include activities that provide the consumer with large muscle exercise.

H. The program shall provide for activity services to meet the physical, social, cultural, health, maintenance and rehabilitation needs of the consumer as defined in the treatment plan.

I. A recreational program offering a wide variety of activities suited to the interests and abilities of the consumers and leisure counseling as needed, shall also be provided daily.

J. Health Facility Licensure Code R432-151-15. Special Treatment Procedures. Included are Section 1, Section 2, a through c and Section 3 through 4 for reference.

1. The program shall identify the behavioral interventions and special treatment procedures to be utilized and will provide justification and standards for use, and shall develop standards governing the use of these procedures consistent with consumer rights, and fire and health standards.

2. The program shall identify policies and procedures for the following:

a. use of seclusion and time out,

b. prescription and administration of drugs, and

c. use of involuntary medicine.

3. Use of painful stimuli is not allowed.

K. Programs that conduct strip searches shall have policies and procedures which have been approved by the program's governing body and legal counsel.

KEY: licensing, human services, youth
April 12, 2004 62A-4a-413
Notice of Continuation October 4, 2017

R539. Human Services, Services for People with Disabilities.
R539-1. Eligibility.
R539-1-1. Purpose.

(1) The purpose of this rule is to provide:

(a) procedures and standards for the determination of eligibility for Division services as required by Title 62A, Chapter 5, Part 1; and

(b) notice to Applicants of hearing rights and the hearing process.

R539-1-2. Authority.

(1) This rule establishes procedures and standards for the determination of eligibility for Division services as required by Title 62A, Chapter 5, Part 1.

(2) The procedures of this rule constitute the minimum requirements for eligibility for Division funding. Additional procedures may be required to comply with any other governing statute, federal law, or federal regulation.

R539-1-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101.

(2) In addition:

(a) "Agency Action" means an action taken by the Division that denies, defers, or changes services to an Applicant applying for, or a person receiving, Division funding;

(b) "Applicant" means an individual or a representative of an individual applying for determination of eligibility;

(c) "Brain Injury" means any acquired injury to the brain and is neurological in nature. This would not include those with deteriorating diseases such as Multiple Sclerosis, muscular dystrophy, Huntington's chorea, ataxia, or cancer, but would include cerebral vascular accident;

(d) "Department" means the Department of Human Services;

(e) "Division" means the Division of Services for People with Disabilities;

(f) "Electronic Surveillance" is observing or listening to persons, places, or activities with the aid of electronic devices such as cameras, web cams, global positioning systems, motion detectors, weight detectors or microphones, in real time.

(g) "Electronic Surveillance Certification" is documentation signed by members of the Provider Human Rights Committee that contains the location of the site under surveillance, description of the types of surveillance to be used, names of persons to be under surveillance and signed consent from each person affected as required by Subsections R539-3-7(3) and R539-3-7(4).

(h) "Form" means a standard document required by Division rule or other applicable law;

(i) "Guardian" means someone appointed by a court to be a substitute decision maker for a person deemed to be incompetent of making informed decisions;

(j) "Hearing Request" means a written request made by a person or a person's representative for a hearing concerning a denial, deferral or change in service;

(k) "ICF/ID" means Intermediate Care Facility for People with Intellectual Disability;

(l) "Person" means someone who has been found eligible for Division funding for support services due to a disability and who is waiting for or receiving services at the present time;

(m) "Qualifying Acquired Neurological Brain Injury" means an eligible International Classification of Diseases code diagnosis from the most recent revision of the classification, clinical modification, as outlined in Division Directive 1.40 Qualifying Acquired Brain Injury Diagnoses.

(n) "Related Conditions" means a severe, chronic disability that meets the following conditions:

(i) It is attributable to:

(A) Cerebral palsy or epilepsy; or

(B) Any other condition, other than mental illness, found to be closely related to intellectual disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of people with intellectual disability, and requires treatment or services similar to those required for these persons.

(ii) It is manifest before the person reaches age 22.

(iii) It is likely to continue indefinitely.

(iv) It results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care.

(B) Understanding and use of language.

(C) Learning.

(D) Mobility.

(E) Self-direction

(F) Capacity for independent living.

(o) "Representative" means the person's legal representative including the person's parents if the person is a minor child, a court appointed guardian or a lawyer retained by the person;

(p) "Resident" is an Applicant or Guardian who is physically present in Utah and provides a statement of intent to reside in Utah.;

(q) "Support" is assistance for portions of a task allowing a person to independently complete other portions of the task or to assume increasingly greater responsibility for performing the task independently;

(r) "Support Coordinator" is an employee of the Division or an individual contracted with the Division to provide assistance in assessing the needs of, and developing services and supports for, persons receiving Division funding. Support Coordinators complete written documentation of supports and assist with monitoring the appropriate spending of a person's annual budget, as well as monitor the quality of the services provided.

(s) "Team Member" means members of the person's circle of support who participate in the planning and delivery of services and supports with the Person. Team members may include the Person applying for or receiving services, his or her parents, Guardian, the support coordinator, friends of the Person, and other professionals and Provider staff working with the Person; and

(t) "Waiver" means the Medicaid approved plan for a state to provide home and community-based services to persons with disabilities in lieu of institutionalization in a Title XIX facility, the Division administers three such waivers; the intellectual disabilities or related conditions waiver, the brain injury waiver and physical disabilities waiver.

R539-1-4. Non-Waiver Services for People with Intellectual Disabilities or Related Conditions.

(1) The Division will serve those Applicants who meet the definition of a person with a disability in Subsections 62A-5-101(8).

(2) When determining functional limitations in the areas listed below for Applicants ages 7 and older, age appropriate abilities must be considered.

(a) Self-care - An Applicant who requires assistance, training and/or supervision with eating, dressing, grooming, bathing or toileting.

(b) Expressive and/or Receptive Language - An Applicant who lacks functional communication skills, requires the use of assistive devices to communicate, or does not demonstrate an understanding of requests or is unable to follow two-step instructions.

(c) Learning - An Applicant who has a valid diagnosis of mental retardation based on the criteria found in the current edition of the Diagnostic and Statistical Manual of Mental

Disorders (DSM).

(d) Mobility - An Applicant with mobility impairment who requires the use of assistive devices to be mobile and who cannot physically self-evacuate from a building during an emergency without the assistive device.

(e) Capacity for Independent Living - An Applicant (age 7-17) who is unable to locate and use a telephone, cross streets safely, or understand that it is not safe to accept rides, food or money from strangers. An adult who lacks basic survival skills in the areas of shopping, preparing food, housekeeping, or paying bills.

(f) Self-direction - An Applicant (age 7-17) who is significantly at risk in making age appropriate decisions. An adult who is unable to provide informed consent for medical/health care, personal safety, legal, financial, habilitative, or residential issues and/or who has been declared legally incompetent. A person who is a significant danger to self or others without supervision.

(g) Economic self-sufficiency - (This area is not applicable to children under 18.) An adult who receives disability benefits and who is unable to work more than 20 hours a week or is paid less than minimum wage without employment support.

(3) Applicant must be diagnosed with an intellectual disability or related conditionas set forth in Section 62A-5-101(8).

(a) Applicants who have a primary diagnosis of mental illness, hearing impairment and/or visual impairment, learning disability, behavior disorder, substance use disorder or personality disorder do not qualify for services under this rule.

(4) The Applicant, parent of a minor child, or the Applicant's Guardian must be a resident of the State of Utah prior to the Division's final determination of eligibility.

(5) The Applicant or Applicant's Representative shall be provided with information about all service options available through the Division as well as a copy of the Division's Guide to Services.

(6) It is the Applicant's or Applicant's Representative's responsibility to ensure that the appropriate documentation is provided to the intake worker to determine eligibility.

(7) The following documents are required to determine eligibility for non-waivered intellectual disability or related conditions services.

(a) A Division Eligibility for Services Form 19 completed by the designated staff. For children under seven years of age, Eligibility for Services Form 19C, completed by the designated staff within the Division office, will be accepted in lieu of the Eligibility for Services Form 19. The staff member will indicate on the Eligibility for Services Form 19C that the child is at risk for substantial functional limitation in three areas of major life activity due to intellectual disability or related conditions; that the limitations are likely to continue indefinitely; and what assessment provides the basis of this determination.

(b) Inventory for Client and Agency Planning (ICAP) assessment shall be completed by the Division;

(c) Social History completed by or for the Applicant within one year of the date of application;

(d) Psychological Evaluation provided by the Applicant or, for children under seven years of age, a Developmental Assessment may be used as an alternative; and

(e) Supporting documentation for all functional limitations identified on the Division Eligibility for Services Form 19 or Division Eligibility for Services Form 19C shall be gathered and filed in Applicant's record. Additional supporting documentation shall be required when eligibility is not clearly supported by the above-required documentation. Examples of supporting documentation include, but are not limited to, mental health assessments, educational records, neuropsychological evaluations, and medical health summaries.

(8) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to Applicant or Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(9) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, Division staff shall determine the Applicant eligible or ineligible for funding for non-waiver intellectual disability or related conditions services within 90 days of receiving the required documentation.

(10) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(11) People receiving services will have their eligibility re-determined on an annual basis. If people are determined to no longer be eligible for services, a transition plan will be developed to discontinue services and ensure health and safety needs are meet.

(12) This section does not apply to Applicants who meet the separate eligibility criteria for physical disability and brain injury outlined in Subsections R539-1-6 and R539-1-8 respectively.

(13) Persons not participating in a Waiver or Persons participating in a Waiver but receiving non-Waiver services may have reductions in non-Waiver service packages or be discharged from non-Waiver services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-5. Medicaid Waiver Eligibility for People with Intellectual Disability or Related Conditions.

(1) Matching federal funds may be available through the Community Supports Waiver for People with Intellectual Disabilities or Related Conditions to provide an array of home and community-based services that an eligible person needs.

(2) Within appropriations from the Legislature, as set forth by UT Code Subsections 62A-5-102(3) and (4), persons may be found eligible for Waiver funding according to the following methods:

(a) A person's needs score, as determined by the Division's needs assessment tool, identifies the person as ranking among persons with the most critical needs.

(b) A person is identified by the Division as a person whose only need is respite services.

(i) The Division determines that a person only needs respite services by:

(A) Identifying those persons who, according to the Division's records, have indicated that the person is in need of respite services only;

(B) Conducting an additional needs assessment to update the person's needs score and determine if the person is in need of additional services beyond respite.

(ii) Persons identified by the Division as needing only respite services will be grouped together, from which the Division shall randomly select persons, using a simple random sampling method.

(3) Pursuant to Section R414-510, where the Department

of Health determines that sufficient funds are available, a person meeting the eligibility requirements set forth by the Department of Health in Subsection R414-510-3 may receive Medicaid Home and Community-Based Waiver Services by transitioning out of an ICF/ID into the Community Supports Waiver for People with Intellectual Disabilities or Related Conditions.

(4) Pursuant to Section R414-502, where the Department of Health determines that a person meets nursing facility level of care and is medically approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid Home and Community-Based Waiver program, a person may be found eligible for funding through the Community Supports Waiver for People with Intellectual Disabilities or Related Conditions when all other eligibility requirements of Section R414-502 are met.

(5) Persons who are found eligible for funds through the Medicaid Home and Community-Based Waiver for People with Intellectual Disabilities or Related Conditions may choose not to participate in the Waiver. Persons who choose not to participate in the Waiver will receive only the state funded portion of the budget the person would have received had the person participated in the Waiver.

R539-1-6. Non-Waivered Services for People with Physical Disabilities.

(1) The Division will serve those Applicants who meet the eligibility requirements for physical disabilities services. To be determined eligible for non-waivered Physical Disabilities Services, the Applicant must:

(a) Have the functional loss of two or more limbs;

(b) Be 18 years of age or older;

(c) Have at least one personal attendant trained or willing to be trained and available to provide support services in a residence that is safe and can accommodate the personnel and equipment (if any) needed to adequately and safely care for the Person; and

(d) Be medically stable and have a physical disability.

(e) Have their physician document that the Person's qualifying disability and need for personal assistance services are attested to by a medically determinable physical impairment which the physician expects will last for a continuous period of not less than 12 months and which has resulted in the individual's functional loss of two or more limbs, to the extent that the assistance of another trained person is required in order to accomplish activities of daily living/instrumental activities of daily living;

(f) Be capable, as certified by a physician, of selecting, training and supervising a personal attendant;

(g) Be capable of managing personal financial and legal affairs; and

(h) Be a resident of the State of Utah.

(2) Applicants seeking non-Waiver funding for physical disabilities services from the Division shall apply directly to the Division's State Office, by submitting a completed Physical Disabilities Services Application Form 3-1 signed by a licensed physician.

(3) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the Applicant indicating that the intake case will be placed in inactive status.

(a) The Applicant may activate the application at any time thereafter by providing the remaining required information.

(b) The Applicant shall be required to update information.

(4) When all necessary eligibility documentation is received from the Applicant and the Applicant is determined eligible, the Applicant will be assessed by a Nurse Coordinator, according to the Physical Disabilities Needs Assessment Form 3-2 and the Minimum Data Set-Home and Community-based (MDS-HC), and given a score prior to placing a Person into services. The Physical Disabilities Nurse Coordinator shall:

(a) use the Physical Disabilities Needs Assessment Form 3-2 to evaluate each Person's level of need;

(b) determine and prioritize needs scores;

(c) rank order the needs scores for every Person eligible for service, and

(d) if funding is unavailable, enter the Person's name and score on the Physical Disabilities wait list.

(5) The Physical Disabilities Nurse Coordinator assures that the needs assessment score and ranking remain current by updating the needs assessment score as necessary. A Person's ranking may change as needs assessments are completed for new Applicants found to be eligible for services.

(6) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant of eligibility determination and placement on the pending list. The Applicant may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(7) This does not apply to Applicants who meet the separate eligibility criteria for intellectual disability or related condition and brain injury outlined in Subsections R539-1-4 and R539-1-8 respectively.

(8) Persons not participating in a waiver or Persons participating in a waiver but receiving non-waiver services may have reductions in non-waiver service packages or be discharged from non-waiver services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-7. Medicaid Waiver Eligibility for People with Physical Disabilities.

(1) Matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Physical Disabilities to provide an array of home and community-based services that an eligible person needs.

(2) Within appropriations from the Legislature, as set forth by UT Code Subsections 62A-5-102(3) and (4), persons with physical disabilities may be found eligible for Waiver funding according to the following methods:

(a) A person's needs score, as determined by the Division's needs assessment tool, identifies the person as ranking among persons with the most critical needs.

(b) A person who is eligible for waiver service through the Medicaid Home and Community-Based Waiver for People with Disabilities is not eligible for respite services.

(3) Pursuant to Section R414-502, where the Department of Health determines that an applicant meets nursing facility level of care and is medically approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid Home and Community-Based Waiver program, an applicant may be found eligible for funding through the Medicaid Home and Community-Based Waiver for People with Physical Disabilities when all other eligibility requirements of Section R414-502 are met.

(4) Persons who are found eligible for funds through the Medicaid Home and Community-Based Waiver for People with Physical Disabilities may choose not to participate in the Waiver. Persons who choose not to participate in the Waiver will receive only the state funded portion of the budget the person would have received had the person participated in the Waiver.

R539-1-8. Non-Waiver Services for People with Brain Injury.

(1) The Division will serve those Applicants who meet the

eligibility requirements for brain injury services. To be determined eligible for non-waiver brain injury services the Applicant must:

(a) have a documented qualifying acquired neurological brain injury from a licensed physician (MD or DO).

(b) Be 18 years of age or older;

(c) score between (36 and 126) on the Comprehensive Brain Injury Assessment Form 4-1.

(d) meet at least three of the functional limitations listed under number (4).

(2) Applicants with functional limitations due solely to mental illness, substance use disorder or deteriorating diseases like Multiple Sclerosis, Muscular Dystrophy, Huntington's Chorea, Ataxia or Cancer are ineligible for non-waiver services.

(3) Applicants with intellectual disability or related conditions are ineligible for these non-waiver services.

(4) In addition to the definitions in Section 62A-5-101(2) and (8), eligibility for brain injury services will be evaluated according to the Applicant's functional limitations as described in the following definitions:

(a) Memory or Cognition means the Applicant's brain injury resulted in substantial problems with recall of information, concentration, attention, planning, sequencing, executive level skills, or orientation to time and place.

(b) Activities of Daily Life means the Applicant's brain injury resulted in substantial dependence on others to move, eat, bathe, toilet, shop, prepare meals, or pay bills.

(c) Judgment and Self-protection means the Applicant's brain injury resulted in substantial limitation of the ability to:

(i) provide personal protection;

(ii) provide necessities such as food, shelter, clothing, or mental or other health care;

(iii) obtain services necessary for health, safety, or welfare;

(iv) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(d) Control of Emotion means the Applicant's brain injury resulted in substantial limitation of the ability to regulate mood, anxiety, impulsivity, agitation, or socially appropriate conduct.

(e) Communication means the Applicant's brain injury resulted in substantial limitation in language fluency, reading, writing, comprehension, or auditory processing.

(f) Physical Health means the Applicant's brain injury resulted in substantial limitation of the normal processes and workings of the human body.

(g) Employment means the Applicant's brain injury resulted in substantial limitation in obtaining and maintaining a gainful occupation without ongoing supports.

(5) The Applicant shall be provided with information concerning service options available through the Division and a copy of the Division's Guide to Services.

(6) The Applicant or the Applicant's Guardian must be physically present in Utah and provide evidence of residency prior to the determination of eligibility.

(7) It is the Applicant's or Applicant's Representative's responsibility to provide the intake worker with documentation of brain injury, signed by a licensed physician;

(8) The intake worker will complete or compile the following documents as needed to make an eligibility determination:

(a) Comprehensive Brain Injury Assessment Form 4-1, Part I through Part VII; and

(b) Brain Injury Social History Summary Form 824L, completed or updated within one year of eligibility determination;

(9) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the Applicant or the Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at any time thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(10) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, Division staff shall determine the Applicant eligible or ineligible for funding for brain injury supports.

(11) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(12) Persons receiving Brain Injury services will have their eligibility re-determined on an annual basis. Persons who are determined to no longer be eligible for services will have a transition plan developed to discontinue services and ensure that health and safety needs are met.

R539-1-9. Medicaid Waiver Eligibility for People with Acquired Brain Injury.

(1) Matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Acquired Brain Injury to provide an array of home and community-based services that an eligible person needs.

(2) Within appropriations from the Legislature, as set forth by UT Code Subsections 62A-5-102(3) and (4), persons may be found eligible for Waiver funding according to the following methods:

(a) A person's needs score, as determined by the Division's needs assessment tool, identifies the person as ranking among persons with the most critical needs.

(b) A person is identified by the Division as a person whose only need is respite services.

(i) The Division determines that a person only needs respite services by:

(A) Identifying those persons who, according to the Division's records, have indicated that the person is in need of respite services only;

(B) Conducting an additional needs assessment to update the person's needs score and determine if the person is in need of additional services beyond respite.

(ii) Persons identified by the Division as needing only respite services will be grouped together, from which the Division shall randomly select persons, using a simple random sampling method.

(3) Pursuant to Section R414-502, where the Department of Health determines that an applicant meets nursing facility level of care and is medically approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid Home and Community-Based Waiver program, an applicant may be found eligible for funding through the Medicaid Home and Community-Based Waiver for People with Acquired Brain Injury when all other eligibility requirements of Section R414-502 are met.

(4) Persons who are found eligible for funds through the Medicaid Home and Community-Based Waiver for People with Acquired Brain Injury may choose not to participate in the Waiver. Persons who choose not to participate in the Waiver will receive only the state funded portion of the budget the person would have received had the person participated in the Waiver.

R539-1-10. Graduated Fee Schedule.

(1) Pursuant to Subsections 62A-5-105(2)(b) and(c) the Division establishes a graduated fee schedule for use in assessing fees to individuals. The graduated fee schedule shall be applied to Persons who do not meet the Medicaid eligibility requirements for Waiver services. Family size and gross income shall be used to determine the fee. This rule does not apply to Persons who qualify for Medicaid waiver funding but who choose to have funding reduced to the state match per R539-1-5(5), R539-1-7(4), and R539-1-9(4) rather than participate in the Medicaid Waiver.

(a) Persons who do not participate in a Medicaid Waiver who do not meet Waiver level of care must apply for a Medicaid Card within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver who meet Waiver level of care must apply for determination of financial eligibility using Form 927 within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver shall provide the Support Coordinator or Nurse Coordinator with the financial determination letter within 10 days of the receipt of such documentation. Persons who do not participate in a Medicaid Waiver and who fail to comply with these requirements shall have funding reduced to the state match rate.

(b) Persons who do not participate in a Medicaid Waiver due to financial eligibility, must be reduced to the state match rate.

(c) Persons who only meet the general eligibility requirements, as per Sections R539-1-4, R539-1-6, and R539-1-8, must report all cash assets (stocks, bonds, certified deposits, savings, checking and trust amounts), annual income and number of family members living together using Division Form 2-1G. Persons with Discretionary Trusts are exempt from the Graduated Fee Schedule as per Subsection 62A-5-110(6). The Form 2-1G shall be reviewed at the time of the annual planning meeting. The Person / family shall return Form 2-1G to the support coordinator prior to delivery of new services. Persons / families currently receiving services will have 60 days from receiving notice of this rule to return a completed and signed Form 2-1G to the Division. Persons / families who complete the Division Graduated Fee Assessment Form 2-1G shall be assessed a fee no more than 3% of their income. If the form is not received within 60 days of receiving notice of this rule, the Person will have funding reduced to the state match rate.

(d) Cash assets, income and number of family members will be used to calculate available income (using the formula: (assets + income) / by the total number of family members = available income). Available income will be used to determine the fee percent (0 percent to 3 percent). The annual fee amount will be calculated by multiplying available income by the fee percent. Persons who do not participate in a Medicaid Waiver, who only meet general eligibility requirements, and have available incomes below 300 percent of the poverty level will not be assessed a fee. Persons with available incomes between 300 and 399 percent of poverty will be assessed a 1 percent fee, Persons with available incomes between 400 and 499 percent of poverty will be assessed a 2 percent fee and those with available income over 500 percent of poverty will be assessed a 3 percent fee.

(e) No fee shall be assessed for a Person who does not participate in a Medicaid Waiver and who receives funding for less than 31 percent of their assessed need. A multiplier shall be applied to the fee of Persons who do not participate in a Medicaid Waiver and who receive 31 to 100% percent of their assessed need.

(f) If a Person's annual allocation is at the state match rate, they will not be assessed a fee.

(g) Only one fee will be assessed per family, regardless of the number of children in the family receiving services. Persons who do not participate in a Medicaid Waiver under the age of 18 shall be assessed a fee based upon parent income. Persons who do not participate in a Medicaid Waiver over the age of 18 shall be assessed a fee based upon individual income and assets.

(h) If the Person is assessed a fee, the Person shall pay the Division of Services for People with Disabilities or designee 1/12th of the annual fee by the end of each month, beginning the following month after the notice of this rule was sent to the Person.

(i) If the Person fails to pay the fee for six months, the Division may reduce the Person's next year annual allocation to recover the amount due. If a Person can show good cause why the fee cannot be paid, the Division Director may grant exceptions on a case-by-case basis.

R539-1-11. Social Security Numbers.

(1) The Division requires persons applying for services to provide a valid Social Security Number. The Division adopts the same standard as Sections R414-302 and 42 CFR 435.910, 2014 ed., which is incorporated by reference.

KEY: human services, disabilities, social security numbers
October 23, 2017 62A-5-103
Notice of Continuation October 23, 2017 62A-5-105

R539. Human Services, Services for People with Disabilities.
R539-10. Short-Term Limited Waiting List Services.
R539-10-1. Purpose and Authority.

(1) The purpose of this rule is to provide:

(a) procedures and standards for the determination of eligibility for persons on the waiting list to receive short-term, limited services from the Division.

(2) This rule is authorized by Subsections 62A-5-102(2); 62A-5-102(7).

R539-10-2. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-2.

(2) In addition:

(a) "Active Status" means a person has a current needs assessment score and is on the Division's waiting list.

(b) "Respite" is a service provided in a person's residence or other approved residential setting, designed to give relief to or during the temporary absence of a person's primary caregiver.

R539-10-3. Eligibility.

(1) A person is eligible for short-term limited waiting list services if:

(a) the person is not receiving ongoing services with the Division; and

(b) the person is currently in active status on the Division's waiting list.

R539-10-4. Limitations.

(1) With the exception of Short-Term Limited Respite Care Services, funds granted must be used during the fiscal year in which they are granted, beginning July 1st of the year granted and ending June 30th of the following year.

(a) If there is no plan to use the funds or if the funds are unused, those funds will return to the Division and may be reallocated to another eligible person.

(2) Funds granted for Short-Term Limited Respite Care Services must be used within 365 days of the date in which the plan is activated.

(a) if funds are unused within 365 days of the date in which the plan is activated, those funds will return to the Division and shall be reallocated to another eligible person as set forth in Subsection R539-10-5(2)(c).

(3) Funds may be withdrawn or reduced at any time and the establishment of a person's budget does not constitute an obligation for the Division to provide services or funding.

R539-10-5. Selection for Short-Term Limited Respite Care Services.

(1) Non-lapsing Funds may be available to provide short-term limited respite care services for persons determined eligible who are on the Division's waiting list.

(2) If the Division determines that sufficient funds are available to provide short-term limited respite care services, persons will be selected to receive short-term limited respite care according to the following method:

(a) The Division shall identify all persons on the waiting list who have indicated that they are in need of respite services;

(b) Persons identified by the Division as needing respite services, who had not been selected to receive respite services in the previous selection period, shall be grouped together, from which the Division shall use a random selection process to select persons to receive short-term limited respite care services.

(c) if the Division determines that sufficient funds are available to provide additional short-term limited respite care services, after all persons who had not been selected to receive respite services during the previous selection period have been given an opportunity to receive short-term limited respite care services, the Division may use a random selection process to select persons to receive short-term limited respite care services from the remaining persons on the waiting list who have indicated that they are still in need of respite services regardless of whether the person had been selected previously.

(d) a sibling of a person selected to receive short-term limited respite care services, at the discretion of the Division, may also be selected to receive short-term limited respite care services in the same selection period despite not being selected.

(3) Notwithstanding the foregoing, the Division Emergency Services Management Committee (ESMC) may select a person on the waiting list to receive short-term limited respite care services if the ESMC determines that short-term limited respite care services are appropriate to address the emergency circumstances faced by the person.

R539-10-6. Short-Term Limited Respite Care Provider Options.

(1) Short-term limited respite care services may be provided through either the Self-Administered Services Model or the traditional Agency-Based Provider Model or a combination of both.

(2) If the person elects the Self-Administered Services Model to provide short-term limited respite care, the following requirements must be met:

(a) the person must select a fiscal agent, through which all payments to employees must be made;

(b) the person must adhere to all additional requirements set forth in Section R539-5.

R539-10-7. Short-Term Limited Service Brokering Services.

(1) Non-lapsing Funds may be available to provide short-term limited service brokering services for persons determined eligible who are on the Division's waiting list.

(2) When the Division determines that sufficient funds are available to provide short-term limited service brokering services, persons will be selected to receive short-term limited service brokering services according to need as determined from information supplied to the Division.

KEY: waiting lists, family preservation, respite, service brokering
October 11, 2017 62A-5-102(7)

R590. Insurance, Administration.
R590-152. Health Discount Programs and Value Added Benefit Rule.
R590-152-1. Authority.

This rule is promulgated by the commissioner under 31A-8a-210, which authorizes the commissioner to enforce Chapter 8a and protect the public interest.

R590-152-2. Purpose and Scope.

(1) The purpose of this rule is to describe initial and renewal license procedures, fees, and other authorized charges, required and prohibited practices, advertising and marketing activity, disclosure requirements, provider agreements, dispute resolution, and record keeping.

(2) This rule applies to health discount programs, health discount program operators, and health discount program marketers.

(3) This rule applies to a value added benefit provided by a person licensed under Title 31A, Chapters 7 or 8.

R590-152-3. Definitions.

For the purposes of this rule, the commissioner adopts the definitions in Sections 31A-1-301 and 31A-8a-102 and the following:

(1) "Administration of the health discount program" means the processes to solicit members, enroll members, maintain the membership, resolve disputes with members, disenroll members, and collect or refund fees and other authorized charges.

(2) "Authority to do business in this state" means having other applicable licenses as required by statute and operating within the scope of such licenses.

(3) "Health discount program marketer" means a person or entity, including a private label entity, that markets or distributes a health discount program but may also operate the marketed or distributed health discount program.

(4) "Private label entity" means an entity that purchases a health discount program from a health discount program operator and issues or markets the obtained health discount program under the private label entity's name or logo.

(5) "Prominently" means not less than 14-point type or no smaller than the largest type on the page if larger than 12 point type.

R590-152-4. General Information.

(1) The commissioner may examine, audit, or investigate the business and affairs of any health discount program operator or a licensed health discount program marketer or any person the commissioner believes may be operating or marketing a health discount program.

(2) A health discount program, a health discount program operator, or a health discount program marketer that offers an insurance benefit as part of a health discount program or in addition to a health discount program must comply with statutes and rules pertaining to the solicitation, negotiation, and sale of insurance in Utah that are otherwise applicable to the altering of such benefit.

R590-152-5. Licensing (Application, Initial, Renewal).

(1) The following must be licensed prior to offering a health discount program:

(a) a health discount program operator; or

(b) a health discount program marketer. A licensee licensed under Chapters 7 or 8 does not require a license as a health discount program operator or health discount program marketer when offering valued added benefits as part of their insurance product package.

(2) The "Application for Health Discount Program Operator or Health Discount Program Marketer" must be completed and submitted with the appropriate fee.

(3) The commissioner may deny an application from a health discount program operator or a health discount program marketer if the applicant would not be in compliance with Chapter 31A-8a because the applicant, in this or any other jurisdiction, for a matter dealing with a health discount program is:

(a) under investigation; or

(b) has been found in violation of a statute or regulation.

(4) A licensed health discount program operator must notify the commissioner each time a health discount program marketer or private label entity is added or deleted during the annual licensure period.

(5) Annual licensure period.

(a) A license issued under this section is for one annual period which expires each December 31st.

(b) A licensee desiring to continue to do business in this state must renew its license prior to December 31st each year by submitting an Application for Health Discount Program Operator or Health Discount Program Marketer and paying the required fee.

R590-152-6. Fees and Other Authorized Charges.

(1) A health discount program operator may provide discounts or free services through contracted providers to subscribers in exchange for a periodic payment to the program or as a benefit in connection with membership in a particular group.

(2) A health discount program operator may charge:

(a) a non-refundable one-time enrollment charge; and

(b) a refundable periodic fee.

(3) A health discount program operator that charges fees for a time period in excess of one month must, in the event of cancellation of the membership by the health discount program operator, make a pro-rata refund of the periodic fees paid by the member.

R590-152-7. Required Practices.

(1) A health discount program operator must have an active toll-free telephone number for members to call.

(2) Face to face, paper, telephone, and electronic communications with clients or potential clients must state that the health discount program is a discount plan and not insurance.

(3) When a health discount program operator or a health discount program marketer, markets or sells a health discount program together with any other product that can be purchased separately, including insured benefits, an itemized list of the fees or premiums for each individual product must be provided in writing to the client at solicitation.

(4) Information available to a health discount program member via a health discount program operator's or marketer's web page must be updated no later than 30 days from a change.

R590-152-8. Value Added Benefit.

(1) Any value added benefit must actually exist and a copy of the contract verifying such existence must be available upon request to the commissioner.

(2) Prior to any offering of a value added benefit, a person licensed under Title 31A, Chapter 7 or 8, shall:

(a) file with the commissioner a value added benefits list that includes the following:

(i) the insurer's name and address;

(ii) the insurer's policy form number(s) to which the value added benefit applies; and

(iii) a description of the benefits offered.

(b) comply with Sections R590-152-10 and 11, if providing a member discount card.

R590-152-9. Prohibited practices.

(1) A health discount program operator may not make any payments to providers for:
(a) participation in the health discount program;
(b) capitation payments;
(c) signing fees;
(d) bonuses; or
(e) other forms of compensation.
(2) A health discount program operator may not offer any insurance benefits unless licensed as an insurance producer and contracted and appointed by the insurer providing the insurance benefits.

R590-152-10. Advertising and Marketing.
(1) The format and content of any advertisement shall be sufficiently complete and clear as to avoid deceiving or misleading the reader, viewer, or listener.
(2) An advertisement of any insured product or benefit must comply with applicable provisions of Subsections 31A-23a-102 (12) and (13) and Rule R590-130, Rules Governing Advertisements of Insurance.
(3) A health discount program operator must approve in writing all advertisements, marketing materials, brochures, web sites and discount cards used by a health discount program marketer marketing a health discount program operator's health discount program.
(4) All advertisements, marketing materials, brochures, web sites and discount cards used by a health discount program operator and the health discount program operator's health discount program marketer must be available to the commissioner upon request.
(5) The health discount program operator must have an executed written agreement with a health discount program marketer prior to the health discount plan marketer marketing, promoting, selling, or distributing a health discount program.

R590-152-11. Disclosures.
(1) A health discount program operator must provide the disclosures required by Section 31A-8a-205.
(2) The membership card shall prominently state: "This is not health insurance."
(3) Disclosure materials provided to a purchaser or potential purchaser must include:
(a) membership materials;
(b) new enrollee information;
(c) a printed list of providers, or access to the health discount program operator's web page, that have agreed by written contract with the health discount program to accept the program;
(d) a statement that "A health discount program member is responsible for the entire payment of their medical or health care bill after the discount is applied."; and
(e) the complete terms and conditions of any refund policy.
(4) A health discount program operator or health discount program marketer must:
(a) provide a purchaser a 30-day money back guarantee, which allows the purchaser to terminate the contract and receive a full refund of any periodic fee paid; and
(b) the 30-day period must commence when the purchaser receives the membership materials.

R590-152-12. Contracts.
(1) A provider agreement between a health discount program operator and a provider network shall require:
(a) the provider network to have a written agreement with each provider in the network authorizing the provider network to contract with a health discount program operator on behalf of the provider; and
(b) the health discount program operator to inform each provider within the contracted provider network with information about the health discount program.
(2) A provider agreement between a health discount program operator and another health discount program operator that has contracted with a provider network shall require the contract with the provider network to comply with Subsection (1).

R590-152-13. Dispute Resolution Procedures.
A health discount program operator must:
(1) file its dispute resolution procedures with the commissioner pursuant to Section 31A-8a-203; and
(2) comply with its filed dispute resolution procedures.

R590-152-14. Penalties.
A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-152-15. Enforcement Date.
The commissioner will begin enforcing the revised provisions of this rule 45 days from the rule's effective date.

R590-152-16. Severability.
If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

KEY: insurance, medical discount program
January 20, 2011 31A-1-103
Notice of Continuation November 1, 2017 31A-2-201

R590. Insurance, Administration.
R590-242. Military Sales Practices.
R590-242-1. Authority.

This rule is promulgated pursuant to Subsection 31A-23a-402(8)(a) and Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A.

R590-242-2. Purpose.

(1) The purpose of this rule is to set forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices.

(2) Nothing herein shall be construed to create or imply a private cause of action for a violation of this rule.

R590-242-3. Scope.

This rule shall apply only to the solicitation, negotiation, or sale of any life insurance product, including annuities, by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

R590-242-4. Findings.

The commissioner finds that the acts prohibited by this rule are misleading, deceptive, unfairly discriminatory, and provide an unfair inducement.

R590-242-5. Exemptions.

(1) This rules shall not apply to solicitations, negotiations, or sales involving:

(a) credit insurance;

(b) group life insurance or group annuities where there is no in-person, face-to-face solicitation of individuals by an insurance producer or where the contract or certificate does not include a side fund;

(c) an application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or, when a term conversion privilege is exercised among corporate affiliates;

(d) individual stand-alone health policies, including disability income policies;

(e) contracts offered by Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI), as authorized by 38 U.S.C. Section 1965 et seq.;

(f) life insurance contracts offered through or by a non-profit military association, qualifying under Section 501(c)(23) of the Internal Revenue Code (IRC), and which are not underwritten by an insurer; or

(g) contracts used to fund:

(i) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(ii) a plan described by Sections 401(a), 401(k), 403(b), 408(k), or 408(p) of the IRC, as amended, if established or maintained by an employer;

(iii) a government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;

(iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(v) settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(vi) prearranged funeral contracts.

(2) Nothing herein shall be construed to nullify the ability of nonprofit organizations to educate members of the United States Armed Forces in accordance with Department of Defense DoD Instruction 1344.07 - PERSONAL COMMERCIAL SOLICITATION ON DOD INSTALLATIONS or successor directive.

(3) For purposes of this rule, general advertisements, direct mail and internet marketing shall not constitute "solicitation". Telephone marketing shall not constitute "solicitation" provided the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation. Provided however, nothing in this subsection shall be construed to exempt an insurer or insurance producer from this rule in any in-person, face-to-face meeting established as a result of the "solicitation" exemptions identified in this subsection.

R590-242-6. Definitions.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule:

(1) "Active Duty" means full-time duty in the active military service of the United States and includes members of the reserve component, National Guard and Reserve, while serving under published orders for active duty or full-time training. The term does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than 31 calendar days.

(2) "Department of Defense (DoD) Personnel" means all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the Department of Defense.

(3) "Door to Door" means a solicitation or sales method whereby an insurance producer proceeds randomly or selectively from household to household without prior specific appointment.

(4) "General Advertisement" means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance producer.

(5) "Known" or Knowingly" means, depending on its use herein, the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known, at the time of the act or practice complained of, that the person solicited:

(a) is a service member; or

(b) is a service member with a pay grade of E-4 or below.

(6) "Military Installation" means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

(7) "MyPay" is a Defense Finance and Accounting Service (DFAS) web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

(8) "Service Member" means any active duty officer, commissioned and warrant, or enlisted member of the United State Armed Forces.

(9) "Side Fund" means a fund or reserve that is part of or otherwise attached to a life insurance policy, excluding individually issued annuities, by rider, endorsement or other mechanism which accumulates premium or deposits with interest or by other means. The term does not include:

(a) accumulated value or cash value or secondary guarantees provided by a universal life policy;

(b) cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or

(c) a premium deposit fund which:

(i) contains only premiums paid in advance which

accumulate at interest;

(ii) imposes no penalty for withdrawal;

(iii) does not permit funding beyond future required premiums;

(iv) is not marketed or intended as an investment; and

(v) does not carry a commission, either paid or calculated.

(10) "Specific Appointment" means a prearranged appointment agreed upon by both parties and definite as to place and time.

(11) "United State Armed Forces" means all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

R590-242-7. Practices Declared False, Misleading, Deceptive or Unfair on a Military Installation.

(1) The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation, negotiation, or sale of life insurance are declared to be false, misleading, deceptive or unfair:

(a) Knowingly soliciting the purchase of any life insurance product "door to door" or without first establishing a specific appointment for each meeting with the prospective purchaser.

(b) Soliciting service members in a group or "mass" audience or in a "captive" audience where attendance is not voluntary.

(c) Knowingly making appointments with or soliciting service members during their normally scheduled duty hours.

(d) Making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation.

(e) Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee.

(f) Posting unauthorized bulletins, notices or advertisements.

(g) Failing to present DD Form 2885, Personal Commercial Solicitation Evaluation, to service members solicited or encouraging service members solicited not to complete or submit a DD Form 2885.

(h) Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer's files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives or rules of the DoD or any branch of the Armed Forces.

(2) The following acts or practices when committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

(a) Using DoD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members.

(b) Using an insurance producer to participate in any United States Armed Forces sponsored education or orientation program.

R590-242-8. Practices Declared False, Misleading, Deceptive or Unfair Regardless of Location.

(1) The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

(a) Submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member's "MyPay" account or other similar internet or electronic medium for such purposes. This subsection does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form.

(b) Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this section, a formal banking relationship is established when the depository institution:

(i) provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. Section 4301 et seq. and the rules promulgated thereunder; and

(ii) permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.

(c) Employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as "Savings" or "Checking" and where the service member has no formal banking relationship as defined in subsection 7(1)(b).

(d) Entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship.

(e) Using DoD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel.

(f) Offering or giving anything of value, directly or indirectly, to DoD personnel to procure their assistance in encouraging, assisting or facilitating the solicitation, negotiation, or sale of life insurance to another service member.

(g) Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited.

(h) Advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

(2) The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval or affiliation and are declared to be false, misleading, deceptive or unfair:

(a) Making any representation, or using any device, title, descriptive name or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, the United States Armed Forces, or any state or federal agency or government entity.

(i) Examples of prohibited insurance producer titles include, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor".

(ii) Nothing herein shall be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning.

(iii) Such designations include, but are not limited to, Chartered Life Underwriter (CLU), Chartered Financial

Consultant (ChFC), Certified Financial Planner (CFP), Master of Science in Financial Services (MSFS), or Masters of Science Financial Planning (MS).

(b) Soliciting the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, or the United States Armed Forces.

(3) The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, costs or investment returns and are declared to be false, misleading, deceptive or unfair:

(a) Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid.

(b) Excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free".

(4) The following acts or practices by an insurer or insurance producer regarding SGLI or VGLI are declared to be false, misleading, deceptive or unfair:

(a) Making any representation regarding the availability, suitability, amount, cost, exclusions or limitations to coverage provided to a service member or dependents by SGLI or VGLI, which is false, misleading or deceptive.

(b) Making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers, which is false, misleading or deceptive.

(c) Suggesting, recommending or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the United States Armed Forces.

(5) The following acts or practices by an insurer and or insurance producer regarding disclosure are declared to be false, misleading, deceptive or unfair:

(a) Deploying, using or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance.

(b) Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser.

(c) Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance.

(d) Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the "Military Personnel Financial Services Protection Act," Pub. L. No. 109-290, p.16.

(e) Excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide the applicant at the time the application is taken:

(i) an explanation of any free look period with instructions on how to cancel if a policy is issued; and

(ii) either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first year cost. A basic illustration that meets the requirements of R590-177, Life Insurance Illustrations Rule, shall be deemed sufficient to meet this requirement for a written disclosure.

(6) The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive or unfair:

(a) Excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable.

(b) Offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.

(i) "Insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and survivors or dependents.

(ii) "Other military survivor benefits" include, but are not limited to: the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivor Benefits.

(c) Excluding individually issued annuities, offering for sale or selling any life insurance contract which includes a side fund:

(i) unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

(ii) unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one to ten and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and

(iii) which, by default, diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due.

(d) Excluding individually issued annuities, offering for sale or selling any life insurance contract which after considering all policy benefits, including but not limited to endowment, return of premium or persistency, does not comply with 31A-22-408, Standard Nonforfeiture Law for Life Insurance.

(e) Selling any life insurance product to an individual known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service except for an accidental death coverage which may be excluded.

R590-242-9. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-242-10. Enforcement Date.

The commissioner will begin enforcing the provisions of

this rule on January 1, 2008.

R590-242-11. Severability.

If any provision or portion of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule or the applicability of the provision to other persons or circumstances shall not be affected.

KEY: insurance, military sales practices
November 16, 2007 31A-2-201
Notice of Continuation November 1, 2017 31A-23a-402

R590. Insurance, Administration.
R590-266. Utah Essential Health Benefits Package.
R590-266-1. Authority.

This rule is promulgated pursuant to Subsection 31A-30-116(3)(b) wherein the commissioner is directed to adopt a rule for purposes of designating the essential health benefits for Utah.

R590-266-2. Purpose and Scope.

(1) The purpose of this rule is to designate an essential health benefits package in Utah as required by Section 1302 of the Patient Protection and Affordable Care Act of 2010, the Health Care Education Reconciliation Act of 2010, and related federal regulations and guidance (PPACA).

(2) This rule applies to all non-grandfathered individual and small employer health benefit plans issued or renewed on or after January 1, 2014.

R590-266-3. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-30-103, the following definitions shall apply for the purpose of this rule:

(1) "Essential health benefits" means the following health care service categories that must be included in non-grandfathered individual and small employer health benefit plans beginning January 1, 2014:

(a) ambulatory patient services;

(b) emergency services;

(c) hospitalization;

(d) maternity and newborn care;

(e) mental health and substance use disorder services, including behavioral health treatment;

(f) prescription drugs;

(g) rehabilitative and habilitative services and devices;

(h) laboratory services;

(i) preventive and wellness services and chronic disease management; and

(j) pediatric services, including oral and vision care.

(2) "Grandfathered health plan" means an individual or small employer health benefit plan that:

(a) was in existence when the PPACA was enacted on March 23, 2010;

(b) has not had any significant changes that reduce benefits or increase costs to consumer including:

(i) a significant cut or reduction in benefits, such as excluding coverage for people with diabetes;

(ii) an increase in co-pays by more than $5, adjusted annually for medical inflation, or a percentage equal to medical inflation plus 15%;

(iii) the employer reduces contributions by more than five percentage points; or

(iv) reducing annual dollar limits, or adding a new limit; and

(c) the insured has received notification from the carrier that their health benefit plan is a grandfathered plan.

(3) "Habilitative" means health care services that help a person keep, learn, or improve skills and functioning for daily living. Habilitative services may include physical therapy, occupational therapy, speech-language pathology, and other services.

(4) "Non-Grandfathered health plan" means an individual or small employer health benefit plan:

(a) that is issued after the PPACA was enacted on March 23, 2010; or

(b) a grandfathered health plan that has made significant changes that reduce benefits or increase costs to consumers that has caused the plan to lose the grandfathered status as provided in (2)(b).

(5) "Rehabilitative" means the treatment of disease, injury, developmental delay, or other cause, by physical agents and methods to assist in the rehabilitation of normal physical bodily function, that is goal-oriented and where the person has potential for functional improvement and ability to progress.

(6) "Utah Essential Health Benefits Package" means the benefits designated in this rule by the commissioner as essential health benefits in non-grandfathered plans for the purposes of the PPACA in Utah.

R590-266-4. Utah Essential Health Benefits.

(1)(a) The commissioner hereby designates the PEHP Utah Basic Plus plan as the Utah Essential Health Benefits Package for purposes of the PPACA in Utah.

(b) The PEHP Utah Basic Plus 2013 Plan as incorporated herein and available at http://insurance.utah.gov/health/healthreform.html.

(c) The PEHP Utah Basic Plus 2013 Plan was issued on July 1, 2013. Some of the benchmark plan benefits may not comply with current state or federal requirements.

(2)(a) Except as provided in Subsection (b) and (c), an individual or small employer carrier who issues or renews a non-grandfathered plan on or after January 1, 2014, must include at a minimum the benefits of the Utah Essential Health Benefits Package.

(b) A carrier may substitute coverage provided in the Utah Essential Health Benefits Package as long as substitutions are actuarially equivalent and complies with the standards set forth in 42 CFR 457.431.

(c) A health benefit plan may exclude the pediatric dental essential health benefit if there is at least one carrier offering a certified stand-alone dental plan that provides the pediatric dental essential health benefit in the PEHP Utah Basic Plus 2013 Plan.

(3) This rule does not prohibit an individual or small employer carrier from offering a non-grandfathered plan with benefits in addition to the Utah Essential Health Benefits Package.

R590-266-5. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-266-6. Severability.

If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

KEY: essential health benefit insurance
May 23, 2016 31A-30-116(3)(b)
Notice of Continuation October 16, 2017

R590. Insurance, Administration.
R590-275. Qualified Health Plan Alternate Enrollment.
R590-275-1. Authority.

This rule is promulgated pursuant to Section 31A-2-201 and Subsection 31A-2-212(5) wherein the commissioner may make rules to implement the provisions of Title 31A and preserve state control over the health insurance market.

R590-275-2. Purpose and Scope.

(1) The purpose of this rule is to select an alternate enrollment system for a PPACA qualified health plan as provided in 45 CFR 155.335(j)(3).

(2) This rule applies:

(a) when a carrier will have no qualified health plans available to individuals on the Federal Exchange for the upcoming plan year;

(b) to a carrier who offers a qualified health plan to an individual on the Federal Exchange; and

(c) to the Federal Exchange.

R590-275-3. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-30-103, the following definitions shall apply for the purpose of this rule.

(1) "Federal Exchange" means the exchange established and operated by the United States Department of Health and Human Services that makes individual qualified health plans available to qualified enrollees.

(2) "Qualified Health Plan" means a health benefit plan that is certified to meet the standards recognized by the Federal Exchange.

R590-275-4. Alternate enrollment process.

(1) Pursuant to 45 CFR 155.335(j)(3), the Federal Exchange requires a defined alternate enrollment for an enrollee in an individual qualified health plan, QHP, where the carrier will have no exchange option available for the upcoming plan year due to a carrier no longer offering an individual QHP in a particular service area in which it previously offered coverage on the Federal Exchange.

(2) At renewal, if an enrollee does not have an individual QHP available from the same carrier through the Federal Exchange in which to enroll, the Federal Exchange shall direct enrollment for an enrollee to a QHP issued by a different carrier based on the hierarchy in Subsection (3), subject to a carrier's ability to absorb new enrollment.

(3)(a) The enrollee's coverage will be matched to a QHP in the same service area:

(i) at the same metal level; or

(ii) if more than one QHP is available the coverage will be matched to a QHP at the same metal level with the lowest premium.

(b) If no QHP is available at the same metal level in the same service area, the enrollee will be matched to a QHP in the same service area:

(i) that is one metal level lower than the enrollee's current QHP; or

(ii) if more than one QHP is available, coverage will be matched to a QHP at one metal level lower with the lowest premium.

(c) If no QHP is available at the same metal level or one metal level lower and in the same service area, the enrollee will be matched to a QHP that is:

(i) one metal level higher than the enrollee's current QHP; or

(ii) if more than one QHP is available at one metal level higher, coverage will be matched to a QHP at one metal level higher with the lowest premium.

(d) If no QHP is available at the same metal level, one metal level lower, or one metal level higher in the same service area, the enrollee will be matched to any QHP at any metal at the lowest premium in the same service area.

(4) The alternate enrollment hierarchy in Subsection (3) does not apply to an enrollee who terminates coverage, including termination of coverage in connection with voluntarily selecting a different QHP in accordance with 45 CFR 155.430.

R590-275-5. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-275-6. Enforcement Date.

The commissioner will begin enforcing this rule September 1, 2017.

R590-275-7. Severability.

If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

KEY: insurance, enrollment
October 23, 2017 **31A-2-201**
31A-22-212(5)

R602. Labor Commission, Adjudication.
R602-3. Procedure and Standards for Approval of Assignment of Benefits.
R602-3-1. Policy, Scope and Authority.

A. Policy. Utah's workers' compensation system provides disability compensation to injured workers as a partial replacement for lost wages. These periodic payments allow injured workers to provide for the ongoing necessities of life--food, shelter and clothing--not only for themselves, but for their dependents. These periodic payments also prevent injured workers from becoming charges on public welfare or private charity.

The 2007 Utah Legislature reaffirmed and strengthened the foregoing policy of the workers' compensation system by enacting Senate Bill 109, "Transfers of Structured Settlements." Senate Bill 109 amended Section 34A-2-422 of the Utah Workers Compensation Act to specifically prohibit any transfer of workers' compensation payment rights unless the proposed transfer is first submitted to the Utah Labor Commission and approved by the Commission.

B. Scope. This rule establishes the procedural and substantive requirements for Commission approval of any request for transfer of workers' compensation payment rights. The Commission will not approve any transfer of workers' compensation payment rights in the absence of strict compliance with all procedural and substantive requirements of the Utah Workers' Compensation Act and this rule.

C. Statutory authority. The Commission enacts this rule pursuant to Subsection 34A-1-104(1) and Section 34A-1-304 of the Utah Labor Commission Act, Section 34A-2-422 of the Utah Workers' Compensation Act, and Subsection 63G-3-201(2) of the Utah Administrative Rulemaking Act.

R602-3-2. Benefits Subject to Assignment.

A. Commission approval a precondition to any action to transfer benefits. Subsection 34A-2-422(3) prohibits any transfer, or action to transfer, workers' compensation payment rights without prior Commission approval. The Commission will not approve any proposed transfer that includes an advance of funds or property, or other similar action, without prior Commission review.

B. Transfer limited to benefits that are fixed and certain. Pursuant to Subsection 34A-2-422(3)(c), Commission approval of a transfer of workers' compensation payment rights is a "full and final resolution" of such payment rights. The Commission will, therefore, approve transfer of only those payment rights that are fixed and certain as a matter of law. The Commission will not approve the transfer of payment rights that are subject to modification under any provision of the Utah Workers' Compensation Act or other applicable law.

C. New petition required for additional transfers. A petition may not request Commission approval of future, open-ended or follow-up transfers of payment rights. A new petition must be submitted for approval of any such additional transfers.

D. Medical benefits. An injured worker is entitled to continuing medical care necessary to treat his or her work-related injuries. These medical benefits are, by their nature, contingent on the injured worker's future medical condition and progress in medical and pharmacological science. For these reasons, medical benefits are not "fixed and certain," and the Commission will not approve any request for transfer of medical benefits.

R602-3-3. Procedure for Requesting Approval.

A. Petition. The transferee shall fully complete the Commission's "Petition for Approval of Transfer of Payment Rights" form. The transferee shall then file the completed petition with the Commission's Adjudication Division. The Adjudication Division shall return to the transferee any petition that is not fully completed, signed, and accompanied with all required documentation.

B. Documentation. Subsection 34A-2-422(3)(b)(ii)(A) requires that the transferor of workers' compensation payment rights receive adequate notice of the workers' compensation benefits proposed to be transferred, as well as an explanation of the financial consequences of, and alternatives to, the proposed transfer. The Commission will therefore require the following documentation to accompany every Petition for Approval of Transfer of Payment Rights.

1. Notice and explanation. The transferee shall provide written notice and explanation of the proposed transfer to the transferor in writing, with receipt confirmed by the transferor's signature.

a. The notice and explanation must be in plain language. If the transferor is of limited English proficiency, the notice and explanation must also be provided in writing in the transferor's native language.

b. The notice and explanation must contain each of the following items in full detail:

i. A description of the specific workers' compensation payment rights proposed to be transferred;

ii. An explanation of the legal effect of the transfer;

iii. An explanation of all alternatives to the proposed transfer; and

iv. A recommendation that the transferor obtain independent professional advice regarding the advisability of the proposed transfer and the terms of the proposed transfer.

2. Disclosure of financial information. The transferee shall provide written disclosure of financial information regarding the proposed transfer to the transferor, with receipt confirmed by the transferor's signature.

a. The disclosure of financial information must be in plain language. If the transferor is of limited English proficiency, the disclosure must also be provided in writing in the transferor's native language.

b. The disclosure of financial information must contain each of the following items full detail:

i. The amount and due date of each payment to be transferred;

ii. The sum of all payments to be transferred;

iii. The present value of the payments to be transferred, computed in the same manner and using the same discount rate by which future annuity payments are discounted to present value for federal estate tax purposes;

iv. The gross amount payable by the transferee in exchange for the payments to be transferred;

v. The implied annual interest rate that the transferor would be paying if the transfer were viewed as a loan to the transferor of the net amount payable by the transferee, to be paid in installments corresponding to the transferred payments.

vi. An itemized listing any amount to be deducted from the gross payment, with detailed explanation of the reason for such deduction and the method for computing the deduction;

vii. The net amount to be paid to the transferee;

viii. The amount and method of calculation of any penalties or liquidated damages for which the transferor might be liable under the transfer agreement; and

ix. A statement of the tax consequences of the transfer.

3. Source of workers' compensation payment rights. The transferee shall provide an authenticated copy of the document(s) that establish the transferor's right to the workers' compensation payment rights that are proposed to be transferred.

4. All agreements between the transferor and transferee. All agreements between the transferor and transferee must be in writing and signed by both the transferor and the transferee. The transferee will provide true and correct copies of all such documents.

C. Notice to other interested parties. After the Adjudication Division has received a petition for approval of transfer of payment rights, and has determined that the petition is complete and is supported by all necessary documentation, the Division will mail copies of the petition and supporting documentation to the following:

1. Each party and attorney who participated in the underlying workers' compensation claim;

2. If the payment right to be transferred arises under a structured workers' compensation settlement, the issuer and owner of the annuity contract that funds the settlement;

3. Any other party having rights or obligations with respect to the payment rights proposed to be transferred;

4. An ombudsman designated by the Industrial Accidents Division for receipt of such petitions; and

5. Any other individual or entity the Division believes may have an interest in the proposed transfer.

D. Hearing. All Petitions for Approval of Transfer of Payment Rights will be assigned to the Director of the Adjudication Division for hearing.

1. The Director will conduct a formal evidentiary hearing on each petition to determine whether the petition should be approved. The hearing will be conducted in accordance with the requirements of the Utah Administrative Procedures Act.

2. No hearing on the merits of a petition will be scheduled prior to 60 days after the notices required by III.C of this rule have been mailed to all parties entitled to such notice.

3. Notice of hearing on the merits of a petition shall be provided to the transferor, the transferee, their attorneys, and all parties listed in III.C.1 through 4 of this rule.

4. The Director will conduct the hearing in such manner as the Director deems proper to obtain all information that may be material to approval or rejection of the proposed transfer.

E. Decision. After hearing, the Director will issue a written decision approving or denying the petition. The Director may approve a petition only if the Director finds:

1. The petition has been submitted in proper form with all required documentation;

2. The notice and explanation required by III.B.1 of this rule and the disclosure of financial information required by III.B.2 of this rule are correct, adequate, and understood by the transferor;

3. The agreement(s) between the transferor and transferee does not include any abusive provisions that are against the transferor's best interests. "Abusive provisions" include, but are not limited to, the following:

a. The transferor's confession of judgment or consent to entry of judgment;

b. Choice of forum or choice of law provisions requiring resolution of disputes in a forum other than the courts and administrative agencies of the State of Utah, or under the laws of a jurisdiction other than Utah; or

c. Requirements that transferors indemnify transferees or reimburse transferees for costs or expenses incurred in disputes between transferors and transferees.

4. The proposed transfer is in the best interest of the transferor, specifically taking into account:

a. The transferor's need for a continuing source of income to provide for future necessities;

b. The needs of the transferor's dependents for a continuing source of support from the transferor to provide for future necessities;

c. Whether the transferor's intended uses of the funds obtained as a result of the transfer are prudent and consistent with the underlying purposes of the workers' compensation system;

d. Whether the transferor possesses the ability to manage, preserve and properly apply the funds to be obtained through the transfer; and

e. Whether other alternatives exist that will better meet the legitimate needs of the transferor and/or satisfy the objectives of the workers' compensation system.

F. Appeal. Any interested party who has participated in the formal evidentiary hearing conducted pursuant to III.D of this rule may request agency review of the Director's decision by following the procedures established in Section 63G-4-301 of the Utah Administrative Procedures Act and Section 34A-1-303 of the Utah Labor Commission Act.

KEY: workers' compensation, administrative procedures, hearings, settlements

February 7, 2008	**34A-1-104(1)**
Notice of Continuation October 4, 2017	**34A-1-301 et seq.**
	34A-4-304
	34A-2-422
	63G-3-201(2)
	63G-4-102 et seq.

R614. Labor Commission, Occupational Safety and Health.
R614-1. General Provisions.
R614-1-1. Authority.

A. These rules and all subsequent revisions as approved and promulgated by the Labor Commission, Utah Occupational Safety and Health Division, are authorized pursuant to Title 34A, Chapter 6, Utah Occupational Safety and Health Act.

B. The intent and purpose of this chapter is stated in Section 34A-6-202 of the Act.

C. In accordance with legislative intent these rules provide for the safety and health of workers and for the administration of this chapter by the Utah Occupational Safety and Health Division of the Labor Commission.

R614-1-2. Scope.

These rules consist of the administrative procedures of the Utah Occupational Safety and Health Division, incorporating by reference applicable federal standards from 29 CFR 1904, 1908, 1910 and 1926, and the Utah initiated occupational safety and health standards found in Utah Administrative Code R614-1 through R614-7.

R614-1-3. Definitions.

A. "Access" means the right and opportunity to examine and copy.

B. "Act" means the Utah Occupational Safety and Health Act of 1973.

C. "Administrator" means the director of the Division.

D. "Amendment" means such modification or change in a code, standard, rule, or order intended for universal or general application.

E. "Analysis using exposure or medical records" means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

F. "Commission" means the Utah Labor Commission.

G. "Days" means calendar days, including Saturdays, Sundays, and holidays. The day of receipt of any notice shall not be included, and the last day of any time frame shall be included. If the last day of any time period is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday or legal holiday.

H. "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purpose of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

I. "Division" means the Utah Occupational Safety and Health Division (UOSH) within the Commission.

J. "Employee" includes any person suffered or permitted to work by an employer.

1. For Medical Records: "Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

K. "Employee exposure record" means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents:

1. Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretations of the results obtained;

2. Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

3. Safety data sheets; or

4. In the absence of the above, any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

L. Employee medical record

1. "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician including:

a. Medical and employment questionnaires or histories (including job description and occupational exposures);

b. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring);

c. Medical opinions, diagnoses, progress notes, and recommendations;

d. Descriptions of treatments and prescriptions; and

e. Employee medical complaints.

2. "Employee medical record" does not include the following:

a. Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, and not required to be maintained by other legal requirements;

b. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or

c. Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

M. "Employer" means:

1. The state;

2. Each county, city, town, and school district in the state; and

3. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

4. For medical records: "Employer" means a current employer, a former employer, or a successor employer.

N. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and separate notices shall be posted in each establishment to the extent that such notices have been furnished by the Administrator.

O. "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent

is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

P. "Hearing" means a proceeding conducted by the commission.

Q. "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under this chapter.

R. "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under R614-1-6.K.1. and 3., any re-inspection, follow-up inspection, accident investigation or other inspection conducted under Section 34A-6-301 of the Act.

S. "National consensus standard" means any occupational safety and health standard or modification:

1. Adopted by a nationally recognized standards-producing organization under procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;

2. Formulated in a manner which affords an opportunity for diverse views to be considered; and

3. Designated as such a standard by the Secretary of the United States Department of Labor.

T. "Person" means the general public, one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state and its political subdivisions.

U. "Publish" means publication in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

V. "Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing.)

W. "Safety and Health Officer" means a person authorized by the Division to conduct inspections.

X. "Secretary" means the Secretary of the United States Department of Labor.

Y. "Specific written consent" means written authorization containing the following:

1. The name and signature of the employee authorizing the release of medical information;

2. The date of the written authorization;

3. The name of the individual or organization that is authorized to release the medical information;

4. The name of the designated representative (individual or organization) that is authorized to receive the released information;

5. A general description of the medical information that is authorized to be released;

6. A general description of the purpose for the release of medical information; and

7. A date or condition upon which the written authorization will expire (if less than one year).

8. A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

9. A written authorization may be revoked in writing prospectively at any time.

Z. "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

AA. "Toxic substance" or "harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.) or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo and hyperbaric pressure, etc) which:

1. Is regulated by any Federal law or rule due to a hazard to health;

2. Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (See R614-1-12B);

3. Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to the employer; or

4. Has a material safety data sheet available to the employer indicating that the material may pose a hazard to human health.

BB. "Variance" means a special, limited modification or change in the code or standard applicable to the particular establishment of the employer or person petitioning for the modification or change.

CC. "Workplace" means any place of employment.

R614-1-4. Incorporation of Federal Standards.

A. The following federal occupational safety and health standards are hereby incorporated:

1. 29 CFR 1904, July 1, 2015, is incorporated by reference, except the workplace fatality, injury and illness reporting requirements found in 29 CFR 1904.1, 1904.2, 1904.7 and 1904.39. Workplace fatalities, injuries and illnesses shall be reported pursuant to the more specific Utah standards in Utah Code Ann. Subsection 34A-6-301(3)(b)(2) and the Utah Administrative Code R614-1-5(C)(1).

2. 29 CFR 1908, July 1, 2015, is incorporated by reference.

3. 29 CFR 1910.6 and 1910.21 through the end part of 1910, July 1, 2015, are incorporated by reference.

4. 29 CFR 1926.6 and 1926.20 through the end of part 1926, of the July 1, 2015, edition are incorporated by reference.

R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.

A. Scope and Purpose.

1. The provisions of this rule adopt and extend the applicability of: (1) established Federal Safety Standards, (2) R614, and (3) Workers' Compensation Coverage, as in effect July 1, 1973 and subsequent revisions, with respect to every employer, employee and employment within the boundaries of the State of Utah, covered by the Utah Occupational Safety and Health Act of 1973.

2. All standards and rules including emergency and/or temporary, promulgated under the Federal Occupational Safety and Health Act of 1970 shall be accepted as part of the Standards, Rules and Regulations under the Utah Occupational Safety and Health Act of 1973, unless specifically revoked or deleted.

3. All employers will provide workers' compensation benefits as required in Section 34A-2-201.

4. Any person, firm, company, corporation or association employing minors must comply fully with all orders and standards of the Labor Division of the Commission. UOSH standards shall prevail in cases of conflict.

B. Construction Work.

Federal Standards, 29 CFR 1926 and selected applicable sections of R614 are accepted covering every employer and place of employment of every employee engaged in construction work of:

1. New construction and building;
2. Remodeling, alteration and repair;
3. Decorating and painting;
4. Demolition; and
5. Transmission and distribution lines and equipment erection, alteration, conversion or improvement.

C. Reporting Requirements.

1. Each employer shall within 8 hours of occurrence, notify the Division of Utah Occupational Safety and Health of the Commission of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901.

2. Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by the Labor commission or one of its Compliance Officers.

3. Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

4. Each employer shall file a report with the Commission within seven days after the occurrence of an injury or occupational disease, after the employers' first knowledge of the occurrence, or after the employee's notification of the same, on forms prescribed by the Commission, of any work-related fatality or any work-related injury or occupational disease resulting in medical treatment, loss of consciousness or loss of work, restriction of work, or transfer to another job. Each employer shall file a subsequent report with the Commission of any previously reported injury or occupational disease that later resulted in death. The subsequent report shall be filed with the Commission within seven days following the death or the employer's first knowledge or notification of the death. No report is required for minor injuries, such as cuts or scratches that require first-aid treatment only, unless the treating physician files, or is required to file the physician's initial report of work injury or occupational disease with the Commission. Also, no report is required for occupational disease which manifest after the employee is no longer employed by the employer with which the exposure occurred, or where the employer is not aware of an exposure occasioned by the employment which results in an occupational disease as defined by Section 34A-3-103.

5. Each employer shall provide the employee with a copy of the report submitted to the Commission. The employer shall also provide the employee with a statement, as prepared by the Commission, of his rights and responsibilities related to the industrial injury or occupational disease.

6. Each employer shall maintain a record in a manner prescribed by the Commission of all work-related injuries and all occupational disease resulting in medical treatment, loss of consciousness, loss of work, restriction or work, or transfer to another job.

7. No person shall remove, displace, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees. No employee shall refuse or neglect to follow and obey reasonable orders that are issued for the protection of health, life, safety, and welfare of employees.

D. Employer, Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes his or her duty to immediately report the unsafe place, tools, equipment, or conditions to the foreman or supervisor.

2. Employees must comply with all safety rules of their employer and with all the Rules and Regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found to take appropriate action to correct such conditions immediately.

4. Supervisory personnel shall enforce safety regulations and issue such rules as may be necessary to safeguard the health and lives of employees. They shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

E. General Safety Requirements.

1. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

2. Body protection: Clothing which is appropriate for the work being done should be worn. Loose sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

3. General. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

4. Safety Committees. It is recommended that a safety committee comprised of management and employee representatives be established. The committee or the individual member of the committee shall not assume the responsibility of management to maintain and conduct a safe operation. The duties of the committee should be outlined by management, and may include such items as reviewing the use of safety apparel, recommending action to correct unsafe conditions, etc.

5. No intoxicated person shall be allowed to go into or loiter around any operation where workers are employed.

6. No employee shall carry intoxicating liquor into a place of employment, except that the place of employment shall be engaged in liquor business and this is a part of his assigned duties.

7. Employees who do not understand or speak the English language shall not be assigned to any duty or place where the lack or partial lack of understanding or speaking English might adversely affect their safety or that of other employees.

8. Good housekeeping is the first law of accident prevention and shall be a primary concern of all supervisors and workers. An excessively littered or dirty work area will not be tolerated as it constitutes an unsafe, hazardous condition of employment.

9. Emergency Posting Required.

a. Good communications are necessary if a fire or disaster situation is to be adequately coped with. A system for alerting and directing employees to safety is an essential step in a safety program.

b. A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

(1) Responsible supervision (superintendent or equivalent)
(2) Doctor
(3) Hospital
(4) Ambulance
(5) Fire Department
(6) Sheriff or Police

10. Lockouts and Tagging.

a. Where there is any possibility of machinery being started or electrical circuits being energized while repairs or maintenance work is being done, the electrical circuits shall be

locked open and/or tagged and the employee in charge (the one who places the lock) shall keep the key until the job is completed or he is relieved from the job, such as by shift change or other assignment. If it is expected that the job may be assigned to other workers, he may remove his lock provided the supervisor or other workers apply their lock and tag immediately. Where there is danger of machinery being started or of steam or air creating a hazard to workers while repairs on maintenance work is being done, the employee in charge shall disconnect the lines or lock and tag the main valve closed or blank the line on all steam driven machinery, pressurized lines or lines connected to such equipment if they could create a hazard to workers.

b. After tagging and lockout procedures have been applied, machinery, lines, and equipment shall be checked to insure that they cannot be operated.

c. If locks and tags cannot be applied, conspicuous tags made of nonconducting material and plainly lettered, "EMPLOYEES WORKING" followed by the other appropriate wording, such as "Do not close this switch" shall be used.

d. When in doubt as to procedure, the worker shall consult his supervisor concerning safe procedure.

11. Safety-Type hooks shall be used wherever possible.

12. Emergency Showers, Bubblers, and Eye Washers.

a. Readily accessible, well marked, rapid action safety showers and eye wash facilities must be available in areas where strong acid, caustic or highly oxidizing or irritating chemicals are being handled. (This is not applicable where first aid practices specifically preclude flushing with running water.)

b. Showers should have deluge type heads, easily accessible, plainly marked and controlled by quick opening valves of the type that stay open. The valve handle should be equipped with a pull chain, rope, etc., so the blinded employee will be able to more easily locate the valve control. In addition, it is recommended that the floor platform be so constructed to actuate the quick opening valve. The shower should be capable of supplying large quantities of water under moderately high pressure. Blankets should be located so as to be reasonably accessible to the shower area.

c. All safety equipment should be inspected and tested at regular intervals, preferably daily and especially during freezing weather, to make sure it is in good working condition at all times.

13. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be furnished with and be required to use approved type safety harnesses and shall be tied off securely so as to suspend him above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

F. All requirements of PSM Standard 29 CFR 1910.119 are hereby extended to include the blister agents, HT, HD, H, Lewisite, and the nerve agents, GA, VX.

R614-1-6. Personal Protective Equipment.

A. When no other method or combination of methods can be provided to prevent employees from becoming exposed to toxic dusts, fumes, gases, flying particles or other objects, dangerous rays or burns from heat, acid, caustic, or any other hazard of a similar nature, the employer must provide each worker with the necessary personal protection equipment, such as respirators, goggles, gas masks, certain types of protective clothing, etc. Provision must also be made to keep all such equipment in good, sanitary working condition at all times.

B. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

C. Except when, in the opinion of the Administrator, their use creates a greater hazard, life lines and safety harnesses shall be provided for and used by workers engaged in window washing, in securing or shifting thrustouts, inspecting or working on overhead machines supporting scaffolds or other high rigging, and on steeply pitched roofs. Similarly, they shall be provided for and used by all exposed to the hazard of falling, and by workmen on poles workers or steel frame construction more than ten (10) feet above solid ground or above a temporary or permanent floor or platform.

D. Every life line and safety harness shall be inspected by the superintendent or his authorized representative and the worker before it is used and at least once a week while continued in use.

E. Wristwatches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

R614-1-7. Inspections, Citations, and Proposed Penalties.

A. The Utah Occupational Safety and Health Act (Title 34A, Chapter 6) requires, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act applicable to employees actions and conduct. The Act authorizes the Utah Occupational Safety and Health Division to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under Section 34A-6-301, also authorizes the Administrator to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Labor Commission, if contested by an employer or by an employee or authorized representative of employees, and for a judicial review. The purpose of R614-1-7 is to prescribe rules and general policies for enforcement of the inspection, citations, and proposed penalty provisions of the Act. Where R614-1-7 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Administrator or his designee determines that an alternative course of action would better serve the objectives of the Act.

B. Posting of notices; availability of Act, regulations and applicable standards.

1. Each employer shall post and keep posted notices, to be furnished by the Administrator, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact their employer or the office of the Administrator. Such notices shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

2. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation communications, and electric, gas and sanitary

services, the notices required shall be posted at the location where employees report each day. In the case of employees who do not usually work at, or report to, a single establishment, such as traveling salesman, technicians, engineers, etc., such notices shall be posted in accordance with the requirements of R614-1-7.Q.

3. Copies of the Act, all regulations published under authority of Section 34A-6-202 and all applicable standards will be available at the office of the Administrator. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative.

4. Any employer failing to comply with the provisions of this Part shall be subject to citation and penalty in accordance with the provisions of Sections 34A-6-302 and 34A-6-307 of the Act.

C. Authority for Inspection.

1. Safety and Health Officers of the Division are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in R614-1-7 and 8, and other records which are directly related to the purpose of the inspection.

2. Prior to inspecting areas containing information which has been classified as restricted by an agency of the United States Government in the interest of national security, Safety and Health Officers shall obtain the appropriate security clearance.

D. Objection to Inspection.

1. Upon a refusal to permit the Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with R614-1-7.B. and C. or to permit a representative of employees to accompany the Safety and Health Officer during the physical inspection of any workplace in accordance with R614-1-7.G. the Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interview concerning which no objection is raised.

2. The Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Administrator. The Administrator shall take appropriate action, including compulsory process, if necessary.

3. Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Administrator circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employers past practice either implicitly or explicitly puts the Administrator on notice that a warrantless inspection will not be allowed:

b. When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the work-site;

c. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

4. For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

E. Entry not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply a waiver of any cause of action, citation, or penalty under the Act. Safety and Health Officers are not authorized to grant such waivers.

F. Advance notice of Inspections.

1. Advance notice of inspections may not be given, except in the following instances:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection.

c. Where necessary to assure the presence of the employer or representative of the employer and employees or the appropriate personnel needed to aid the inspection; and

d. In other circumstances where the Administrator determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

2. In the instances described in R614-1-7.F.1., advance notice of inspections may be given only if authorized by the Administrator, except that in cases of imminent danger, advance notice may be given by the Safety and Health Officer without such authorization if the Administrator is not immediately available. Where advance notice is given, it shall be the employer's responsibility to notify the authorized representative of the employees of the inspection, if the identity of such representatives is known to the employer. (See R614-1-7.H.2. as to instances where there is no authorized representative of employees.) Upon the request of the employer, the Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Safety and Health Officer with the identity of such representatives and with such other information as is necessary to enable him promptly to inform such representatives of the inspection. A person who fails to comply with his responsibilities under this paragraph, may be subject to citation and penalty under Sections 34A-6-302 and 34A-6-307 of the Act. Advance notice in any of the instances described in R614-1-7.F. shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in cases of imminent danger and other unusual circumstances.

3. The Act provides in Subsection 34A-6-307(5)(b) conditions for which advanced notice can be given and the penalties for not complying.

G. Conduct of Inspections.

1. Subject to the provisions of R614-1-7.C., inspections shall take place at such times and in such places of employment as the Administrator or the Safety and Health Officer may direct. At the beginning of an inspection, Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in R614-1-7.C. which they wish to review. However, such designations of records shall not preclude access to additional records specified in R614-1-7.C.

2. Safety and Health Officers shall have authority to take environmental samples and to take photographs or video recordings related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See R614-1-7.I. on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

3. In taking photographs and samples, Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and shall wear and use appropriate protective clothing and equipment.

4. The conduct of inspections shall preclude unreasonable disruption of the operations of the employer's establishment.

5. At the conclusion of an inspection, the Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Safety and Health Officer any pertinent information regarding conditions in the workplace.

H. Representative of employers and employees.

1. Safety and Health Officer shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Safety and Health Officer may permit additional employer representative and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Safety and Health Officer during each phase of an inspection if this will not interfere with the conduct of the inspection.

2. Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and the employees for purpose of this Part. If there is no authorized representative of employees, or if the Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Safety and Health Officer during the inspection.

4. Safety and Health Officers are authorized to deny the right of accompaniment under this Part to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of R614-1-7.I.3. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a Safety and Health Officer in areas containing such information.

I. Trade secrets.

1. Section 34A-6-306 of the Act provides provisions for trade secrets.

2. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of Section 34A-6-306 of the Act.

3. Upon the request of an employer, any authorized representative of employees under R614-1-7.H. in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is not such representative or employee, the Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

J. Consultation with employees.

Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Safety and Health Officer.

K. Complaints by employees.

1. Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Administrator or to a Safety and Health Officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent by the Administrator or Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Administrator.

2. If upon receipt of such notification the Administrator determines that the complaint meets the requirements set forth in R614-1-7.K.1., and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable. Inspections under this Part shall not be limited to matters referred to in the complaint.

3. Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with requirements of R614-1-7.K.1.

4. Section 34A-6-203 of the Act provides protection for employees while engaged in protected activities.

L. Inspection not warranted; informal review.

1. If the Administrator determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under K, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Administrator. The Administrator, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral view presented, the Administrator shall affirm, modify, or reverse the determination

of the previous decision and again furnish the complaining party and the employer written notification of his decision and the reasons therefor.

2. If the Administrator determines that an inspection is not warranted because the requirements of R614-1-7.K.1. have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of R614-1-7.K.1.

M. Imminent danger.

Whenever a Safety and Health Officer concludes, on the basis of an inspection, that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be eliminated through the enforcement procedures of the Act, he shall inform the affected employees and employers of the danger, that he is recommending a civil action to restrain such conditions or practices and for other appropriate citations of proposed penalties which may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

N. Citations.

1. The Administrator shall review the inspection report of the Safety and Health Officer. If, on the basis of the report the Administrator believes that the employer has violated a requirement of Section 34A-6-201 of the Act, of any standard, rule, or order promulgated pursuant to Section 34A-6-202 of the Act, or of any substantive rule published in this chapter, shall issue to the employer a citation. A citation shall be issued even though, after being informed of an alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violations. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of 6 months following the occurrence of any violation.

2. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision of the Act, standard, rule, regulations, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violations.

3. If a citation is issued for an alleged violation in a request for inspection under R614-1-7.K.1. or a notification of violation under R614-1-7.K.3., a copy of the citation shall also be sent to the employee or representative of employees who made such request or notification.

4. Following an inspection, if the Administrator determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under R614-1-7.K.1.or a notification of violation under R614-1-7.K.3., the informal review procedures prescribed in R614-1-7.L.1. shall be applicable. After considering all views presented, the Administrator shall either affirm, order a re-inspection, or issue a citation if he believes that the inspection disclosed a violation. The Administrator shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor.

5. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Commission.

O. Petitions for modification of abatement date.

1. An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of the citation, but such abatement has not been completed because of factors beyond his reasonable control.

2. A petition for modification of abatement date shall be in writing and shall include the following information.

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons such additional time is necessary, including the unavailability, of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph R614-1-7.O.3.a. and a certification of the date upon which such posting and service was made.

3. A petition for modification of abatement date shall be filed with the Administrator who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

b. Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Administrator. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

c. The Administrator or his duly authorized agent shall have authority to approve any petition for modification of abatement date filed pursuant to paragraphs R614-1-7.O.2. and 3. Such uncontested petitions shall become final orders pursuant to Subsection 34A-6-303(1) of the Act.

d. The Administrator or his authorized representative shall not exercise his approval power until the expiration of ten (10) days from the date of the petition was posted or served pursuant to paragraphs R614-1-7.O.3.a. and b. by the employer.

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the Administrator per R614-1-7.O.3.b. Upon receipt the Administrator shall schedule and notify all interested parties of a formal hearing before the Administrator or his authorized representative(s). Minutes of this hearing shall be taken and become public records of the Commission. Within ten (10) days after conclusion of the hearing, a written opinion by the Administrator will be made, with copies to the affected employees or their representatives, the affected employer and to the Commission.

P. Proposed penalties.

1. After, or concurrent with, the issuance of a citation and within a reasonable time after the termination of the inspection, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of the proposed penalty under Section 34A-6-307 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notice, the employer notifies the Adjudication Division

in writing that he intends to contest the citation or the notification of proposed penalty before the Commission.

2. The Administrator shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business, of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of Section 34A-6-307 of the Act.

3. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

Q. Posting of citations.

1. Upon receipt of any citation under the Act, the employer shall immediately post such citation, or copy thereof, unedited, at or near each place of alleged violation referred to in the citation occurred, except as hereinafter provided. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed (see R614-1-7.B.), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see R614-1-7.B.2.), the citation must be posted at the location from which the employees commence their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

2. Each citation or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days which ever is later. The filing by the employer of a notice of intention to contest under R614-1-7.R. shall not affect his posting responsibility unless and until the Commission issues a final order vacating the citation.

3. An employer, to whom a citation has been issued, may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Commission, such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

4. Any employer failing to comply with the provisions of R614-1-7.Q.1. and 2. shall be subject to citation and penalty in accordance with the provisions of Section 34A-6-307 of the Act.

R. Employer and employee hearings before the Commission.

1. Any employer to whom a citation or notice of proposed penalty has been issued, may under Section 34A-6-303 of the Act, notify the Adjudication Division in writing that the employer intends to contest such citation or proposed penalty before the Commission. Such notice of intention to contest must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

2. An employee or representative of employee of an employer to whom a citation has been issued may, under Section 34A-6-303(3) of the Act, file a written notice with the Adjudication Division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Adjudication Division shall handle such notice in accordance with the rules of procedure prescribed by the Commission.

S. Failure to correct a violation for which a citation has been issued.

1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of such failure and of the additional penalty proposed under Section 34A-6-307 of the Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under Section 34A-6-303(3) of the Act, notify the Adjudication Division in writing that he intends to contest such notification or proposed additional penalty before the Commission. Such notice of intention to contest shall be postmarked within 30 days of receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

3. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notification, the employer notifies the Adjudication Division in writing that he intends to contest the notification or the proposed additional penalty before the Commission.

T. Informal conferences.

At the request of an affected employer, employee, or representative of employees, the Administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The Administrator shall provide in writing the reasons for any settlement of issues at such conferences. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 30 day period for filing a notice of intention to contest as prescribed in R614-1-7.R.

U. Multi-Employer worksites.

1. Pursuant to Section 34A-6-201 of the Act, violation of an applicable standard adopted under Section 34A-6-202 of the Act at a multi-employer worksite may result in a citation issued to more than one employer.

2. An employer on a multi-employer worksite may be considered a creating, exposing, correcting, or controlling employer. An employer may be cited should:

a. It meet the definition of a creating employer and be found to have failed to exercise the duty of care required by this Rule for a creating employer: or

b. It meet the definition of an exposing, correcting, or controlling employer and be found to have failed to exercise the duty of care required by this Rule for that category of employer.

c. Even if an employer meets its duty of reasonable care applicable to one category of employer, it may still be cited should it meet the definition of another category of employer and be found to have failed to exercise the duty of care required by this Rule for that category of employer. No employer will be

cited for the same violation under multiple categories of employers.

3. Creating Employer. A creating employer is one that created a hazardous condition on the worksite. A creating employer may be cited if:

a. Its own employees are exposed or if the employees of another employer at the site are exposed to this hazard; and

b. The employer did not exercise reasonable care by taking prompt and effective steps to alert employees of other employers of the hazard and to correct or remove the hazard or, if the creating employer does not have the ability or authority to correct or remove the hazard, to notify the controlling or correcting employer of the hazard.

4. Exposing Employer. An exposing employer is one that exposed its own employees to a hazard. If the exposing employer created the hazard, it is citable as the creating employer, not the exposing employer.

a. If the exposing employer did not create the hazard, it may be cited as the exposing employer if:

i. It knew of the hazard or failed to exercise reasonable care to discover the hazard; and

ii. Upon obtaining knowledge of the hazard, it failed to take prompt and reasonable precautions, consistent with its authority on the worksite, to protect its employees.

b. An exposing employer will be deemed to have exercised reasonable care to discover a hazard if it demonstrates that it has regularly and diligently inspected the worksite.

c. If the exposing employer has the authority to correct or remove the hazard, it must correct or remove the hazard with reasonable diligence. If the exposing employer lacks such authority, it may still be cited if:

i. It failed to make a good faith effort to ask the creating and/or controlling employer to correct the hazard;

ii. It failed to inform its employees of the hazard; and

iii. It failed to take reasonable alternative measures, consistent with its authority on the worksite, to protect its employees.

5. Correcting Employer. A correcting employer is one responsible for correcting a hazardous condition, such as installing or maintaining safety and health devices or equipment, or implementing appropriate health and safety procedures. A correcting employer must exercise reasonable care in preventing and discovering hazards and ensure such hazards are corrected in a prompt manner, which shall be determined in light of the scale, nature and pace of the work, and the amount of activity of the worksite.

6. Controlling Employer. A controlling employer is one with general supervisory authority over a worksite. This authority may be established either through contract or practice and includes the authority to correct safety and health violations or require others to do so, but it is separate from the responsibilities and care to be exercised by a correcting employer.

a. A controlling employer will not be cited if it has exercised reasonable care to prevent and detect violations on the worksite. The extent of the measures used by a controlling employer to satisfy this duty, however, is less than the extent required of an employer when protecting its own employees. A controlling employer is not required to inspect for hazards or violations as frequently or to demonstrate the same knowledge of applicable standards or specific trade expertise as the employer under its control.

b. When determining the duty of reasonable care applicable to a controlling employer on a multi-employer worksite, the factors that may be considered include, but are not limited to:

i. The nature of the worksite and industry in which the work is being performed;

ii. The scale, nature and pace of the work, including the pace and frequency at which the worksite hazards change as the work progresses;

iii. The amount of activity at the worksite, including the number of employers under its control and the number of employees working on the worksite;

iv. The implementation and monitoring of safety and health precautions for the entire worksite requiring that other employers on the worksite comply with their respective obligations and standards of care for the safety of employees, a graduated system of discipline for non-compliant employees and/or employers, regular worksite safety meetings, and when appropriate for atypical hazards, the providing of adequate safety training by employers for atypical hazards present on the worksite; and

v. The frequency of worksite inspections, particularly at the commencement of a project or the commencement of work on the project by other employers that come under its control. As work progresses, the frequency and sufficiency of such inspections shall be determined in relation to other employers' compliance with their respective obligations and standards of care as required by this Rule.

c. When evaluating whether a controlling employer has demonstrated reasonable care in preventing and discovering violations, the following factors, though not inclusive, shall be considered;

i. Whether the controlling employer conducted worksite inspections with sufficient frequency as contemplated by subsection 6(b);

ii. The controlling employer's implementation and monitoring of an effective system for identifying a hazardous condition and promptly notifying employers under its control of the hazard so as to ensure compliance with their respective duties of care under this Rule;

iii. Whether the controlling employer implements a graduated system of discipline for non-compliant employees and/or employers with their respective safety and health requirements;

iv. Whether the controlling employer performs follow-up inspections to ensure hazards are corrected; and

v. Other actions demonstrating the implementation and monitoring of safety and health precautions for the entire worksite.

7. In accordance with Section 34A-6-110, nothing in this Rule shall:

a. be deemed to limit or repeal requirements imposed by statute or otherwise recognized by law; or

b. be construed or held to supersede or in any manner affect workers' compensation or enlarge or diminish or affect the common-law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, occupational or other diseases, or death of employees arising out of, or in the course of employment.

R614-1-8. Recording and Reporting Occupational Injuries and Illnesses.

A. The rules in this section implement Sections 34A-6-108 and 34A-6-301(3) of the Act. These sections provide for record-keeping and reporting by employers covered under the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics. Regardless of size or type of operation, accidents and fatalities must be reported to UOSH in accordance with the requirements of R614-1-5.C.

NOTE: Utah has adopted and will enforce the Federal Recordkeeping Standard 29CFR1904.

Utah Specific Recordkeeping requirements follow:

B. Supplementary record.

Each employer shall have available for inspection at each

establishment within 6 working days after receiving information that a recordable case has occurred, a supplementary record for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying federal OSHA Form No. 301, Utah Industrial Accidents Form 122. Workers' compensation, insurance, or other reports are acceptable alternative records if they contain the information required by the federal OSHA Form No. 301, Utah Industrial Accidents Form 122. If no acceptable alternative record is maintained for other purposes, Federal OSHA Form No. 301, Utah Industrial Accidents Form 122 shall be used or the necessary information shall be otherwise maintained.

C. Retention of records.

Preservation of records.

a. This section applies to each employer who makes, maintains or has access to employee exposure records or employee medical records.

b. "Employee exposure record" means a record of monitoring or measuring which contains qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

c. "Employee medical record" means a record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(1) The results of medical examinations and tests;

(2) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(3) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

d. Preservation of records. Each employer who makes, maintains, or has access to employee exposure records or employee medical records shall preserve these records.

e. Availability of records. The employer shall make available, upon request to the Administrator, or a designee, and to the Director of the Division of Health, or a designee, all employee exposure records and employee medical records for examination and copying.

D. Access to records.

1. Records provided for in R614-1-8.A.,E., and F. shall be available for inspection and copying by Compliance Officers during any occupational safety and health inspection provided for under R614-1-7 and Section 34A-6-301 of the Act.

2. The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in R614-1-8.A. shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

3. Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

4. Access to the log provided under this section shall pertain to all logs retained under requirements of R614-1-8.G.

E. Reporting of fatality or accidents. (Refer to Utah Occupational Safety and Health Rule, R614-1-5.C.)

F. Falsification or failure to keep records or reports.

1. Section 34A-6-307 of the Act provides penalties for false information and recordkeeping.

2. Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in Sections 34A-6-302 and 34A-6-307 of the Act.

G. Description of statistical program.

1. Section 34A-6-108 of the Act directs the Administrator to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. The program shall consist of periodic surveys of occupational injuries and illnesses.

2. The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within Stratification. Stratification and sampling will be carried out in order to provide the most efficient sample for eventual state estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. The survey should produce adequate estimates for most four-digit Standard Industrial Classification (SIC) industries in manufacturing and for three-digit classification (SIC) in non-manufacturing. Full cooperation with the U. S. Department of Labor in statistical programs is intended.

R614-1-9. Rules of Practice for Temporary or Permanent Variance from the Utah Occupational Safety and Health Standards. (Also Adopted and Published as Chapter XXIII of the Utah Occupational Safety and Health Field Operations Manual.)

A. Scope.

1. This rule contains Rules of Practice for Administrative procedures to grant variances and other relief under Section 34A-6-202 of the Act. General information pertaining to employer-employee rights, obligations and procedures are included.

B. Application for, or petition against Variances and other relief.

1. The applicable parts of Section 34A-6-202 of the Act shall govern application and petition procedure.

2. Any employer or class of employers desiring a variance from a standard must make a formal written request including the following information:

a. The name and address of applicant;

b. The address of the place or places of employment involved;

c. A specification of the standard or portion thereof from which the applicant seeks a variance;

d. A statement by the applicant, supported by opinions from qualified persons having first-hand knowledge of the facts of the case, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefore;

e. A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the existing standard;

f. A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standards (applies to temporary variances);

g. A statement of the facts the applicant would show to establish that (applies to newly promulgated standards);

(1) The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) He is taking all available steps to safeguard his employees against the hazards covered by the standards; and

(3) He has an effective program for coming into compliance with the standard as quickly as practicable;

h. Any request for a hearing, as provided in this rule;

i. A statement that the applicant has informed his affected employees of the application for variance by giving a copy thereof to their authorized representative, posting a summary statement of the application at the place or places where notices to employees are normally posted specifying where a copy may be examined; and

j. A description of how affected employees have been informed of their rights to petition the Administrator for a hearing.

3. The applicant shall designate the method he will use to safeguard his employees until a variance is granted or denied.

4. Whenever a proceeding on a citation or a related issue concerning a proposed penalty or period of abatement has been contested and is pending before an Administrative Law Judge or any subsequent review under the Administrative Procedures Act, until the completion of such proceeding, the Administrator may deny a variance application on a subject or an issue concerning a citation which has been issued to the employer.

C. Hearings.

1. The Administrator may conduct hearings upon application or petition in accordance with Section 34A-6-202(4) of the Act if:

a. Employee(s), the public, or other interested groups petition for a hearing; or

b. The Administrator deems it in the public or employee interest.

2. When a hearing is considered appropriate, the Administrator shall set the date, time, and place for such hearing. He shall provide timely notification to the applicant for variance and the petitioners. In the notice of hearing to the applicant, the applicant will be directed to notify his employees of the hearing.

3. Notice of hearings shall be published in the Administrative Rulemaking Bulletin. This shall include a statement that the application request may be inspected at the UOSH Division Office.

4. A copy of the Notification of Hearing along with other pertinent information shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

D. Inspection for Variance Application.

1. A variance inspection will be required by the Administrator or his designee prior to final determination of either acceptance or denial.

2. A variance inspection is a single purpose, pre-announced, non-compliance inspection and shall include employee or employer representative participation or interview where necessary.

E. Interim order.

1. The purpose of an interim order is to permit an employer to proceed in a non-standard operation while administrative procedures are being completed. Use of this interim procedure is dependent upon need and employee safety.

2. Following a variance inspection, and after determination and assurance that employees are to be adequately protected, the Administrator may immediately grant, in writing, an interim order. To expedite the effect of the interim order, it may be issued at the work-site by the Administrator. The interim order will remain in force pending completion of the administrative promulgation action and the formal granting or denying of a temporary/permanent variance as requested.

F. Decision of the Administrator.

1. The Administrator may deny the application if:

a. It does not meet the requirements of paragraph R614-1-8.B.;

b. It does not provide adequate safety in the workplace for affected employees; or

c. Testimony or information provided by the hearing or inspection does not support the applicant's request for variance as submitted.

2. Letters of notification denying variance applications shall be sent to the applicant, and will include posting requirements to inform employees, affected associations, and employer groups.

a. A copy of correspondence related to the denial request shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

b. The letter of denial shall be explicit in detail as to the reason(s) for such action.

3. The Administrator may grant the request for variances provided that:

a. Data supplied by the applicant, the UOSHA inspection and information and testimony affords adequate protection for the affected employee(s);

b. Notification of approval shall follow the pattern described in R614-1-9.C.2. and 3.;

c. Limitations, restrictions, or requirements which become part of the variance shall be documented in the letter granting the variance.

4. The Administrator's decision shall be deemed final subject to Section 34A-6-202(6).

G. Recommended Time Table for Variance Action.

1. Publication of agency intent to grant a variance. This includes public comment and hearing notification in the Utah Administrative Rulemaking Bulletin: within 30 days after receipt.

2. Public comment period: within 20 days after publication.

3. Public hearing: within 30 days after publication

4. Notification of U.S. Department of Labor Regional Administrator for OSHA: 10 days after agency publication of intent.

5. Final Order: 120 days after receipt of variance application if publication of agency intent is made.

6. Rejection of variance application without publication of agency intent: 20 days after receipt of application.

a. Notification of U.S. Department of Labor Regional Administrator for OSHA: 20 days after receipt of application.

H. Public Notice of Granted Variances, Tolerances, Exemptions, and Limitations.

1. Every final action granting variance, exemption, or limitation under this rule shall be published as required under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and the time table set forth in R614-1-9.G.

I. Acceptance of federally Granted Variances.

1. Where a variance has been granted by the U.S. Department of Labor, Occupational Safety and Health Administration, following Federal Promulgation procedures, the Administrator shall take the following action:

a. Compare the federal OSHA standard for which the variance was granted with the equivalent UOSH standard.

b. Identify possible application in Utah.

c. If the UOSH standard under consideration for application of the variance has exactly or essentially the same intent as the federal standard and there is the probability of a multi-state employer doing business in Utah, then the Administrator shall accept the variance (as federally accepted) and promulgate it for Utah under the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

d. If the variance has no apparent application to Utah industry, or to a multi-state employer in Utah, or if it conflicts with Utah Legislative intent, or established policy or procedure, the federal variance shall not be accepted. In such case, the Regional Administrator will be so notified.

J. Revocation of a Variance.

1. Any variance (temporary or permanent) whether

approved by the state or one accepted by State based on Federal approval, may be revoked by the Administrator if it is determined through on-site inspection that:

a. The employer is not complying with provisions of the variance as granted;

b. Adequate employee safety is not afforded by the original provisions of the variance; or

c. A more stringent standard has been promulgated, is in force, and conflicts with prior considerations given for employee safety.

2. A federally approved national variance may be revoked by the state for a specific work-site or place of employment within the state for reasons cited in R614-1-9.J.1. Such revocations must be in writing and give full particulars and reasons prompting the action. Full rights provided under the law, such as hearings, etc., must be afforded the employer.

3. Normally, permanent variances may be revoked or changed only after being in effect for at least six months.

K. Coordination.

1. All variances issued by the Administrator will be coordinated with the U.S. Department of Labor, OSHA to insure consistency and avoid improper unilateral action.

R614-1-10. Discrimination.

A. General.

1. The Act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of work places, and record keeping requirements. Enforcement procedures initiated by the Commission; review proceedings as required by Title 63G, Chapter 4, Administrative Procedures Act; and judicial review are provided by the Act.

2. This rule deals essentially with the rights of employees afforded under section 34A-6-203 of the Act. Section 34A-6-203 of the Act prohibits reprisals, in any form, against employees who exercise rights under the Act.

3. The purpose is to make available in one place interpretations of the various provisions of Section 34A-6-203 of the Act which will guide the Administrator in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect.

B. Persons prohibited from discriminating.

Section 34A-6-203 defines employee protections under the Act, because the employee has exercised rights under the Act. Section 34A-6-103(11) of the Act defines "person". Consequently, the prohibitions of Section 34A-6-203 are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Section 34A-6-203 would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee. (See, Meek v. United States, F. 2d 679 (6th Cir., 1943); Bowe v. Judson C. Burnes, 137 F 2d 37 (3rd Cir., 1943).)

C. Persons protected by section 34A-6-203.

1. All employees are afforded the full protection of Section 34A-6-203. For purposes of the Act, an employee is defined in Section 34A-6-103(6). The Act does not define the term "employ". However, the broad remedial nature of this legislation demonstrates a clear legislative intent that the existence of an employment relationship, for purposes of Section 34A-6-203, is to be based upon economic realities rather than upon common law doctrines and concepts. For a similar interpretation of federal law on this issue, see, U.S. v. Silk, 331 U.S. 704 (1947); Rutherford Food Corporation v. McComb, 331 U.S. 722 (1947).

2. For purposes of Section 34A-6-203, even an applicant for employment could be considered an employee. (See, NLRB v. Lamar Creamery, 246 F. 2d 8 (5th Cir., 1957).) Further, because Section 34A-6-203 speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

3. In view of the definitions of "employer" and "employee" contained in the Act, employees of a State or political subdivision thereof would be within the coverage of Section 34A-6-203.

D. Unprotected activities distinguished.

1. Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of Section 34A-6-203 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations. (See, NLRB v. Dixie Motor Coach Corp., 128 F. 2d 201 (5th Cir., 1942).)

2. To establish a violation of Section 34A-6-203, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, Section 34A-6-203 has been violated. (See, Mitchell v. Goodyear Tire and Rubber Co., 278 F. 2d 562 (8th Cir., 1960); Goldberg v. Bama Manufacturing, 302 F. 2d 152 (5th Cir., 1962).) Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case.

E. Specific protections - complaints under or related to the Act.

1. Discharge of, or discrimination against an employee because the employee has filed "any complaint under or related to this Act" is prohibited by Section 34A-6-203. An example of a complaint made "under" the Act would be an employee request for inspection pursuant to Section 34A-6-301(6). However, this would not be the only type of complaint protected by Section 34A-6-203. The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application, which entails the full extent of the commerce power. ((See Cong. Rec., vol. 116 P. 42206 December 17, 1970).)

2. Complaints registered with Federal agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Likewise, complaints made to State or local agencies regarding occupational safety and health conditions would be "related to" the Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

3. Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be related to the Act, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.

F. Proceedings under or related to the act.

1. Discharge of, or discrimination against, any employee because the employee has exercised the employee's rights under or related to this Act is also prohibited by Section 34A-6-203. Examples of proceedings which would arise specifically under the Act would be inspections of work-sites under Section 34A-6-301 of the Act, employee contest of abatement date under

Section 34A-6-303 of the Act, employee initiation of proceedings for promulgation of an occupational safety and health standard under Section 34A-6-202 of the Act and Title 63G, Chapter 3, employee application for modification of revocation of a variance under Section 34A-6-202(4)(c) of the Act and R614-1-9., employee judicial challenge to a standard under Section 34A-6-202(6) of the Act, and employee appeal of an order issued by an Administrative Law Judge, Commissioner, or Appeals Board under Section 34A-6-304. In determining whether a "proceeding" is "related to" the Act, the considerations discussed in R614-1-10.G. would also be applicable.

2. An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

G. Testimony.

Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the Act is also prohibited by Section 34A-6-203. This protection would of course not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rulemaking or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he would be protected against discrimination resulting from such testimony.

H. Exercise of any right afforded by the Act.

1. In addition to protecting employees who file complaints, institute proceedings under or related to the Act it also prohibited by Section 34A-6-203 discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings (34A-6-303). Certain other rights exist by necessary implications. For example, employees may request information from the Utah Occupational Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Administrator in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

2. Review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to Section 34A-6-301 of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of Section 34A-6-203 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

a. Occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

I. Procedures - Filing of complaint for discrimination.

1. Who may file. A complaint of Section 34A-6-203 discrimination may be filed by the employee himself, or by a representative authorized to do so on his behalf.

2. Nature of filing. No particular form of complaint is required.

3. Place of filing. Complaint should be filed with the Administrator, Division of Occupational Safety and Health, Labor Commission, 160 East 300 South, Salt Lake City, Utah 84114-6650, Telephone 530-6901.

4. Time for filing.

a. Section 34A-6-203(2)(b) provides protection for an employee who believes that he has been discriminated against.

b. A major purpose of the 30-day period in this provision is to allow the Administrator to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

c. However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; where the employee has, within the 30-day period, resorted in good faith to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency; where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

J. Notification of administrator's determination.

The Administrator is to notify a complainant within 90 days of the complaint of his determination whether prohibited discrimination has occurred. This 90-day provision is considered directory in nature. While every effort will be made to notify complainants of the Administrator's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in this section.

K. Withdrawal of complaint.

Enforcement of the provisions of Section 34A-6-203 is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the Administrator's investigation. The Administrator's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

L. Arbitration or other agency proceedings.

1. An employee who files a complaint under Section 34A-6-203(2) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Administrator's jurisdiction to entertain Section 34A-6-203 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Administrator may file action in district court regardless of the pendency of other proceedings.

2. However, the Administrator also recognizes the policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. (See, e.g., Boy's Market, Inc.

v. Retail Clerks, 398 U.S. 235 (1970); Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); Carey v. Westinghouse Electric Co., 375 U.S. 261 (1964); Collier Insulated Wire, 192 NLRB No. 150 (1971).) By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to Section 34A-6-203 complaints.

3. Where a complainant is in fact pursuing remedies other than those provided by Section 34A-6-203, postponement of the Administrator's determination and deferral to the results of such proceedings may be in order. (See, Burlington Truck Lines, Inc., v. U.S., 371 U.S. 156 (1962).)

4. Postponement of determination. Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under Section 34A-6-203 and those proceedings are not likely to violate the rights guaranteed by Section 34A-6-203. The factual issues in such proceedings must be substantially the same as those raised by Section 34A-6-203 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination. (See, Rios v. Reynolds Metals Co., F. 2d (5th Cir., 1972), 41 U.S.L.W. 1049 (October 10, 1972): Newman v. Avco Corp., 451 F. 2d 743 (6th Cir., 1971).)

5. Deferral to outcome of other proceedings. A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicative hearing thereof, such dismissal will not ordinarily be regarded as determinative of the Section 34A-6-203 complaint.

M. Employee refusal to comply with safety rules.

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by Section 34A-6-203. This situation should be distinguished from refusals to work, as discussed in R614-1-10.H.

R614-1-11. Rules of Agency Practice and Procedure Concerning UOSH Access to Employee Medical Records.

A. Policy.

UOSH access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, UOSH authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, UOSH examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by UOSH only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

B. Scope.

1. Except as provided in paragraphs R614-1-11.B.3. through 6. below, this rule applies to all requests by UOSH personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provision of R614-1-12.D.

2. For the purposes of this rule, "personally identifiably employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

3. This rule does not apply to UOSH access to, or the use of, aggregate employee medical information or medical records on individual employees which is not a personally identifiable form. This section does not apply to records required by R614-1-8 to death certificates, or to employee exposure records, including biological monitoring records defined by R614-1-3.M. or by specific occupational safety and health standards as exposure records.

4. This rule does not apply where UOSH compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance record keeping requirements of an occupational safety and health standard, or with R614-1-12. An examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the record holder. The UOSH compliance personnel shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

5. This rule does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

6. This rule does not apply where a written directive by the Administrator authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

7. Even if not covered by the terms of this rule, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

C. Responsible persons.

1. UOSH Administrator. The Administrator of the Division of Occupational Safety and Health of the Labor Commission shall be responsible for the overall administration and implementation of the procedures contained in this rule, including making final UOSH determinations concerning:

a. Access to personally identifiable employee medical information, and

b. Inter-agency transfer or public disclosure of personally identifiable employee medical information.

2. UOSH Medical Records Officer. The Administrator shall designate a UOSH official with experience or training in the evaluation, use, and privacy protection of medical records to be the UOSH Medical Records Officer. The UOSH Medical Records Officer shall report directly to the Administrator on matters concerning this section and shall be responsible for:

a. Making recommendations to the Administrator as to the approval or denial of written access orders.

b. Assuring that written access orders meet the requirements of paragraphs R614-1-11.D.2. and 3. of this rule.

c. Responding to employee, collective bargaining agent, and employer objections concerning written access orders.

d. Regulating the use of direct personal identifiers.

e. Regulating internal agency use and security of personally identifiable employee medical information.

f. Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees.

g. Preparing an annual report of UOSH's experience under this rule.

h. Assuring that advance notice is given of intended inter-agency transfers or public disclosures.

3. Principal UOSH Investigator. The Principal UOSH Investigator shall be the UOSH employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section. When access is pursuant to a written access order, the Principal UOSH Investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, bio-statistics, environmental health, etc.)

D. Written access orders.

1. Requirement for written access order. Except as provided in paragraph R614-1-11.D.4. below, each request by a UOSH representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other record holder shall be made pursuant to a written access order which has been approved by the Administrator upon the recommendation of the UOSH Medical Records Officer. If deemed appropriate, a written access order may constitute, or be accompanied by an administrative subpoena.

2. Approval criteria for written access order. Before approving a written access order, the Administrator and the UOSH Medical Records Officer shall determine that:

a. The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information.

b. The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access, and

c. The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

3. Content of written access order. Each written access order shall state with reasonable particularity:

a. The statutory purposes for which access is sought.

b. The general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information.

c. Whether medical information will be examined on-site, and what type of information will be copied and removed off-site.

d. The name, address, and phone number of the Principal UOSH Investigator and the names of any other authorized persons who are expected to review and analyze the medical information.

e. The name, address, and phone number of the UOSH Medical Records Officer, and

f. The anticipated period of time during which UOSH expects to retain the employee medical information in a personally identifiable form.

4. Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

a. Specific written consent. If the specific written consent of an employee is obtained pursuant to R614-1-12.D., and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a Principal UOSH Investigator shall be promptly named to assure protection of the information, and the UOSH Medical Records Officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs R614-1-11.H.

b. Physician consultations. A written access order need not be obtained where a UOSH staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the UOSH physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the UOSH physician shall leave his or her control without the permission of the UOSH Medical Records Officer.

E. Presentation of written access order and notice to employees.

1. The Principal UOSH Investigator, or someone under his or her supervision, shall present at least two (2) copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the Principal UOSH Investigator or to the UOSH Medical Records Officer.

2. The Principal UOSH Investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

3. The Principal UOSH Investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter.

4. The Principal UOSH Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal UOSH Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

F. Objections concerning a written access order. All employees, collective bargaining agents, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the UOSH Medical Records Officer. Unless the agency decides otherwise, access to the record shall proceed without delay notwithstanding the lodging of an objection. The UOSH Medical Records Officer shall respond in writing to each employee's and collective bargaining agent's written objection to UOSH access. Where appropriate, the UOSH Medical Records Officer may revoke a written access order and direct that any medical information obtained by it by returned to the original record holder or destroyed. The principal UOSH Investigator shall assure that such instructions

by the UOSH Medical Records Officer are promptly implemented.

G. Removal of direct personal identifiers. Whenever employees medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the Principal UOSH Investigator shall, unless otherwise authorized by the UOSH Medical Records Officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number of each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The Principal UOSH Investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

H. Internal agency use of personally identifiable employee medical information.

1. The Principal UOSH Investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

2. The Principal UOSH Investigator, the UOSH Medical Records Officer, the Administrator, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No UOSH employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

3. Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the office of the State Attorney General, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

4. UOSH employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of the employee is obtained as to a secondary purpose, or the procedures of R614-1-11.D. through G. are repeated with respect to the secondary purpose.

5. Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

I. Security procedures.

1. Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

2. The UOSH Medical Records Officer and the Principal UOSH Investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

3. The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

4. The protective measures established by this rule apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

5. Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

J. Retention and destruction of records.

1. Consistent with UOSH records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained.

2. Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

K. Results of an agency analysis using personally identifiable employee medical information.

1. The UOSH Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

2. Annual report. The UOSH Medical Records Officer shall on an annual basis review UOSH's experience under this section during the previous year, and prepare a report to the UOSH Administrator which shall be made available to the public. This report shall discuss:

a. The number of written access orders approved and a summary of the purposes for access;

b. The nature and disposition of employee; collective bargaining agent, and employer written objections concerning UOSH access to personally identifiable employee medical information; and

c. The nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

L. Inter-agency transfer and public disclosure.

1. Personally identifiable employee medical information shall not be transferred to another agency or office outside of UOSH (other than to The Attorney General's Office) or disclosed to the public (other than to the affected employee or the original record holder) except when required by law or when approved by the Administrator.

2. Except as provided in paragraph R614-1-11.L.3. below, the Administrator shall not approve a request for an inter-agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

a. Needs the requested information in a personally identifiable form for a substantial public health purpose;

b. Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;

c. Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section; and

d. Satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information (See 5 U.S.C. 552a(b); 29 CFR 70a.3).

3. Upon the approval of the Administrator, personally identifiable employee medical information may be transferred to:

a. The National Institute for Occupational Safety and Health (NIOSH).

b. The Department of Justice when necessary with respect to a specific action under the federal Occupational Safety and

Health Act of 1970 and Utah Occupational Safety and Health Act of 1973.

4. The Administrator shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

5. The Administrator shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy.

6. Except as to inter-agency transfers to NIOSH or the State Attorney General's Office, the UOSH Medical Records Officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that UOSH intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the UOSH Medical Records Officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be released or disclosed contains direct personal identifiers.

M. Effective date.

This rule shall become effective on January 15, 1981.

R614-1-12. Access to Employee Exposure and Medical Records.

A. Purpose.

To provide employees and their designated representatives a right of access to relevant exposure and medical records, and to provide representatives of the Administrator a right of access to these records in order to fulfill responsibilities under the Utah Occupational Safety and Health Act. Access by employees, their representatives, and the Administrator is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this Rule, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this Rule is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

B. Scope.

1. This rule applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

2. This rule applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and health standards.

3. This rule applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house or contractual (e.g., fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this rule are complied with regardless of the manner in which records are made or maintained.

C. Preservation of records.

1. Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

a. Employee medical records. Each employee medical record shall be preserved and maintained for a least the duration of employment plus thirty (30) years, except that health insurance claims records maintained separately from the employer's medical program and its records need not be retained for any specified period.

b. Employee exposure records. Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(1) Background data to environmental (workplace) monitoring or measuring, such a laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

(2) Material safety data sheets and paragraph R614-1-3.M.4. records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; and

c. Analyses using exposure or medical records. Each analysis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.

2. Nothing in this rule is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that X-ray films shall be preserved in their original state.

D. Access to records.

1. Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made.

2. Whenever an employee or designated representative requests a copy of a record, the employer shall, within the period of time previously specified, assure that either:

a. A copy of the record is provided without cost to the employee or representative;

b. The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

c. The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

3. Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copy expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that:

a. An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and

b. An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

4. Nothing in this rule is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this rule.

5. Employee and designated representative access.

a. Employee exposure records. Each employer shall, upon

request, assure the access of each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this rule exposure records relevant to the employee consist of:

(1) Records of the employee's past or present exposure to toxic substances or harmful physical agents,

(2) Exposure records of other employees with past or present job duties or working conditions related to or similar to those of the employee,

(3) Records containing exposure information concerning the employee's workplace or working conditions, and

(4) Exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.

b. Employee medical records.

(1) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in R614-1-12.D.4.

(2) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. R614-1-12A., Appendix A to R614-1-12., contains a sample form which may be used to establish specific written consent for access to employee medical records.

(3) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:

(a) Consult with the physician for the purposes of reviewing and discussing the records requested;

(b) Accept a summary of material facts and opinions in lieu of the records requested;, or

(c) Accept release of the requested records only to a physician or other designated representative.

(4) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employees health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

(5) Nothing in this rule precludes physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

c. Analysis using exposure or medical records.

(1) Each employer shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

(2) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.) the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of analysis need not be provided.

(3) UOSH access.

(a) Each employer shall, upon request, assure the immediate access of representatives of the Administrator to employee exposure and medical records and to analysis using exposure or medical records. Rules of agency practice and procedure governing UOSH access to employee medical records are contained in R614-1-8.

(b) Whenever UOSH seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to R614-1-8, the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

E. Trade Secrets.

1. Except as provided in paragraph R614-1-12.E.2., nothing in this rule precludes an employer from deleting from records requested by an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the employee to identify where and when exposure occurred.

2. Notwithstanding any trade secret claims, whenever access to records is requested, the employer shall provide access to chemical or physical agent identities including chemical names, levels of exposure, and employee health status data contained in the requested records.

3. Whenever trade secret information is provided to an employee or designated representative, the employer may require, as a condition of access, that the employee or designated representative agree in writing not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret information by a competitor or potential competitor of the employer.

F. Employee information.

1. Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform employees exposed to toxic substances or harmful physical agents of the following;

a. The existence, location, and availability of any records covered by this rule;

b. The person responsible for maintaining and providing access to records; and

c. Each employee's right of access to these records.

2. Each employer shall make readily available to employees a copy of this rule and its appendices, and shall distribute to employees any informational materials concerning this rule which are made available to the employer by the Administrator.

G. Transfer of Records

1. Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this Rule to the successor employer. The successor employer shall receive and maintain these records.

2. Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

3. Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the employer shall:

a. Transfer the records to the Director of the National

Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or

b. Notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

4. Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

a. Appendices. The information contained in the appendices to this rule is not intended, by itself, to create any additional obligations not otherwise imposed by this rule nor detract from any existing obligation.

H. Effective date. This rule shall become effective on December 5, 1980. All obligations of this rule commence on the effective date except that the employer shall provide the information required under R614-1-12.F.1. to all current employees within sixty (60) days after the effective date.

R614-1-12A. Appendix A to R614-1-12 SAMPLE.

Authorization letter for the Release of Employee Medical Record Information to Designated Representative.

I, (full name of worker/patient), hereby authorize (individual or organization holding the medical records), to release to (individual or organization authorized to receive the medical information), the following medical information from my personal medical records: (Describe generally the information desired to be released).

I give my permission for this medical information to be used for the following purpose: ....., but I do not give permission for any other use or re-disclosure of this information.

(Note---Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year): (2) describe medical information to be created in the future that you intend to be covered by this authorization letter, or (3) describe portions of the medical information in you records which you do not intend to be released as a result of this letter.)

Full name of Employee or Legal Representative

Signature of Employee or Legal Representative

Date of Signature

R614-1-12B. Appendix B to R614-1-12 Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS).

R614-1-12 applies to all employee exposure and medical records, and analysis thereof, of employees exposed to toxic substances or harmful physical agents (see R614-1-12.B.2.). The term "toxic substance" or "harmful physical agent" is defined by paragraph R614-1-3.FF. to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The standard uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the standard applies to exposure and medical records (and analysis of these records) relevant to employees exposed to the substances.

It is appropriate to note that the final standard does not require that employers purchase a copy of RTECS and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the standard. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by Rule 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669 (a)(6)). The 1978 edition is the most recent printed edition as of May 1, 1980. Its Forward and Introduction describes the RTECS as follows:

"The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment.

"This registry contains 142,247 listings of chemical substances: 33,929 are names of different chemicals with their associated toxicity data and 90,318 are synonyms. This edition includes approximately 7,500 new chemical compounds that did not appear in the 1977 Registry.

"The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers and information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous.

"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known does entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters.

"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences."

The RTECS 1978 printed edition may be purchased for $13.00 from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202-783-3238) (GPO Stock No. 017-033-00346-7). The 1979 printed edition is anticipated to be issued in the summer of 1980. Some employers may also desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchase from the GPO for $14.00 (Order the "Microfiche Edition. Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at OSHA Technical Data Center, Room N2439-Rear, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202-523-9700), or any OSHA Regional or Area Office (See major city

telephone directories under United States Government-Labor Department).

KEY: safety
December 28, 2015 34A-6
Notice of Continuation October 19, 2017

R614. Labor Commission, Occupational Safety and Health.
R614-2. Drilling Industry.
R614-2-1. Drilling Industry -- Administrative Provision.

A. Agency.

Labor Commission, Division of Occupational Safety and Health.

B. Authority.

Title 34A, Chapter 6, Utah Occupational Safety and Health Act of 1973.

C. Scope.

1. Section 34A-6-202 establishes the authority, method, and procedures for issuance of standards by the Administrator of UOSH. The standards contained herein govern safety and health for the drilling industry and related services.

2. The UOSH Administrator, following a significant number of inspections of drilling activities, has found many issues unique to the industry which require they be addressed separately and apart from the Utah Rules and Regulations General Industry Standards.

3. Further, the collection of statistical inferences by the Utah Occupational Safety and Health Statistical division indicates a substantial need for occupational safety and health standards for drilling and related services.

D. Effective Date.

January 15, 1980.

E. Variance From Safety and Health Standards.

Variances from standards which are or may be published in this part may be requested under Subsection 34A-6-202(2)(d) of the Utah Occupational Safety and Health Act of 1973. Procedures for the granting of variances or related relief are those published as R614-1-9.

F. Adoption of Existing Standards.

The provisions of this part adopt and extend the applicability of R614 and 29 CFR 1910 and 29 CFR 1926.

G. Inspections--Right of Entry.

1. It shall be a condition of each place of employment where work is performed that the Administrator of the Utah Occupational Safety and Health Act or any authorized representative shall have the right of entry to any site for the following purposes:

2. To inspect or investigate the matter of compliance with the safety and health standards contained in the General Industry Standards and the Oil, Gas, Geothermal and Related Services Standards.

3. For the purpose of carrying out his investigative duties under the Act, the Administrator of the Utah Occupational Safety and Health Act may, by agreement, use with or without reimbursement, the services, personnel, and facilities of any state Agency.

H. Duties of Employers and Employees.

Section 34A-6-201 defines duties of employers and employees.

I. Safety Training and Education.

1. The Administrator of the Utah Occupational Safety and Health Act shall establish and supervise programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe conditions in employments covered by this act.

2. Employer Responsibility.

a. The employer should avail himself of the safety and health training programs the Administrator provides.

b. The employer shall instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environments to control or eliminate any hazards or other exposure to illness or injury.

c. In job site areas where harmful plants or animals are present, employees who may be exposed shall be instructed regarding the potential hazards, and how to avoid injury, and the first aid procedures to be used in the event of injury.

J. Reporting Requirements.

Shall meet the requirements of R614-102-13.

K. Incorporation by Reference.

1. 29 CFR 1910 and 1926 and standards of the American National Standards Institute, National Fire Protection Association, National Electrical Code, and other consensus standards are incorporated by reference, or when referenced in this UOSH standard, shall have the same force and effect as other standards, rules, or regulations.

2. Consensus standards and any changes in the referenced standards are available for examination at the Occupational Safety and Health Division, Labor Commission, as listed in the current public telephone directory.

L. General Drilling Rules.

1. Surface casing shall be run to reach a depth to prevent blowouts or uncontrolled wells. In areas where pressures and formations are unknown, surface casing shall be of sufficient size to permit the use of an intermediate string or strings of casing. Surface casing shall be set in or through an impervious formation and shall be cemented by the pump and plug or displacement or other approved method with sufficient cement to fill the annulus to the top of the hole. If cement is not circulated to surface during the primary operation, the drilling owner/operator shall perform cemented operations to assure that the annular space from the casing shoe to the surface is filled with cement.

2. The cemented casing string shall stand under pressure until the cement has reached a compressive strength of 300 pounds per square inch; providing, however, that no further operation shall be commenced until the cement has been in place at least 8 hours. The term "under pressure" as used herein shall be complied with if one float valve is used or if pressure is otherwise held.

3. Setting depths of all casing string shall be determined by taking into account formation fracture gradients and the maximum anticipated pressure to be maintained within the well bore.

4. If and when it becomes necessary to run a production string, such string shall be cemented by the pump and plug method, and shall be properly tested by the pressure method before cement plugs are drilled.

5. Natural gas which may be encountered in a substantial quantity in any section of a cable-tool drilled hole above the ultimate objective shall be shut off with reasonable diligence either by mudding or casing, or other approved method and confined to its original source. Any gas escaping from the well during drilling operations shall be, so far as practicable, conducted a safe distance from the well site and burned in accordance with the Rules and Regulations of the Environmental Quality Department of the State, or otherwise safely disposed of.

M. Site Clearing and Roads, General Requirements.

1. Employees engaged in site clearing shall be protected from hazards of irritant and toxic plants, and suitably instructed in the first aid treatment available.

2. All equipment used in site clearing shall be equipped with rollover guards in accordance with 29 CFR 1926.1000. In addition, rider-operated equipment shall be equipped with an overhead and rear canopy guard meeting the following requirements:

a. The overhead covering on this canopy structure shall be covered with not less than 1/8 inch steel plate or 1/4 inch woven wire mesh with openings no greater than one inch or equivalent.

b. The opening in the rear of the canopy structure shall be covered with no less than 1/4 inch woven wire mesh with openings no greater than one inch.

3. On single lane private roads with two-way traffic, arrangements shall be provided with adequate turnouts. Where adequate turnouts are not practical, a control system shall be

provided to prevent vehicles from meeting on such single lane roads.

R614-2-2. Drilling Industry -- Definition of Terms.

A. General Terms.

1. "Act" means the Utah Occupational Safety and Health Act of 1973.

2. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

3. "Administrator" means the director of the Division of Utah Occupational Safety and Health.

4. "Commission" means the Labor Commission.

5. "Employee" includes any person suffered or permitted to work by an employer.

6. "Employer" means:

a. The state;

b. Each county, city, town, and school district in the state; and

c. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

B. Industry Terms.

1. "Accumulator" - On a drilling rig, the nitrogen and hydraulic oil for closing the blowout preventer in an emergency is kept in an accumulator.

2. "Acidizing" - The treatment of oil-bearing limestone or other formations by chemical reaction with acid in order to increase production. Hydrochloric or other type acid is injected into the formation under pressure, bringing about an enlargement of the pore spaces and passages through which the reservoir fluids flow. The acid is held under pressure for a period of time and then pumped out; the well is swabbed and put back into production. Chemical inhibitors are combined with the acid to prevent corrosion of the pipe.

3. "A-frame" - A form of derrick or crane used to handle heavy loads.

4. "Air Drilling" - Drilling using air or gas as the circulating medium.

5. "Anchor, Deadline" - Holding the deadline to the derrick or substructure.

6. "Annular Space" - The space surrounding pipe suspended in the wellbore. The outer wall of the annular space may be an open hole or it may be a string or larger pipe.

7. "Approved" - sanctioned, endorsed,accredited certified, or accepted by a duly constituted and recognized authority or agency.

8. "Authorized Person" - A person approved or assigned by the employer to a specific type of duty or duties or to be at a specific location or locations at the job-site.

9. "Back-up Line (Snub Line)" - A wire rope, one end of which is fastened to the end of a pipe tong handle and the other end secured to hold the tongs stationary while such tongs are in use.

10. "Back-up Post" - A post, column or stanchion secured to the derrick, derrick floor or derrick foundation, the purpose of which is to make secure the dead end of the back-up line.

11. "Back-up Tong" - The name applied to the drill pipe tong suspended in the derrick and used to hold a section of drill pipe while another section is unscrewed from it by use of another tong.

12. "Barricade" - An obstruction to deter the passage of persons or vehicles.

13. "Berm" - A pile or mound of material capable of restraining a vehicle.

14. "Bit" - The cutting element attached to the bottom of the drill stem. These are broken down into three general categories: roller bits, usually having three rolling cones with milled teeth or inserts; diamond bits using diamonds for cutting; and drag bits with fixed blades.

15. "Bleed" - To drain off liquid or gas, generally slowly, through a valve called a bleeder. To bleed down or bleed off, means a controlled release of the pressure of a well or of pressurized equipment.

16. "Block" - In mechanics, one or more pulleys or sheaves mounted to rotate on a common axis; any assembly of pulleys on a common frame work. The crown block is an assembly of sheaves mounted on beams at the top of the derrick. The drilling line, is reeved over the sheaves of the crown block alternately with the sheaves of the traveling block, which is hoisted and lowered in the derrick by means of the drilling line.

17. "Blowout" - A sudden, violent escape of gas and oil (and sometimes water) from a well.

18. "Blowout Preventer" - A device attached immediately above the casing to control pressures and prevent escape of fluids from the annular space between the drill pipe and casing or shut off the hole if no drill pipe is in the hole, should a kick or blowout occur.

19. "Board" -A platform installed in the derrick approximately 90 feet above the derrick floor. The derrickman works on this board while the pipe is being hoisted from or lowered into the wellbore.

20. "Boom" - a movable arm of wood or steel used on some types of cranes or derricks to support the hoisting lines that carry the load.

21. "Bowline" - A knot much used in lifting heavy equipment with the catline. Its advantage lies in the fact that it can be readily untied irrespective of the load that has been placed on it.

22. "Breaking down" - Usually means unscrewing the drill stem into single joints and placing them on the pipe rack. This operation takes place at the completion of the well when the drill pipe will no longer be used. It also takes place when changing from one size drill pipe to another during drilling operations. It is necessary to "break the pipe down" in order that it will be in lengths short enough to be handled and moved. Also called Laying Down.

23. "Breakout Line" - Either a wire rope or a manila or fiber rope used in conjunction with a pipe tong and a cathead which serves to impart a pulling power on the tong handle to start the unscrewing or breaking of a threaded pipe joint or tool joint when the pipe is in a vertical position in the well and projecting above the rotary table.

24. "Breakout" - Refers to the act of unscrewing one section of pipe from another section, especially in the case of drill pipe while it is being withdrawn from the wellbore. During this operation the Breakout Tongs are used to start the unscrewing operation.

25. "Casing" - Steel pipe placed in an oil or gas well as drilling progresses. The function of casing is to prevent the wall of the hole from caving during drilling and to provide a means of extracting the oil if the well is productive.

26. "Cat" - A crawler type tractor noted for its ability to move over difficult terrain. It is much used in clearing the location, earth-moving operations, and skidding rigs. The operator or driver is frequently referred to as a CAT DRIVER. This term is probably a shortening of the trade name Caterpillar, which is a brand of this type of equipment.

27. "Cathead" - Is a spool shaped steel mechanical device mounted on the end of a shaft of a drawworks, well pulling hoist or other machinery onto which a fiber rope such as a catline, breakout line, make-up line, spinning line, is wrapped to impart a pulling power to such rope or line.

28. "Cathead--automatic" - A steel mechanical device, generally in such shapes as a sheave, hoist, drum, pulley or wheel, and is mounted on the shafting of a drawworks, well pulling hoist or other machinery to which is attached a breakout

line, make-up line, or a spinning line. The primary purpose of the automatic cathead is to impart a pulling power on the breakout line, make-up line, and/or spinning line. (See definitions for Breakout Line, Make-up Line and Spinning Line.)

29. "Catline" - a rope, usually a manila rope which is usually reeved over a single sheave in the mast or on a sheave suspended from the derrick gin pole. It serves a general utility purpose for making pulls, lifting or lowering objects up into or from the derrick, lifting and transferring materials about the derrick floor. One end of the line is attached to the object, other end is wrapped around the cathead to effect the source of power.

30. "Cellar" - Excavation under the derrick to provide space for items of equipment at the top of the wellbore. Also serves as a pit to collect drainage of water and other fluids under the floor for subsequent disposal by jetting.

31. "Cementing" - The operation by which cement slurry is forced down through the casing and out at the lower end in such a way that it fills the space between the casing and the sides of the wellbore to a predetermined height above the bottom of the well. This is for the purpose of securing the casing in place and excluding water and other fluids from the wellbore.

32. "Christmas Tree" - A term applied to the valves and fittings assembled at the top of a well to control the flow of the fluids.

33. "Circulating Fluid"--drilling Fluid, Mud - A fluid consisting of water, oil, or other liquid which may contain clay, weighting materials and/or chemicals which is circulated through the drill pipe and well bore during rotary drilling and workover operations.

34. "Closed-container" - A container so sealed by means of a lid or other device that neither liquid nor vapor will escape from it at ordinary temperatures.

35. "Collar" - Usually refers to a coupling device used to join two lengths of pipe.

36. "Combustion" - Any chemical process that invloves oxidation sufficient to produce light or heat.

37. "Combustible Liquids" - Any liquid having a flash point at or above 100 degrees F. (37.8 degrees C.)

38. "Competent Person" - One who is capable of identifying existing and predictable hazards in the surroundings of working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

39. "Corrosion" - The complex chemical or electrochemical process by which metal is destroyed through reaction with its environment. The familiar coating of rust that appears on steel is a product of corrosion.

40. "Corrosive" - An agent which, in contact with animal tissue, by chemical reaction will cause more or less severe destruction and with which systematic effects are either of secondary nature or less pronounced than with poisons.

41. "Counter Weight" - A ladder climbing assist device.

42. "Crown Block" - Two or more metal beams of plates and other metal parts assembled into a framework within which are mounted one or more sheaves. The crown block is mounted on top of the derrick. The hoisting line is reeved on the crown block sheaves.

43. "Dead Line" - This refers to the end of the drilling line which is not reeled on the hoisting drum of the rotary rig. This end of the drilling line is usually anchored to the derrick substructure and does not move as the traveling block is hoisted, hence the term "dead line."

44. "Dead Man" - A buried anchor to which guy-wires are tied to steady the derrick, boiler stacks, etc.

45. "Density" - The weight of a substance per unit volume. For instance, the density of drilling mud may be described as "10.0 lbs. per gallon" or "74.9 lbs. per cubic foot."

46. "Derrick" - Any one of a large number of types of load-bearing structures. In drilling work, the standard derrick has four legs standing at the corners of the substructure and reaching to the crown blocks. The substructure is an assembly of heavy beams used to elevate the derrick above the ground and provide space to install blowout preventers, casing heads, etc. The standard derrick has largely been replaced by the mast for drilling. The mast is lowered and raised without disassembly. For land transport it may be divided into two or more sections to avoid excessive length on the highway.

47. "Derrick Foundation" - Is either concrete, wood, or other solid and substantial material placed on the ground upon which the derrick is built and/or supported, and includes all the substructure which supports the derrick legs and derrick floor.

48. "Derrick Gin Pole" - An assembly of two or more vertical or upright members supporting one or more cross members, erected on the top of a derrick above the opening in the top thereof. It serves as a support for a block and tackle, primarily for raising or lowering the crown block to or from the top of the derrick.

49. "Derrick Ladder" - A fixed ladder attached to a derrick as a means of access to the top and/or any inside platform on the derrick.

50. "Derrick Walk" (Cat Walk) - This is a walkway extending from the V Door Ramp beyond the outer end of the drill pipe and casing storage rack at a well, the purpose of which is to facilitate the handling of the pipe between the rack and the derrick.

51. "Derrickman" - The crew member whose work station is in the derrick while the drill stem is being hoisted from or being lowered into the hold. He attaches the elevators to the drill stem members as they are being lowered into hold and detaches the elevators and racks the drill stem in the finger board after it is unscrewed and set on the floor. Other responsibilities frequently include the conditioning of the drilling fluid and maintenance of the mud and slush pumps.

52. "Diesel Electric Power" - The power supplied to a drilling rig by diesel engines driving electric generators. This type of power is widely used on drilling barges and offshore platforms.

53. "Drawworks" - Includes an assembly of shafts, sprockets, chains, pulleys, belts, clutches, catheads, and/or other mechanical devices, suitably mounted and provided with controls, for hoisting, operating, and handling the equipment used for drilling a well or servicing a producing well. Drawworks may be either stationary or portable.

54. "Elevator" - A steel mechanical device used in connection with the hoisting equipment, suspended from the traveling block or traveling block hook, for holding in suspension pipe or sucker rods being lowered into or pulled from a well. There being so many types of elevators only the most common type is herein described as follows: one side of the elevator body is a gate or door which, when closed, forms a conjunction with the remaining part of the elevator body a circular opening that fits snugly around the pipe or rod just below the threaded joint, sleeve, or coupling thereof. The threaded joint, sleeve, or coupling being larger than the circular opening in the elevator body, the pipe or rods are held in suspension from the elevator.

55. "Fast Line" - The end of the drilling line which is affixed to the drum or reel. It is so called because it apparently travels with greater velocity than any other portion of the drilling line.

56. "Feed-off" - The act of unwinding a cable from a drum. Also a device on a drilling rig that keeps the weight on the bit constant, and lowers the drilling line automatically. Known as the "automatic driller."

57. "Finger Board" - A rack with fingers located in the derrick to contain the top of the stands of pipe while they are

racked in the derrick.

58. "Finger Brace" - Any structural member either in direct or indirect contact with the finger to resist either horizontal, vertical, or diagonal movement of the finger.

59. "Fireman" - The member of the crew on a steam-powered rig who is responsible for the care and operation of the boilers. On a mechanical rig his counterpart is the motorman.

60. "Fish" - An object accidentally lost in the hole.

61. "Fishing" - Operations on the rig for the purpose of retrieving from the wellbore sections of pipe, casing or other items which may have become stuck or inadvertently dropped in the hole.

62. "Flammable" -Capable of being easily ignited,burning intensely, or having a rapid rate of flame spread.

63. "Flammable Liquid" - Any liquid having a flash point below 100 degrees F. and having a vapor pressure not exceeding 40 pounds per square inch (absolute) at 100 degrees F.

64. "Flare" - An open flame used to dispose of unwanted gas.

65. "Flash Point" (of the liquid) - The temperature at which it gives off vapor sufficient to form an ignitable mixture with the air near the surface of the liquid or within the vessel used as determined by appropriate test procedure and apparatus as specified below.

a. The flash point of liquids having a viscosity less than 45 Saybolt Universal Second(s) at 100 degrees F. (37.8) degrees C.) and a flash point below 175 degrees F. (79.4 degrees C.) shall be determined in accordance with the standard Method of test for Flash Point by the Tag Closed Tester, American Standard Testing Method ASTM D-56-69.

b. The flash point of liquids having a viscosity of 45 Saybolt Universal Second(s) or more at 175 degrees C.) or higher shall be determined in accordance with the Standard Method of Test for Flash Point by the Pensky Martens Closed Tester,(ASTM) D-93-69.

66. "Floor Hole" - An opening measuring less than 12 inches but more than 1 inch in its least dimension in any floor, roof, or platform through which materials but not persons may fall, such as a belt hold, pipe opening, or slot opening.

67. "Floor Opening" - An opening measuring 12 inches or more in its least dimension in any floor, roof, or platform through which persons may fall.

68. "Floorman" - A member of the drilling crew whose work station is usually on the derrick floor.

69. "Fracturing"(Formation) -A method of stimulating production by increasing the permeability of the producing formation. Under extremely high hydraulic pressure, a fluid such as distillate, diesel fuel, crude oil, dilute hydrochloric acid, water, or kerosene is piped downward through production tubing or drill pipe and forced out below a packer between two packers. The pressure causes cracks to open in the formation, and the fluid penetrates the formation through the cracks. Sand grains, aluminum pellets, walnut shells, or similar materials are carried in suspension by the fluid into the cracks. These are called propping agents. When the pressure is released at the surface, the fracturing fluid returns to the well. The cracks partially close on the pellets, leaving channels for oil to flow around them to the well. Sometimes shortened to "Frac."

70. "Gas Cut Mud" - Mud with entrained formation gas which gives the mud a characteristic fluffy texture.

71. "Gas" or "Gases" - The vapor state of the hydrocarbons occurring in, or derived from, petroleum or natural gas.

72. "Gel" -A gelatinous substance formed by certain colloidal dispersions at rest. Gel Strength is a measure of the ability of a colloidal dispersion to form such a gel, and is based upon its resistance to shear. The gel strength of a drilling mud determines its ability to hold solids in suspension, and for this reason bentonite and other colloidal clays are added to drilling fluids. It is important that the gel formed by the mud, when drilling is not in progress, be thixotropic--that is, it should be readily converted to a fluid state by agitation and then gel again when at rest in order to prevent the cuttings from settling to the bottom of the hole.

73. "Geronimo Escape Line" - A wire line attached near the board which has a man-riding trolley to convey personnel to the ground by use of a friction control speed device.

74. "Handrail" - A bar or pipe supported on brackets from a wall or partition, as on a stairway or ramp, to furnish persons with a handhold in case of tripping.

75. "Hazardous Substance" - A substance which, by reason of being explosive, flammable, poisonous, corrosive, oxidizing, causing irritation, or otherwise harmful, is likely to cause death or injury.

76. "Kelly" - The heavy square or hexagonal steel pipe which goes through the rotary table and in conjunction with the drive bushing turns the drill string.

77. "Kelly Cock" - A valve installed between the swivel and the kelly. When a high pressure backflow begins, the operator can close this valve and keep the pressure off the swivel and rotary hose.

78. "Liquefied Petroleum Gases" - "LPG: and LP-Gas" mean and include any material which is composed predominantly of any of the following hydrocarbons or mixtures of them, such as propane, propylene, butane, (normal butane or iso-butane), and butylenes.

79. "Log" - A running account listing a series of events in chronological order. The driller's log is a tour-to-tour account of progress made in drilling. An electric well log is the record of geological formations which is made by a well logging device. This device operates on the principle of differential resistance of various formations to the transmission of electric current.

80. "Logging" - A generic term used when instruments are run in the hole for any of several purposes during drilling or completion operations.

81. "Lubricator" - An extension of casing or tubing above a valve on top of the casing or tubing head. Lubricators are supplied with a pack-off, or pressure sealing, device at the upper end to afford a seal on the wireline, or other connection, attached to tools run into a well.

82. "Making a Trip" - Consists of hoisting the drill pipe to the surface and returning it to the bottom of the wellbore. This is done for the purpose of changing bits, preparing to take a core, and for other reasons.

83. "Motorman" - The man on a mechanical rotary drilling rig responsible for the care and operation of the drilling engines.

84. "Mouse Hole" - A shallow cased hole close to the rotary table through the derrick floor in which a joint of drill string can be placed to facilitate connecting the joint to the kelly.

85. "Mud" - The liquid that is circulated through the wellbore during rotary drilling and workover operations. In addition to its function of bringing cutting to the surface, drilling mud also cools and lubricates the bit and drill string, protects against blowouts by containing subsurface pressures, and deposits a mud cake on the wall of the borehole to prevent loss of fluids to the formations. Although it originally was a suspension of earth solids, especially clays, in water, the mud used in modern drilling operations is a somewhat more complex three-phase mixture of liquids, reactive solids, and inert solids. The liquid phase may be fresh water, diesel oil, or crude oil, and may contain one or more conditioners.

86. "Mud Balance" - An instrument consisting of a cup and graduated arm with a sliding weight and resting on a fulcrum, used to measure weight of the mud.

87. "Mud Gun" - A pipe that shoots a jet of drilling mud under high pressure into the mud pit to mix the additives and stir the mud for other reasons.

88. "Mud Log" - To record information derived from examination and analysis of return circulation mud and drillbit cuttings.

89. "Mud off" - In drilling, to seal the hole off from the formation water or oil by using mud. Applies especially to the undesirable blocking off of the flow of oil from the formation into the wellbore. Special care is given to the treatment of drilling fluid to avoid this.

90. "Mud Pit" - The reservoir or tank through which the drilling mud is cycled to allow sand and fine sediments to settle out, where additives are mixed with mud,and where the fluid is temporarily stored before being pumped back into the well. Mud pits may be further classified as the shaker pit, settling pit, and suction pit, according to their main purpose.

91. "Mud (Slush) Pump" - A large single (triplex) or double (duplex) acting pump used to circulate mud down the drill pipe and up the annulus, under normal operations. It is a piston type pump whose pistons reciprocate in replaceable liners.

92. "Outside Derrick Platform" - A walkway extending across one or more outer sides of a derrick at an elevation of 10 feet or more above the derrick floor.

93. "Pipe Rack" - A series of parallel heavy wooden or steel bents, secured in place by bracing, on which pipe is stored. Flooring may be laid upon the bents.

94. "Platform" - A working space for persons, elevated above the surrounding floor or ground, such as a balcony or platform for the operation of machinery and equipment.

95. "Pressure Relief Device" - A device for relieving pressure, such as a direct spring-loaded safety valve, rupture disc, or piston shear pin valve.

96. "Prime Mover" - As applied to oil well drilling, this is the steam or diesel engine, electric motor, or other internal-combustion engine which is the source of power for the drilling rig.

97. "Qualified" - Means one who, by possession of a recognized degree, certificate, or professional standing, or who by knowledge, training and/or experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project.

98. "Ram" - On a blowout preventer, the closing and sealing component.

99. "Respiratory Equipment" - Is approved self-contained oxygen breathing apparatus, canister-type gas masks, air hose masks, and other approved equipment providing equivalent protection.

100. "Rig" - All mechanical equipment directly connected with the drilling of a well or for producing petroleum from a well.

101. "Rigging down" - The act of dismantling the drilling rig and auxiliary equipment following the completion of drilling operations. Also referred to as tearing down.

102. "Rigging up" - The act of assembling the drilling rig and auxiliary equipment prior to commencement of drilling operations.

103. "Rotary Drilling" - The drilling method by which a hole is drilled by a rotating bit to which a downward force (drill collars) is applied. The bit is fastened to and rotated by the drill stem, which also provides a passage for the circulating fluid.

104. "Rotary Hose" - The hose that conducts the circulating fluid from the standpipe to the swivel and kelly.

105. "Roustabout" - A laborer who assists the foreman in the general work about producing oil wells and around the property of the oil company. Also used on large offshore drilling rigs to help maintain the rig and load and unload material.

106. "Runway" - A passage for a person, elevated above the surrounding floor or ground level, such as a footwalk along shafting or a walkway between buildings.

107. "Safety Can" - Means an approved closed container, of not more than 5 gallons capacity, having a spring-closing lid and spout cover and so designed that it will safely relieve internal pressure when subjected to fire and exposure.

108. "Shale Shaker" - A vibrating screen that removes coarser cuttings from the circulating fluid before it flows into the return mud pit, disilters or desanders.

109. "Shall" - Means mandatory.

110. "Shutdown" - A term denoting that work has been temporarily stopped as on an oil well.

111. "Slurry" - Any mixture of solids and water or cement slurry which is pumped into the well to cement casing or plug back.

112. "Source of Ignition" - Any flame, arc, spark, or heat which is capable of igniting flammable liquids, sour gas, or oil, gases, or vapors.

113. "Spudding" - Refers to the act of hoisting the drill stem and permitting it to fall freely so that the drill bit strikes the bottom of the wellbore or bridge with considerable force. This is done to clean the bit of an accumulation of sticky shale which has slowed the rate of penetration and/or remove bridges or other obstructions. Careless execution of this operation can result in kinks in the drill string as well as damaged bit cones and bearings.

114. "Spudding in" - The very beginning of drilling operations of a well. The term has been handed down from cable tool operations in the early days of the oil industry.

115. "Stabbing Board" - A temporary platform in the derrick, 20 to 40 feet above the floor, on which a crewman works while casing is being run to guide a joint while it is being screwed into the joint in the rotary table.

116. "Stair Railing" - A vertical barrier erected along exposed sides of a stairway to prevent falls of persons.

117. "Stairs" or "Stairways" - A series of steps leading from one level or floor to another, or leading to platforms, pits, boiler rooms, crossovers, or around machinery, tanks, and other equipment that are used more or less continuously or routinely by employees or only occasionally by specific individuals. A series of steps and landings having three or more rises constitutes stairs or stairway.

118. "Standard Railing" - A vertical barrier erected along exposed edges of a floor opening, wall opening, ramp, platform, or runway to prevent falls of persons.

119. "Standpipe" - Part of the circulating system. A pipe extending, usually along a derrick leg, to a height suitable for attaching the rotary hose.

120. "Substructure" - The foundation on which, normally, the derrick and engines sit. Height varies depending upon the equipment required, such as the blowout preventers, for the particular operation.

121. "Swabbing" - Operation of a lifting device on a wireline to bring well fluids to the surface when the well does not flow naturally. This is a temporary operation to determine whether or not the well can be made to flow or require artificial lift or stimulation to bring oil to the surface.

122. "Thribble" - A stand of drill pipe made up of three joints, each about 30 feet in length.

123. "Toeboard" - A vertical barrier at floor level erected along exposed edges of a floor opening, wall opening, platform, runway, or ramp to prevent falls of materials.

124. "Toolpusher" - The rig owner's supervisor who is in charge of one or more rigs. Usually the drilling contractor's highest level of direct field supervision.

125. "Tour" - The word which designates the shift of a drilling crew or other oil field workers.

126. "Traveling Block" - Two or more steel plates and other metal parts assembled into a framework within which are mounted one or more sheaves on which the hoisting line is reeved in connection with the sheaves on the crown block.

127. "Traveling Block Hook" - A hook suspended from the traveling block to which the elevator links, swivel bail, or other equipment is attached.

128. "V-door Ramp" - A ramp on the side of the drilling rig where pipe is laid to be lifted to the derrick floor by the catline.

129. "V-door (Window)" - An opening in a side of a standard derrick at the floor level having the form of an inverted V. This opening is opposite the drawworks. It is used as an entry to bring in drill pipe and casing from the pipe rack.

130. "Vapor Proof" - A term used to describe a product which is not susceptible to the action of gases or other vapors.

131. "Viscosity" - A measure of liquid's resistance to flow. The viscosity of petroleum products or mud is usually expressed, and measured by the time it takes for a certain volume to flow through an orifice of specific size.

132. "Wall Opening" - An opening at least 30 inches wide, in any wall or partition, through which persons may fall, such as a yard-arm doorway or chute opening.

133. "Weight Indicator" - Instrument on a drilling or workover rig, which shows the weight suspended from hook.

134. "Weighting Material" - A material used to increase the density of drilling fluids or cement slurries.

135. "Wellbore" - The hole made by the drilling bit.

136. "Wildcat" - A well in unproved territory. With present day exploration methods and equipment about one wildcat of every 10 drilled proves to be commercially productive.

137. "Wildcatter" - One who drills wells in the hope of finding oil in territory not known to be an oil field.

138. "Wind Load Rating" - A specification of a derrick used to indicate the resistance of the derrick to the force of wind.

139. "Work-over" - To perform one or more of a variety of remedial operations on a producing oil well with the hope of restoring or increasing production. Examples of work-over operations are deepening, plugging back, pulling and resetting the line, squeeze cementing, shooting and acidizing.

140. "Well Servicing" or "Special Services" - Consists of, but not limited to the operations listed in the 1972 Standard Industrial Classifications Manual under "1382 Oil and Gas Field Services" and "1389 Oil and Gas Field Services, Not Elsewhere classified."

R614-2-3. Drilling Industry -- General Safety and Health Provisions.

A. General Requirements.

Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, hot surfaces, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation, or physical contact.

B. First Aid Supplies and Training.

1. Every operation subject to the provision of these orders shall at all times have a supply of first aid equipment (24 unit min.) which shall be conveniently located so as to be readily accessible. The first aid supplies shall be encased in suitable sanitary storage places so as to protect them from contamination, and the contents of the kits replenished as used.

2. At least one employee at the work site shall be trained in first aid and rescue operations.

3. First aid equipment shall be provided. This equipment shall be stored in sanitary places which are conveniently and accessibly located. First aid equipment shall include: one set of arm and leg splints; two all-wool blankets or blankets equal in strength and fire resistance; and one stretcher. Where harmful chemicals are being used, readily accessible facilities shall be available for rapid flushing of the eyes and/or skin areas.

4. Provisions shall be made prior to commencement of the project for either prompt transportation of an injured person to a physician or hospital, or an effective communication system for contacting necessary ambulance service.

5. The telephone numbers of the physician, hospitals, or ambulances shall be conspicuously posted.

C. Housekeeping.

Good housekeeping is the first law of accident prevention and shall be a primary concern of all supervisors and workers. An excessively littered or dirty work area will not be tolerated as it constitutes an unsafe, hazardous condition of employment.

D. Pressure Vessels and Boilers.

1. Pressure Vessels: Shall be built in accordance with the requirements for Unfired Pressure Vessels of the ASME Boiler and Pressure Vessel Code, pursuant to Section 34A-7-102.

2. Boilers: Boilers provided by the employer shall be deemed to be in compliance with the requirements of this rule when evidence of current and valid certification by an insurance company or regulatory authority attesting to the safe installation, inspection, and testing is presented.

E. Employee-Owned Equipment.

Where employees provide their own protective equipment, the employer shall be responsible to assure that it meets the appropriate American National Standard Institute or a national consensus standard.

F. Head Protection.

1. The employer shall require the use of Class A protective helmet (Safety Hard Hat) where there is a hazard from flying or falling objects.

2. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

G. Eye and Face Protection.

Employees shall be provided with eye and face protective equipment when machines or operations present potential eye or face injury from physical, chemical, or radiation agents.

H. Respiratory Protection.

1. When necessary appropriate respiratory protective devices shall be provided by the employer and shall be used.

2. The employer shall provide and shall require employees to use self contained breathing apparatus or supplied air respirators in atmospheres which have an oxygen concentration of less than 19.5%. All units shall be of a pressure demand type or a positive pressure type.

3. All respiratory devices regardless of type shall be selected, used, and maintained in accordance with 29 CFR 1910.134 "Respiratory Protection" of the Utah Occupational Safety and Health Rules and Regulations.

a. The air from a regular compressed air line may be used for breathing air systems if:

b. A trap and carbon filter are installed and regularly maintained to remove oil, water, scale, and odor;

c. A pressure reducing diaphragm or valve is installed to reduce pressure down to requirements of the particular type of respirator; and

d. An automatic control is provided to either sound an alarm or shut down the compressor in case of over heating.

I. Occupational Noise Exposure.

1. Protection against the effects of noise exposure shall be provided when the sound levels exceed those shown in the following permissible noise exposure table when measured on the "A" scale of a standard sound level meter at slow response. When noise levels are determined by octave band analysis, the equivalent A-weighted sound level may be determined by referring to 29 CFR 1910.95(a), Figure G-9.

2. When employees are subjected to sound exceeding those listed in the following table, feasible administrative or engineering controls shall be utilized. If such controls fail to reduce sound levels within the levels of the table, personal protective equipment shall be provided and used to reduce sound levels within the levels of the table.

TABLE 1

PERMISSIBLE NOISE EXPOSURES

Duration per day, hours	Sound level dBA slow response
8	90
6	92
4	95
3	97
2	100
1-1/2	102
1	105
1/2	110
1/4 or less	115

When the daily noise exposure is composed of two or more periods of noise exposure of different levels, their combined effect should be considered, rather than the individual effect of each. If the sum of the following fractions: $C_1/T_1 + C_2/T_2 \ldots C_n/T_n$ exceeds unity, then the mixed exposure should be considered to exceed the limit value. C_n indicates the total time of exposure at a specified noise level, and T_n indicates the total time of exposure permitted at that level.

3. Exposure to impulsive or impact noise shall not exceed 140 dB peak sound pressure level.

4.Variations in sound levels

a. If the variations in noise levels involve maxima at intervals of 1 second or less, it is to be considered continuous.

b. In all cases where the sound levels exceed the values shown herein, a continuing, effective hearing conservation program shall be administered.

5. Audiometric Tests.

a. Audiometric testing may be requested by the UOSH Administrator whenever individual hearing loss is in question. These tests shall be arranged for by the employer and shall be given under medical supervision.

b. To ensure accurate audiograms, the facilities must meet the following minimum standards:

c. Test Room. Audiograms shall be obtained only in environments which meet the requirements of the American National Standards Institute for background noise.

d. Audiometer. Audiometers shall meet the specifications of the American National Standards Institute and should be maintained in calibration in accordance with recognized procedures.

J. Working Over or Near Water.

Employees working over or near water, where the danger of drowning exists, shall be provided with U.S. Coast Guard-approved life jackets or buoyant work vests.

K. Occupational Foot Protection.

The employer shall require employees to wear safety shoes or boots in the working areas.

L. Safety Harnesses, Lifelines, and Lanyards.

1. The employer shall require and provide an approved safety harness suitable for the particular job or hazard exposure, which shall be attached by means of a tailrope or lanyard to a fixed anchor and adjusted to allow a maximum drop of 6 feet in case of fall, except when working on the fingerboard or when longer tag lines are necessary to perform the work required.

2. A separate life line shall be provided for each employee exposed to the particular job or hazard.

3. Safety harnesses and life lines shall be checked prior to each use and shall be repaired or replaced if found to be defective.

M. Emergency Escapes.

1. A Safety Buggy with an adequate braking device shall be installed on an escape line and kept at the derrickman's working platform.

2. The Safety Buggy and escape line shall be checked by the derrickman prior to each trip.

3. An escape line shall be a wire rope of suitable diameter and type. It shall be kept free of obstruction.

4. Tension on the escape line shall be such that a 180 lb. worker sitting in the Safety Buggy will touch the ground at least 20 feet from the anchor.

5. The length of the escape line shall be adequate to assure no less than a 45 degree descent from the vertical plane and shall be securely anchored both at the ground and to the rig.

N. Gases, Vapors, Fumes, Dusts, and Mists.

1. Occupational asbestos exposure shall be controlled in accordance with 29 CFR 1910.1001 of the Utah Occupational Safety and Health Rules and Regulations.

2. Exposure to contaminants shall be limited by the regulations set forth in Chapter Z of the Utah Occupational Safety and Health Rules and Regulations.

O. Ionizing Radiation.

Sources of ionizing radiation not regulated by the Nuclear Regulatory Commission shall be regulated by 29 CFR 1910.96 of the Utah Occupational Safety and Health Rules and Regulations.

P. Non-Ionizing Radiation.

Non-ionizing radiation exposure shall be regulated by 29 CFR 1926.54; and 29 CFR 1910.97.

Q. Hydrogen Sulfide (H_2S) Gas.

1. Area Definitions

a. No Hazard Area = any well which will not penetrate a known H_2S horizon.

b. Low Hazard Area = any well which will penetrate a formation containing H_2S with a known .35 psi/ft. B.H. pressure gradient or less and/or in which the H_2S zone has been effectively sealed off by casing-cementing and/or cementing method.

c. Medium Hazard Area = any well which will penetrate a formation containing H_2S not defined in R614-2-3.Q.1.a. and b.

d. High Hazard Area = any operation expected to bring free H_2S gas to the surface, i.e., DST (Drill Stem Testing), production testing, etc.

2. H_2S Safety Equipment Procedures.

a. The well operator and employer will require that the following safety equipment shall be provided and operational on site before the hole is 500 feet above any formation as defined in R614-2-3.Q.1. suspected and/or known to contain H_2S Gas.

(1) No Hazard Area

(a) No special H_2S equipment shall be required.

(2) Low Hazard area:

(a) Two (2) thirty (30) minute self-contained breathing apparatuses for emergency use only.

(3) Medium Hazard Area:

(a) Air masks with emergency escape cylinders for each employee.

(b) Two (2) thirty (30) minute self-contained breathing apparatuses for emergencies.

(c) Three wind socks and/or streamers.

(d) Oxygen powered resuscitator with cylinder.

(e) 2-Gas detectors (pump type).

(f) A separate warning system.

(4) High Hazard Area:

(a) Manifold air masks with emergency escape cylinders for each employee.

(b) Two (2) thirty (30) minute self-contained breathing apparatuses for emergencies.

(c) Three wind socks and/or streamers.
(d) Oxygen powered resuscitator with cylinder.
(e) Two Gas detectors (pump type).
(f) A separate warning system.

3. The employer shall assure that in High Hazard Areas no employee is permitted on location without H_2S safety training, except for instruction purposes.

4. The well operator shall provide two (2) means of egress on each location in a High Hazard Area.

5. A means of communications or instructions for emergency procedures shall be established and maintained on location along with the names and telephone numbers of the person or persons to be informed in case of emergencies.

6. Employee Instructions.

a. Employees shall be instructed in the use of all H_2S safety equipment before being allowed on the location.

b. The instruction of personnel shall include the following elements.

c. Employees shall be informed of the characteristics of H_2S and its hazards.

d. Proper first-aid procedures to be used in a H_2S knock down.

e. Use of personal protective equipment.

f. Use and operation of H_2S monitoring systems.

g. Corrective action and shut-down procedures.

7. The employer shall be able to show through training and/or experience that the person(s) giving H_2S safety instruction is qualified to give such instructions.

8. Signs shall be posted 500 feet from the location, when possible, on each road leading to the location warning of the hazard of H_2S.

9. All H_2S Safety equipment shall be checked to assure readiness before each tour change.

R. Illumination.

1. Lighting in the work place shall be sufficient to enable the employees to see clearly enough to perform their work safely.

2. Vehicle lights shall not be used for lighting of rig operations in lieu of rig lights, except in emergency.

S. Sanitation.

1. Potable Water.

a. An adequate supply of potable water shall be provided in all places of employment.

b. Portable containers used to dispense drinking water shall be capable of being tightly closed, and equipped with a tap. Water shall not be dipped from containers.

c. Any container used to distribute drinking water shall be clearly marked as to the nature of its contents and not used for any other purpose.

d. The common drinking cup is prohibited.

2. Toilet Facilities.

a. Under temporary field conditions at any work site, provisions shall be made to assure that not less than one toilet facility is available.

b. Toilets shall be maintained in a clean and sanitary condition.

3. Temporary Sleeping Quarters. When temporary sleeping quarters are provided, they shall be heated, ventilated, and lighted.

4. Washing Facilities. The employer shall provide adequate washing facilities for employees engaged in operations where contaminants may be harmful to the employees.

R614-2-4. Drilling Industry -- Fire Protection and Prevention.

A. Fire Protection.

1. The employer shall be responsible for the development of a fire protection program to be followed throughout all phases of operation work, and he shall provide for the firefighting equipment. As fire hazards occur, there shall be no delay in providing the necessary equipment.

2. Access to all available firefighting equipment shall be maintained at all times.

3. A minimum of four (4) 20#, Class B-C fire extinguishers or equivalent shall be conveniently located at the rig.

4. A minimum of two (2) 20#, Class B-C fire extinguishers or equivalent shall be conveniently located on well service units.

B. Fire Prevention.

1. All sources of ignition shall be prohibited at or in the vicinity of all operations that constitute a fire hazard, unless adequate protection is provided.

2. Smoking shall be prohibited at or in the vicinity of operations which constitute a fire hazard, and shall be conspicuously posted: "No Smoking".

3. An exhaust pipe from any internal combustion engine, located within 75 feet of any well bore, process vessel, oil storage tank, or other source of ignitable vapor, shall be so constructed and used so that any emission of flame along its length or at its end is prevented.

4. Burning stoves and open fires shall not be permitted within 75 feet of the wellbore, except for purpose of maintenance and repair.

5. Engine-driven light plants shall be located at least 75 feet from the wellbore unless properly protected to prevent source of ignition.

6. Oil and Grease Hazards. Oxygen cylinders and fittings shall be kept away from oil or grease.

7. When lighting a flare pit, the lighting shall be done from the upwind side. When there is no wind or when the wind direction is uncertain, no attempt shall be made to light the pit unless the operator can position himself in an explosive-free area. The use of hand thrown rags or similar flaming objects shall be prohibited.

a. A pilot flame shall be maintained at the end of the discharge line at all times when air, gas, or mist drilling is in progress.

C. Flammable Liquids.

1. General Requirements.

a. Only approved containers and portable tanks shall be used for storage and handling of flammable liquids. Approved safety cans shall be used for the handling and use of flammable liquids in quantities less than 5 gallons. For quantities of one gallon or less, only the original container or approved safety cans shall be used for storage, use, and handling of flammable liquids.

b. No material used for cleaning shall have a flashpoint less than 100 degrees F. Examples of materials which may have flashpoints below 100 degrees F. are Gasoline, Naphtha, etc.

c. No smoking or open flame shall be allowed within 25 feet of the handling of flammable liquids. Any engine being refueled shall be shut off during such refueling except diesel engines.

d. An electrical bond shall be maintained between containers when a flammable liquid is being transferred from one to the other.

e. Dispensing nozzles and valves shall be of the self-closing type.

f. Except for the fuel in the tanks of the operating equipment, no flammable fuel shall be stored within 75 feet of a wellbore.

g. Drainage from any fuel storage shall be in a direction away from the well and equipment.

2. Safety Procedures for Fuel Tanks

a. Propane or butane tanks shall be placed parallel to any side of the rig.

b. Fuel tanks shall be protected by crash rails or guards to prevent physical damage unless by virtue of their location they

have this protection.

c. Fuel tank storage areas shall be kept free of weeds, debris, and other combustible material not necessary to the storage.

3. Liquid Petroleum Gas (LPG)

a. Liquid Petroleum Gas (LPG) shall be handled in accordance with NFPA 58-69 "Standard for Handling of Liquefied Petroleum Gases," or according to the latest published addenda or revision of that code.

b. Utilization equipment shall have a thermal coupling or equivalent installed.

R614-2-5. Drilling Industry -- Signs, Signals and Barricades.

A. Prevention Signs and Tags.

1. General. Warning signs or symbols shall be visible at all times when work is being performed, and shall be removed or covered promptly when the hazards no longer exist.

a. Regulatory signs and barricades for Hydrogen Sulfide are covered in R614-2-3.Q.8.

2. Safety Warning Signs

a. Warning signs shall be posted to denote any unusual hazardous situation.

b. Warning signs shall be posted in areas where the use of personal protective equipment is required.

c. Identification signs shall be conspicuously posted to locate emergency equipment.

d. Storage areas and containers of poisonous, toxic, flammable, or explosive material shall be properly labeled and appropriately stored according to content.

3. Transformers.

Signs indicating danger and prohibiting unauthorized access shall be conspicuously displayed on the housing or other enclosure around electrical equipment.

B. Signaling.

Signals between supervisors, employees, or other persons involved shall be established and agreed upon prior to start of operations.

R614-2-6. Drilling Industry -- Materials Handling, Storage and Use.

A. General Requirements for Storage.

1. All materials stored in tiers shall be stacked, racked, blocked, interlocked, or otherwise secured to prevent sliding, falling, or collapse.

2. Aisles and passageways shall be kept clear to provide for the free and safe movement of material handling equipment or employees. Such areas shall be kept in good repair.

3. Noncompatible materials shall be segregated in storage.

4. Bagged materials shall be stacked by stepping back the layers and cross-keying the bags at least every 10 bags high.

B. Construction and Loading of Pipe Racks.

1. Construction of pipe racks shall be designed to support any load placed thereon.

2. Pipe racks shall be set level laterally on a stable foundation. They may slope front to back to facilitate laying down or picking up pipe.

3. Provision shall be made to prevent pipe, tubular material, or other round material from rolling off pipe racks.

4. No employee shall go between pipe racks and a load of pipe during loading, unloading, and transferring operations.

5. Pipe shall be loaded and unloaded, layer by layer, with bottom layer pinned or blocked securely on all 4 corners, and each successive layer effectively chocked or blocked.

6. Spacers shall be used, and evenly spaced between the layers of pipe or material on the rack.

7. When pipe is being moved or transferred between pipe racks, truck and trailer, the temporary supports for skidding or rolling shall be so constructed, placed, and anchored so as to support the load that is placed on them.

8. During freezing weather, pipe standing on end shall be positioned so as to afford proper drainage.

C. Rigging Equipment for Material Handling.

1. General.

a. Rigging equipment for material handling shall be checked prior to use on each shift and as necessary during its use to ensure that it is safe. Defective rigging equipment shall be removed from service.

b. Rigging equipment shall not be loaded in excess of its recommended safe working load.

2. Wire Ropes.

a. Protruding ends of strands in splices on slings and bridles shall be covered or blunted.

b. An eye splice made in any wire rope shall have not less than three full tucks. However, this requirement shall not operate to preclude the use of another form of splice or connection which can be shown to be as efficient and which is not otherwise prohibited.

c. Except for eye splices in the ends of wires and for endless rope slings, each wire rope used in hoisting or lowering, or in pulling loads shall consist of one continuous piece without knot or splice. Sand lines and winch lines are excluded.

d. Eyes in wire rope bridles, slings, or bull wires shall not be formed by knots.

e. When U-bolt wire rope clips are used to form eyes, The following table shall be used to determine the number and spacing of clips.

f. When used for eye splices, the U-bolt shall be applied so that the "U" section is in contact with the dead end of the rope.

3. Natural Rope and Synthetic Fiber.

Fiber ropes which are cut, frayed (through one or more strands), or that have been in contact with caustic, acid, or any other chemical that might weaken them shall be replaced immediately.

TABLE 2

NUMBER AND SPACING OF U-BOLT WIRE ROPE CLIPS

Improved plow steel rope diameter inches	NUMBER OF CLIPS Drop forged	Other material	Minimum Spacing inches
1/2	3	4	3
5/8	3	4	3-3/4
3/4	4	5	4-1/2
7/8	4	5	5-1/4
1	5	6	6
1-1/8	6	6	6-3/4
1-1/4	6	7	7-1/2
1-3/8	7	7	8-1/4
1-1/2	7	7	9

D. Transporting, Moving, and Storing Compressed Gas Cylinders.

1. Valve protection caps shall be in place and secured.

2. When cylinders are hoisted, they shall be secured on a cradle, slingboard, or pallet. They shall not be hoisted or transported by means of magnets or choker slings.

3. When cylinders are transported by powered vehicles, they shall be secured in a vertical position.

4. Valve protection caps shall not be used for lifting cylinders from one vertical position to another. Bars shall not be used under valves or valve protection caps to pry cylinders loose when frozen. Warm, not boiling water shall be used to thaw cylinders loose.

5. Cylinders shall be secured in an upright position and shall be separated in storage as to full and empty cylinders and shall be separated as to contents.

6. No person other than the gas supplier shall attempt to mix gases in a cylinder. No one except the owner of the cylinder or person authorized by him, shall refill a cylinder. No

one shall use a cylinder's contents for purposes other than those intended by the supplier.

7. No damaged or defective cylinder shall be used.

R614-2-7. Drilling Industry -- Tools - Hand and Power.

A. General Requirements.

1. Condition of tools. All hand and power tools and similar equipment, whether furnished by the employer or the employees, shall be maintained in a safe condition.

2. All hand-held powered tools shall be equipped with a constant pressure switch that will shut off the power when the pressure is released.

B. Hand Tools.

1. Employers shall not issue or permit the use of unsafe hand tools.

2. Impact tools, such as drift pins, wedges, and chisels, shall be kept free of mushroomed heads.

3. The wooden handles of tools shall be kept free of splinters or cracks and shall be kept tight in the tool.

C. Power-Operated Hand Tools.

1. Electric power operated tools.

a. Electric power operated tools shall either be of the approved double-insulated type or grounded.

b. The use of electric cords for hoisting or lowering tools shall not be permitted.

2. Pneumatic Power Tools.

a. Pneumatic power tools shall be secured to the hose or whip by some positive means to prevent the tool from becoming accidentally disconnected.

b. Safety clips or retainers shall be securely installed and maintained on pneumatic impact (percussion) tools to prevent attachments from being accidentally expelled.

c. The manufacturer's safe operating pressure for hoses, pipes, valves, filters, and other fittings shall not be exceeded.

d. The use of hoses for hoisting or lowering tools is prohibited.

e. All hoses exceeding 1/2 inch inside diameter and having a pressure greater than 150 psi shall have a safety device at the source of supply or branch line to reduce pressure in case of hose failure.

3. Fuel Powered Tools.

a. All fuel powered tools shall be stopped while being refueled, serviced, or maintained.

b. When fuel powered tools are used in enclosed spaces, the applicable requirements for concentrations of toxic gases and use of personal protective equipment, as outlined in 29 CFR 1926.55 and 1926.103 shall apply.

4. Hydraulic Power Tools.

a. The fluid used in hydraulic powered tools shall be fire-resistant fluids approved under 30 CFR 1 to 199, and shall retain its operating characteristics at the most extreme temperatures to which it will be exposed.

b. The manufacturer's safe operating pressures for hose, valves, pipes, filters, and other fittings shall not be exceeded.

D. Abrasive Wheel Machinery.

1. Abrasive wheels shall be used only on machines provided with safety guards. Safety guards will be: spindle-end guards, tongue, and workrest guards.

2. Safety guards used on machines known as right angle head or vertical portable grinders shall have a maximum exposure angle of 180 degrees and the guard shall be so located so as to be between the operator and the wheel during use.

3. The maximum angular exposure of the grinding wheel periphery and sides for safety guards used on other portable grinding machines shall not exceed 180 degrees and the top half of the wheel shall be enclosed at all times.

E. Jacks-Lever and Ratchet, Screw, and Hydraulic, Except Rig Jacks.

1. The manufacturer's rated capacity shall be legibly marked on all jacks and shall not be exceeded.

2. All jacks shall have a positive stop to prevent overtravel.

3. Heavy capacity hydraulic jacks shall have a safety device which will cause the jacks to support the load in any position in event the jack malfunctions.

R614-2-8. Drilling Industry -- Welding and Cutting.

A. Welders and cutters shall be well trained in the safe practices that apply to their work.

B. Welding, cutting, and brazing shall not be done in the presence of explosive gas or fumes, or near combustible materials, except when performed in compliance with 29 CFR 1910 Subpart Q.

R614-2-9. Drilling Industry -- Electrical.

A. General Requirements.

1. Reference materials for electrical classifications are available at the UOSH office.

2. All electrical work, installation, and wire capacities shall be in accordance with the pertinent provisions of the National Electrical Code, 1990 Edition unless otherwise provided by regulations of this part.

B. Classification of Areas.

1. Drilling Wells. Areas surrounding wells in the process of drilling or being serviced by drilling rigs shall be classified as follows:

a. Well Head Area.

(1) When the derrick is not enclosed or is equipped with a wind-break (open top and V door) and the substructure is open to ventilation, the areas shall be classified as shown in Fig. I-1.

(2) When the derrick floor and substructure are enclosed, the areas shall be classified as shown in Fig. I-2.

b. Mud Tank.

(1) The area around a mud tank located outdoors with unrestricted ventilation shall be classified to the extent shown in Figure I-3.

(2) The area around a mud tank located in an enclosure shall be classed Class I, Div. II to the extent of the enclosure as shown in Fig. I-4.

c. Mud Ditch.

When an open ditch or trench is used to connect between mud tanks, or between shale shaker and mud tanks; or open, active mud pits located outdoors with unrestricted ventilation, the area shall be classified as shown for mud tanks in Fig. I-3.

d. Mud Pump

The area surrounding a mud pump shall be unclassified unless it is located in an area that is classified because of some other facility.

e. Shale Shaker.

(1) The area surrounding a shale shaker with unrestricted ventilation shall be classified as shown in Fig. I-5.

(2) When the shale shaker is located in an enclosure, the area shall be classified as Class I, Division II to the extent of the enclosure.

f. Desander - desilter

(1) A desander - desilter located in an open area or in an adequately ventilated enclosure shall be classified as shown in Fig. I-6.

(2) A desander - desilter located in an inadequately ventilated enclosure shall be classified as Class I, Division II to the extent of the enclosure.

g. Degasser.

The area surrounding a degasser which is a closed system, is unclassified except for the vent from the degasser, which shall be classified as shown in Fig. I-7.

h. Open Sump

The area surrounding an open sump which contains

volatile, flammable liquid shall be classified the same as for a mud tank as shown in Fig. I-3.

i. Diverter line vent.

The area around the diverter line shall be classified as shown in Fig. I-7 for gas vent.

2. Producing Oil and Gas Wells.

Areas adjacent to producing oil and gas wells shall be classified as follows:

a. Flowing well.

(1) Area around a flowing well located in an open area is unclassified where a cellar or below grade sump is not present.

(2) Area around a flowing well located in an open area with a cellar or below grade sump shall be Class I Division I below grade and Class I Division II above grade to the extent shown in Fig. I-8.

b. Artificially lifted wells.

(1) Beam pumping well.

(a) Where a cellar or below grade sump is not present, the area around a pumping well shall be Class I Division II to the extent shown in Fig. I-9.

(b) Area around a beam pumping well where a cellar or below grade sump is present shall be classified Class I Division I below grade and Class I Division II above grade to the extent shown in Fig. I-10.

(2) Well equipped with submersible, electric motor-driven pump.

(a) Area around a well in an open area being produced with a submersible electric motor-driven pump is unclassified if a cellar or below grade sump is not present.

(b) Where a cellar below grade sump is present at a well produced with a submersible, electric motor-driven pump, Class I Division I and Division II areas shall be classified as shown in Fig. I-8.

(3) Well produced with hydraulic subsurface pump.

(a) Area around a well being lifted with a hydraulic subsurface pump is not classified when there is no cellar or below grade sump.

(b) Where a cellar is present at a well being lifted with hydraulic subsurface pump, Class I Division I and Division II area shall be classified as shown in Fig. I-8.

(4) Gas liftwell.

(a) The area around a gas lift well located in an open area is unclassified when there is no cellar or below grade sump.

(b) Areas around a gas lift well that has a cellar or below grade sump shall be classified as Class I, Division I or Division II as shown in Fig. I-8.

C. Grounding and Bonding.

1. Portable and/or Cord and Plug-connected Equipment.

a. The noncurrent-carrying metal parts of portable and/or plug-connected equipment shall be grounded.

b. Portable tools and appliances protected by an approved system of double insulation, or its equivalent, need not be grounded. Where such an approved system is employed, the equipment shall be distinctively marked.

2. Fixed Equipment. Exposed noncurrent-carrying metal parts of fixed electrical equipment, including motors, generators, frames and tracks of electrically operated cranes, electrically driven machinery, etc., shall be grounded.

3. Effective Grounding. The path from circuits, electrical equipment, structures and conduit or enclosure to ground shall have a maximum resistance to ground of 25 ohms. Where the resistance exceeds 25 ohms, one or more driven rod electrodes shall be connected to the ground side of the system to lower the resistance to 25 ohms maximum.

4. Extension Cords/Cables. Extension cords/cables used with portable electric tools and appliances shall be of three wire type.

5. Bonding.

a. Conductors used for bonding and grounding stationary and moveable equipment shall be of ample size to carry the anticipated current.

b. When attaching bonding and grounding clamps or clips, secure and positive metal-to-metal contact shall be made.

6. Temporary Wiring. All temporary wiring shall be shall be grounded.

D. Overcurrent Protection.

1. Overcurrent protection shall be provided by fuses or circuit breakers for each feed and branch circuit, and shall be based on the current-carrying capacity of the conductors supplied and the power load being used.

2. No overcurrent device shall be placed in any permanently grounded conductor, except where the overcurrent device simultaneously opens all conductors of the circuit or for motor running protection.

3. When fuses are installed or removed with one or both terminals energized, special tools insulated for the voltage shall be used.

E. Switches, Circuit Breakers, and Disconnecting Means.

1. Each disconnecting means for motors and appliances, and each service feeder or branch circuit at the point where it originates, shall be legibly marked to indicate its purpose unless located and arranged so the purpose is evident.

2. Disconnecting means shall be located or shielded so that employees will not be injured.

F. Lockouts and/or Tagging.

Where there is danger of machinery being started or electrical circuits being energized while repairs or maintenance work is being done, the electrical circuits shall be locked open and/or tagged. Where there is danger of machinery being started or of steam or air creating a hazard to workers while repairs or maintenance work is being done, the employees shall disconnect the lines or lock and tag the main valve closed or blank the line on all steam driven machinery, air driven machinery, pressurized lines or lines connected to such equipment if they would create a hazard to workers.

G. Electrical Equipment Installation and Maintenance.

1. General Requirements

a. Where different voltages, frequencies, or types of current (A.C. or D.C.) are to be supplied by portable cords, receptacles shall be of such design that attachment plugs used on such circuits are not interchangeable.

b. Attachment plugs or other connectors supplying equipment at more than 300 volts shall be of the skirted type or otherwise so designed that arcs will be confined.

c. Cable/cords passing through work areas shall be covered or elevated to protect it from damage which would create a hazard to employees.

d. Worn or frayed electric cables/cords shall not be used.

e. Extension cords/cables shall not be fastened with staples, hung from nails, or suspended by wire.

2. Facilities and Equipment.

a. Light plant generator shall have an adequate overload safety device.

b. All light cords and plug-ins shall be kept in good condition.

c. Rig lights shall be of an approved type for the area in which they are located.

d. Lamps and reflectors shall be cleaned frequently.

e. The rays of light shall be directed toward the objects to be illuminated, and away from the eyes of the worker.

3. Wiring and Electrical Equipment Permissible in Class I, Division II areas.

a. Wiring shall employ: Rigid threaded conduits, lead covered armoured cable, Type SO, SOW, STW, STO, GGW, W, Diesel Locomotive, or equivalent cable with approved connectors (vapor proof).

b. Electrical equipment including fixtures, plugs, receptacles, fittings and enclosures for switches and controllers

shall be sealed and gasketted or totally enclosed gasketted with threaded hubs (vapor proof).

c. Motors: All A.C. motors shall be totally enclosed, fan-cooled type (TEFC) or equivalent. D.C. motors located in Class I, Division II areas will be purged (cooled) with air from a safe source.

R614-2-10. Drilling Industry -- Ladders.

A. Ladders.

1. Except where either permanent or temporary stairways or suitable ramps or runways are provided, ladders described in this chapter shall be used to give safe access to all elevations.

2. All ladders shall be maintained in a safe condition. All ladders shall be checked regularly, with the intervals between checks being determined by use and exposure.

3. Ladder requirements not specifically referenced in this part shall be in accordance with the State of Utah Occupational Safety and Health Rules and Regulations 29 CFR 1910.25, 26, and 27.

4. Rungs, cleats, and steps shall be free of splinters, sharp edges, burrs, or projections which may be a hazard.

5. Where there is a walking/working platform or access to a ladder of 24 inches or more above the floor or ground level, a step or steps of not more than 12 inches high shall be provided for access.

6. Step-across distance. The step-across distance from the nearest edge of ladder to the nearest edge of equipment or structure shall not be more than 12 inches.

7. Cages or wells shall be provided on ladders of more than 20 feet to a maximum unbroken length of 30 feet where a climbing device is not used.

8. All landing platforms shall be equipped with standard railings and toeboards, so arranged as to give safe access to the ladder.

9. The side rails of a ladder shall extend 3 feet above parapets and landing.

10. Ladder safety devices may be used on ladders over 20 feet in unbroken length in lieu of cage protection. All ladder safety devices, such as those that incorporate lifebelts, friction brakes, and sliding attachments shall meet the design requirements of the ladders which they serve.

R614-2-11. Drilling Industry -- Walking, Working Surfaces.

A. Guardrails, Handrails and Covers.

1. Guarding of Floor Openings and Floor Holes.

Floor openings and floor holes shall be guarded by a standard railing and toeboards and/or cover.

2. Guarding of Wall Openings.

Wall openings from which there is a drop of more than 4 feet shall be guarded.

3. Guarding of Open-Sided Floors, Platforms, and Runways

a. Every open-sided floor or platform 4 feet or more above adjacent floor or ground level shall be guarded by a standard railing, or equivalent.

b. Standard railing shall be provided on the inside of all mud tank runways unless other means are available to prevent an employee from falling into the mud tanks.

c. Regardless of height, open-sided floors, walkways, platforms, or runways above or adjacent to dangerous equipment and similar hazards shall be guarded with a standard railing and toeboard.

4. Stairway Railings and Guards.

Every flight of stairs having four or more risers shall be equipped with standard stair railings on open sides.

B. Floors, Stairways, and Platforms.

1. Floors, stairways, and platforms shall be free of dangerous projections or obstructions and shall be maintained in good repair and reasonably free from oil, grease, water, or other materials of similar nature. Where the type of operation necessitates working on slippery floor areas, such surfaces shall be protected against slipping by the use of mats, grates, cleats, or other methods to provide reasonable protection.

2. Each corner of a crown block shall be securely bolted or welded to the mast or derrick.

3. Each finger of a finger board shall be bolted or welded to its support beam.

4. Any temporary stabbing board or other temporary boards placed in the derrick shall be securely fastened.

5. On all derricks, ladder platforms shall be installed adjacent to, and shall provide safe access to the work platforms.

6. Ladder platforms are to be located at the crown of all drilling rigs.

7. With the exception of the stabbing board and derrick board, every platform erected on the inside of a derrick shall completely cover the space from the working edge of the platform back to the legs and girts of the derrick.

C. Exits, Access, and Egress.

1. Exits shall be provided to the outside on at least 3 sides of the derrick floor.

2. All work stations shall have two means of egress, except for hopper house.

3. No exit door of the derrick floor, including all doors of the doghouse, shall be held closed with a lock or outside latch while anyone is on the derrick floor.

4. No employee shall slide down any pipe, kelly hose, cable, or rope line except in the event of an extreme emergency.

5. No employee shall use the catline as a means of ascending to or descending from any point in the derrick except in an emergency. Even then, the rotary table shall be locked out and qualified employees shall operate the cathead and controls.

R614-2-12. Drilling Industry -- Hoisting Equipment.

A. Derricks and Cranes.

1. The employer shall comply with the manufacturer's specifications and limitations applicable to the operation of any derrick. Where manufacturer's specifications are not available, the limitations assigned to the equipment shall be based on the determinations of a qualified engineer competent in this field and such determinations will be appropriately documented and recorded.

2. Traveling Blocks shall have an operational limiting device or adequate crown timbers properly installed (Special Services are excluded).

3. Cranes mounted on barges.

a. When a crane is mounted on a barge, the rated load of a crane shall not exceed the original capacity specified by the manufacturer.

b. A load rating chart, with clearly legible letters and figures, shall be provided with each crane, and securely fixed at a location easily visible to the operator.

c. When load ratings are reduced to stay within the limits for list of the barge with the crane mounted on it, a new load rating chart shall be provided.

d. Cranes on barges shall be positively secured.

B. Truck-Mounted Masts and Derricks.

The employer shall require that truck-mounted derricks or masts are not moved while in a raised position. This does not apply to the skidding of a drilling rig.

C. Personnel Hoisting.

1. Well Drilling: Employees shall not ride the traveling blocks to or from the boards (except in cases of emergency).

2. Special Services: Riding hoisting equipment.

a. No employee shall ride traveling blocks when rods or tubing or any other downhole equipment is being moved.

b. Anyone riding the traveling blocks shall wear an approved safety harness with appropriate safety line anchored and adjusted to prevent a fall of over 6 feet.

3. The cat-line shall not be used as a personnel carrier except in an emergency.

D. Drawworks.

1. The drawworks shall not be operated without all guards in position and properly maintained.

2. If lubrication fittings are not accessible with guards in place, machinery shall be stopped for oiling and greasing.

3. The brakes, linkage, and brake flanges of the drawworks shall be checked every day and repaired or replaced as necessary.

E. Cathead.

1. A blunt smooth-edged divider to separate the first wrap of a line on a cathead shall be installed on all manually-operated rope catheads and the clearance between the device and the friction surface of the cathead shall not exceed 1/2 of an inch.

2. The friction surface and flanges of a cathead on which a rope is manually operated shall be smooth and the diameter of the cathead between the flanges shall be uniform throughout its length with an allowable tolerance of 3/8 of an inch.

3. The key seat and projecting key on a cathead shall be covered with a smooth thimble or plate.

4. When the cathead is unattended, no rope or line shall be left wrapped on or in contact with the cathead.

5. A qualified employee shall be at the controls while a cathead is in use. He shall stop the rotation of the cathead immediately in event of an emergency.

6. No splice other than by the manufacturer shall be allowed to come into contact with the friction surface of the cathead.

7. Each cathead using chain shall be equipped with a manually operated cathead clutch or with another device adequate to keep the rotation of the cathead under control when it is in use. The clutch or device shall be of the "nongrab" type and shall release automatically when not manually held in the engaged position.

8. Every chain used in a spinning line shall have a fiber tailrope between 8 inches and 12 inches in length fastened to the pipe end of the chain.

9. Connections between lengths of cathead chain, tong chains, and spinning chain shall be of the connecting link or swivel type and of strength equal to the lighter chain. Connecting links and swivels shall be of a size and type suitable for the chain in use.

10. The operator of a cathead shall keep his operating area clear at all times. That portion of the catline not being used shall be kept coiled or spooled.

F. Wire Ropes.

1. All hoisting lines (wire ropes) shall be visually checked by a competent person daily, and shall be thoroughly inspected at least each 30 days in conjunction with a ton-mile program, or a record made of each 30 day inspection which shall designate defects and deterioration. When the wire rope is slipped or replaced, it shall be recorded on the inspection report as to date and length of wire rope removed. Such written report must be kept on file at the drilling rig and local office.

2. A dead-line anchor for a drilling line shall be so constructed, installed, and maintained that its strength shall at least equal the working strength of the hoisting line.

3. All lines and sand lines shall be visually checked daily when in use. At this time a determination shall be made as to whether the hoisting line shall be cut to bring a new line into the system, or replaced. In no event shall the hoisting line or sand line be allowed to remain in service when the following numbers of broken wires appear in any section of the line:

TABLE 3

BROKEN WIRE-ROPE TABLE

Construction	Number of Broken Wires In One Rope Lay	Number of Broken Wires In One Strand in One Lay
6 x 7	7	3
6 x 19 Seale	11	4
6 x 21 Seale or FW	13	5
6 x 25 FW	18	6
6 x 31	19	6
6 x 36	21	7
18 x 7	18	3
19 x 7	18	3
8 x 19 Seale	16	4
8 x 25 FW	25	6

4. In addition to the above criteria, a hoisting line or sand line shall be removed from service when any of the following conditions exist:

a. When end connections are corroded, cracked, bent, worn, or improperly applied.

b. When evidence of severe kinking, crushing, cutting, or unstranding are noted.

R614-2-13. Drilling Industry -- Blasting and the Use of Explosives.

A. The employer shall permit only authorized and qualified persons to use, handle and/or transport explosives.

B. Transportation of explosives shall meet the provisions of the Department of Transportation regulations.

C. Explosives and related materials shall be stored in approved facilities required under 27 CFR 55 Commerce in Explosives adopted by reference.

D. A blaster shall be qualified in the field of transporting, storing, handling, and use of explosives and have a working knowledge of Federal, State, and Local Laws which pertains to explosives.

R614-2-14. Drilling Industry -- Machine Guarding.

A. All belts, gears, shafts, pulleys, sprockets, spindles, drums, fly wheels, or other reciprocating or rotating parts, with the exception of the cathead, shall be guarded by a guard of sufficient strength to prevent any person from coming in contact therewith, unless they are guarded by location.

B. A rotary table shall have a substantially constructed metal guard adequately covering the outer edge of the table and extending downward to completely cover all the exposed rotating side of the table including the pinion gear.

C. Machinery shall not be operated without all guards properly maintained and in position; except during maintenance, repair, or rigup work or when limited testing may be performed by a qualified person.

D. No employee shall clean or lubricate any machinery where there is danger of contact with a moving part until such machinery has been stopped.

E. Any counterweight above the derrick floor when not fully enclosed shall run away from the working surfaces or be guarded.

F. The employer shall require that the mast crown is equipped with sheave guards which shall prevent the hoisting lines from being displaced from the sheaves during operations or when being raised to or lowered from the operating position.

G. When maintenance or servicing is to be accomplished on electrical lines, air lines, gas lines, or other lines containing hazardous materials, the line being worked on shall be rendered safe by emptying, purging, disconnecting, or other means before work is begun.

R614-2-15. Drilling Industry -- Overwater Operations.

A. When work is performed over water, employees shall be instructed in proper water entry procedures to be used.

B. An emergency means of escape from platforms shall be provided when working over water.

C. Coast Guard approved life jackets or work vests shall be available for and worn by each employee when performing operations over water.

D. Due consideration shall be given when dispatching vessels consistent with weather conditions, sizes of vessels, loading, and other factors.

E. Decks of all vessels shall be kept clean of oil, grease, debris, and free of excess equipment at all times.

F. Wireline units, power packs, tool boxes, and other equipment shall be securely tied down once it has been loaded on a vessel to be transported to or from inland water locations.

G. Mobile service units (when working off a barge) shall be properly secured with chains or wire rope and load binders once it has been spotted and when it is enroute to and from locations.

H. Tag lines shall be used to guide and steady equipment being loaded or unloaded from vessels on inland water locations.

I. It shall be the responsibility of the person skippering a vessel to determine when it is safe or unsafe to tie up or jack up on a well site.

J. When a crane is being used to transfer employees over water, employees shall wear a life jacket or work vest and shall not ride on anything other than an approved personnel net.

K. When handling equipment with a side loader type marine unit hauler the operator shall not lift or lower the base of the equipment being handled below the level of the ground or dock.

L. The operator shall not lift or lower a heavy load with a side loader boom without first extending jacks or outriggers.

R614-2-16. Drilling Industry -- Anchoring and Guy Wires.

Each derrick requiring anchoring or guying, shall follow the manufacturer's recommendations for guying and anchoring. If the manufacturer's recommendations are not available, an appropriate survey by a qualified engineer shall be made. A copy of the manufacturer's recommendations or a signed copy of the engineer's survey shall be made available for inspection on each derrick.

R614-2-17. Drilling Industry -- Air and Hydraulic Pressure.

A. Safety Procedures for Air Compressors.

1. Air compressors used or operated shall be constructed, installed, operated, and repaired to conform to the Engineering Standards of ASME and ANSI.

2. All air compressors shall have at least one air pressure regulator to control proper air flow.

3. The safety relief (safety pop-off) valve on the main air tank shall be checked periodically and kept in proper working order.

4. There shall be no valve in the discharge opening of a safety relief valve or in the discharge pipe connected thereto.

5. The piping connected to the pressure side and discharge side of a safety relief valve shall not be smaller than the normal pipe size openings of the device.

6. The piping from the discharge side of the safety relief device shall be securely tied down.

7. The piping from the discharge side of the safety relief valve shall be sloped in order to drain liquids.

8. All valves and pressure control devices shall be kept in the proper working order.

9. Hydraulic pressure lines shall not be subjected to pressures exceeding those recommended by the manufacturer.

B. Hydraulic Tong Control Mechanism.

1. The input pressure line on power tongs shall be disconnected or disengaged before any repair, replacement, or other work of a similar nature is done on tongs, chains, dies, or their component parts.

2. Pressure lines (hydraulic or air) shall have a safety relief valve which shall never be set higher than manufacturer's specifications for the working pressure of the lines or valve.

3. Hydraulic tongs shall be backed up with a safety device able to withstand the full torque of the power tool.

C. Mud Pits and Tanks, Mud Pumps, Piping and Hoses.

1. All fixed mud guns used for jetting shall be pinned or hobbled when in use and unattended.

2. Hoses shall not be used for jetting operations.

3. When necessary for an employee to enter a mud tank which has contained toxic fluid, adequate personal protective equipment shall be utilized or the tank shall be purged of all harmful substances.

4. Clamps and safety lines or chains shall be used to fasten the kelly hose at the standpipe end to the derrick and at the swivel end to the swivel housing, and all other flexible mud lines shall be appropriately secured.

5. The suction pit or tanks used for the circulation of flammable materials shall not be within 75 feet of well bore.

6. All mud pumps associated with a drilling rig shall be equipped with a safety pressure relief valve and an operating gauge in the system.

7. The safety pressure relief valve shall be set to discharge at a pressure not in excess of the established working pressure of the pump, pipe, and fittings.

8. A guard shall be placed around the shearing pin and spindle of a safety pressure relief valve.

9. The discharge from a safety pressure relief valve shall be piped to a place where it will not endanger employees.

10. There shall be no valve between a pump and its safety pressure relief valve.

11. The piping connected to the pressure side and discharge side of a safety pressure relief valve shall not be smaller than the normal pipe size opening of valve.

12. The piping on the discharge side of a safety pressure relief valve shall be properly secured.

R614-2-18. Drilling Industry -- Drilling Operations.

A. When maintenance or servicing is to be accomplished on power-driven equipment, the immediate source of power to the individual piece of equipment to be worked on shall be locked out. When maintenance or servicing is to be accomplished on electrical lines, air lines, gas lines, or other lines containing hazardous materials, the line being worked on shall be rendered safe by emptying, purging, disconnecting, or other means before work is begun.

B. Drillers shall never engage the rotary clutch without watching the rotary table.

C. Tools or other materials shall not be carried up or down a ladder unless properly secured to the body, leaving both hands free for climbing.

D. The hoisting line (wire rope) shall not be removed from the drum until the traveling blocks are to be laid on the derrick floor, or the traveling blocks are to be held suspended by a separate wire rope.

E. The hoisting line (wire rope) shall not be in direct contact with any derrick member, any stationary equipment, or material in the derrick except the crown block and any traveling block sheaves, a line spooler, a line stabilizer or weight indicator.

F. Every overhead sheave or pulley on which a line spooler counterweight rope runs shall be fastened securely to its support.

G. Every rig shall be equipped with a safety valve (Kelly Cock) with connections for each type of tool joint being used.

H. Blowout Prevention Equipment. While a well is being drilled, tested, completed, reconditioned, or is otherwise being worked on, blowout prevention equipment shall be installed and used in accordance with recognized standards and shall be reasonably adequate to keep the well under control at all times.

The blowout prevention equipment provided shall be approved by the State of Utah Oil, Gas, and Mining Division.

I. Spinning chains shall not be handled near the rotary table while it is in motion. Workers shall not place the chain on the joint of pipe in the mouse hole while the table is rotating.

J. Chains used in connection with drilling or production operations shall be suitable for the type of service. Chains used in a spinning line, in a long line, or on a cathead must be of an approved type.

K. Every drilling rig shall be equipped with a reliable weight indicator.

L. Any weight indicator hung above the floor shall be secured to the derrick by means of a wire rope safety line or chain.

M. Every test plug used above the derrick floor shall be attached to the elevator links by safety line or chain.

N. The operator shall not leave the brake without tying the brake down or securing it with adequate counterbalance unless the drawworks is equipped with an automatic feed control.

O. The operator shall not engage the rotary clutch until the rotary table is clear of personnel and material.

P. The operator shall not leave the controls while the hoisting drum is on motion, except when drilling.

Q. Each rotary tong shall be securely attached to the derrick or a backup post with adequate wire rope safety lines.

R. A mud box or other effective means shall be provided on all rigs to convey any fluids away from the derrick floor while pulling drill stem test or breaking wet joints.

S. Hoses, lines, or chains shall not be handled or used near the rotary table while it is in motion.

T. A kelly pull-back post shall be provided for pulling the kelly back to the rat hold. The pull-back post shall be secured either to the derrick foundation, side sills, or floor sills, and shall not be attached to or in contact with the derrick legs, girts, or braces.

U. Whenever drill pipes, drill collars, or tubing are racked in the derrick provision shall be made for drainage of any fluids or gases in the stands.

V. The toolpusher (or other qualified employee) shall be in charge and present during the operation of raising or lowering a derrick.

W. The employer shall not allow employees under or in a derrick being raised or lowered.

X. No employee shall handle a traveling hoisting line unless he uses a suitable hand guard which shall be secured to the derrick.

Y. The rotary table shall not be used for the final making up or initial breaking out of a pipe connection.

Z. All pipe and drill collars racked in a derrick shall be adequately secured to prevent them from falling across the derrick.

AA. Safety clamps used on drill collars, flush joint pipe, or similar equipment for the purpose of preventing its falling in the well when not held by the elevator, shall be removed from the pipe and drill collars before racking.

BB. Racking foundations shall be designed to withstand the load of racked pipe and drill collars.

R614-2-19. Drilling Industry -- Special Services.

A. Special Services.

1. The owner/operator shall require that all applicable requirements of other sections of these Rules and Regulations, in addition to the following requirements, shall apply to Special Services and Operations.

2. The supervisor of the special service shall hold a pre-job meeting with his crew to review responsibilities for the operations to be performed.

3. Special services fire extinguishers shall be placed in an accessible position.

4. Precautions shall be taken to prevent personnel or vehicles from crossing under or over unprotected wire lines, pressurized hoses, or pipe.

5. There shall be a minimum number of employees in the derrick or within 6 feet of the wellbore during the time a swab line or other wire line is being run in the hole.

6. Smoking or open fires shall be permitted only in designated areas.

7. A frozen flow line or hose shall not knowingly be flexed or hit.

8. Line wipers shall be adequately secured.

9. Oil savers should not be adjusted while the line is in motion except by remote means.

10. Only a qualified person shall operate the cathead.

11. All discharge lines shall be laid with sufficient flexible joints, preventing rigidity so as to prevent excess vibration at wellbore.

12. When using an open ended flow line to flow or bleed off a well, it shall be secured at the end of the flow line and at each 30 foot interval before opening the flow line.

B. Mud Pits and Tanks.

1. Portable tanks shall be located where it is not possible for employees or equipment to come into contact with overhead power lines.

2. All valves and gauges shall be checked to be sure there is no pressure on the lubricator before working on or removing it. Prior to breaking out (rigging down), all pressure shall be bled off the lines that are to be broken out.

3. A lubricator or other adequate control devices shall be used to allow the removal of the downhole tool under controlled conditions.

4. Only necessary personnel shall be permitted near the pressurized lubricator, flow lines, and wellbore.

5. All wellbore adapters, wireline valves, and lubricating equipment shall be of such a design, strength, and material to withstand the maximum surface pressure of the well and the lateral movement of the lubricator.

C. Safety Procedures for Drill Stem Tests.

1. Initial opening of drill stem test tools shall be restricted to daylight hours only.

2. Test line and valves shall be checked, and the test line shall be securely anchored at each end and at each 30 foot interval.

3. When taking a drill stem test, and hydrocarbons appear at the surface, it shall be mandatory that such hydrocarbons are reversed out before coming out of the hole.

4. Drill stem tests shall not be taken in known or expected zones containing H_2S with tubular goods of strengths less than Grade "E" drill pipe.

5. All drill stem tests in known or expected zones containing H_2S shall be reversed out. This shall be done in daylight hours only.

6. A reversing mechanism shall be included in the test tool assembly in order to be able to reverse.

7. The kelly hose shall not be used as part of the test line.

D. Treating.

1. The special services supervisor shall personally check to see that all valves in discharge lines are open before giving orders to pump.

2. During operations each employee designated to handle the pumping shall remain constantly at his designated position while the pump is in operation, unless relieved by an authorized employee as directed by the supervisor on that job.

3. Cementing pressure shall not exceed equipment maximum safe working pressure.

4. All acidizing, fracturing, and hot oil trucks and tanks shall be at least 75 feet from the wellbore.

5. The services supervisor shall see that all flammable fluid spilled on location is adequately covered with dirt before

pumping operations start.

6. Flammable fluids shall not be bled back into open measuring tanks on equipment designed for pumping.

7. All spilled oil or acid shall be covered or properly disposed of after breakout with adequate precautions taken to prevent personnel from contact with such material.

8. All equipment that could produce a source of ignition shall not be permitted within 75 feet of any tank containing a flammable material.

9. When pumping a flammable fluid, all electrical or internal combustion equipment not used for performance of the job, and all fires shall be shut down or off during treatment.

10. All blending equipment used in fracturing operations shall be grounded to a conductive rod driven into the ground and all sand hauling equipment, unloading sand into blender hopper, shall be "electrically bonded" to the blender.

11. All supercharged suction hoses shall be covered with hose covers to deflect fluids when pumping flammable fluids.

R614-2-20. Drilling Industry -- Safety Procedures for Air and Gas Drilling.

A. Drilling compressors (air or gas) shall be located at least 150 feet from the wellbore and in a direction away from the discharge or blooie line.

B. The air or gas discharge line (blooie line) shall be laid in as nearly a straight line as possible from the drilling head. It must be at least 150 feet in length. This discharge line shall be securely coupled and anchored to prevent movement. It shall be laid into a discharge pipe in such a direction from the wellbore as to allow prevailing winds to carry produced or circulated gas away from the rig.

C. All combustible material shall be kept at least 100 feet away from the discharge line.

D. The air line from the compressors to the standpipe shall be of adequate strength to withstand at least the maximum discharge pressure of the compressors used, and shall be checked daily by the compressor operator for any evidence of damage or weakness.

E. All cars, trucks, house trailers, etc., shall be parked at least 75 feet from the wellbore, except when delivering equipment or supplies.

F. Smoking shall not be allowed within 75 feet of the drilling rig while drilling air or gas.

G. Designated employees shall be shown and taught how to use control units and the blowout preventer and all fire fighting equipment.

H. Designated employees shall be shown and taught how to use the emergency shut-off equipment during gas drilling.

I. All pipe connections carrying gas or air to or from the wellbore shall be made up tightly. All lines and connections shall be frequently checked for leaks.

J. In the case of gas drilling, a shut-off valve shall be installed on the main feeder line at least 150 feet from the wellbore; in the case of air drilling, the shut-off valve shall be located near the compressors.

K. When making a connection, the standpipe valve shall be closed and the bleed-off line shall be open before breaking a tool joint.

L. One Class B-C fire extinguisher of at least 150 lbs. dry chemical capacity or equivalent shall be stationed on the job in addition to 4-20# capacity, or their equivalent, fire extinguishers with a Class B-C rating.

KEY: safety
December 9, 2009 34A-6
Notice of Continuation October 19, 2017

R614. Labor Commission, Occupational Safety and Health.
R614-3. Farming Operations Standards.
R614-3-1. Authority, Method of Adoption, and Effective Date.

A. This standard is adopted by authority given the Administrator of the Division of Occupational Safety and Health , Labor Commission, under Title 34A, Chapter 6. As required, adoption is through Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

B. R614-3-1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 14, 16, 17, and 18 are existing standards and are presently in effect. R614-3-10, 11, 13, 15, and 19 are effective October 13, 1986.

R614-3-2. Scope and Definitions.

A. This rule contains Occupational Safety and Health Standards applicable to farming operations, for farms employing eleven (11) or more employees during any part of a year or maintain a labor camp. Family members of farm employers shall not be regarded as employees when making the determination as to number.

B. General Definitions

1. "Act" means the Utah Occupational Safety and Health Act of 1973.

2. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

3. "Administrator" means the director of the Division of Occupational Safety and Health.

4. "Commission" means the Labor Comission.

5. "Employee" includes any person suffered or permitted to work by an employer.

6. "Employer" means:

a. The state;

b. Each county, city, town, and school district in the state; and

c. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

C. Farming Definitions

1. "Agricultural tractor" means any vehicle, of more than 20 engine horsepower, designed to furnish the power to pull, carry, propel, or drive farm implements. All self propelled implements are excluded.

2. "Confined Space" means an open topped space more than four feet deep, or an enclosed space, such as a tank, vessel, silo, vault, pit, that is not designed for continuous employee occupancy, and: (1) contains an actual or potentially hazardous atmosphere or other safety or health hazard; (2) makes ready escape difficult; or (3) restricts entry for rescue purposes.

3. "Farmfield equipment" means tractors or implements, including self propelled implements, or any combination thereof used in agricultural operations.

4. "Farming operation" is defined as any operation involved in the growing or harvesting of crops, the raising of livestock or poultry, or similar activities conducted by a farmer on sites such as farms, ranches, orchards, dairy farms or similar farming operations.

5. "Farmstead equipment" means agricultural equipment normally used in a stationary manner. This includes, but is not limited to, materials handling equipment and accessories for such equipment whether or not the equipment is an integral part of a building.

6. "Ground driven components" are components which are powered by the turning motion of a wheel as the equipment travels over the ground.

7. "Guard" or "Shield" is a barrier designed to protect against employee contact with a hazard created by a moving machinery part.

8. "Hand labor operations" means agricultural activities or operations performed by hand or with hand tools. Some examples of "hand labor operations" are the hand harvest of vegetables, nuts, and fruit, hand weeding of crops and hand planting of seedlings. "Hand labor" does not include such activities as logging operations, the care or feeding of livestock, or hand labor operations in canning facilities or packing houses.

9. "Handwashing facility" means a facility providing either a basin, container, or outlet with an adequate supply of potable water, soap and single use towels.

10."Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

11."Labor camp" is defined as farm housing directly related to the seasonal or temporary employment of migrant farm workers. In this context, "housing" includes both permanent and temporary structures under the control of the employer, located on or off the property and that is provided as a condition of employment.

12. "Low profile tractor" means a wheeled tractor possessing the following characteristics: (1) the front wheel spacing is equal to the rear wheel spacing; (2) the clearance from the bottom of the tractor chassis to the ground does not exceed 18 inches; (3) the highest point of the hood does not exceed 60 inches; and (4) the tractor is designed so that the operator straddles the transmission when seated.

13. "Potable water" means water that meets the standards for drinking purposes by the state or local authority having jurisdiction or water that meets the quality standards prescribed by the Bureau of Public Water Supplies, Utah Department of Health.

14. "Power take off shafts" are the shafts and knuckles between the tractor, or other power source, and the first gear set, pulley, sprocket, or other components on power take off shaft driven equipment.

15. "Service building" shall mean a building housing toilets, lavatories, bathing facilities, a service sink, and may also include laundry and such other facilities as may be required.

16. "Toilet facility" means a facility designed for the purpose of both defecation and urination, including biological or chemical toilets, combustion toilets, or sanitary privies, which is supplied with toilet paper adequate to employee needs. Toilet facilities may be either fixed or portable.

17. "Wastewater" shall mean discharges from all plumbing facilities, such as restrooms, kitchen, and laundry fixtures, either separately or in combination.

R614-3-3. General Duty Clause and Applicable General Standards.

A. Section 34A-6-201 defines the General Duty Clause.

B. The following General Standards shall apply to farm operations: 29CFR1910.111 Storage and Handling of Anhydrous Ammonia; 29CFR1910.266 Pulpwood Logging.

R614-3-4. Employer and Employee Responsibility.

A. The employer shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found take appropriate action to correct such conditions immediately.

B. The employer shall enforce safety regulations and issue such rules as may be necessary to safeguard the health and lives of employees. They shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

C. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe,

if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it should be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes the employee's duty to immediately report the unsafe place, tools, equipment, or conditions to the employer.

D. Employees must comply with all safety rules of their employer and with all the Rules and Regulations promulgated by UOSH which are applicable to their type of employment.

E. No employer or employee shall remove, displace or destroy or carry away any safety devices or safeguard provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees.

R614-3-5. Reporting Requirements for Accidents and Fatalities.

Each employer shall shall meet the injury reporting requirements of R614-1-5.C.

R614-3-6. Recording Occupational Injuries and Illnesses.

A. General. This part provides for record keeping by employers to develop, collect, and analyze information regarding occupational accidents and illnesses.

B. Log and Summary. Each employer having 11 or more employees during any part of a calendar year or who has been notified by the Commission to keep records as part of the "Annual Survey of Occupational Injuries and Illnesses", shall maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment. The employer shall enter all recordable occupational injury and illness on the log and summary as early as practicable but no later than 6 working days after receiving information that a recordable case has occurred. The federal OSHA Form No. 200 or any private equivalent form may be used. The Form or its equivalent shall be completed in the detail provided in the form and instructions contained in Form No. 200. If an equivalent of OSHA Form No. 200 is used, such as a printout from data processing equipment, the information shall be readable and comprehensible.

C. The employer may maintain the log and summary of occupational injuries and illnesses at a place other than the establishment under the following circumstances:

1. There is available at the place where the log and summary is maintained sufficient information to complete the log to a date within 6 working days after receiving information that a recordable case has occurred.

2. At each of the employer's establishments, there is available a copy of the log and summary which reflects separately the injury and illness experience of that establishment complete and current to a date within 45 calendar days.

R614-3-7. Safety and Health Protection on the Job Poster.

Each employer shall display in a location convenient to employees the "Safety and Health Protection on the Job" poster. The poster is provided to inform employees of the protections and obligations under the act. The Administrator shall furnish the poster at no charge.

R614-3-8. General Safety Requirements.

A. Good housekeeping is the first law of accident prevention and should be a primary concern of all employers and employees. Floors and platforms shall be free of dangerous projections or obstructions and shall be maintained in good repair and reasonably free from oil, grease, water or other materials of similar nature.

B. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

C. Clothing shall be appropriate for the work being done. Loose clothing which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed as soon as practicable and shall not be worn until properly cleaned.

D. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

E. Employees who do not understand or speak the English language shall not be assigned to any duty or place where the lack or partial lack of understanding or speaking English might adversely affect their safety or that of other employees.

R614-3-9. Medical Services and First Aid.

A. The employer shall insure the availability of medical personnel for advice and consultation on matters of Occupational Health.

B. Emergency Posting Required. A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include: (1) Employer or representative, (2) Doctor, (3) Hospital, (4) Ambulance, (5) Fire Department, (6) Sheriff or Police, (7) First aid person.

C. Proper equipment for prompt transportation of the injured person to a physician or hospital or a communication system for contacting necessary ambulance service, shall be provided.

D. In the absence of reasonably accessible medical personnel, a person who has a valid certificate in first aid training from the Mine Safety and Health Administration, the American Red Cross, or equivalent training that can be verified by documentary evidence, shall be available at the worksite to render first aid.

E. An adequate supply of first aid supplies shall be readily accessible at the worksite. The first aid supplies shall be encased in suitable sanitary storage places so as to protect them from contamination.

F. Where the employee's eyes or body may be exposed to injurious materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use.

R614-3-10. Respiratory Protective Equipment.

A. When an employee is or may be exposed to harmful concentrations of gases, vapors, smoke, fumes, mists or dusts created by permanent or temporary work processes, respiratory protective equipment, approved for the purpose, shall be provided by the employer and worn by the employee.

B. Employees shall be trained in the use of respiratory equipment that they may be expected to use.

C. The employer shall ensure that respiratory protective equipment required by these regulations is used as intended by the manufacturer, and that it provides the employee with adequate respiratory protection.

D. Respiratory protective equipment used to protect employees shall be readily available and shall be maintained in good working order and in a sanitary condition.

E. Filter type, cartridge or single use respiratory protective equipment shall not be used in any confined space.

R614-3-11. Requirements for Confined Space Entry.

A. No employee shall be required or permitted to enter a confined space:

1. Unless protected by self contained or airline type respiratory protective equipment, the employer shall ensure that air supplied for respirators by compressors, fans, or similar devices is free of dusts, oil vapors, toxic or noxious fumes or gases; or

2. Unless an approved ventilation system is being used to ensure the removal of any harmful gases, vapors, smoke, fumes, mists, or dusts from within the confined space; or

3. Until appropriate tests have been made immediately prior to entry to confirm the absence of any harmful gases, vapors, smoke, fumes, mists or dusts or a sufficiency of oxygen. Testing shall be done at intervals during an employee's presence in the confined space to ensure no change of conditions; or

4. When flammable or explosive gases are present, until ventilated, purged and all sources of ignition have been controlled or eliminated.

B. An employee required or permitted to enter a confined space where a harmful atmosphere exists or may develop, shall:

1. Wear a safety harness to which is attached a life line tended at all times by another person stationed outside the entrance and so equipped as to be capable of effecting a rescue, and

2. When entered from the top, wear a safety harness or a harness of a type of which will keep the employee in a vertical position in case of rescue.

C. When the work being performed is such that more than one employee is required or permitted to enter a confined space, provision shall be made in the planning of the work to avoid the safety lines or air hoses from becoming entangled.

D. An employee required or permitted to enter a confined space being ventilated with a ventilation system to maintain respirable air, and in which a harmful atmosphere cannot develop shall:

1. Be attended by and in communication with another person stationed at or near the entrance, or

2. Be provided with a means of continuous communication with a person outside, or

3. Be visually checked by a designated person at intervals as often as may be required by the nature of the work to be performed.

R614-3-12. Pesticides.

Pesticide storage, use and clean up shall meet the provisions required by the Utah Department of Agriculture under Title 4, Chapter 14, Utah Pesticide Control Act; the United States Environmental Protection Agency (EPA); and Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

R614-3-13. Flammable and Combustible Liquids.

A. This Section applies to the storage of flammable and combustible liquids having a flash point below 200 degrees F (93.3 degrees C).

B. Storage areas shall be kept free of weeds and other combustible material. Open flames and smoking shall not be permitted in flammable or combustible liquids storage areas.

C. Storage tanks shall be provided with a free opening vent to relieve vacuum or pressure which may develop in normal operation or from fire exposure.

D. Tanks and containers for the storage of flammable and combustible liquids aboveground shall be conspicuously marked with the name of the product which they contain and "FLAMMABLE - KEEP FIRE AND FLAME AWAY."

E. Dispensing Flammable Liquids and Combustibles

1. Containers to which flammable liquids are being transferred shall be bonded together to eliminate static electricity.

2. Dispensing units shall be protected against physical damage by suitable means.

3. Dispensing devices (pumps, hoses and nozzles) shall be of approved type and be maintained to prevent leakage.

4. Flammable and combustible liquids shall not be dispensed by pressure from drums, barrels and similar containers. Approved pumps taking suction through the top of the container or approved self closing valves shall be used.

5. Flammable and combustible liquids shall be kept in closed containers when not actually in use.

6. Care shall be taken to eliminate source of ignition where flammable liquids are used.

F. L.P.G. Storage for use shall be in an approved container.

1. Shall have a relief valve on container.

2. Shall have an automatic shut off (thermocoupler) on utilization equipment.

3. Shall have a relief valve between each shut off valve.

R614-3-14. Labor Camp Sanitation.

A. NOTE: FR Vol 62, No. 12, Friday, January 17, 1997, Pages 2558 to and including 2565, "Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands and Wyoming State Plans; Approval of Plan Supplements; Levels of Federal Enforcement; Final Rule" is incorporated by reference.

This change amends OSHA's regulations to reflect the Assistant Secretary's decision approving amendments to nine (9) State plans to exclude coverage of the field sanitation standard and the temporary labor camp standard as it applies to agriculture (with the exception of temporary labor camps for employees engaged in egg, poultry or red meat production, or the post-harvest processing of agriculture or horticultural commodities) from their State Plans. The states of Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands, and Wyoming have elected to follow the jurisdictional transfer of authority as effected by Secretary of Labor's Orders 5-96 and 6-96, published in the Federal Register on January 2, 1997, between the Employment Standards Administration (ESA) and OSHA with regard to these two OSHA standards. OSHA is hereby amending pertinent sections of its regulations on approved State plans to reflect this relinquishment of State jurisdiction and transfer of OSHA enforcement authority to ESA in these nine (9) States.

B. General

1. Camps which move regularly due to the nature of the work, such as sheep or cattle camps, are exempt from this Part.

2. Each structure made available for occupancy shall comply with the requirements of the applicable building, zoning, electrical, health, fire, and animal control codes and all local ordinances.

3. Labor camp sites shall be constructed to provide adequate surface drainage and shall be isolated at least 100 feet from barnyards, corrals and any existing or potential health hazard.

4. Each structure made available for occupancy shall be of sound construction, shall assure adequate protection against weather, and shall include essential facilities to permit maintenance in a clean and operable condition. Comfort and safety of occupants shall be provided for by adequate heating, lighting, ventilation or insulation when necessary to reduce excessive heat. Total window area in permanent structures should be equal to at least 10 percent and in no case less than 5 percent of the floor area. Windows shall be openable and screened or mechanical ventilation must be provided.

5. Floors, walls and ceilings in permanent and semipermanent structures shall be of smooth, nonabsorbent easily cleanable materials, kept clean and in good repair.

6. In dormitory type facilities beds shall be separated by a horizontal distance of at least five (5) feet, reducible to three (3) feet if beds are alternated head to foot, except in the case of double deck bunks, which shall have a minimum horizontal separation of six (6) feet under all circumstances. If suitable permanent partitions are installed between beds, spacing requirements may be modified upon approval of the health department having jurisdiction.

7. All combustion type room heating devices shall be supplied with proper vent pipes. Gas fired facilities shall meet

standards of the American Gas Association.

8. All service buildings shall:

a. Be located not less than 15 feet and not more than 500 feet from any sleeping quarters served.

b. Where practical, be of permanent construction, and be provided with adequate light, heat and ventilation.

c. Have interiors of smooth, moisture resistant material, to permit frequent washing and cleaning.

d. Have all outer openings effectively screened.

e. Where electric power is available, service buildings shall be provided with outside lighting to indicate the location and entrance doorways of each.

C. Water Supply

1. Potable water supply systems for labor camp occupants shall meet the requirements of the Utah State rules and regulations relating to public drinking water supplies.

2. In addition to the requirements of the rules and regulations relating to public drinking water supplies the design of water system facilities shall be based on the suppliers engineer's estimates of water demands, but shall in no case be less than Source Capacity of 50 gallons per day per person and Storage Volume of 25 gallons per person. Distribution System Capacity shall maintain a water system pressure in excess of 20 psi at all points in the distribution system during peak hourly flow conditions. Noncommunity systems in remote areas can be exempted from this requirement, on a case by case basis, if flow from the system is always unregulated and free flowing. The peak hourly flow should be calculated for the number of fixture units presented in the Utah Plumbing Code.

3. The source and storage requirements as indicated above do not include water demands for outside use or fire protection. However, if the culinary system is intended to provide water for such uses, the water requirements indicated above must be appropriately increased. Specific information on watering requirements (e.g. area of land to be irrigated) must be provided for Department of Health review.

4. Construction of a public drinking water supply system intended to serve occupants of any labor camp shall not commence until plans prepared by a licensed professional registered engineer have been submitted to and approved in writing by the Utah State Department of Health. Following construction the system may not be placed in service until a final inspection is made by a representative of the Utah State Department of Health or the local health department having jurisdiction.

5. Any culinary system or portion thereof that is drained seasonally must be cleaned, flushed, and disinfected prior to use. Furthermore, a water sample of satisfactory bacteriologic quality, i.e. a sample showing not more than one coliform bacteria per 100 ml sample, must be obtained before being placed into service. Systems operated on a seasonal basis may be required to sample for bacteriologic analysis at an accelerated frequency as determined by the health department having jurisdiction.

6. In any labor camp where it is infeasible to pipe water into the area, an alternate supply may be permitted upon approval of the health department having jurisdiction.

D. Wastewater Disposal

1. All wastewater shall be discharged to a public sewer system where accessible and within 300 feet of the labor camp property line.

2. Where connection to a public sewer is not available, wastewater shall be discharged into a wastewater disposal system meeting requirements of the Utah State Code of Waste Disposal Regulations. Unless water usage rates are available, design shall be based on not less than 50 gallons per day per person.

3. All plans for the construction or alteration of a wastewater disposal system shall initially be submitted to the local health department having jurisdiction. Where plan approval is required by law to be provided by the State Department of Health, such plans will be forwarded by the local authority along with any appropriate comments. Construction or alteration of the disposal system shall not commence until the plans have been approved in writing by the appropriate health agency.

E. Toilet Facilities and Plumbing.

1. Wherever toilet facilities for males and females are located in the same building, and adjacent to each other, they shall be separated by a sound resistant wall. Direct line of sight to each restroom entrance shall be effectively obstructed. Separate facilities for men and women are not required in single family quarters.

2. Soap and toilet tissue in suitable dispensers, and individual towels or other approved hand drying facilities shall be provided in restrooms. The use of common towels in connection with such facilities is prohibited except in single family quarters.

3. Suitable waste receptacles with lids shall be provided for each restroom.

4. Adequate plumbing fixtures shall be available to all labor camp occupants as required below:

TABLE 1

REQUIRED RATIO OF PLUMBING FIXTURES - LABOR CAMP OCCUPANTS FOR SERVICE BUILDINGS

Plumbing Fixtures	Ratio of Plumbing Fixtures for Labor Camp Occupants(1)	
	Males	Females
Water Closets	1/10	1/8
Urinals(2)	1/25	---
Lavatories	1/12	1/12
Shower/Bath	1/8	1/8

(1) or fraction thereof.
(2) one unit for each 25 men or fraction thereof, up to 150 men, after which one additional unit shall be provided for each 50 persons.

5. Plumbing fixtures which normally require water for their operation shall be supplied with an adequate potable water supply under pressure. Water will be provided for showers and lavatories at a minimum temperature of 90 degrees F.

6. In camps where dormitory facilities are provided or where individual family units are not plumbed, sanitary drinking fountains shall be conveniently located.

7. Where water cannot be made available, exceptions to the above requirements may be granted upon approval of the Director or local health authorities having jurisdiction.

8. All plumbing in labor camps shall comply with provisions of Utah Plumbing Code, and applicable local plumbing codes.

9. Essential laundering facilities shall be available to camp occupants and if included as part of the labor camp facilities shall provide for each 40 occupants, or fraction thereof, at least one laundry tray, washtub, or washing machine served with an adequate supply of water.

F. Maintenance

1. The employer has the duty of controlling the conduct of camp occupants and shall make at least one daily inspection of the entire camp while in operation, for these purposes. All camp toilet and washroom facilities shall be inspected as necessary.

2. All buildings, rooms and equipment and the grounds surrounding them shall be maintained in a clean and operable condition and be protected from rubbish accumulation.

3. All necessary means shall be employed to eliminate and control any infestations of insects and rodents within all parts of any labor camp. This shall include approved screening or other control of outside openings in structures intended for occupancy or food service facilities.

4. Each bed, bunk, cot or other sleeping facility for use by occupants shall be maintained in a sanitary condition.

G. Food Service

1. All food, food service employees, ice, vending machines, food storage, preparation and serving facilities made available by the camp management except those restricted to individual or single family quarters shall comply with the requirements of the Utah State Food Service Sanitation Regulations.

2. Where occupant is permitted or required to cook foods, a space for kitchen facilities shall be provided, and shall be equipped with a cooking stove in good working order and with adequate and sufficient fuel, a kitchen sink, a refrigerator and convenient storage space for food and necessary utensils. All food items provided by camp management shall be wholesome and suitable for human consumption.

H. Solid Wastes.

Solid wastes originating in any labor camp shall be stored in a sanitary manner, in watertight containers with lids, or the equivalent, approved by the Local Health Department. The containers shall be conveniently located and the contents shall be disposed of in a manner approved by the State or Local Health Department having jurisdiction.

I. Reference Code.

1. Codes and regulations made part of these regulations by reference are:

a. Utah Plumbing Code

b. State of Utah Public Drinking Water Regulations

c. Food Service Sanitation Regulations

d. Code of Waste Disposal Regulations

e. Recreational Vehicle Park Sanitation Regulations.

f. FR Vol. 59, No. 137, Tuesday July 19, 1994, pages 36695 to and including 36700, "Retention of DOT Markings, Placards, and Labels; Final Rule" is incorporated by reference.

2. All are available on request to: Utah State Department of Health, Division of Environmental Health or the Labor Commission, Division of Occupational Safety and Health.

R614-3-15. Field Sanitation.

A. NOTE: FR Vol 62, No. 12, Friday, January 17, 1997, Pages 2558 to and including 2565, "Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands and Wyoming State Plans; Approval of Plan Supplements; Levels of Federal Enforcement; Final Rule" is incorporated by reference.

This change amends OSHA's regulations to reflect the Assistant Secretary's decision approving amendments to nine (9) State plans to exclude coverage of the field sanitation standard and the temporary labor camp standard as it applies to agriculture (with the exception of temporary labor camps for employees engaged in egg, poultry or red meat production, or the post-harvest processing of agriculture or horticultural commodities) from their State Plans. The states of Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands, and Wyoming have elected to follow the jurisdictional transfer of authority as effected by Secretary of Labor's Orders 5-96 and 6-96, published in the Federal Register on January 2, 1997, between the Employment Standards Administration (ESA) and OSHA with regard to these two OSHA standards. OSHA is hereby amending pertinent sections of its regulations on approved State plans to reflect this relinquishment of State jurisdiction and transfer of OSHA enforcement authority to ESA in these nine (9) States.

B. This Rule shall apply to any farming operation where 11 or more employees are engaged on any given day in hand labor operations in the field.

C. Employers shall provide the following for employees engaged in hand labor operations in the field, without cost to the employee.

1. Potable drinking water.

a. Potable water shall be provided and shall be placed in locations readily accessible to all employees.

b. The water shall be suitably cool and in sufficient amounts, taking into account the air temperature, humidity and the nature of the work performed, to meet employee's needs.

c. The water shall be dispensed in single use drinking cups or by fountains. The use of common drinking cups or dippers is prohibited.

2. Toilet and handwashing facilities.

a. One toilet facility and one handwashing facility shall be provided for each thirty (30) employees or fraction thereof, except as stated in (4).

b. Toilet facilities shall have doors that can be closed and latched from the inside and shall be constructed to insure privacy.

c. Toilet and handwashing facilities shall be accessibly located, in close proximity to each other, and within one quarter (1/4) mile of each employee's place of work in the field. Where it is not feasible to locate facilities accessibly and within the required distance due to the terrain, they shall be located at the point of closest vehicular access.

d. Toilet and handwashing facilities are not required for employees who perform field work for a period of three (3) hours or less (including transportation time to and from the field) during the day.

3. Potable drinking water and toilet and handwashing facilities shall be maintained in accordance with appropriate public health sanitation practices, including the following:

a. Drinking water containers shall be covered, cleaned and refilled daily.

b. Toilet facilities shall be operational and maintained in clean and sanitary condition.

c. Handwashing facilities shall be maintained in clean and sanitary condition; and

d. Disposal of wastes from facilities shall not cause unsanitary conditions.

4. Employees shall be allowed reasonable opportunities during the workday to use the facilities.

R614-3-16. Slow Moving Vehicle.

A. Farm field equipment operated at a speed of 25 mph or less on a highway shall have lamps, reflectors and a slow moving vehicle emblem as required by the Utah Department of Public Safety or local law enforcement agency.

B. Every animal drawn vehicle shall be equipped with a slow moving vehicle emblem as required by the Utah Department of Public Safety or local law enforcement agency.

R614-3-17. Roll Over Protective Structures (ROPS) for Agricultural Tractors.

Agricultural tractors manufactured after October 25, 1976, shall meet the following requirements:

A. Roll over protective structure. Unless exempted under 51.4 a roll over protective structure (ROPS) shall be provided by the employer for each tractor operated by an employee. ROPS used on wheel type tractors shall meet the test and performance requirements of SAE J 1194 "Roll over Protective Structures (ROPS) for Wheeled Agricultural Tractors and SAE J 208d" Safety for Agricultural Equipment and ROPS used on track type tractors shall meet the test and performance requirements of UOSH Construction Standards Part 1000.

B. Exempted uses:

1. "Low profile" tractors while they are used in orchards, vineyards or hop yards where the vertical clearance

requirements would substantially interfere with normal operations, and while their use is incidental to the work performed therein.

2. "Low profile" tractors while used inside a farm building or greenhouse in which the vertical clearance is insufficient to allow a ROPS equipped tractor to operate, and while their use is incidental to the work performed therein.

3. Tractors while used with mounted equipment which is incompatible with ROPS (e.g. cornpickers, cotton strippers, vegetable pickers and fruit harvesters.)

C. Seatbelts. Where the ROPS are required by this section, the employer shall:

1. Provide each tractor with a seatbelt which meets the requirements of 51.5.

2. Instruct each employee in the use of seatbelts to ensure use while the tractor is moving.

D. ROPS equipped tractors shall be fitted with seat belt assemblies (Type 1) conforming to the following: SAEJ114, J117, J140a, J141, J339a, and J800c, except as noted hereafter.

1. Where a suspended seat is used, the seat belt shall be fastened to the movable portion of the seat to accommodate the ride motion of the operator.

2. The seat belt anchorage shall be capable of withstanding a static tensile force of 4448N (1000 lbf) at 45 degrees to the horizontal equally divided between the anchorages. The seat mounting shall be capable of withstanding this force plus a force equal to four times the force of gravity on the mass of all applicable seat components applied 45 degrees to the horizontal in a forward and upward direction. In addition, the seat mounting shall be capable of withstanding 2224N (500 lbf) belt force plus two times the force of gravity on the mass of all applicable seat components both applied at 45 degrees to the horizontal in an upward and rearward direction. Floor and seat deformation is acceptable provided there is no structural failure or release of the seat adjuster mechanism or other locking device. The seat adjuster or locking device need not be operable after application of the test load.

E. Protection from spillage. Batteries, fuel tanks, oil reservoirs, and coolant systems shall be constructed and located or sealed to assure that spillage will not occur which may come in contact with the operator in the event of an upset.

F. Protection from sharp surfaces. All sharp edges and corners at the operator's station shall be designed to minimize operator injury in the event of an upset.

G. Remounting. Where ROPS are removed for any reason, they shall be remounted so as to meet the requirements of this paragraph.

H. Labeling. Each ROPS shall have a label, permanently affixed to the structure, which states:

1. Manufacturer's or fabricator's name and address;

2. ROPS model number, if any;

3. Tractor makes, models, or series numbers that the structure is designed to fit; and

4. That the ROPS model was tested in accordance with the requirements of this rule.

I. Operating Instructions. Every employee who operates an agricultural tractor shall be informed of the operating practices listed below and of any other practices dictated by the work environment. Such information shall be provided at the time of initial assignment and at least annually thereafter.

TABLE 2

EMPLOYEE OPERATING INSTRUCTIONS

1. Securely fasten your seat belt if the tractor has a ROPS.
2. Where possible, avoid operating the tractor near ditches, embankments, and holes.
3. Reduce speed when turning, crossing slopes, and on rough, slick, or muddy surfaces.
4. Stay off slopes too steep for safe operation.
5. Watch where you are going, especially at row ends, on roads, and around trees.
6. Do not permit others to ride.
7. Operate the tractor smoothly, no jerky turns, starts, or stops.
8. Hitch only to the drawbar and hitch points recommended by tractor manufacturers.
9. When tractor is stopped, set brakes securely and use park lock if available.

R614-3-18. Guarding of Farm Field Equipment, Farmstead Equipment.

A. This section applies to all farm field equipment and farmstead equipment manufactured after October 25, 1976. Equipment manufactured prior to that date shall meet the manufacturers specifications for guards.

B. Operating instructions. At the time of initial assignment and at least annually thereafter, the employer shall instruct every employee in the safe operation and servicing of all covered equipment with which he is or will be involved, including at least the following safe operating practices:

1. Keep all guards in place when the machine is in operation.

2. Permit no riders on farm field equipment other than persons required for instruction or assistance in machine operation;

3. Stop engine, disconnect the power source, and wait for all machine movement to stop before servicing, adjusting, cleaning, or unclogging the equipment, except where the machine must be running to be properly serviced or maintained, in which case the employer shall instruct employees as to all steps and procedures which are necessary to safely service or maintain the equipment;

4. Make sure everyone is clear of machinery before starting the engine, engaging power, or operating the machine;

5. Lock out power before performing maintenance or service on farmstead equipment.

C. Methods of guarding. Each employer shall protect employees from coming into contact with hazards created by moving machinery parts as follows:

1. Through the installation and use of a guard or shield or guarding by location.

2. Whenever a guard or shield or guarding by location is infeasible, by using a guardrail or fence.

D. Strength and design of guards.

1. Where guards are used to provide the protection required by this section, they shall be designed and located to protect against inadvertent contact with the hazard being guarded.

2. Unless otherwise specified, each guard and its supports shall be capable of withstanding the force that a 250 pound individual, leaning on or falling against the guard, would exert upon that guard.

E. Guards shall be free from burrs, sharp edges, and sharp corners, and shall be securely fastened to the equipment or building.

F. Guarding by location. A component is guarded by location during operation, maintenance, or servicing when, because of its location, no employee can inadvertently come in contact with the hazard during such operation, maintenance, or servicing. Where the employer can show that any exposure to hazards results from employee conduct which constitutes an isolated and unforeseeable event, the component shall also be considered guarded by location.

G. Guarding by railings. Guardrails or fences shall be capable of protecting against employees inadvertently entering the hazardous area.

H. Servicing and maintenance. Whenever a moving machinery part presents a hazard during servicing or maintenance, the engine shall be stopped, the power source disconnected, and all machine movement stopped before

servicing or maintenance is performed, except where the employer can establish that:

1. The equipment must be running to be properly serviced or maintained;

2. The equipment cannot be serviced or maintained while a guard or guards otherwise required by this standard are in place; and

3. The servicing or maintenance can be safely performed.

I. Farm field equipment

1. Power take off guarding. All power take off shafts, including rear, mid or side mounted shafts, shall be guarded either by a master shield or by other protective guarding.

a. All tractors shall be equipped with an agricultural tractor master shield on the rear power take off except where removal of the tractor master shield is permitted by (2). The master shield shall have sufficient strength to prevent permanent deformation of the shield when a 250 pound operator mounts or dismounts the tractor using the shield as a step.

b. Power take off driven equipment shall be guarded to protect against employee contact with positively driven rotating members of the power drive system. Where power take off driven equipment is of a design requiring removal of the tractor master shield, the equipment shall also include protection from that portion of the tractor power take off shaft which protrudes from the tractor.

c. Signs shall be placed at prominent locations on tractors and power take off driven equipment specifying that power drive system safety shields must be kept in place.

2. Other power transmission components.

a. The mesh or nip points of all power driven gears, belts, chains, sheaves, pulleys, sprockets, and idlers shall be guarded.

b. All revolving shafts, including projections such as bolts, keys, or set screws, shall be guarded, except smooth shaft ends protruding less than one half the outside diameter of the shaft and its locking means.

c. Ground driven components shall be guarded if any employee may be exposed to them while the drives are in motion.

3. Functional components. Functional components, such as snapping or husking rolls, straw spreaders and choppers, cutterbars, flail rotors, rotary beaters, mixing augers, feed rolls, conveying augers, rotary tillers, and similar units, which must be exposed for proper function, shall be guarded to the fullest extent which will not substantially interfere with normal functioning of the component.

4. Access to moving parts. Guards, shields, and access doors shall be in place when the equipment is in operation. Where removal of a guard or access door will expose an employee to any component which continues to rotate after the power is disengaged, the employer shall provide, in the immediate area, the following:

a. A readily visible or audible warning of rotation; and

b. A safety sign warning the employee to look and listen for evidence of rotation and not remove the guard or access door until all components have stopped.

J. Farmstead equipment.

1. Power take off guarding.

a. All power take off shafts, including rear, mid, or side mounted shafts, shall be guarded either by a master shield or other protective guarding.

b. Power take off driven equipment shall be guarded to protect against employee contact with positively driven rotating members of the power drive system.

c. Where power take off driven equipment is of a design requiring removal of the tractor master shield, the equipment shall also include protection from that portion of the tractor power take off shaft which protrudes from the tractor.

d. Signs shall be placed at prominent locations on power take off driven equipment specifying that power drive system safety shields must be kept in place.

2. Other power transmission components. The mesh or nip points of all power driven gears, belts, chains, sheaves, pulleys, sprockets, and idlers shall be guarded. All revolving shafts, including projections such as bolts, keys, or set screws, shall be guarded, with the exception of:

a. Smooth shafts and shaft ends (without any projecting bolts, keys, or set screws), revolving at less than 10 rpm, on feed handling equipment used on the top surface of materials in bulk storage facilities; and

b. Smooth shaft ends protruding less than one half the outside diameter of the shaft and its locking means.

3. Functional components, such as choppers, rotary beaters, mixing augers, feed rolls, conveying augers, grain spreaders, stirring augers, sweep augers, and feed augers, which must be exposed for proper function, shall be guarded to the fullest extent which will not substantially interfere with the normal functioning of the component. All accessible screw conveyors shall be guarded by substantial covers or gratings, or with an inverted horizontally slotted guard of the trough type, which will prevent employees from coming into contact with the screw conveyor. Such guards may consist of horizontal bars spaced so as to allow material to be fed into the conveyor, and supported by arches which are not more than 8 feet apart. Screw conveyors under gin stands shall be considered guarded by location.

4. Sweep arm material gathering mechanisms used on the top surface of materials within silo structures shall be guarded. The lower or leading edge of the guard shall be located no more than 12 inches above the material surface and no less than 6 inches in front of the leading edge of the rotating member of the gathering mechanism. The guard shall be parallel to, and extend the fullest practical length of, the material gathering mechanism.

5. Exposed auger flighting on portable grain augers shall be guarded with either grating type guards or solid baffle type covers as follows:

a. The largest dimensions or openings in grating type guards through which materials are required to flow shall be 4-3/4 inches. The area of each opening shall be no larger than 10 square inches. The opening shall be located no closer to the rotating flighting than 2-1/2 inches.

b. Slotted openings in solid baffle type covers shall be no wider than 1-1/2 inches, or closer than 3-1/2 inches to the exposed flighting.

6. Access to moving parts. Guards, shields, and access doors shall be in place when the equipment is in operation. Where removal of a guard or access door will expose an employee to any component which continues to rotate after the power is disengaged, the employer shall provide, in the immediate area, the following:

a. A readily visible or audible warning of rotation; and

b. A safety sign warning the employee to:

(1) look and listen for evidence of rotation; and

(2) not remove the guard or access door until all components have stopped.

K. Electrical disconnect means. Application of electrical power from a location not under the immediate and exclusive control of the employee or employees maintaining or servicing equipment shall be prevented by:

1. providing an exclusive, positive, locking means on the main switch which can be operated only by the employee or employees performing the maintenance or servicing; or

2. there is an electrical disconnect switch available to the employee within 15 feet of the equipment upon which maintenance or service is being performed; and

3. a sign is prominently posted near each hazardous component which warns the employee that unless the electrical disconnect switch is utilized, the motor could automatically reset while the employee is working on the hazardous

component.

R614-3-19. Electrical.

A. Electrical installation shall conform to the requirements of the local authority having jurisdiction provided that the requirements are substantially similar to the latest published addenda or revision of the National Electrical Code, ANSI/NFPA 70 and Standard for Electrical Safety Requirements for Employees Work Places ANSI/NFPA 70e.

B. Protection of Employees.

1. The employer shall inspect all electrical installations and utilization equipment as necessary to maintain it in good repair. Any damage which may be a hazard to employees shall be repaired prior to use by an employee.

2. No employer shall permit an employee to work or operate equipment within 10 feet of an electrical power circuit to which contact may be made, unless:

a. The employee is protected against electrical shock by deenergizing the circuit and grounding it or by guarding it by effective insulation or other means.

b. The employee is trained in recognition and avoidance of hazards associated with electrical circuits.

3. No employee shall be permitted or required to use electrical utilization equipment that is not intrinsically safe and approved for the location.

KEY: safety
December 4, 1998 34A-6-202
Notice of Continuation October 19, 2017

R614. Labor Commission, Occupational Safety and Health.
R614-4. Hazardous Materials.
R614-4-1. Flammable Solids.

A. No source of ignition shall be permitted in locations where a hazard of dust explosion might exist until all dust producing operations have been stopped, airborne dust allowed to settle, and accumulated dusts and closed dust containers removed to an extent which will remove the hazard of dust explosion. A well administered flame permit system shall be established requiring inspection and approval by a responsible person prior to allowing spark or flame producing devices into such areas.

B. Adequate separators shall be provided to prevent iron, rocks or other sparking materials from entering, grinding, shredding, pulverizing or mixing where a hazard of dust explosion exists.

C. Machines and equipment in which the hazard of a dust explosion exists shall be so located, constructed, enclosed or vented that the force of an explosion in the machine or equipment may be dissipated without endangering employees in the regular performance of their duties.

D. Dust collectors for combustible dusts which present an explosion hazard shall be located outdoors or in detached rooms of fire resistant construction and shall be provided with adequate explosion vents, except that liquid spray type collectors may be located within buildings. Care must be exercised in the selection of liquid dust collectors.

E. Ignition by static sparks is an extreme hazard in the processing of metal powders. In addition to electrically grounding and crossbonding of all equipment, floor surfaces shall be electrically conductive and employees shall be equipped with conductive footwear. Floors shall not exceed 250,000 ohms resistance to ground. Maintaining a relative humidity between 55 and 60 percent aids in eliminating static buildup; however, relative humidity level is not a positive means of eliminating static electricity hazards. A high relative humidity shall not be used in rooms used to store, handle or process materials which are affected by moisture such as metal dusts.

F. Extreme care shall be exercised in the processing and storage of metal powders such as aluminum and magnesium to prevent water contact with the materials. Moisture reacts with powdered metals and generates hydrogen gas which is highly explosive. Materials shall be stored in tightly sealed containers and shall be brought to ambient temperatures prior to opening to prevent condensation inside the container.

G. Provisions not covered by this section shall be carried out according to the National Fire Code, Volume 3, 1992, Combustible Solids and dust Explosions, or the latest addenda or revision of that code. National fire prevention codes are also distributed as ANSI Z-12.

R614-4-2. Definitions.

A. General Definitions

1. "Act" means the Utah Occupational Safety and Health Act of 1973.

2. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

3. "Administrator" means the director of the Division of Occupational Safety and Health.

4. "Commission" means the Labor Commission.

5. "Employee" includes any person suffered or permitted to work by an employer.

6. "Employer" means:

a. The state;

b. Each county, city, town, and school district in the state; and

c. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

B. Explosives Definitions

1. "American Table of Distances" also known as Quantity Distance Tables - means American Table of Distances for Storage of Explosives as revised and approved by the Institute of the Makers of Explosives, November 5, 1971.

2. "Ammonium nitrate" - A chemical compound represented by the formula NH_4NO_3.

3. "Ammunition" - All components and any explosives case or contrivance prepared to form a charge, complete round, or cartridge for cannon, howitzer, mortar, or small arms, or for any other weapon, torpedo warhead, mine, depth charge, demolition charge, fuse, detonator, projectile, grenade, guided missile, rocket, pyrotechnics; and all chemical agents, fillers and associated hazardous materials.

4. "Ammunition and explosive materials operating area" - A restricted area specifically designed and set aside from other positions of an installation for the manufacturing, processing, storing and otherwise handling of ammunition or explosive materials.

5. "Approved" or "approval" - Means sanctioned, endorsed, accredited, certified, or accepted as satisfactory by a duly constituted and nationally recognized authority or agency.

6. "Authorized person" - Means a person approved or assigned by the employer to perform a specific type of duties or to be at a specific location or locations at the job site.

7. "Barricaded" - An intervening approved barrier, natural or artificial, of such type, size and construction as to limit the effect of an explosion on nearby buildings or exposures.

8. "Blasting agent" - Any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive. Provided, that the finished product as mixed for use or shipment, cannot be detonated by means of a number 8 test blasting cap when unconfined.

9. "Blast area" - The area of a blast, including the area immediately adjacent, within the influence of flying rock missiles.

10. "Blaster" - The person or persons authorized to use explosives for blasting purposes and meeting the qualifications contained in Part 109.22.2.

11. "Blasting cap" - A metallic tube closed at one end, containing a charge of one or more detonating compounds, and designed for and capable of detonation from the sparks or flame from a safety fuse inserted and crimped into the open end.

12. "Bulk mix delivery equipment" - Equipment (Usually a motor vehicle with or without mechanical delivery device) that transports materials in bulk form for mixing, or loading directly into blast holes, or both.

13. "Bus wire" - An expendable wire, used in parallel or series in parallel circuits, to which are connected the leg wires of electric blasting caps.

14. "Compatibility" - The ability of explosives, explosive materials, ingredients or compositions to remain unaffected when in contact with other materials or containers.

15. "Connecting wire" - An insulated expendable wire used between electric blasting caps and the leading wires or between the bus wire and the leading wires.

16. "Deflagration" - A very rapid combustion, sometimes accompanied by flame, sparks, or spattering of burning particles. Although classed as an explosion a deflagration generally implies the burning of a substance with self-contained oxygen so that the reaction zone advances into the unreacted material at less than the velocity of sound.

17. "Delay mechanism" - A mechanism designed to initiate detonation at a predetermined period of time after energy is applied to the ignition system.

18. "Detonate or detonation" - To be changed by exothermic chemical reaction usually from a solid or liquid to

a gas with such rapidity that the rate of advance of the reaction zone into the unreacted material exceeds the velocity of sound in the unreacted material; that is, the advancing reaction zone is preceded by a shock wave.

19. "Detonating cord" - A flexible cord containing a center core of high explosive and used to initiate other explosives.

20. "Detonator" - Any device containing a detonating charge that is used for initiating detonation in an explosive; the term includes, but is not limited to, electric blasting caps of instantaneous and delay types, and the non-electric instantaneous and delay blasting caps.

21. "Electric blasting cap" - A blasting cap designed for and capable of detonation by means of an electric current.

22. "Emulsion explosive" - An explosive material containing substantial amounts of oxidizers dissolved in water droplets surrounded by an immiscible fuel: May be classified as Explosives Class A, Explosives Class B, or blasting agents.

23. "Explosive" - The term explosive includes any chemical compound or mechanical mixture which, when subjected to heat, impact, friction, detonation or other suitable initiation, undergoes a very rapid chemical change with the evolution of large volumes of highly heated gases which exert pressures in the surrounding medium. The term applies to materials that either detonate or deflagrate.

24. "Class A Explosives" - Explosives which possess detonating or otherwise maximum hazard; such as, but not limited to, dynamite, nitroglycerin, lead azide, blasting caps and detonating primers.

25. "Class B Explosives" - Explosives which possess flammable hazard; such as, but not limited to, propellant explosives, photographic flash powders, and some special fireworks.

26. "Class C Explosives" - Explosives which contain Class A or Class B explosives, or both, as components but in restricted quantities.

27. "Explosive Materials" - These include explosives, blasting agents and detonators. This term includes, but is not limited to, dynamite and other high explosives, slurrys, emulsions, water gels, blasting agents, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, igniters, pyrotechnics, pyrotechnic compositions, fireworks (special and common), ammunition, propellent and propellent compositions.

28. "Fireworks" - A common synonym for Pyrotechnics (special and common).

Special Fireworks - are Class B explosives as defined by the U.S. Department of Transportation.

Common Fireworks - are Class C explosives as defined by the U.S. Department of Transportation.

29. "Fuse Lighters" - Special devices for the purpose of igniting safety fuse.

30. "Hazard" - A source of danger; exposure or liability to injury or harm.

31. "Inert" - Containing no explosives, active chemicals or pyrotechnics.

32. "Leading Wire" - An insulated wire used between the electric power source and the electric blasting cap circuit.

33. "Magazine" - Any building or structure or container other than an explosives manufacturing building approved for the storage of explosive materials.

34. "Mass Detonation" - Mass Explode - The virtually instantaneous explosion of a mass of explosives when only a small portion is subjected to fire, severe concussion or impact, the impulse of an initiating agent, or to the effect of a considerable discharge of energy from without.

35. "Misfire" - An explosive charge which failed to detonate.

36. "Motor Vehicle" - Any self-propelled vehicle.

37. "Oxidizer" or "Oxidizing Material" - A substance, such as a nitrate, that readily yields oxygen or other oxidizing substance to stimulate the combustion of organic matter or other fuel.

38. "Plant" - The land, buildings, and machinery used in carrying on a trade or business.

39. "Primer" - A cartridge or container of explosives into which a detonator is inserted or attached.

40. "Propellant" - An explosive material whose rate of combustion is low enough, and its other properties suitable, to permit its use as a propelling charge. A propellant may be either solid or liquid. A single base propellant composition consists primarily of matrix of nitrocellulose. A double base propellant composition contains nitrocellulose and nitroglycerine. A composite propellant composition contains an oxidizing agent in a matrix of binder.

41. "Pyrotechnics or Pyrotechnic Compositions" - A mixture of materials consisting essentially of an oxidizing agent (oxident) and a reducing agent (fuel), that is capable of producing an explosive self sustaining reaction when heated to its ignition temperature; such as, but not limited to, devices used to produce sound, colored lights or smokes for signaling, a bright light for illumination, and time delays.

42. "Qualified" - Means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work or the project.

43. "Restricted Area" - Any area, from which personnel, aircraft, or vehicles, other than required for operations, are excluded for reasons of safety and security.

44. "Safety Fuse" - A flexible cord containing an internal burning medium by which fire or flame is conveyed at a continuous and uniform rate from the point of ignition to the point of use, usually a detonator.

45. "Semiconductive Hose" - A hose with an electrical resistance high enough to limit flow of stray electric currents to safe levels, yet not so high as to prevent drainage of static electric charges to ground. Hose of not more than 2 megohms resistance over this entire length and of not less than 5,000 ohms per foot meets the requirement.

46. "Sensitivity" - A physical characteristic of an explosive material, classifying its ability to react to externally applied energy or changes in environment.

47. "Shield" - A safeguard securely braced and of a strength proven sufficient to withstand the effects of the maximum credible incident involving the item being handled.

48. "Slurry" - An explosive material containing substantial portions of a liquid, oxidizers, and fuel, plus a thickener. Slurrys may be classified as Explosives Class A, Explosives Class B, or Blasting Agents.

49. "Small Arms Ammunition" - Any shotgun, rifle, pistol, or revolver cartridge, and cartridges for propellant-actuated power devices and industrial guns.

50. "Small Arms Ammunition Primers" - Are small percussion-sensitive explosive charges, encased in a cup, used to ignite propellant powder.

51. "Smokeless Propellants" - Solid propellants, commonly called smokeless powders in the trade, used in small arms ammunition, cannon, rockets, propellant-actuated power devices, etc.

52. "Stability" - The ability of an explosive material to retain chemical and physical properties when exposed to specific environmental conditions over a particular period of time.

53. "Stemming" - A suitable inert or incombustible device used to confine or separate explosives in a drill hole, or to cover explosives in mudcapping.

54. "Substantial Dividing Wall" - A structure designed to resist the effects of accidental explosions or to prevent

propagation of detonation by blast or fragments.

55. "Water Gels" - An explosive material containing substantial portions of water, oxidizers, and fuel, plus a cross-linking agent. Water gels may be classified as Explosives Class A, Explosives Class B, or Blasting Agents.

R614-4-3. Explosive Materials, Purpose Scope and Responsibility.

A. Purpose: To set forth safe practices and standards for work performed in the manufacture and use of explosives, explosive material, ammunition, pyrotechnics, and related materials.

B. Scope and Application: These standards shall apply to the manufacture, testing, research, storage and use of explosives, explosive material, ammunition, pyrotechnics, fireworks (special and common), propellants, propellent compositions and related materials within the boundaries of the State of Utah. These standards shall apply to employers who employ one or more employees. These standards shall not apply to the laboratories of schools and colleges when confined to educational purposes or to explosive materials in the forms prescribed by the official United States Pharmacopeia or the National Formulary and used in medicines and medicinal agents.

C. Responsibility: Prior to starting new operations, it shall be the responsibility of every manufacturer within the scope of this standard to notify in writing the Administrator of the Utah Occupational Safety and Health Division of the Labor Commission.

R614-4-4. Explosive Materials, General Requirements.

A. Any new or existing operation shall have written operating rules and practices developed and approved by management as being in accordance with this part. The operating rules and practices shall include but are not limited to such items as:

1. Safety requirements,
2. Personal protective clothing and equipment,
3. Personnel and explosive material limits,
4. Equipment designation, inspection and maintenance,
5. Location and sequence of operations,
6. Housekeeping procedures,
7. Mixing procedures,
8. Destruction or disposal of explosive material,
9. Test on product and ingredients for compatibility and sensitivity before production.

B. No deviations from the operating rules and practices shall be permitted without written management approval.

C. An emergency action plan shall be in writing and shall cover those designated actions employers and employees must take to ensure employee safety in emergencies (i.e., fire, explosion, and adverse weather conditions). The following elements, at a minimum, shall be included in the plan:

1. Emergency evacuation procedures and emergency escape route assignments;
2. Procedures to be followed by employees who remain to operate critical operations or fight fires before they evacuate;
3. Procedures to account for all employees after emergency evacuation has been completed;
4. Rescue and medical duties for all employees after emergency evacuation has been completed;
5. The preferred means of reporting explosions, fires, and other emergencies;
6. Where fire departments or other agencies are depended on for emergency assistance, prior notice shall be given of potential hazards, and
7. Names or regular job titles of persons or departments to be contacted for further information or explanation of duties under the plan.

D. Employees shall be trained regarding pertinent requirements of R614-4-4.A.,B., and C.

E. Applicable portions of the operating rules and practices shall be convenient to all employees involved in the operation. Supervisory personnel shall maintain copies of the overall operating procedure and be responsible for the enforcement of its provisions.

F. Buildings on explosives materials plant sites shall be separated by minimum distances conforming to the requirements of the "Intra Plant Distance Table for Use only Within Confines of Explosives Manufacturing Plants" which Table is contained in "The American Table of Distances", 1991 edition as published by the Institute of Makers of Explosives, and incorporated herein by this reference in this rule; except those buildings or sites that meet the specific requirements of other organizations such as the Department of Defense.

G. Mixing facilities for blasting agents shall be separated from storage facilities and each other in accordance with the "Table of Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents" which Table is contained in "The American Table of Distances", 1991 edition as published by the Institute of Makers of Explosives, and incorporated herein by this reference in this rule.

H. All explosive material operations shall be scrutinized to devise methods for reducing the number of employees exposed, or the quantity of material subject to a single incident. Where necessary to protect employees, appropriate shields, substantial dividing walls or barricades shall be provided to shield employees from hazards; where this is not practicable, work by remote control shall be utilized.

I. An explosive material shall not be put in production unless safe working limits have been determined and posted. Operations shall be shut down whenever limits are exceeded.

J. Appropriate visual inspections shall be made of mixing, conveying, packaging, or other equipment to establish that such equipment is in safe operating condition. All problems relating to the safety of employees shall be corrected.

K. Floors and work surfaces in hazardous locations shall be constructed to facilitate cleaning and shall have no cracks or crevices in which explosive material may lodge.

L. Buildings shall be cleaned to prevent accumulations of explosive materials. Combustible or explosive waste shall be removed from buildings as often as necessary.

M. Explosive material spills shall be cleaned up immediately. An appropriate cleaning and collection system for hazardous residues shall be provided and used.

N. Waste explosives and materials contaminated with explosives shall be kept separate from all other waste.

O. Care shall be exercised so that foreign objects or materials do not get into explosive materials.

P. Appropriate tools and equipment shall be used in explosive materials operations.

Q. Only properly identified and inspected explosives materials shall be mixed.

R. Finished explosive materials shall be identified.

S. No person shall store, handle or transport explosives or materials when such storage handling, and transportation of explosives or material constitutes an undue hazard to life.

T. Explosive material areas shall be placarded at each entrance. Personnel entering these areas shall present the proper credentials and turn over all articles prohibited by management before entering the area. Plant boundaries shall be fenced unless topography and/or other physical considerations accomplish this; the boundaries of restricted areas shall be posted at intervals to warn against trespassing.

U. Parking of vehicles in restricted areas near explosives facilities shall be controlled to minimize fire and explosion hazards and prevent congestion in event of emergency. Vehicles shall be parked in designated areas only.

R614-4-5. Building Construction.

A. Buildings used for explosive materials shall be of a safe design for the materials being handled and shall be maintained in that condition.

B. Heating equipment shall be installed in a manner to prevent ignition, deflagration or explosion of the materials being handled.

C. Buildings where dust, fumes, or vapors are possible shall be adequately ventilated, at the source of the hazard. Exhaust fans through which combustible dust or flammable vapors pass shall be equipped with nonsparking blades (or casing lined with nonsparking material) and approved motors. The entire ventilating system shall be bonded electrically and grounded properly.

D. Cleaning and collection systems shall be installed and maintained in a manner that takes into consideration the materials being handled.

R614-4-6. Electrical.

A. All electrical switches, controls, motors, wiring and equipment located in explosive material plants shall conform to the requirements of 29 CFR 1910 Chapter S (Electrical).

B. In any operations where a continuous supply of power is required, the lack of which may cause a hazard to employees an alternate source of power shall be provided.

C. The primary electrical supply to an explosives area shall be so arranged that it can be cut off by switches located at one or more central points away from the area.

D. When static electricity is a hazard nonsparking conductive floors and work surfaces or other approved methods to control and disperse static electricity is required, continuity of grounding on all mechanical devices shall be assured.

E. Only artificial lighting devices approved for the location shall be permitted in explosive areas.

R614-4-7. Fire, and/or Explosion Prevention.

A. No person shall take matches, lighters or other fire, flame, heat or spark producing devices into any restricted area containing ammunition, explosive material or readily ignitable flammable materials except by written authorization. When such authority has been received, a carrying device, too large to fit into the pockets, shall be used for matches, lighters, and similar materials. The carrying of and the use of "strike anywhere" matches are prohibited.

B. An employee whose clothing is contaminated with explosive or flammable material to the degree that it may endanger the safety of the employee shall not smoke, go near fire, open flame or spark producing devices.

C. Smoking is prohibited except in designated smoking areas.

D. The land within 25 feet of any explosive material manufacturing or mixing building shall be kept clear of rubbish, brush, dried grass, leaves, dead trees, all live trees less than 10 feet high, and other combustible materials.

R614-4-8. Protective Clothing and Equipment.

A. Management shall assure that appropriate protective clothing, eye and face protection equipment, and respiratory protection equipment, where necessary to protect the safety and health of employees, shall be used and employees trained in their use.

B. When required by exposure, a shower bath shall be taken at the end of each shift.

C. Shoes shall be cleaned before entering or leaving explosive materials buildings.

D. Contaminated work clothing and shoes shall not be worn off the plant site.

E. Employees who work upon conductive flooring, conductive mats, or conductive runners where explosive materials or flammable vapors are present must wear non-sparking conductive footwear and the conductivity shall be assured. Personnel from other departments or visitors who enter these areas shall also comply (See ANSI/UL 467-1972 Grounds and Grounding and ANSI Z41.3-1976 Conductive Safety-Toe Footwear).

F. Under no circumstances will personnel working on electrical equipment or facilities wear conductive-soled safety shoes or other conductive footwear.

G. Operational safety showers and eye wash facilities, clearly identified, shall be provided in case of contact with corrosives. All personnel employed in corrosive areas shall know the location of safety showers and eye wash facilities and be trained in their use.

R614-4-9. Intra Plant Transportation.

A. When moving explosive materials, the material shall be in acceptable containers, and covered when necessary.

B. Only authorized employees shall operate motorized equipment.

C. Vehicles used for the transportation of explosives shall be of a design to safely handle the material being moved.

R614-4-10. Explosive Materials Ingredient Preparation Operations.

A. When explosive material ingredients are susceptible to ignition by static electricity, shock, friction, spontaneous combustion, or incompatibility, adequate precaution shall be taken.

B. Blending or mixing equipment shall be of a construction suitable for the hazards of the materials being handled or processed.

C. Drive equipment for explosive material blenders, mixers, presses (hydraulic), screeners (mechanical), and other equipment shall be so designed that drive motors and pumps are located outside of the operating room in a dust-free and vapor-free atmosphere.

D. When materials are dried, the safe temperature for drying shall be established and then not exceeded at any point in the dryer apparatus or drying operation.

E. Containers used for handling oxidizers such as sodium nitrate and ammonium nitrate shall be examined for foreign material before use.

F. When necessary, screening of raw materials shall be supplemented by a permanent type magnetic separator.

G. Sulfur shall be handled so as to avoid friction and static electricity ignition.

H. Nitrocotton shall not be subjected to rough handling.

I. Extreme cleanliness shall be maintained in all nitrocotton operations. Any material that has escaped from its container shall be wet down immediately with water for proper disposal. Waste or dirty nitrocotton shall be properly disposed of.

J. Hoops and nuts on nitrocotton barrels or containers shall be wet with water or oil prior to removing them and prior to placing them back on the containers.

K. Nitrocotton shall be stored in closed containers.

L. Frozen nitrocotton shall be thawed before removing from drums.

M. Nitrocotton shall be screened before use; screens shall be of non-sparking material and grounded.

N. Nitrocotton containing less than 25% moisture shall not be screened.

O. Partially filled drums of nitrocotton or similar materials shall be closed to prevent evaporation of moisture.

P. Empty drums shall be thoroughly cleaned of nitrocotton, inside and out.

R614-4-11. Maintenance and Repairs.

A. Repairs to explosive material, machinery or buildings shall not be made without prescribed cleanup, decontamination and approval by authorized supervisory personnel.

B. All new or newly repaired process equipment used in explosive material operations shall be examined and test operated before being placed into routine operation.

C. All tools used for lubrication, repairs or adjustment of explosive material equipment shall be removed from the building or returned to their proper location before routine operations are started or resumed.

D. Refueling shall comply with 29 CFR 1910.106.

R614-4-12. Storage of Explosive Material.

A. Explosives and related materials shall be stored in approved facilities required under the applicable provisions of 27 CFR 55 Commerce in Explosives, and/or the applicable provisions of the U.S. Department of Defense Regulations.

B. All explosive materials shall be stored in an approved magazine or area unless they are in process, being used or being loaded or unloaded into or from transportation vehicles or while in the course of transportation.

R614-4-13. Transportation of Explosive Material.

Transportation of explosives shall meet all the provisions of the U.S. Department of Transportation and/or Utah Department of Transportation.

R614-4-14. Blasting Agents.

A. General. Unless otherwise set forth in this rule, blasting agents, excluding slurry, water gels, and emulsions, shall be manufactured, transported, stored, and used in accordance with these regulations. Slurry, water gels, and emulsion are covered in R614-4.

B. Fixed Location Mixing.

1. Buildings or other facilities used for the mixing of blasting agents shall conform to the following minimum requirements.

2. Buildings shall be of noncombustible construction or sheet metal on wood studs.

3. Floors shall be of concrete or other non-absorbent material. They shall be constructed without enclosed floor drains and piping into which molten materials could flow and be confined in case of fire.

4. All fuel oil storage facilities, including heating oil and process oil, shall be separated from the mixing plant, and located in such a manner that in case of tank rupture the oil will drain away from the mixing plant, or diked in a manner to contain the tank contents in case of rupture.

5. The building shall be well ventilated (See R614-4-5.C.)

6. Only heating units which do not depend on combustion processes, properly designed and located, may be used in the plant. Electric heaters with exposed resistance elements are prohibited. All direct sources of heat shall be provided from units located outside the mixing building.

7. All internal-combustion engines, such as diesel or gasoline-powered generators, shall be located outside the mixing building, or shall be properly ventilated and isolated by a permanent firewall. The exhaust systems on all such engines shall be provided with spark arrester mufflers, or be remotely located, so that any spark emission will not be a hazard to any materials in or adjacent to the building.

C. Equipment used for mixing blasting agents shall conform to the requirements of this subdivision.

1. The design of the processing equipment, including mixing and conveying equipment, shall be compatible with the relative sensitivity of the materials being handled. Equipment shall be designed to minimize the possibility of frictional heating, compaction, overloading, accumulation of dust, and confinement. All bearings and drive assemblies shall be mounted outside the mixer. All surfaces shall be accessible for cleaning. All hollow shafts shall be constructed to permit venting with an opening of at least 1/2 inch diameter.

2. Both equipment and handling procedures shall be designed to prevent the introduction of foreign objects or materials.

3. Mixers, pumps, valves and related equipment shall be designed to permit regular and periodic flushing, cleaning, dismantling and inspection.

4. All electrical equipment, including wiring, switches, controls, motors and lights which is located inside the mixing room shall conform to the requirements of 29 CFR 1910 Subpart S for Class II, Division 2 locations.

5. Mixing and packaging equipment shall be constructed of materials compatible with the materials being handled.

6. Suitable means shall be provided to prevent the flow of fuel to the mixer in case of fire. In gravity flow systems, an automatic spring-loaded shut-off valve with fusible link shall be installed.

D. The provisions of this subdivision shall be considered when determining blasting agent compositions.

1. The sensitivity of the blasting agent shall be determined by means of a No. 8 test blasting cap at regular intervals and after every change in formulations.

2. Oxidizers of small particle size, such as crushed ammonium nitrate prills or fines, may be more sensitive than coarser products and shall, therefore, be handled with greater care.

3. No hydrocarbon liquid fuel with flashpoint lower than that of no. 2 diesel fuel oil 125 degrees F. minimum shall be used.

4. Crude oil and crankcase oil shall not be used.

5. Metal powders such as aluminum shall be kept dry and shall be stored on containers or bins which are moisture-resistant or weather-tight. Solid fuels shall be used in such manner as to minimize dust explosion hazards.

6. Peroxides and chlorates shall not be used.

E. Mixing Operations

1. Safety precautions at mixing plants shall include the requirements of this subdivision.

2. The mixing, loading, and ingredient transfer areas where residues or spilled materials may accumulate shall be cleaned periodically. A cleaning and collection system for dangerous residues shall be provided.

3. A daily visual inspection shall be made of the mixing, conveying and electrical equipment to determine that such equipment is in safe operating condition. All discrepancies shall be corrected prior to operation. A program of systematic maintenance shall be conducted on a regular schedule.

4. The entire mixing and packaging plant shall be cleaned regularly and thoroughly to prevent excessive accumulation of dust, grease, and product ingredients.

5. Empty ingredient bags shall be disposed of daily in a safe manner.

6. No welding shall be permitted nor open flames allowed in or around the mixing or storage area of the plant, unless the equipment and area have been completely washed down and all fuels and oxidizing material removed.

7. Before welding or making repairs to hollow shafts, all fuels and oxidizing material shall be removed from the outside and inside of the shaft by a thorough washing, and the shaft shall be vented.

8. Other explosive material shall not be stored inside of or within 50 feet of any building or facility used for the mixing of blasting agents.

F. Bulk delivery and mixing vehicles.

1. The provisions of this subparagraph shall apply to off-highway private operations as well as to all public highway movements.

2. A bulk vehicle body for delivering and mixing blasting agents shall conform with the requirements of this subdivision.

a. The body shall be constructed of noncombustible materials.

b. Vehicles used to transport bulk premixing blasting agents on public highways shall have closed bodies.

c. All moving parts of the mixing system shall be designed as to prevent a heat buildup. Shafts or axles which contact the product shall have outboard bearings with 1-inch minimum clearance between the bearings and the outside of the product container. Particular attention shall be given to the clearances on all moving parts.

d. A bulk delivery vehicle shall be strong enough to carry the load without difficulty and be in safe mechanical condition.

e. When electric power is supplied by a self-contained motor generator located on the vehicle, the motor generator shall be separated from the blasting agent discharge.

f. A positive action parking brake which will set the wheel brakes on at least one axle shall be provided on vehicles when equipped with air brakes and shall be used during bulk delivery operations. Wheel chocks shall supplement parking brakes whenever conditions may require.

3. Operation of bulk delivery vehicles shall conform to the requirements of this subdivision. These include the placarding requirements as specified by the Department of Transportation.

a. The operator shall be trained in the safe operation of the vehicle together with its mixing, conveying, and related equipment. The employer shall assure that the operator is familiar with the commodities being delivered and the general procedure for handling emergency situations.

b. The operator shall be familiar with applicable local, state, and federal laws and regulations governing the transportation of explosive materials to the location and on the site.

c. No person shall smoke, carry matches or any flame producing device, or carry any fire-arms while in or about bulk vehicles effecting the mixing, transfer, or down-the-hole loading of blasting agents at or near the blasting site.

d. Caution shall be exercised in the movement of the vehicle in the blasting area to avoid driving the vehicle over or dragging hoses over firing lines, cap wires, or explosive materials. The employer shall assure that the driver, in moving the vehicle, has assistance of a second person to guide his movements.

e. No in transit mixing of materials shall be performed.

4. Pneumatic loading from bulk delivery vehicles into blast holes primed with electric blasting caps or other static-sensitive systems shall conform to the requirements of the subdivision.

a. A positive grounding device shall be used to prevent the accumulation of static electricity.

b. A discharge hose shall be used that has a resistance range that will prevent conducting stray currents, but that is conductive enough to bleed off static buildup.

c. A qualified person shall evaluate all systems to determine if they will adequately dissipate static under potential field conditions.

5. Repairs to bulk delivery vehicles shall conform to the requirements of this Part.

a. No welding or open flames shall be used on or around any part of the delivery equipment unless it has been completely washed down and all oxidizer material removed.

b. Before welding or making repairs to hollow shafts, the shaft shall be thoroughly cleaned inside and out and vented with a minimum one-half inch diameter opening.

G. Bulk Storage Bins

1. The bin, including supports, shall be constructed of compatible materials, waterproof, and adequately supported and braced to withstand the combination of all loads including impact forces arising from product movement within the bin and accidental vehicle contact with the support legs.

2. The bin discharge gate shall be designed to provide a closure tight enough to prevent leakage of the stored product. Provision shall also be made so that the gate can be locked.

3. Bin loading manways or access hatches shall be hinged or otherwise attached to the bin and designed to permit locking.

4. Any electrically driven conveyors for loading or unloading bins shall conform to the requirements of 29 CFR 1910 Subpart S. They shall be designed to minimize damage from corrosion.

5. Bins containing blasting agent shall be located, with respect to inhabited buildings, passenger railroads, and public highways, in accordance with American Table of Distances and separation from other blasting agent storage and explosives storage shall be in conformity with NFPA 492.

6. Bins containing ammonium nitrate shall be separate from blasting agent storage and explosives storage in conformity with NFPA 492.

H. Storage of Blasting Agents shall conform with the requirements of R614-4-12.

I. Transportation of Blasting Agents shall conform with the requirements of R614-4-13.

R614-4-15. Slurry, Water Gel and Emulsions.

A. General Provisions. Unless otherwise set forth in this rule, slurry, water gels, and emulsions shall be manufactured, transported, stored and used in the same manner as explosives or blasting agents in accordance with these regulations.

B. Types and classification.

1. Slurry, water gels, and emulsions which are cap-sensitive as defined in R614-4-2.B. under Blasting Agent shall be classified as an explosive and manufactured, transported, stored, and used as specified for "explosives" in this rule.

2. Slurry, water gels, and emulsions which are not cap-sensitive as defined in R614-4-2.B.of this section under Blasting Agent shall be classified as blasting agents and manufactured, transported, stored, and used as specified for "blasting agents" in this rule.

3. When tests on specific formulations of slurry, water gels, and emulsions result in Department of Transportation classification as a Class B explosive, bullet-resistant magazines are not required. See R614-4-12.

C. Fixed Location Mixing

1. Buildings or other facilities used for the mixing of slurrys, water gels and emulsions shall conform to the following minimum requirements.

2. Buildings shall be of noncombustible construction or sheet metal on wood studs.

3. Floors shall be of concrete or other non-absorbent material. They shall be constructed without enclosed floor drains and piping into which molten materials could flow and be confined in case of fire.

4. All fuel oil storage facilities, including heating oil and process oil, shall be separated from the mixing plant, and located in such a manner that in case of tank rupture the oil will drain away from the mixing plant, or diked in a manner to contain the tank contents in case of rupture.

5. The building shall be well ventilated.

6. Only heating units which do not depend on combustion processes, properly designed and located, may be used in the plant. Electric heaters with exposed resistance elements are prohibited. All direct sources of heat shall be provided from units located outside the mixing building.

7. Internal-combustion engines, such as diesel or gasoline-powered generators, when the hazard exists, shall be located outside the mixing building or shall be properly ventilated and isolated by a permanent firewall. The exhaust systems on all such engines shall be provided with spark-arrester mufflers, or be remotely located, so that any spark emission will not be a

hazard to any materials in or adjacent to the building.

D. Ingredients of Slurry, Water Gels and Emulsions.

1. Ingredients of slurrys, water gels, and emulsions shall conform to the requirements of this subdivision.

2. Ingredients in themselves classified as Class A or Class B Explosives shall be stored in conformity with R614-4-15 of this rule.

3. Nitrate-water solutions may be stored in tank cars, tank trucks, or fixed tanks without quantity or distance limitations. Spills or leaks which may contaminate combustible materials shall be cleaned up immediately.

4. Metal powders such as aluminum shall be kept dry and shall be stored in containers or bins which are moisture-resistant or weathertight. Solid fuels shall be used in such manner as to minimize dust explosion hazards.

5. Ingredients shall not be stored with incompatible materials.

6. Peroxides and chlorates shall not be used.

E. Mixing Equipment

1. Mixing equipment shall comply with the requirements of this subdivision.

2. The design of the processing equipment, including mixing and conveying equipment, shall be compatible with the relative sensitivity of the materials being handled. Equipment shall be designed to minimize the possibility of frictional heating, compaction, overloading, and confinement.

3. Both equipment and handling procedures shall be designed to prevent the introduction of foreign objects or materials.

4. Mixers, pumps, valves and related equipment shall be designed to permit regular and periodic flushing, cleaning, dismantling, and inspection.

5. All electrical equipment including wiring, switches, controls, motors and lights, shall conform to the requirements of 29 CFR 1910 Subpart S.

F. Bulk delivery and mixing vehicles

1. The provisions of this subparagraph shall apply to off-highway private operations as well as to all public highway movements.

2. The design of vehicles shall comply with the requirements of this subdivision.

a. Vehicles used over public highways for the bulk transportation of water gels or of ingredients classified as dangerous commodities, shall meet the requirements of the Department of Transportation and shall meet the requirements of this Part.

b. When electric power is supplied by a self-contained motor generator located on the vehicle the generator shall be at a point separated from where the water gel is discharged.

c. The design of processing equipment and general requirements shall conform to the requirements of this Chapter.

d. A bulk delivery vehicle shall be strong enough to carry the load without difficulty and be in good mechanical condition.

e. A positive action parking brake which will set the wheel brakes on at least one axle shall be provided on vehicles when equipped with air brakes and shall be used during bulk delivery operations. Wheel chocks shall supplement parking brakes whenever conditions may require.

G. Operation of bulk delivery and mixing vehicles shall comply with the requirements of this subdivision.

1. The operator shall be trained in the safe operation of the vehicle together with its mixing, conveying, and related equipment. He shall be familiar with the commodities being delivered and the general procedure for handling emergency situations.

2. The operator shall be familiar with applicable local, state and federal laws and regulations governing the transportation of explosive materials to the location and on the site.

3. No person shall be allowed to smoke, carry matches or any flame-producing devices, or carry any firearms while in or about bulk vehicles effecting the mixing, transfer, or down-the-hole loading of slurry, water gels, and emulsions, at or near the blasting site.

4. Caution shall be exercised in the movement of the vehicle in the blasting area to avoid driving the vehicle over or dragging hoses over firing lines, cap wires, or explosive materials. The employer shall assure the driver the assistance of a second person to guide the driver's movements.

5. No in transit mixing of materials shall be performed.

6. The location chosen for slurry, water gel, and emulsions or ingredient transfer from a support vehicle into the borehole loading vehicle shall be away from the blasting hole site when the boreholes are loaded or in the process of being loaded.

R614-4-16. Small Arms Ammunition, Small Arms Primers, and Small Arms Propellants.

A. Scope - This rule does not apply to in-process storage and intraplant transportation during manufacture of small arms ammunition, small arms primers and smokeless propellants.

B. Small Arms Ammunition

1. No quantity limitations are imposed on the storage of small arms ammunition in warehouses, retail stores, and other general occupancy facilities except those imposed by limitations of storage facilities.

2. Small arms ammunition shall be separated from flammable liquids, flammable solids as classified in 49 CFR 172, and from oxidizing materials, by a fire-resistive wall of 1 hour rating or by a distance of 25 feet.

3. Small arms ammunition shall not be stored together with Class A or Class B explosives unless the storage facility is adequate for this latter storage.

C. Smokeless Propellants

1. All smokeless propellants shall be stored in shipping containers specified in 27 CFR 55 Commerce in Explosives for smokeless propellants.

2. Commercial stocks of smokeless propellants over 20 pounds and not more than 100 pounds shall be stored in portable wooden boxes having wall of at least 1 inch nominal thickness.

3. Commercial stocks in quantities not to exceed 750 pounds shall be stored in nonportable storage cabinets having wooden walls of at least 1 inch nominal thickness. Not more than 400 pounds shall be permitted in any one cabinet.

4. Quantities in excess of 750 pounds shall be stored in magazines in accordance with R614-4-12.

D. Small Arms Ammunition Primers

1. Small arms ammunition primers shall not be stored except in the original shipping container in accordance with the requirements of Department of Transportation for small arms ammunition primers.

2. Small arms ammunition primers shall be separated from flammable liquids, flammable solids as classified in 49 CFR 172, and oxidizing materials by a fire-resistive wall of 1-hour rating or by a distance of 25 feet.

3. Not more than 750,000 small arms ammunition primers shall be stored in any one building, except as provided in R614-4-16.D.4. Not more than 100,000 shall be stored in any one pile. Piles shall be at least 15 feet apart.

4. Quantities of small arms ammunition primers in excess of 750,000 shall be stored in magazines in accordance with R614-4-12.

R614-4-17. Fireworks.

Scope - This rule applies to the manufacture of Class B and C fireworks.

A. All fireworks manufacturing shall comply with the requirements of this rule and the applicable portions of R614-4.

1. No more than 500 pounds of pyrotechnic and explosive composition shall be permitted at one time in any mixing building or any building in which pyrotechnic and explosive compositions are pressed or otherwise prepared for finishing and assembling.

2. No more than 500 pounds of pyrotechnic and explosive composition shall be permitted in a finishing and assembling building at one time.

3. In no case shall oxidizers such as nitrates, chlorates, or perchlorates be stored in the same building with combustible powdered materials such as charcoal, guns, metals, sulfur, or antimony sulfide.

B. Separation Distances.

1. All process buildings shall be separated from inhabited buildings, public highways and passenger railways in accordance with American Table of distance.

2. The separation distance between process buildings shall be in accordance with American Table of Distances.

3. Separation distances of nonprocess buildings from process buildings and magazines shall be in accordance with American Table of Distances.

4. Separation of magazines containing black powder or salutes classified as Class B fireworks from inhabited buildings, highways, and other magazines containing black powder or salutes classified as Class B fireworks shall be in accordance with American Table of Distances.

C. Building Construction

1. The exterior of process buildings constructed after this Code is adopted shall be constructed of materials no more combustible than painted wood.

2. No buildings shall have a basement. Interior wall surfaces and ceilings of buildings shall be smooth, free from cracks and crevices, noncombustible, and with a minimum of horizontal ledges upon which dust may accumulate. Wall joints and openings for wiring and plumbing shall be sealed to prevent entry of dust. Floors and work surfaces shall not have cracks or crevices in which explosives or pyrotechnic compositions may lodge.

3. Mixing, screening, pressing and assembly buildings or areas shall have conductive flooring, properly grounded.

R614-4-18. Use of Explosives and Blasting Agents.

A. General Provision

1. While explosives are being handled or used, smoking shall not be permitted and no one near the explosives shall possess matches,open light or other fire or flame except for ignition purposes. No person shall be allowed to handle explosives while under the influence of intoxicating liquors, narcotics, or other dangerous drugs.

2. Original containers or approved magazines shall be used for taking detonators and other explosives from storage magazines to the blasting area.

3. When blasting is done in congested areas or in close proximity to a structure, or any other installation that may be damaged, the blast shall be covered before firing with a mat constructed so that it is capable of preventing fragments from being thrown.

4. Persons authorized to prepare explosive charges or conduct blasting operations shall use every reasonable precaution including but not limited to warning signals, flags, barricades, or woven wire mats to insure the safety of all employees.

5. Surface blasting operations, except during unusual conditions shall be conducted during daylight hours.

a. Unusual blasting operations associated with industrial processes that are performed inside buildings shall be permitted, regardless of time of day, if both of the following conditions are met:

(1) All requirements concerning the use of explosives during normal blasting operations are implemented; and

(2) A minimum illumination intensity of 20 foot-candles is provided within a 5-foot (1.52m) radius of where explosive charges are being assembled, where explosive charges are being placed, and where explosive materials are being attached to initiating devices.

6. Whenever blasting is being conducted in the vicinity of gas, electric, water, fire alarm, telephone, telegraph, and steam utilities, the blaster shall notify the appropriate representatives of such utilities at least 24 hours in advance of blasting, specifying the location and intended time of such blasting. Verbal notice shall be confirmed with written notice.

7. Due precautions shall be taken to prevent accidental discharge of electric blasting caps from current induced by radar, radio transmitters, lightning, adjacent powerlines, dust storms, or other sources of extraneous electricity. These precautions shall include:

a. The suspension of all blasting operations and removal of persons from the blasting area during the approach and progress of an electric storm; and

b. The posting of signs warning against the use of mobile radio transmitters. (See ANSI C-95.4 and Institute of Makers of Explosive Safety Library Publication #20.)

8. Warning signs, indicating a blast area, shall be maintained at all approaches to the blast area. The warning sign lettering shall not be less than 4 inches in height on a contrasting background.

9. The blaster shall keep an accurate, up-to-date record of explosives, explosive materials, blasting agents, and blasting supplies used in a blast and shall keep an accurate running inventory of all explosives and blasting agents stored on the operation.

10. No activity of any nature other than that which is required for drilling or for loading holes with explosive material shall be permitted in a blast area.

11. Empty boxes and paper and fiber packing materials which have previously contained explosive material shall not be used again for any purpose, but shall be destroyed by burning at an approved isolated location out of doors, and no person shall be nearer than 100 feet after the burning has started.

12. Containers of explosives shall not be left open in any magazine or within 50 feet of any magazine. In opening kegs or wooden cases, no sparking metal tools shall be used; wooden wedges and either wood, fiber or rubber mallets shall be used. Nonsparking metallic slitters may be used for opening fiberboard cases.

13. Explosives or blasting equipment that are deteriorated or damaged shall not be used.

14. No explosives shall be abandoned.

B. Blaster Qualifications.

1. A blaster shall be able to understand and give written and oral orders.

2. A blaster shall be qualified by reason of training, knowledge, or experience, in the field of transporting, storing, handling, and use of explosives material and have a working knowledge of State and local laws and regulations which pertain to explosives material.

3. Blasters shall be required to furnish satisfactory evidence of competency in handling explosives material and performing in a safe manner the type of blasting that will be required.

4. The blaster shall be knowledgeable and competent in the use of each type of blasting method used.

C. Loading of Explosive Materials.

1. Procedures that permit safe loading shall be established and followed.

2. All drill holes shall be sufficiently large to admit freely the insertion of the cartridges of explosives.

3. Tamping shall be done only with wood rods or plastic

tamping poles without exposed metal parts, but nonsparking metal connectors may be used for jointed poles. Violent tamping shall be avoided. The primer shall never be tamped.

4. When loading blasting agents over electric blasting caps, semiconductive delivery hose shall be used and the equipment shall be bonded and grounded.

5. No holes shall be loaded except those to be fired in the next round of blasting.

6. No loaded holes shall be left unattended or unprotected.

7. Drilling shall not be started until all remaining butts of old holes are examined for unexploded charges, and if any are found, they shall be refired before work proceeds.

8. No employee shall be allowed to deepen drill holes which have contained explosives.

9. After loading for a blast is completed, all excess blasting caps or electric blasting caps and other explosives shall immediately be returned to their separate storage magazines.

D. Initiation of Explosive Charges - Electric Blasting.

1. Electric blasting caps shall not be used where sources of extraneous electricity make the use of electric blasting caps dangerous. Blasting cap leg wires shall be kept short-circuited (shunted) until they are connected into the circuit for firing.

2. Before adopting any system of electrical firing, the blaster shall conduct a thorough survey for extraneous currents, and all dangerous currents shall be eliminated before any holes are loaded.

3. In any single blast using electric blasting caps, all caps shall be electrically compatible.

4. Electric blasting shall be carried out by using blasting circuits or power circuits in accordance with the electric blasting cap manufacturer's recommendations.

5. When firing a circuit of electric blasting caps, care must be exercised to ensure that an adequate quantity of delivered current is available, in accordance with the manufacturer's recommendations.

6. Connecting wires and lead wires shall be insulated single solid wires of sufficient current-carrying capacity.

7. Buss wires shall be solid single wires of sufficient current-carrying capacity.

8. When firing electrically, the insulation on all firing lines shall be adequate in good condition.

9. A power circuit used for firing electric blasting caps shall not be grounded.

10. In underground operations when firing from a power circuit, a safety switch shall be placed in the permanent firing line at intervals. This switch shall be made so it can be locked only in the "off" position and shall be provided with a short-circuiting arrangement of the firing lines to the cap circuit.

11. In underground operations there shall be a "lightning" gap of at least 15 feet in the firing system ahead of the main firing switch; that is, between this switch and the source of power. This gap shall be bridged by a flexible jumper cord just before firing the blast.

12. When firing from a power circuit, the firing switch shall be locked in the open or "off" position at all times, except when firing. It shall be so designed that the firing lines to the cap circuit are automatically short-circuited when the switch is in the "off" position. Keys to this switch shall be entrusted only to the blaster.

13. Blasting machines shall be in good condition and the efficiency of the machine shall be tested periodically to make certain that it can deliver power at its rated capacity.

14. When firing with blasting machines, the connections shall be made as recommended by the manufacturer of the electric blasting caps used.

15. The number of electric blasting caps connected to a blasting machine shall not be in excess of its rated capacity. Furthermore, in primary blasting, a series circuit shall contain no more caps than the limits recommended by the manufacturer of the electric blasting caps in use.

16. The blaster shall be in charge of the blasting machines and no other person shall connect the leading wires to the machines.

17. Blasters, when testing initiating circuits, or electric caps, shall use only blasting galvanometers or other instruments which have been designed and approved for this purpose.

18. Whenever the possibility exists that a leading line of blasting wire might be thrown over a live powerline by the force of an explosion, care shall be taken to see that the total length of wires are kept too short to hit the lines, or that the wires are securely anchored to the ground. If neither of these requirements can be satisfied, a nonelectric system shall be used.

19. In electrical firing, only the employee making leading wire connections shall fire the shot. All connections shall be made from the bore hole back to the source of firing current, and the leading wires shall remain shorted and not be connected to the blasting machine or other source of current until the charge is to be fired.

20. After firing an electric blast from a blasting machine the leading wires shall be immediately disconnected from the machine and short-circuited.

E. Use of Safety Fuse.

1. Safety fuse shall only be used where sources of extraneous electricity make the use of electric blasting caps dangerous. The use of a fuse that has been damaged in any way shall be forbidden.

2. The hanging of a fuse on nails or other projections which will cause a sharp end to be formed in the fuse is prohibited.

3. Before capping safety fuse, a short length shall be cut from the end of the supply reel so as to assure a fresh cut end in each blasting cap.

4. Only a cap crimper of approved design shall be used for attaching blasting caps to safety fuse. Crimpers shall be kept in good repair and accessible for use.

5. No unused cap or short capped fuse shall be placed in any hole to be blasted; such detonators shall be removed from the working place and destroyed.

6. No fuse shall be capped, or primers made up, in any magazine or near any possible source of ignition.

7. No employees shall be permitted to carry detonators or store detonators or primers of any kind in their clothing.

8. The minimum length of safety fuse to be used in blasting shall not be less than 36 inches or a burning time of 120 seconds.

9. At least two employees shall be present when multiple cap and fuse blasting is done by hand lighting methods.

10. Not more than 12 fuses shall be lighted by each blaster when hand lighting devices are used. However, when two or more safety fuses in a group are lighted as one by means of igniter cord, or other similar fuse lighting devices, they may be considered as one fuse.

11. The method of dropping or pushing a primer or any explosive with a lighted fuse attached is forbidden.

12. Cap and fuse shall not be used for firing mudcap charges unless charges are separated sufficiently to prevent one charge from dislodging other shots in the blast.

13. When blasting with safety fuses, consideration shall be given to the length and burning rate of the fuse. Sufficient time, with a margin of safety, shall always be provided for the blaster to reach a place of safety.

F. Use of Detonating Cord.

1. Care shall be taken to select a detonating cord consistent with the type and physical condition of the bore hole and stemming and the type of explosives used.

2. Detonating cord shall be handled and used with the same respect and care given other explosives.

3. The line of detonating cord extending out of a bore hole or from a charge shall be cut from the supply spool before loading the remainder of the bore hole or placing additional charges.

4. Detonating cord shall be handled and used with care to avoid damaging or severing the cord during and after loading and hooking up.

5. Detonating cord connections shall be complete and positive in accordance with approved and recommended methods. Knot-type or other cord-to-cord connections shall be made only with detonating cord in which the explosive core is dry.

6. All detonating cord trunklines and branchlines shall be free of loops, sharp kinks, or angles that direct the cord back toward the oncoming line of detonation.

7. All detonating cord connections shall be inspected before firing the blast.

8. When detonating cord millisecond-delay connectors or short-interval delay electric blasting caps are used with detonating cord, the practice shall conform strictly to the manufacturer's recommendations.

9. When connecting a blasting cap or an electric blasting cap to detonating cord, the cap shall be taped or otherwise attached securely along the side or the end of the detonating cord, with the end of the cap containing the explosive charge pointed in the direction in which the detonation is to proceed.

10. Detonators for firing the trunkline shall not be brought to the loading areas nor attached to the detonating cord until everything else is in readiness for the blast.

G. Firing the Blast.

1. Before a blast is fired, a warning signal shall be given by the blaster in charge, who has made certain that all surplus explosives are in safe place and all employees, vehicles, and equipment are at a safe distance, or under sufficient cover.

2. Before firing any blast, warning shall be given, and all possible entries into the blasting area, shall be carefully guarded. The blaster shall make sure that all employees are out of the blast area before firing a blast.

H. Inspection After Blasting.

1. Immediately after the blast has been fired, the firing line shall be disconnected from the blasting machine, or where power switches are used, they shall be locked open or in the off position.

2. Sufficient time shall be allowed for the smoke and fumes to leave the blast area before returning to the shot. An inspection of the area and the surrounding rubble shall be made by the blaster to determine if all charges have been exploded before employees are allowed to return to the operation. Any unexploded explosives shall be disposed of safely.

I. Misfires.

1. If a misfire is found, the blaster shall provide proper safeguards for excluding all employees from the danger zone.

2. No other work shall be done except that necessary to remove the hazard of misfire and only those employees necessary to do the work shall remain in the danger zone.

3. No attempt shall be made to extract explosives from any charged or misfired hole; a new primer shall be put in and the hole refired. If refiring of the misfired hole presents a hazard, the explosives may be removed by washing out with water or, where the misfire is under water, blown out with air.

4. If there are any misfires while using cap and fuse, all employees shall be required to remain away from the charge for at least 1 hour. If electric blasting caps are used and a misfire occurs, this waiting period may be reduced to 30 minutes. Misfires shall be handled under the direction of the blaster in charge of the blasting and all wires shall be carefully traced and search made for unexploded charges.

5. No drilling, digging, or picking shall be permitted until all missed holes have been detonated or the authorized representative has approved the work can proceed.

J. Underwater Blasting.

1. Loading tubes and casings of dissimilar metals shall not be used because of possible electric transient currents from galvanic action of the metals and water.

2. Only water-resistant blasting caps and detonating cords shall be used for all marine blasting. Loading shall be done through a non-sparking metal loading tube when tube is necessary.

3. No blast shall be fired while any vessel under way is closer than 1,500 feet to the blasting area. Those on board vessels or craft moored or anchored within 1,500 feet shall be notified before a blast is fired.

4. No blast shall be fired while any swimming or diving operations are in progress in the vicinity of the blasting area. If such operations are in progress, signals and arrangements shall be agreed upon to assure that no blast shall be fired while any person is in the water.

5. Blasting flags shall be displayed.

6. The storage and handling of explosives aboard vessels used in underwater blasting operations shall be according to provisions outlined herein on handling and storing explosives.

7. When more than one charge is placed under water, a float device shall be attached to an element of each charge in such a manner that it will be released by the firing. Misfires shall be handled in accordance with the requirements of R614-4-18.I.

R614-4-19. Product Testing.

A. Every program for testing of explosive materials shall be examined by the employer for all foreseeable hazards involved in the test. When a specific hazard can be foreseen which affects safety, alternate means for attaining the objectives of the test shall be adopted.

B. No test shall be conducted unless safe testing facilities are available. The employer shall determine the adequacy of available facilities and the need for additional safeguards prior to beginning tests.

C. The test crew shall consist of at least two members during tests: one member of the crew shall serve as safety observer and shall be stationed at a safe location so as to summon help and offer aid in an emergency.

D. The quantity of explosive material taken to a test site shall not exceed that required to conduct the test safely.

E. It shall be the responsibility of the person in charge of the test to take the necessary action to protect by location or distance, personnel that may be endangered by the test.

F. If a test item fails to function (explode) no attempt shall be made to determine the nature of the malfunction until sufficient time has elapsed to assure that the test item is not reacting. The test item shall be handled cautiously, preferably by remote control and disposed of as soon as possible. Care shall be taken to avoid inhaling the reaction products of test compositions.

R614-4-20. Storage of Ammonium Nitrate.

A. Storage

1. Except as provided in R614-4-12. this rule applies to the storage of ammonium nitrate in the form of crystals, flakes, grains, or prills, including fertilizer grade, dynamite grade, nitrous oxide grade, technical grade, and other mixtures containing 60 percent or more ammonium nitrate by weight but does not apply to blasting agents.

2. This rule does not apply to the transportation of ammonium nitrate.

3. The storage of ammonium nitrate and ammonium nitrate mixtures that are more sensitive than allowed by the "Definition of Test Procedures for Ammonium Nitrate Fertilizer" (available from the Fertilizer Institute, 1015 18th Street, N.W.,

Washington, D.C. 20036) is prohibited.

4. Nothing in this rule shall apply to the production of ammonium nitrate or to the storage of ammonium nitrate on the premise of the producing plant.

5. The standards for ammonium nitrate (nitrous oxide grade) are those found in the "Specifications, Properties, and Recommendations for Packaging, Transportation, Storage, and Use of Ammonium Nitrate", Available from the Compressed Gas Association, Inc., 500 Fifth Avenue, New York, New York 10036.

B. General.

1. This rule applies to all persons storing, having, or keeping ammonium nitrate, and to the owner or lessee of any building, premises, or structure in which ammonium nitrate is stored in quantities of 1,000 pounds or more.

2. Approval of large quantity storage shall be subject to due consideration of the fire and explosion hazards, including exposure to toxic vapors from burning or decomposing nitrate.

C. Storage Buildings.

1. Storage buildings shall not have basements unless the basements are open on at least one side. Storage buildings shall not be over one story in height.

2. Storage buildings shall have adequate ventilation, or be of a construction that will be self-ventilating in the event of fire.

3. The wall on the exposed side of a storage building within 50 feet of a combustible building, forest, piles of combustible materials and similar exposure hazards shall be of fire-resistive construction. In lieu of the fire-resistive wall, other suitable means of exposure protection such as a free standing wall may be used. The roof coverings shall be Class C or better, as defined in the Manual on Roof Coverings, NFPA 203M-1970 or latest edition thereof.

4. All flooring in storage and handling areas shall be of noncombustible materials or protected against impregnation by ammonium nitrate and shall be without open drains, traps, tunnels, pits or pockets into which any molten ammonium nitrate could flow and be confined in the event of fire.

5. The continued use of an existing storage building or structure not in strict conformity with this Rule may be approved in cases where such continued use will not constitute a hazard to life.

6. Buildings and structures shall be dry and free from water seepage through the roof, walls, and floors.

D. Storage of Ammonium Nitrate in Bags, Drums, or Other Containers.

1. Bags and Containers

a. Bags and containers used for ammonium nitrate must comply with specifications and standards required for use in interstate commerce.

b. Containers used on the premises in the actual manufacturing or processing need not comply with provisions of R614-4-20.D.1.a.

2. Storage

a. Containers of ammonium nitrate shall not be accepted for storage when the temperature of the ammonium nitrate exceeds 130 degrees F.

b. Bags of ammonium nitrate shall not be stored within 30 inches of the storage building walls and partitions.

c. The height of piles shall not exceed 20 feet. The width of piles shall not exceed 20 feet and the length 50 feet except that where the building is of noncombustible construction or is protected by automatic sprinklers the length of piles shall not be limited. In no case shall the ammonium nitrate be stacked closer than 36 inches below the roof or supporting and spreader beams over head.

d. Aisles shall be provided to separate piles by a clear space of not less than 3 feet in width. At least one service or main aisle in the storage area shall not be less than 4 feet in width.

E. Storage of Bulk Ammonium Nitrate.

1. Warehouses shall have adequate ventilation or be capable of adequate ventilation in case of fire.

2. Unless constructed of noncombustible material or unless adequate facilities for fighting a roof fire are available, bulk storage structures shall not exceed a height of 40 feet.

F. Bins

1. Bins shall be clean and free of materials which may contaminate ammonium nitrate.

2. Due to the corrosive and reactive properties of ammonium nitrate, and to avoid contamination, galvanized iron, copper, lead, and zinc shall not be used in a bin constructed unless suitably protected. Aluminum bins and wooden bins protected against impregnation by ammonium nitrate are permissible. The partitions dividing the ammonium nitrate storage from other products which would contaminate the ammonium nitrate shall be of tight construction.

3. The ammonium nitrate storage bins or piles shall be clearly identified by signs reading "Ammonium Nitrate" with letters at least 2 inches high.

G. General.

1. Piles or bins shall be so sized and arranged that all material in the pile is moved out periodically in order to minimize possible caking of the stored ammonium nitrate.

2. Height or depth of piles shall be limited by the pressure-setting tendency of the product. However, in no case shall ammonium nitrate be piled higher at any point than 36 inches below the roof or supporting and spreader beams over head.

3. Ammonium nitrate shall not be accepted for storage when the temperature of the product exceed 130 degrees F.

4. Dynamite, other explosives, and blasting agents shall not be used to break up or loosen caked ammonium nitrate.

H. Contaminants.

1. Ammonium nitrate shall be in a separate building or shall be separated by approved type fire-walls of not less than 1 hour fire-resistance rating from storage of organic chemicals, acids, or other corrosive materials, materials that may require blasting during processing or handling, compressed flammable and combustible materials or other contaminating substances, including but not limited to animal fats, baled cotton, baled rags, baled scrap paper, bleaching powder, burlap or cotton bags, caustic soda, coal, coke, charcoal, cork, camphor, excelsior, fibers of any kind, fish oils, fish meal, foam rubber, hay, lubricating oil, linseed oil, or other oxidizable or drying oils, naphthalene, oakum, oiled clothing, oiled paper, oiled textiles, paint straw, sawdust, wood shavings, or vegetable oils. Walls referred to in this subdivision need extend only to the underside of the roof.

2. In lieu of separation walls, ammonium nitrate may be separated from the materials referred to in R614-4-20.H.1. by a space of at least 30 feet.

3. Flammable liquids such as gasoline, kerosene, solvents, and light fuel oils shall not be stored on the premises except when such storage conforms to R614-4-1, and when walls and sills or curbs are provided in accordance with R614-4-20.H.1. or 2.

4. LP-gas shall not be stored on the premises except when such storage conforms to 29 CFR 1910.110.

I. Storage.

1. Sulfur and finely divided metals shall not be stored in the same building with ammonium nitrate except when such storage conforms to R614-4-1. through 20.

2. Explosives and blasting agents shall not be stored in the same building with ammonium nitrate except on the premises of makers, distributors, and user-compounders of explosives or blasting agents.

3. Where explosives or blasting agents are stored in separate buildings, other than on the premises of makers, distributors, and user-compounders of explosives or blasting

agents, they shall be separated from the ammonium nitrate by the distances and/or barricades specified in R614-4-21 but not less than 50 feet.

4. Storage and/or operations on the premises of makers, distributors and user-compounders of explosives or blasting agents shall be in conformity with R614-4-1. through 20. of these rules.

J. General Precautions.

1. Electrical

a. Electrical installations shall conform to the requirements of 29 CFR 1910 Subpart S, for ordinary locations. They shall be designed to minimize damage from corrosion.

b. In areas where lightning storms are prevalent, lightning protection shall be provided. (See the Lightning Protection Code, NFPA 78-1979).

c. Provisions shall be made to prevent unauthorized personnel from entering the ammonium nitrate storage area.

2. Fire Protection.

a. Not more than 2,500 tons of bagged ammonium nitrate shall be stored in a building or structure not equipped with an automatic sprinkler system. Sprinkler systems shall be approved type and installed in accordance with 29 CFR 1910.159.

b. Suitable fire control devices such as small hose or portable fire extinguishers shall be provided throughout the warehouse and in the loading and unloading area. Suitable fire control devices shall comply with the requirements of 29 CFR 1910.157 and 1910.158.

c. Water supplies and fire hydrants shall be available in accordance with recognized good practices.

R614-4-21. Sources of Standards.

The following sources and publications were used in the Development of R614-4.

A. Institute of Makers of Explosives Safety Library Publications, 1575 Eye Street, N.W., Suite 550, Washington, D.C. 20005.

B. The American Table of Distances

C. Suggested Code of Regulations for the Manufacture, Transportation, Storage, Sale, Possession, and Use of Explosive Materials.

D. "Do's and Don'ts" Instructions and Warnings

E. Glossary of Industry Terms

F. Safety in the Transportation, Storage, Handling and Use of Explosives.

G. Safety Guide for the Prevention of Radio Frequency Radiation Hazards in the Use of Electric Blasting Caps.

H. IME Standard for the Safe Transportation of Class C Detonators (Blasting Caps) in a Vehicle with Certain Other Explosives.

I. Department of Defense Standards.

Superintendent of Documents, Government Printing Office, Washington, D.C. 20402

1. DOD 5154.4S DOD Ammunition and Explosives Safety Standards

2. AMCP 706-186 Engineering Design Handbook, Military Pyrotechnics Series, Part Two--Safety, Procedures and Glossary

3. DOD 4145.26M DOD Contractor's Safety Manual for Ammunition, Explosives and Related Dangerous Material

J. National Fire Protection Association Codes, 470 Atlantic Avenue, Boston MA 02210.

1. NFPA 44a-1974 Code for the Manufacture, Transportation, and Storage of Fireworks

2. NFPA 495-1973 Code for the Manufacture, Transportation, Storage and Use of Explosive Materials

3. NFPA 492-1976 Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents

4. NFPA 203M-1970 Manual on Roof Coverings

5. NFPA 78-1979 Lightning Protection Code

6. NFPA 490-1975 Storage of Ammonium Nitrate

7. NFPA 91-1973 Blower and Exhaust Systems for Dust, Stock, and Vapor Removal or Conveying

K. Code of Federal Regulations Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

1. CFR 14 Aeronautics and Space

2. CFR 27 Alcohol, Tobacco Products, and Firearms

3. CFR 29 Labor

4. CFR 30 Mineral Resources

5. CFR 46 Shipping

6. CFR 49 Transportation

L. National Institute for Occupational Safety and Health Reports available from: U.S. Department of Commerce, National Technical; Information Service, Springfield, VA 22161.

1. PB 297 827 A Safe Practices Manual for the Manufacturing, Transportation, Storage and Use of Explosives

2. PB 297 807 A Safe Practices Manual for the Manufacturing, Transportation, Storage, and Use of Pyrotechnics

KEY: safety
December 2, 1997 34A-6-202
Notice of Continuation October 19, 2017

R614. Labor Commission, Occupational Safety and Health.
R614-5. Materials Handling and Storage.
R614-5-1. Crawler Locomotive and Truck Cranes.

Two Blocking Damage Preventive Feature. On hydraulic cranes with power telescoping booms, an "Anti Two-Blocking" feature, warning device, or other arrangement, shall be provided to warn the crane operator to avoid colliding ("two-blocking") the hook block with the boom point when hoisting the load, when extending the boom or when booming up or down.

R614-5-2. Conveyors.

This rule is to cover minimum standards for the safe installation, operation and maintenance of all types of conveying machinery and equipment, which includes belt, bucket, chain, roller, reciprocating or oscillating, screw, pneumatic, and flight conveyors or conveying systems. In the event these orders do not cover a specific hazardous condition, the ANSI standard B-20.1, 1996 shall be used as a guide.

A. Guarding.

1. Driving mechanisms of conveying equipment shall be enclosed by housing or guards where it is possible for workers to come in contact with gears, chain or belt drives or moving shafts. The guards shall be constructed so no part of the body or clothing can contact the driving mechanism.

2. Head pulleys, tail pulleys, take up, counterweights, sprockets, sheaves, drums, blocks, etc., shall be enclosed with guards or the area blocked off with rails or fence so workers cannot come in contact with moving parts.

3. Bucket elevators shall be enclosed in a housing or the area blocked off so no hazard exists from falling material.

4. Screw conveyors, troughs, or box openings shall have covers, grating or guard rails to prevent workers from coming in contact with the moving conveyor.

5. Conveyors passing over work areas, aisles or walkways where workers are exposed shall be covered underneath to eliminate hazard from falling material or personal contact.

6. Openings to hoppers, chutes or other discharge points where workers may be exposed shall be guarded by railings, toeboards, baffleplates, chains, temporary covers and front and sides high enough to prevent workers falling into them and material being discharged from striking them.

7. Platforms with side rails shall be constructed on trippers where a worker is required to ride or climb on the tripper to operate the controls so he cannot slip off or come in contact with the moving machinery. If a platform is not required, levers and controls shall be located so the worker can safely operate the tripper without coming in contact with the moving machinery.

B. Inspection and Maintenance.

1. Periodic inspection of the entire conveying mechanism shall be made for worn parts, defective couplings, loose belts, chains and defective safety devices such as brakes, backstops, overload releases, guards, etc.

2. Such inspection shall be made while the equipment is stopped and locked out except where the inspector can stand completely in the clear of any moving parts.

3. Lubrication of machine parts shall not be done while equipment is operating unless grease and oil fittings are equipped with extensions which permit such lubrication from a position where the worker cannot come in contact with the moving machinery.

C. Walkways, Platforms, Balconies

1. Where conveyors must be crossed over during operation, a walkway with stairs, platform, handrails and toeboards shall be constructed and conspicuously marked with a sign. Where walkways, ramps or stairways are located adjacent to open belt or pan conveyors, they shall be at least 20 inches in width and there shall be three feet clearance from the outside of the passageway and the moving conveyor. All stairways shall have handrails adjacent to the conveyor to prevent workers who may stumble from falling into the conveyor.

2. Where workers must cross under a conveyor, crossunders shall be plainly marked as the only passageways. The passageway shall be covered to prevent contact with moving parts or material falling off the conveyor.

D. Brakes and Backstops.

On conveyors where reversing or a runaway might occur under load in case of power failure, an anti-runaway or backstop device or automatic brake shall be provided or guard rails installed to prevent anyone from being in the area where the falling load could strike him.

E. Dust control.

1. Dust control equipment, provided at transfer points, crushers or such as sprays or exhaust hoods shall be wherever a dust condition exists which may be a health hazard to workers or a fire or explosion hazard.

2. Where the installation of dust control equipment is not practical, workers shall be provided with approved respiratory devices.

F. Fire Protection

1. Housekeeping along conveying systems shall be maintained in a manner that will prevent fires.

2. Where conveying equipment fire may present a hazard to workers or building, emergency fire fighting equipment shall be provided and identified and strategically located to control any outbreak of fire. Equipment selection should consider the control of electrical fires, burning belting and conveyor structures, materials being handled, adjacent materials, etc.

3. Workers operating conveying equipment shall be knowledgeable in the use of the fire protection equipment furnished.

4. Where conveying equipment is located in building or tunnel enclosures where men are working, emergency fire exits shall be provided and identified.

5. All fire fighting equipment, alarm stations, etc., must be identified and readily accessible and free of obstructions.

G. Illumination.

Sufficient lighting to see the equipment clearly shall be provided at floor level, head and tail pulleys, operating stations and along conveyor systems which must be inspected - 5 to 10-foot candles of light meet this requirement.

H. Electrical.

1. Power and control circuits for conveying equipment shall be installed so as to minimize the possibility of electric shock or fire hazard. This shall include grounding. After the effective date of these orders, new equipment shall be installed in accordance with the current edition of the National Electric Code.

2. Power and control circuits shall not be enclosed in the same conduit lines or junction boxes.

3. All starting and stopping devices shall be clearly marked and the immediate area kept clear of obstructions to permit ready access.

4. All conveyor switch boxes shall be identified indicating the voltage and the equipment served.

5. Electrical installations in explosive areas shall meet the requirements, as applicable, of the National Electrical Code, Chapter 500.

6. The installation of electrical emergency conveyor stops, such as pull cables, or push buttons, is recommended where workers are manually loading or unloading or doing cleanup work while equipment is operating.

7. Overload protective devices are recommended on conveying equipment power circuits to prevent damage or fire.

I. Safe Operating Rules.

1. Manually loaded vertical or highly inclined conveyors shall have a sign at the loading point designating the load

capacity.

2. No riding shall be permitted on any conveyor not specifically designed and approved to convey workers.

3. Repairs to conveyors or related equipment shall not be done while the equipment is operating. When stopped for repairs, servicing, cleaning, removing overloads, etc., the controls shall be locked or tagged out.

4. No safety device, guard, overload, cutout, brake, etc., shall be removed from a conveyor and the conveyor placed in operation without the device being reinstalled. Where permanent guards at hazardous points must be left off, the area shall be laced off with temporary boards, etc., if the conveyor is placed in operation other than for testing.

5. Workers working around or operating conveyors shall be advised of the location of the starting and stopping devices and instructed how to use them to stop the conveyor in an emergency.

KEY: safety
December 2, 1997 34A-6
Notice of Continuation October 19, 2017

R614. Labor Commission, Occupational Safety and Health.
R614-6. Other Operations.
R614-6-1. Crushing, Screening, and Grinding Equipment.

A. Car moving, dumping, and shakeout or cleanout operations shall be performed in a safe manner and in compliance with R614-6-4. Reloading shall be performed in a safe manner.

B. Track or truck hoppers or bins shall be covered with a grizzly, or other suitable means shall be provided to prevent an employee from accidentally falling into the bin, or the employee shall wear a safety harness properly tied off. This is also applicable when working around or over crushers or rolls.

C. Equipment feeding crushing, screening and grinding facilities shall be adequately guarded and maintained in a safe manner.

D. Air lines, bars, hammers, and all other tools used shall be kept in good repair at all times. Goggles or face shields shall be worn when lancing or barring down or when any other activity may result in flying particles.

E. Protective equipment such as hard hats, safety shoes, eye protection, respiratory protection, and gloves shall be worn when needed. Operators shall wear clothing as needed to reasonably cover the body. Such clothing shall be relatively close fitting so as to preclude loose, ragged sleeves or trouser legs, long coat tails, neckties and other such items as may become entangled in the machinery.

F. Machinery guards shall be kept in place and machinery shall not be operated following repairs until guards are in place and secured. Electrical gear shall have covers in place during operation.

G. No employees shall work on the drive mechanism, in a chute, hopper, screen, grinder, or crusher unless same is locked and/or tagged in compliance with Part 15.9 and the foreman is informed of his whereabouts.

H. Adequate work platforms and walkways shall be provided. All platforms, ramps, walkways, ladders, and stairways shall be in conformance with 29 CFR 1910 Subpart D. Crossover crushing and feeding equipment shall be provided and the operators shall use such crossovers and not pass over hazardous, unprotected equipment.

I. Adequate storage for tools and supplies shall be provided.

J. Dunnage and other waste or scrap material shall have a place of disposal and shall be removed so as to permit the maintenance of an adequate housekeeping program.

K. Throwing of materials from crushers, elevators, or overhead platforms shall be prohibited, except when an area is provided and barricaded to make it safe.

L. Electrical gear on crushing, screening, and grinding equipment shall be grounded and otherwise meet the requirements of 29 CFR 1910 Subpart S.

M. Dust shall be controlled at the source by adequate dust control equipment. Where this is not effectively accomplished, such additional procedures as wetting down, vacuum cleaning and other means shall be provided and used. Approved respiratory equipment shall be provided when dust concentrations indicate their need.

N. Areas under rod mills, ball mills, and other rotating equipment shall be adequately barricaded, or fenced to prevent persons passing under the operating mills unless such mills have at least 10' clearance above floor level.

O. Employees shall not work over rotating mills, spiral or drag classifiers or any other similar equipment unless protected by a bridge, catwalk, crossover or other protective device.

P. Reagents shall be used in conformance with directions and warnings as supplied by the manufacturer or supplier. Such hazards as caustic or acid burns, fire, poisons, irritants, etc., must be recognized and the operator trained and protected to prevent accidental or unmindful contact which may cause injury. The necessary protective equipment shall be supplied and used.

Q. Any chemicals used in connection with grinding or milling operations shall be labeled.

R. Before any crushing, screening, or grinding equipment is started, the operator shall be sure all persons are clear and machinery is released for operation.

S. Impact breakers, jaw crushers, crushing rolls, and similar equipment shall be protected by adequate covers, chain curtains or other effective guards to prevent material from being thrown out of the feed opening of the crusher.

R614-6-2. Window Cleaning.

A. General.

1. It shall be the responsibility of the employer to provide such safety devices and equipment as required by this rule. He shall be responsible for the proper use and maintenance of such equipment and devices.

2. It shall be the responsibility of the employee to wear and employ the devices so provided as directed and to assist in its reasonable care and maintenance.

3. Only employees who have been adequately trained and instructed shall be permitted to clean windows where the use of anchors, safety harnesses, swinging scaffolds, boatswains' chairs, tackle or other similar equipment is required.

B. Ladders-scaffolds.

1. Ladders shall not be used to clean windows whose top is more than 36 feet above the floor of adjoining ground or a flat roof or which are so placed or obstructed as to make the method unsafe. Built-up scaffolds are preferred over ladders.

2. The use of ladders with hooks attached, to be hung on or over a parapet wall or other projection, are prohibited in window cleaning.

C. Windows.

1. Windows which are of such type that both the inside and the outside of the window may be cleaned from the inside, if over 10 feet to the top of the window on the outside must be cleaned from the inside of the building.

2. Windows whose top is over 36 feet above ground, floor or flat roof, and which are of the type that cannot be cleaned from the inside must be provided with window anchors, or shall be cleaned only by use of swinging or built-up scaffolds or boatswains' chairs or other satisfactory method providing equal safety.

3. When window anchors are used, they shall meet the requirements of ANSI Standard A39.1-1969 and shall be inspected and maintained in a safe manner. No window cleaner shall use an anchor which he finds to be loose or insecure.

4. When working from a suspended scaffold or boatswain's chair, the employee shall wear an approved safety harness and shall be tied off to a line supported from a separate roof anchorage to the ground which must be separate from the rest of the rigging. The fall line shall be provided with an approved automatic locking device.

D. Equipment.

1. Extension tools shall not be over 6 feet long. A cleaner using a brush or squeegee on a pole shall attach it to his person by a wristloop, or other device to prevent dropping. Each extension device so used shall have a locking device to prevent inadvertent detachment of the brush or squeegee.

2. Brushes, buckets, squeegees, and other equipment used by a cleaner working on a scaffold or boatswains' chair shall be fastened to equipment at the moment when not in actual use in the hand of the cleaner.

3. When cleaning windows, special care shall be used where electrical supply lines present a hazard.

4. Window jacks and all other platform devices fastened to window sills for a cleaner to stand upon outside of the window without standard harnesses and anchors are prohibited.

5. Ropes used in windows, cleaning operations shall be

inspected before being used and shall be discarded if unsafe.

R614-6-3. House and Building Moving.

A. General.

1. House movers must provide and maintain good safe equipment. Jacks, blocking, stringers, etc., must be of the proper type and sufficiently strong to support the working load and provide a reasonable factor of safety.

2. Employees shall be properly instructed in the use of the blocks, stringer, jacks, and other equipment, and they shall not be permitted to work under any building or structure until it is safely supported.

B. Utilities and Special regulations.

1. Buildings or structures must not be moved within six (6) feet of any power or communication line until the following provisions have been fully complied with:

a. Arrangements have been made with electric and telephone utilities to have employees present to take care of wires which may interfere with movement of the building or structure.

b. Electric utility linemen are present to take care of any electric supply wires which may interfere with movement of the building or structure.

c. Telephone company utility employees are present to take care of telephone wires or cables which may interfere with movement of the building or structure.

d. No one except electric utility linemen shall be on top of the building or structure while it is passing within 6 feet of energized electric supply wires.

e. A ridge board has been installed on the ridge of the building or structure to assist in sliding wires over it.

2. All state, county, city, or municipal regulations shall also be observed.

3. A "special transporting permit" issued by the Utah Highway Patrol shall be obtained before buildings are moved on the highway.

R614-6-4. Industrial Railroads.

A. Car handling and layout.

1. Purpose. These orders set up minimum standards for industrial railroads in above-ground operations. Where it has been determined by the Labor Commission that, due to the process or operation, compliance with these orders would increase the hazards, industrial railroads need not comply provided such substandard areas are properly posted with warning signs, clearance distances indicated, areas barricaded, proper instructions given to workmen or other safety devices installed to provide maximum protection to workmen. Nothing herein shall be construed as preventing the movement of material over tracks when such material is necessary in the construction or maintenance of such tracks, nor in the movement of special work equipment used in the construction, maintenance or operation of the railroad, provided such movement shall be carried on under such conditions as are necessary to provide for the safety of all concerned.

2. Definition. An industrial railroad is a railway track, or system of tracks, with necessary appurtenances thereto, owned or controlled by an industrial concern not a common carrier, which operations are conducted solely by one or more of such industrial concerns.

3. Layout. Plant layout as it applies to the installations of railroad tracks, trestles, high lines, loading docks, clearances, crossing, etc., shall comply with the Manual of the American Railway Engineering Association-Engineering Division, and General Order No. 66 of the Public Service Commission of Utah.

a. Where there is a driveway storage space or passageway under a trestle, the passageway should be protected with an overhead shield.

b. On trestles and other places where material is unloaded from side of cars, footwalk can be placed at a distance and part of the floor or walk can be arranged so that it can be lifted to allow metal or other material to fall through. Cable nets or gratings should be provided to prevent employees from falling through openings.

4. Clearance. Standard clearances may not give enough protection where tracks pass doorways or corners of buildings or other places where workers may walk directly onto tracks in front of moving railroad equipment. These locations must be safeguarded with fixed railings or other means that force employees to detour or to become otherwise alerted to the hazard.

5. Crossings. Track crossings shall be reduced to a reasonable minimum and as far as practical shall be away from buildings or their obstructions which may impair visibility. The crossings inside plants shall be equipped with stop signs, blinking light, wig-wags, gates, or other means of effective warning or be protected by a watchman, switchman, or other responsible person.

6. Trestles and Highlines.

a. Trestles shall be equipped with walks, the outer edge of which shall be at least six (6) feet from the rail. Where practical, the floor of this walk shall extend to within four (4) inches of the ends of the ties. In no case shall the walk be less than 20 inches wide. Each walk shall be equipped with a standard railing and toeboard.

b. All dead-end tracks are to be provided with adequate blocks. Draw bar height is preferable.

7. Speed limits. Speed limits both for train and vehicular travel inside industrial plants, shall be established and enforced.

8. Movement of railroad cars by car movers other than locomotives.

a. Car moving equipment, such as continuous cable pullers, winches, or other types of car movers shall have adequate guards to protect the operator, should the cable break.

b. The maximum number of cars loaded and empty, must be established and operators instructed in these safe load limits.

c. Hand-type car movers shall be provided with a guard to protect the operator's hand, should the tool slip.

d. Pushmobiles, trucks, and any other mobile-type car movers which are specifically intended for car moving shall have a coupler connection to railroad car being moved except when spotting only.

e. Persons assigned as car riders or so-called car droppers, must be adequately trained and shall use a safety harness and a short lanyard attached to the car they are riding while performing this work. (This is not applicable to railroad switching crews.)

9. Reporting bad order cars.

A definite procedure must be established for reporting bad order or damaged equipment, such as pin lifters, couplers, dumping mechanisms, etc.

10. Blocking of Cars.

a. When there is danger of cars rolling or drifting and employees are required to work on them, cars must be blocked with adequate wheel blocks to prevent them from rolling.

b. Where railroad cars are equipped with effective hand brakes, they may be set up to prevent cars from moving when employees are working on or inside of them in place of wheel blocks.

11. Blue Flag Procedure. When working on tracks, unloading or loading cars such as tank cars, gondolas, box cars, etc., the following blue flag track target procedure must be followed:

a. All blue flag track targets shall be of substantial material, not less than 12" x 15" in size, shall bear the word STOP in letters not less than 4" in height, and shall be at least 28" and not more than 10' above the top of the rail when placed.

The supervisor or other person in charge will determine the distance that they are to be placed on each side of the work area.

b. Track target shall be placed on spur tracks 10' from the clearance of the lead or through tracks and the switch of the spur track locked in a closed position.

c. Track target shall be securely clamped upright to the rail or fastened securely to the side of the rail.

d. At night or when weather conditions result in poor visibility, a blue light is to be placed on the track target in the space provided.

e. Where permanent derails are installed, they must be identified with the standard derail post located 8'6" from the nearest rail. Weeds and debris must be kept free of sign posts.

f. Red flags and red lights may be used in emergency cases where standard blue flag targets and blue lanterns are not immediately available, but must be replaced as soon as possible with the standard blue target and blue light.

g. Train crews shall not couple into or move railroad equipment which is protected by blue flags.

h. Railroad equipment shall not be placed in front of blue flags so as to obscure them without notification to and approval of the supervisor or other person in charge of the work on the tracks. The supervisor in charge of the work will then replace the flag for proper protection.

i. The blue flags or derails are to be removed only under the direction of the supervisor or other person in charge of the work on the tracks.

j. When two or more supervisors have groups of employees working on the same tracks, each supervisor will place his own protective lock on the blue flag derail or switch.

k. The blue flag or derail lock must be removed promptly when the work is completed and the tracks are ready for their normal use.

l. The Yardmaster or other designated person will be notified at the start and finish of all work being performed on lead or through tracks.

m. When men are required to repair cars or make mechanical adjustments in the field, the blue flag procedure must be followed.

n. At any time the blue flag procedure cannot be used, a flagman or safety watchman must be provided to give protection for employees working on equipment.

o. Derails shall never be placed on molten metal or slag tracks unless there is no other means of giving adequate protection for employees or equipment.

12. Unloading cars.

a. Training of employees is required before they are assigned to unload gondolas, bottom dumpers, side dumps, or air dump-type cars.

b. Employees are not permitted to work inside railroad cars when they are being unloaded with a magnet.

c. Bottom dump and side dump car mechanisms are to be operated with tools designed for dumping and they must be in good working condition. At no time shall tools in poor repair be used. Their condition must be reported to the supervisor immediately.

d. At no time shall a railroad car be dumped if the dumping mechanisms are defective which makes them unsafe to operate. Such defective cars will be referred to the proper authority.

e. When employees are required to enter covered hopper cars or tank cars through the hatch cover opening, the hatch cover must be fastened securely open so there is no chance of its closing while the employee is in the car.

f. When it is necessary for employees to enter covered hopper cars or tank cars, safety checks must be made to determine that there is no toxic or explosive gas or lack of oxygen.

13. Closed car thawing houses and heating equipment must be so designated and constructed as to prevent accumulations of toxic or explosive gases.

14. Before employees or locomotives are permitted to enter closed car thawing houses when in operation, ventilation must be provided to insure no toxic or explosive gas or lack of oxygen is present.

15. Lighting-Classification Yards. Classification yards and other similar areas where trains are made up to or broken down shall conform to the specification issued by the American Railway Engieering Association.

B. Operations and maintenance.

1. Trackage and controls. Trackage, roadbed signal systems, traffic control system, power lines should be maintained in good condition and shall be regularly inspected.

2. Switch throws shall be so installed as to provide adequate clearance for switchmen.

3. The rod extending from the bridle bar to the throw shall be covered or the stumbling hazard shall be otherwise minimized.

4. Derail devices shall be installed where necessary on all side tracks on or near junction with connection to through traffic lines.

5. Dead-end tracks shall have bumping blocks or the equivalent to prevent cars from running off the end of the tracks.

6. Where foot travel is required adjacent to switches, a walkway shall be provided.

7. Employees shall be prohibited from sitting on tracks or under cars.

8. Employees shall be prohibited from climbing over or crawling under cars to cross tracks, unless it is in the performance of his assigned duties.

9. Signs and Flags.

a. A sign reading STOP (white lettering on blue background) must be placed on the track, or between the rails of the track, in approach to cars which are being loaded, or unloaded, and when the sign is displayed cars must be not coupled to nor moved nor other cars placed so as to obstruct the view of the sign. Warning lights must be attached to the sign by night.

b. The sign will be placed and removed only by an authorized employee. The sign must be displayed to protect employees loading, unloading, or working in or about cars, and must not be removed until it is known that employees and others are clear.

c. When a sign reading STOP (white lettering on blue background) is displayed, the engine must not be coupled to a tugger, nor shall the car be moved by other means.

d. A car placarded Explosives, Flammable Liquids, Dangerous shall not be cut off while in motion. No car moving under its own momentum shall be allowed to strike any car placarded Explosives, Flammable Liquids, or Dangerous nor shall any such car be coupled with more force than is necessary to complete the coupling.

e. Loaded tank cars with any of the above placards must not be cut off until the hand brake has been tried and found in proper working condition.

10. Electrical.

a. When central traffic control exists and its operation is interrupted or suspended or any irregular function of the system occurs, rail movement shall not be allowed to continue until stoppage or malfunction has been determined, and only then if such movement can be made safely and with direct communication with traffic control operation.

b. All principal electrical switches shall be marked.

c. If the track is used for the return circuit, both rails shall be well bonded at every joint, excepting those tracks governed by automatic block signals.

11. Riding Equipment and Coupling.

a. Employees are cautioned not to get on or off an engine

or car which is in rapid motion.

b. Employees must face the equipment in descending ladders on engines and cars, whether standing or moving.

c. Employees are forbidden to ride on draw bars. When movement is being made, employees must not go between engine or ride on leading footboards of the engine in direction of movement, except for the purpose of uncoupling car from engine. Standing, walking on top of, and jumping from car to car is prohibited.

d. If uncoupling lever fails to work, a stop shall be made before uncoupling car. When necessary to change the alignment of couplers cars must be stopped, and under no circumstances should an attempt be made to adjust couplers with foot or hand or raise lock pin by hand, while cars are moving.

e. If necessary to make change or repairs to couplers, the circumstances must be understood by all employees who may, through misunderstanding, move or cause the car to be moved; the cars should be separated not less than one car length to reduce possibility of injury, should they be moved by mistake. Employees should, when possible, avoid standing directly in line with couplers.

f. Trainmen and enginemen must forbid employees whose duties do not connect them with the movement, to get on and off engines or cars, while in motion.

g. No one except the train, engineer crew and person authorized by management should be permitted to ride on or in a locomotive or on a train.

h. "Poling" or moving a car on another track with a pole should be done only in extreme emergency and under direct supervision. DO NOT PUSH CAR UNTIL ALL PERSONS ARE IN A SAFE PLACE.

i. Rocker or "Cradle" type dumping cars shall be equipped with an efficient positive locking device.

j. Brakemen are not permitted to ride on or between slag pots, or between slag pot and locomotive.

k. Before spotting a slag pot for filling, it shall be inspected carefully to insure that no water or wet debris is in the bottom of the pot.

l. Pots and ladles must not be filled so full as to cause spillage.

m. Before dumping slag in a new place, a member of the crew must investigate to insure that no one will be endangered by the hot slag.

n. In handling railroad cars, employees must:

(1) Use standard brake clubs.

(2) Wear a safety hat.

(3) Wear snug-fitting clothes.

(4) Be required to ride the front end of all trains that are being pushed.

(5) Get off a moving locomotive from the side, well in the clear of the footboard.

(6) Not stand on or between the rails when mounting a moving location.

12. Locomotives.

a. Locomotive shall be equipped with a bell and a whistle, both capable of giving a loud and clear warning signal.

b. Each locomotive used, between sunset and sunrise, shall have two lights, one located on the front of the locomotive and one on the rear, each of which shall enable a person in the cab of the locomotive under the condition, including visual capacity, to see a dark object for a distance of at least 300 feet ahead, and in front of such headlight in yard service and 800 feet in road service.

c. All locomotives equipped with footboards shall be equipped with toeboards. The grab irons and handrails shall be well maintained at all times.

d. Safety latches shall be provided on electric locomotives to hold trolley poles, current collector, or pantagraphs away from the trolley wires.

e. The engineer or motorman shall be made responsible for the safe operation of the locomotive.

f. Locomotives shall not be run over tracks where dirt or other materials strike the footboards.

13. Car Storage.

a. When practical, cars must be kept clear of any street or public crossing, and at least one hundred feet from the crossing.

b. A sufficient number of hand brakes must be set to hold cars; if brakes are inoperative, cars must be secured otherwise. When cars are set out on a grade, they must be coupled, if practical, and in addition to brakes being set, wheels must be blocked.

c. Cars shall not be stored on tracks unless protected with derails, when facing point switches or ascending grades toward main track, except in emergency or on instructions of proper authority, and in such cases cars must be properly secured. Wheels must be blocked where necessary.

d. When empty cars are stored on tracks adjacent to buildings an opening of at least forty feet must be made every five car lengths.

14. Air Brake Systems.

a. Where air brake systems are used, the following is applicable:

(1) Train line pressure for passenger trains is 110 pounds, for freight and mixed trains, 90 pounds. Should the proper control of a freight train or mixed train make it necessary, the use of 90 pounds brake pipe pressure is permissible. Brake pipe pressure for yard engines is governed by class of equipment handled or minimum of 80 pounds.

(2) Main reservoir pressure must be maintained at least 15 pounds minimum above adjustment of the feed valve, or brake pipe pressure.

(3) The proportion of air brakes in operation must at no time be less than 85 percent of all the cars in a train. On ascending grades rear car must have operative air brakes.

(4) Train air brake system must be charged to require air pressure, angle cocks and cut out cocks must be properly positioned, air hose must be properly coupled and must be in condition for service. An examination must be made for leaks and necessary repairs made to reduce leakage to a minimum. Retaining valves and retaining valve pipes must be inspected and known to be in condition for service.

(5) It must be known that the air brake equipment on engines is in a safe and suitable condition for service.

15. Air Brake Application.

a. Leakage from main air reservoir and related piping shall not exceed an average of three pounds per minute in a test of three minutes duration, made after the pressure was reduced forty percent below maximum pressure.

b. Brake pipe leakage must not exceed five pounds per minute after a reduction of ten pounds has been made from brake pipe air pressure of not less than seventy pounds.

c. With a full service application of brakes, and with communication to the brake cylinders closed, brakes must remain applied not less than five minutes.

d. Compressor governor shall be adjusted so that the high pressure side causes the compressor to unload at 140 pounds and the low pressure side causes the compressor to load at 130 pounds.

e. Leakage from control air reservoir, related piping and pneumatically operated controls shall not exceed an average of three pounds per minute in a test of three minutes duration.

f. Compressor or compressors must be tested for a capacity by orifice test as often as conditions require but not less frequently than once every six months.

g. Every main reservoir before being put into service, and at least once every eighteen months thereafter, shall be subjected to hydrostatic pressure not less than 25% above the maximum working pressure.

h. Where a stop is made on a grade for an indefinite period, brakes on all engines must be fully applied and sufficient hand brakes set when necessary to hold the train and air brakes on cars released. When on an ascending grade, hand brakes must be set on rear and on a descending grade, set on head end of train.

i. When stop is for a short period and retaining valves are in ue, the air brakes, when necessary, may be applied and released once every two minutes, to assist engine brakes to hold the train.

j. When setting cars out at intermediate points, a normal brake application from the automatic brake valve must be made, hand brake applied, close angle cock from locomotive, bleed air brake system on car, block wheels of car; the air brakes on the car will not be applied under an emergency application (big hole).

16. Air Brake Maintenance.

a. Before adjusting piston travel or working on the brake rigging, brakes must be cut out by closing cut-out cock in the branch line, all reservoirs drained and necessary precautions taken.

b. Air gauges must be tested at least once every six months and whenever any irregularity is reported. They shall be compared with an accurate deadweight tester, or test gauge. Gauges found inaccurate or defective must be repaired or replaced.

c. Distributing or control valves, brake application valves, equalizing piston portion, feed and reducing valves, safety valves, brake pipe vent valves, relay valves, magnet valves, dirt collectors and filters must be cleaned, repaired and tested as often as conditions require to properly maintain them in a safe and suitable condition for service.

d. On engines so equipped, hand brakes, parts and connections must be inspected and necessary repairs made as often as the service requires.

e. Minimum brake cylinder piston travel must be sufficient to provide proper brake shoe clearance when brakes are released.

f. Maximum brake cylinder piston travel when engine is standing must not exceed the following:

TABLE 1

	Inches
Driving wheel brake	6
Swivel type brake with brakes on more than one truck operated by one brake cylinder	7
Swivel type truck brake equipped with one brake cylinder	8
Swivel type truck brake equipped with two or more brake cylinders	6

g. Foundation brake rigging, and safety supports, where used, must be maintained in safe and suitable condition for service. Levers, rods, brake beams, hangers and pins must be of ample strength and must not bind or foul in any way that will affect proper operation of brakes. All pins must be properly applied and secured in place with suitable locking devices. Brake shoes must be properly applied and kept approximately in line with treads of wheels or other braking surfaces.

h. No part of the foundation brake rigging and safety supports shall be less than 2 1/2 inches above the top of the rail.

i. Before a car is released from a shop or repair track, it must be known that the brake pipe is securely clamped, angle cocks in proper position with suitable clearance; valves, reservoirs and cylinders tight on supports and supports securely attached to car.

j. When cars are on shop or repair tracks, hand brakes and connections must be inspected, tested and necessary repairs made to insure they are in a suitable condition for safe and effective operation.

k. Brake equipment on cars must be cleaned, repaired, lubricated and tested as often as required to maintain it in a safe and suitable condition for service.

R614-6-5. Livestock Butchering and Bulk Carcass Handling.

A. Corrals and livestock.

1. Unloading areas are to be constructed so as not to endanger those employees working in these areas. They are to be constructed with a minimum width of three (3) feet. The area must be lighted with sufficient illumination so that the work can be done safely.

2. Livestock holding pens are to be constructed of a heavy type material, lumber or metal, that will stand extreme pressures from livestock. Also, all sides shall be made climbable.

3. Floors of kill pens will be made of a material with a texture to reduce slippage.

4. Employees who will work with livestock are to be physically and mentally capable to perform their duties.

5. Before any employee is to work with livestock, he shall be aware of the dangers of livestock handling.

6. Electrical shocking devices (hot shots) used for moving livestock shall be manufactured for the purpose with controlled power output and shall be used according to the manufacturer's recommendations. No direct wire shall be used for this purpose.

B. Kill Floors.

1. Dressing platforms shall have standard railing and toeboards at the back side and short board or rail on the dressing side. The rail on the dressing side shall have sufficient clearance above the platform for cleanup but low enough to catch an employee in case of slippage.

2. Employees using explosive-actuated knockers shall be instructed in the use of the tool.

3. Employees using pneumatic knockers shall also be instructed in the use of the tool.

4. Couplings on high pressure hoses shall be pinned, chained or otherwise secured to prevent them from uncoupling accidentally.

5. Employees knocking cattle with the explosive-actuated or pneumatic knockers need not be carded by the manufacturer.

6. Explosive-actuated or pneumatic knockers, either loaded or unloaded, shall not be pointed at workmen.

7. Explosive-actuated knockers shall not be loaded until just prior to intended firing. No loaded tool shall be left unattended.

8. All hoist and balancers shall be equipped with safety chains.

9. All control switches are to be suspended and free swinging so as to permit the operator to move completely clear of hoist area.

10. Safety hats shall be worn by all employees.

11. All water and steam lines 160 degrees or more are to be designated as such by a sign indicating hot water and hot metal pipes shall be located or covered so as to prevent contact with hot surfaces.

12. Splitting area must be clear of all unauthorized personnel before operating saw.

C. Coolers and loading areas.

1. All rails carrying animal carcasses shall be under a periodic maintenance and inspection schedule. All rail hangers, connecting bolts and switching areas are to be checked for tightness and wear.

2. Freezers, coolers, and dry storage areas shall have provisions for adequate aisles and exits.

3. Unit coolers, heaters and refrigeration piping that is within stacking limits must be adequately protected. In ceiling

coil type freezers, all stacking shall be limited to avoid striking and breaking pipes.

4. Defrosting by heat is preferred to scraping of coils. If scraping is necessary, great caution must be used and provisions for emergencies must be made.

5. Unit coolers must be provided with adequate barriers to prevent any product from coming in contact with either unit or piping. Valves, pump-out lines and the like shall be so located at the installation so that they are not vulnerable to damage.

6. All freezer and cooler doors shall be equipped with two-way door openers.

7. All dock areas are to be kept clean and free of all refuse.

8. Empty beef trollies shall not be left hanging on any rail.

9. All dock boards or plates shall have an under-structure preventing them from sliding backward or forward when in loading position. Plates shall be provided with suitable chains, or other fixture, on each side for safe lowering into position.

10. Workers must be trained in safe lifting.

11. Sanitation measures taken shall be such as to protect the health and well being of the employees. A system shall be established and maintained for waste and trash disposal so that reasonable level of housekeeping may be maintained. Wastes shall not be allowed to accumulate so as to ferment or putrefy or otherwise become unsanitary and hazardous.

12. A sufficient level of illumination shall be supplied for the type of work in the area. Reference: ANSI Standard A11.1, Industrial Lighting.

TABLE 2

MEAT PACKING

Slaughtering	30 foot-candles.
Cleaning, Cutting, etc.	100 foot-candles.
Inspection, difficult	100 foot-candles.

R614-6-6. Motor Vehicle Transportation of Workers.

A. General.

1. The purpose of this Safety Code is to prescribe minimum standards for the safe transportation of employees to and from their places of employment as set forth in Title 34, Chapter 36, Transportation of Workers.

2. These rules shall apply to every motor vehicle, including passenger automobiles and station wagons, used to transport employees to and from their place of employment whether or not used upon a public highway.

3. All specifications in this code are minimum. At any particular operation these rules can be enhanced or made more stringent if necessary to protect the life and safety of employees.

4. All owners of motor vehicles used to transport workers, or their duly appointed agents, and drivers of such vehicles shall abide by all safety orders issued by the Labor Commission, or by its duly authorized representative.

5. The right of inspection and examination at any reasonable time is reserved by the Labor Commission or its duly designated agent.

6. These rules shall not apply to motor carriers or to motor vehicles owned and operated by the government of the United States.

7. These rules and regulations do not apply to the transportation of agricultural workers.

B. Drivers.

1. Only authorized, experienced, competent, qualified and licensed drivers, not less than 18 years of age, shall be permitted to operate vehicles used to transport workers. A chauffeur's license is not required, except as may be required by law.

2. No employee shall be used to operate a vehicle for the purpose of transporting workmen after such an employee has completed twelve (12) aggregate hours of work in any period of twenty-four (24) consecutive hours, excluding rest stops and a meal period of not exceeding one hour. During period of regular shift change, this shall not preclude working two (2) alternate eight-hour shifts with an eight-hour off period between the two shifts.

NOTE: A rest stop is a period of time of not less than two (2) hours and during which time the employee is released from all duty and responsibility. Aggregate hours of work includes all types and classifications of employment and shall not be construed to apply to only those hours driving a vehicle.

3. In lieu of responsible supervisory personnel the operator of a vehicle shall at all times be in charge of workers and responsible for the observance of safety rules.

4. There shall be some signal system, or signalling device provided for the supervisor to communicate with or signal the driver, where the supervisor is separated from the driver.

5. Signals adopted shall be simple and understood by both driver and supervisor. If a signalling device is used, it shall be maintained in good working order.

C. Operation of vehicles.

1. No vehicle shall be loaded beyond its safe carry capacity.

2. No motor vehicle shall be driven if it is so loaded, or if the load thereon is so distributed or so inadequately secured, as to prevent its safe operation.

3. No motor vehicle shall be driven when the passengers or any object obscures the driver's view ahead or to either side, or interferes with the free movement of his arms or legs, or prevents his free and ready access to his controls and emergency equipment, or prevents the free and ready exit of any persons from the vehicle.

4. All vehicles transporting workers shall observe all motor vehicle laws of this state and the cities and counties in which the vehicle is operated.

5. The driver of any vehicle transporting workers, before crossing at grade any tracks of a railroad, shall stop such vehicle not less than 10, not more than 50 feet from the nearest rail of such track, and while so stopped shall look and listen in both directions along such tracks for approaching trains or cars.

a. This requirement shall not apply:

(1) To tracks where traffic control signals are in operation and give indication to approaching vehicular traffic to proceed.

(2) To industry track crossing across which train operations are required by law to be conducted under flat protection; or

(3) To industry track crossing within which the indicated speed of vehicles is 20 miles per hour.

b. Unless a train is approaching, motor vehicles carrying workers are not required to stop at crossings where the Public Service Commission has determined and plainly marked exempt.

6. Only persons authorized by management shall be allowed to ride on vehicles.

7. Vehicles transporting workers shall be driven completely off the highway or road to discharge or take on workers. When the width of the highway or road does not allow the observance of this rule, the vehicle shall draw to the extreme right of the usable portion of the road before discharging or taking on workers, provided there is 16 feet of roadway opposite such vehicle for free passage of other vehicles.

D. Securing of Tools, Equipment, etc.

1. Racks, boxes, holsters, or equivalent means shall be provided and arranged so passengers will not be endangered by tools or equipment being transported, loaded or removed, and tools and equipment preferably placed or arranged so they are accessible from the outside of the vehicle.

2. Tools and materials shall be secured in the racks and boxes provided.

3. When materials of any type are transported at the same time, workers shall be protected from the hazards of materials by adequate partitions or proper securing of loads.

4. A motor vehicle used to haul or transport workers must

be equipped with sides at least 42" high and shall have adequate seating facilities.

E. Hauling of Explosives Prohibited.

No explosives, injurious chemicals of pesticides shall be hauled on any vehicles while they are engaged in transporting workers. This rule shall not prohibit the driver and the qualified powder crew from riding in a vehicle in which explosives are being hauled.

F. Hauling of Gasoline, etc.

Gasoline and other low flash point liquids shall not be hauled on vehicles transporting workers except in approved safety containers of not more than five-gallon capacity, and provided such containers are carried in a safe suitable location outside the passenger compartment. Such containers shall be carried as far away from the passenger compartment as possible and where they will not block exit from the vehicle and shall be firmly secured to prevent shifting, or shall be placed in well ventilated compartments or racks.

G. Refueling of Vehicles.

1. Smoking in the vicinity of vehicles being refueled is prohibited.

2. Refueling while motor is running or when within close proximity to any open fires or flame is prohibited.

H. Workers' Duties.

1. Workers riding in motor vehicles shall not stand while the vehicle is in motion. Passengers must wait for the vehicle to come to a complete stop before boarding or leaving.

2. Workers shall be prohibited from riding on running boards or fenders, hoods or cab tops, or with their arms or feet hanging out of or over the rear or side of any vehicle, or on sides of pickups or on tail gates.

3. When dismounting from a vehicle on a highway or road, the workers shall wait until the vehicle has proceeded before crossing the road unless the vehicle has stopped at its destination.

4. Workers wearing equipment which might injure a fellow worker (spurs, exposed sharp tools, etc.) shall remove such equipment before entering any vehicle in which workers are being transported.

5. Scuffling or horseplay while riding in any vehicle is prohibited.

6. Any hazardous condition or defect of a motor vehicle or unsafe practice of driver or workers riding in vehicles used to transport workers shall be reported to the employer, supervisor, or driver as soon as possible by any worker having knowledge of such conditions.

I. Heating the Vehicle.

Any heating units provided for the comfort of workers riding in vehicles used in their transportation shall be guarded or insulated to prevent workers from being burned by accidental contact. The use of hot water radiator type heaters is recommended.

1. If it is necessary to use stoves for heating, such stoves shall be securely attached to the bed of the vehicle and shall be equipped with doors which lock securely. Pipes and other attachments shall be securely fastened to the stove and to the vehicle. Pipes shall be either of continuous length or welded or riveted to the joints.

2. Heating facilities shall be arranged so that smoke, fumes or gases will not enter the vehicle.

J. Inspection, Testing, and Repairs.

1. All vehicles shall be kept in good repair and safe operating condition at all times. Vehicles with defective gears, tires, steering equipment or brakes shall not be used to transport workers.

2. Inspection or testing by the driver of all parts vital to the safe operation of vehicles, such as brakes, steering gear, tires, lights and signalling devices, shall be made at the beginning of each shift or each day, and as often as necessary during use. Any condition found then or at any other time which will prevent the safe operation of the vehicle shall be corrected before the vehicle is used.

3. Compartments for workers shall be kept in a clean and sanitary condition.

R614-6-7. Hot Metallurgical Operations.

A. The purpose of this rule is to cover the minimum standards and requirements for the safe operation and maintenance of all types of facilities associated with Hot Metallurgical Operations. Other Safety Rules and Regulations must be complied with when and if they apply to these operations. Furthermore, it is not the intent of this rule to make specific rules to cover every hazard of an operation. Each operation shall be analyzed for hazards peculiar to that operation and then Safe Operating Rules and Procedures Shall Be Provided and Administered by Management.

B. Provisions shall be made for on-the-job training of personnel to insure a safe operation.

C. Work shoes or leather boots with a minimum height of six (6) inches shall be worn by personnel working around molten metal or other hot process materials. Safety shoes are recommended. Special protective equipment shall be provided and worn as required.

D. In areas where employees are exposed to toxic and nuisance gases and dusts, adequate ventilating and collecting systems shall be provided to insure that such toxic and nuisance gases and dusts are maintained within the recommended maximum allowable concentration as proposed and adopted by the American Conference of Governmental Industrial Hygienists. Where this cannot be accomplished and employees are required to work in excessive concentrations, NIOSH approved respirators or supplied fresh air breathing equipment shall be provided.

E. Equipment shall be provided to test for the presence of toxic and nuisance gases and dusts and qualified personnel will make and evaluate such tests.

F. Furnaces.

1. Furnace combustion systems shall be equipped with fail safe controls and these controls shall not be by-passed during normal operations. Also emergency shut-off systems for fuel supply shall be provided if necessary.

2. Fuel lines and control valves shall be properly identified and accessible.

3. To insure the safe operation of stand-by fuel systems, operating instructions shall be posted in a conspicuous and accessible location and employees trained in these procedures.

4. Whenever a hazard exists while charging or feeding furnaces or process equipment, an adequate warning system shall be provided and used to warn and protect personnel.

5. In processes where water or wet material are necessary to the normal operation of the process, they shall be used only under carefully controlled conditions.

6. On multiple hearth furnace operations, where it is required to work on the furnace as a normal operating procedure adequate working platforms shall be provided when working hearth levels more than four (4) feet above normal roster floors.

7. Solid decking shall be provided where a hazard exists of free flowing hot material falling from one floor to another.

8. Material to be charged into a furnace shall not include items foreign to the normal process that may cause an explosion, such as pressure vessels or closed cylinders.

9. Adequate procedures and tools shall be provided and compliance enforced for removal of product from furnace or oven or while working hot process materials. When pipe is used as a tool, the end adjacent to the employee must be sealed.

10. Copper matte launders shall be covered whenever practical.

11. Unauthorized personnel shall not stand near pots,

ladles, furnaces, etc., when molten material is being handled. Warning systems shall be provided and sounded before a pour is made or the material is moved.

12. Bails and trunions on ladles and pots used to carry molten material must be tested by nondestructive methods to determine if any flaws exist. The tests are to be made and evaluated by qualified personnel on regular, scheduled periods of not to exceed twelve (12) months and a record maintained of each inspection. Defective components must be removed from service immediately.

13. The dumping hook for pots or ladles shall not be attached until the pot or ladle is in the specific area where it is to be dumped.

14. Clean-up crews assigned to work in the area of molten metal, hot slag, hot by-products, hot calcine or similar products shall be adequately instructed and supervised concerning hazards of material and location.

R614-6-8. Elevators, Escalators, Aerial Trams, Manlifts, Workers' Hoists, Etc.

A. This part will cover elevators of various types, dumbwaiters, escalators, moving walks, aerial trams and ski lifts, manlifts, and personnel and material hoists or other mechanical applications of a similar nature when used to transport employees. It will not cover conveyors used to move material to and from storage, stacking or tiering machines, mine hoists, elevators, or skips.

B. Where local laws or ordinances have more strict regulations such laws or ordinances shall apply.

C. Elevators, escalators, and moving walks shall be designed, installed, operated, inspected, maintained and tested as specified in American National Standard Institute, A17.1, which is hereby incorporated by reference.

D. Aerial tramways and ski lifts shall meet the provisions specified in American National Standards Institute Code B77.1 which is hereby incorporated by reference.

E. Manlifts shall meet the provisions specified in American National Standards Institute Safety Code A90.1 which is hereby incorporated by reference.

F. Material hoists and workers' hoists shall meet the safety provisions specified in American National Standards Institute A10.2 and A10.4, which is hereby incorporated by reference. For a hoist to meet the provisions to transport workers (A10.4) it shall also meet safety provisions, out of American National Standards Institute Safety Code A17.1 which is hereby incorporated by reference.

G. Material hoists which do not meet the requirements for worker's hoists (A10.4) must be clearly marked "NO RIDERS" or a similar sign. All employees are required to enforce any restrictions against any workers riding such hoists.

H. Before any equipment covered by this part is installed or a major revision or remodeling begins on such equipment, the Administrator must be advised at least one week in advance of such installation, revision, or remodeling.

R614-6-9. Filters and Centrifuges.

A. Filters-General.

1. The necessary protective equipment shall be supplied and used, to protect employees from chemically harmful, hot or irritating materials.

2. Most filtration equipment is dependent on vacuum and/or pressure operation. Therefore, hazards produced by such vacuum or pressure shall be recognized and precautions and training given commensurate with such hazards.

3. Covers, ventilating hoods, feed chutes or other auxiliary equipment located overhead or suspended above the workers shall be adequately secured by recognized engineering standards and shall be inspected frequently to assure that corrosion wear or any other factor has not deteriorated the suspension system, making it unsafe.

4. When hoods or covers are movable and raised (suspended) so that workers must work under them, positive blocking or supports sufficient to support the load must be in place before the employee commences work under the hood or cover.

5. Floors, walkways, ramps, stairs, or other such equipment shall be adequate for the work performed and they shall have handrailings. Where the materials handled cause floors to become slick, anti-skid surfaces shall be provided.

6. When it is necessary to handle heavy components (in excess of 100 lbs) as a regular part of the operation, a hoist shall be provided. In some cases, depending on the lifting position of the employee, a hoist may be necessary when the components weigh less than 100 lbs.

7. Any filter which is activated by pressure shall be equipped with a pressure gauge installed so as to indicate the pressure within the functional mechanism of the filter.

8. All electrical gear installed in connection with filtration must be grounded. Switch gear should be waterproof or installed above or away from the filtration area. All switch gear shall be properly identified.

9. Sumps or other floor openings shall be protected by covers or railings or other satisfactory barricades.

B. Plate and Frame Filters.

1. The filter shall be fitted for the maximum pressure which can be delivered by the feed pump.

2. Plates and frames shall be properly fitted and dressed so as to reduce leakage to a minimum.

3. Provisions shall be established to control leakage from squirting from the filter into the work area. A full cover is recommended.

4. The handles on plates and frames shall be securely attached. When wooden plates and frames are used, the handles shall be inspected and maintained so as to prevent their pulling out while being handled. Plates and frames with loose handles shall not be installed when reassembling a filter.

5. Spigots, when used, shall be adequately maintained.

6. When the filter cake is dropped into an agitator, hopper, extender chute, or tank, a grizzly or other effective means shall be provided to protect the employee from getting caught or falling into such equipment.

7. Hydraulic closers shall be fitted for the pressure encountered. Adequate blocks or other satisfactory method shall be provided so that the hydraulic pressure can be relieved during the operating cycle of the filter.

8. When a bar is used to tighten the filter, a hand guard or block or other satisfactory means shall be provided on the handle to protect the hands of the operator from being mashed against the floor or other contact surface.

C. Drum filters.

1. Driving machinery shall be guarded or totally enclosed.

2. Agitator drive arms shall be arranged or shall be guarded so that the employee is protected at scissor or pinch points.

3. Air lancing of the feed bath or air agitation shall be controlled. Goggles or face shields shall be worn when using an air lance.

4. Repulper agitators shall be protected by grizzly or other means so that hands or feet cannot come in contact with the blades.

5. Filters shall be maintained or a cover shall be provided so that the blow cannot pass through holes in the blanket in such a manner as to endanger workers. This shall be interpreted as meaning hazardous chemicals or hot solutions.

6. Belt discharges shall be guarded so that the nip points are enclosed or otherwise protected.

7. Employees shall not enter the inside of a drum until it is established that a safe atmosphere exists. A fan or other

source of breathable air shall be supplied to insure an adequate oxygen supply inside the drum. An employee shall be available outside the drum in case of emergency.

D. Disc or Leaf Filters.

1. Driving mechanisms shall be adequately guarded or enclosed.

2. Adequate footing shall be provided when changing sectors, retainers or rods.

3. The filter shall be fitted for the vacuum and pressures encountered.

4. Disposal of filter cake shall meet the provisions outlined in R614-6-9.B.6.

5. If conveyor discharge is used, the conveyors shall meet the standards set forth in R614-5-2.

E. Pressure filters-Horizontal and Vertical tank type.

1. Pressure filter tanks shall be constructed under the standards established for unfired pressure vessels.

2. The filter shall be fitted for the pressures encountered.

3. All seal gaskets shall be maintained so as to preclude leakage.

4. Closure mechanisms shall be positive so as to prevent any possibility of the tank opening while under pressure.

5. Hinged lever type of closures shall be so arranged that when the handle passes center, when opening the filter, that the operator is protected from the thrust on the handle or it is reduced to a safe force which can be easily controlled.

6. Individual screw type closures shall all be in place and tightened so as to receive strain uniformly around the circumference of the tank before the filter is placed in operation.

7. No pressure tank type filter shall be opened until all pressure has been relieved and is open to atmosphere.

8. Filter media shall be cleaned in a safe manner. Due caution shall be exercised when using steam, hot water or compressed air.

F. Pan, Tray and Belt Filters.

1. The applicable provisions for all above-mentioned filters shall be followed.

2. The slurry feed shall be so controlled to prevent splashing onto the operator.

G. Vacuum and filtrate pumps and lines.

1. All drives shall be enclosed or guarded.

2. Lines shall be adequately identified.

3. When valves are installed in lines, they shall be accessible from floors, ladders or platforms provided, or shall have extension handles to the working area.

H. Filter aids and reagents.

1. Operators shall be knowledgeable concerning any additives used and the reaction which may be hazardous.

2. Chemicals which may be poisonous or severely ittiating shall have such warnings posted along with procedure concerning their use and instructions in case of hazardous exposure.

3. The storage and handling of any chemicals used shall be in conformance with the Manufacturing Chemists Association data sheet concerning the material.

4. Steam and hot solutions or slurries shall be identified and where practical shall have the lines insulated in areas where employees may contact them.

I. Centrifuges.

1. The housing of all centrifuges shall be electrically grounded.

2. Operators of centrifuges shall be trained concerning the hazards of the operation.

3. Each centrifuge shall be equipped with an interlocking device that will prevent the cover from being opened while the machine is in operation or under power.

4. When the cover is bolted, the interlock will not be necessary, but a positive procedure of lockout and tagging shall be enforced.

5. Each centrifuge shall be adequately anchored and shall be equipped with a vibration cutout device. This must be maintained operable at all times. This requirement may be waived when the centrifuge has a full-time attendant.

R614-6-10. Food Processing.

A. Grinders and cutters.

1. Production rooms shall have adequate lighting throughout working and storage areas.

2. Machines and equipment shall be installed and used in the manner recommended by their manufacturer.

3. Machine operators shall be trained in the machine operation and especially in safety as concerns the particular machine or process.

4. Grinders shall be provided with suitable pushing bars. Supervision shall see that the pushers are used and that hands are not used to feed grinders.

5. Every power-driven food grinder of the worm type shall be so constructed, installed or guarded that the employee's fingers cannot come in contact with the worm. Examples:

a. Mechanical feeding.

b. Grating or bar guards over opening arranged in such a manner that the fingers cannot reach the worm.

c. Distance from the feed opening to screw in excess of an arm's length.

d. Restricting the size of the feed opening.

6. Under no circumstances shall pusher be used in lieu of a positive method of guarding)

7. Before cleaning food grinders, choppers, or similar powered equipment, the controls shall be locked and/or tagged in the off position.

8. Processing machines shall be installed at the proper height, or platforms installed, so the operator can accomplish the work without using stools or make-shift devices to stand on.

9. Chopper and blender bowls shall be guarded. When guarding is not practical, explicit instructions and supervision must assure that hands do not enter the bowl.

10. Machines having a plunger, piston or fast moving press type of operation shall be equipped with two hand controls, remote controls, interlocking devices, etc., to prevent the operator from being caught in the closure.

11. Knife changing or any repairs or changes which will permit the employee to be caught in the machinery or its driving mechanism shall not be done until the power controls are in the off position and/or tagged and locked.

B. Material and arrangement.

1. Machines shall be installed so as to give safe operation space and adequate access.

2. A system shall be established and maintained for waste and trash disposal so that a reasonable level of housekeeping may be maintained. Wastes shall not be allowed to accumulate so as to ferment or putrefy or otherwise become unsanitary and hazardous.

3. Excess material in the work places may be hazardous and shall be avoided.

4. Equipment shall be maintained so as to prevent metal edges from wearing sharp, tools from wearing or otherwise becoming hazardous, broken handles, etc. Buckets, pans, trays, etc., shall have a place and be in their place. Bails and handles on service containers shall be maintained safe.

5. Hoses shall be selected for the type of usage involved. Hoses shall be identified so that there is not an interchange of cold water hose into hot water, air or steam usage.

6. Hose couplings on air, hot water, and steam lines shall be secured by pinning, chains, or other satisfactory methods.

7. Hoses shall not be strung across work areas and left unattended. A rack, reel or other device shall be provided for hose storage.

C. Tools.

1. Hand knives and other sharp tools when carried, except in hand, shall be kept in a scabbard, case, holder or otherwise protected from accidental contact.

2. 29 CFR 1910 Subpart S adopts the National Electrical Code. This includes the grounding of all machines and electrical tools, and extension cords. Electrical installation must meet the provisions of these codes.

3. All portable tools shall have suitable guards that meet accepted codes. Employees using portable power tools shall be instructed and supervised in their proper use and care.

D. Refrigeration maintenance.

1. All mechanical personnel who are scheduled or designated to do any work whatsoever on a refrigeration system shall be briefed on the entire job before beginning. The production foreman and superintendent, safety department, and emergency personnel shall be notified that work is to be done.

2. Some of the basics that shall be checked before a refrigerant system is opened are:

a. Trace out piping.

b. Locate branch shut off valves.

c. Tag or lock out all switches, equipment, and valves that may affect the job.

d. Obtain all necessary safety equipment, and be sure that it is in operating condition.

e. Check to see that chemicals and gases are purged or evacuated from the system.

f. Note the effect of liquid and oil on pump-out operations.

g. Confer with associated personnel on safety precautions, safety equipment, standby safety equipment, emergency plans and first-aid measures.

h. Locate safety shower or deluge water supply.

i. Establish an evacuation route.

j. Check for location of nearest fire alarm, stretcher, and fire extinguisher. Know all emergency telephone numbers.

3. Before leaving the job make necessary checks to see that equipment is secured or safe to operate. If the job is not completed, post suitable warning, tag and lock controls, and notify supervisors of subsequent shift. Clean up all protective equipment.

E. Hot Processing.

1. Deep frying and similar processes where hot shortening or grease is handled or used must have adequate safety procedures established. Training in safe methods is essential and supervision must be assured that the safe procedures and methods are followed and that equipment used will function in a safe manner.

2. Hand transferring of hot grease or similar materials shall be done with extreme care, using gloves or pads to protect hands, and quantities not to exceed 1 U.S. gallon. Eye protection should be worn. Other employees shall be excluded from the hazard area.

3. Ventilation hoods over frying areas shall be cleaned sufficiently to keep them relatively grease free. A 10 B.C. fire extinguisher shall be available in the immediate area.

4. Lard rendering and filtration shall be so arranged, guarded, and protected as to prevent the workers from being exposed to the hazards of burns.

5. Sanitation and housekeeping measures shall be sufficient to protect the health and well being of the employees. Rotted or putrefied products and diseased animal products shall not be handled unless the employee is protected from skin contact. Other protection may be needed, and if so shall be used.

R614-6-11. Boilers and Pressure Vessels.

Boilers and pressure vessels shall meet the requirements of Section 34A-7-102.

KEY: machinery, work-related diseases, boilers*

December 4, 1998	**34A-7-101**
Notice of Continuation October 19, 2017	**34A-7-102**
	34A-7-103
	34A-7-104
	34A-7-105
	34A-6-201 et seq.

R614. Labor Commission, Occupational Safety and Health.
R614-7. Construction Standards.
R614-7-1. Roofing, Tar-Asphalt Operations.

A. Hot roofing.

1. Protective clothing and equipment.

a. Roofers handling hot roofing materials shall be fully clothed including long sleeved shirts buttoned at the wrists. Other employees may wear no less than "T" shirts over their upper body.

b. Substantial shoes no less than six (6) inches in height, fully laced or secured shall be worn.

c. No gauntlet gloves shall be permitted. Wrist length gloves shall be worn.

d. Employees subjected to the possibility of splashing hot materials shall wear face shields or goggles.

2. Heating equipment.

a. All heating kettles shall be equipped with a temperature measring device in operating condition and the asphalt shall not be heated in excess of 50 degrees below the Flash Point.

b. Toxic and combustible vapors are given off during heating of asphalt and tar materials. Employees working with these materials shall be instructed in safety precautions and in the proper methods of handling.

c. Attendants shall be within 100 feet of the kettle at all times while the burner flame is on.

d. Kettle heating equipment shall be installed and maintained in conformity with the American National Standards Institute Requirements for the fuel being used.

e. A fire extinguisher no smaller than 10 B-C rating shall be installed in close proximity to heating kettles.

f. During melting and heating operations, care shall be taken to prevent moisture from getting into the hot mix.

3. Material handling.

a. Pump lines handling hot asphalt shall be positioned securely and equipped with a shut-off valve on each of a coupler which may be opened when lines are full.

b. Pump lines shall not be subjected to pressures in excess of the safe working pressure of the lines being used.

c. Hot asphalt shall not be carried up ladders but shall be pumped or hoisted.

d. Hoisting frames and equipment shall be installed in a safe manner, properly secured and positioned so that the operator has access to the bucket or container without subjecting himself to hazard.

e. Every tar bucket used by roofers or workers in similar trades shall be made of No. 24 gauge or heavier sheet steel and shall have a metal bail of no less than 1/4 inch diameter material. The bail shall be fastened to offset ears or the equivalent which have been riveted, welded or otherwise securely attached to the bucket. Soldered bail sockets are not permissible. Most paint buckets will not comply with these regulations.

f. Extreme caution shall be taken when working near sky lights or other roof holes.

g. Employees shall be positioned in such a manner that they cannot be struck by a bucket or other roofing material which may accidentally fall either while being hoisted, lowered or used in the roofing operation.

4. Flammable liquid with a flash point below 100 degrees F. (gasoline and similar products) shall not be used for cleaning purposes.

5. Workers shall not ride on top of loaded trucks or on running boards but shall be seated inside the cab of the vehicle.

6. Provisions of 29 CFR 1926.451 and 1926.1050 shall be complied with as applicable, covering scaffolds and ladders.

B. Asphalt mixing plants.

1. Toxic and combustible vapors are given off during heating of asphalt and tar materials. Employees working with these materials shall be instructed in necessary precautions and in the proper methods of handling.

2. Suitable clothing and protective devices shall be worn by employees handling or applying asphalt and tar materials.

3. Positive care shall be taken to prevent heating materials above the flashpoint. Mixing operations shall be performed at the lowest practicable temperature.

4. Drums or other containers in which liquid bituminous materials are stored shall be kept tightly closed when not in use and shall be protected from sources of excess heat, sparks, and open flames.

5. A 10 B.C. fire extinguisher shall be provided at locations where heating devices or melting kettles are in use.

6. Asphalt or tar heating kettles when in use shall not be left unattended and shall be securely fastened to prevent accidental tipping. They shall be provided with a lid and thermometer.

7. During melting and heating operations, care shall be taken to prevent moisture from getting into the hot mix. The use of gasoline or similar volatile materials as thinners is prohibited.

8. Where natural ventilation is insufficient at enclosed areas in which hot tar, asphalt, etc., are being heated or applied, an approved method of mechanical ventilation shall be provided. In addition, respirators shall be furnished to workers where required.

9. Heating, pumping, and application operations shall not be left unattended and an operator shall be stationed near the equipment to cut off flow or care for other emergencies.

10. Spraymen handling hot asphalt or tar shall not be allowed to work under hoses supplying hot materials to the sprays. Only flexible metallic hoses fitted with insulated handles shall be used in hand-spraying operations.

11. Form pins having mushroomed or split heads shall be discarded or effectively repaired.

12. Pipe lines which contain hot oil or asphalt shall be equipped with a shut-off valve on each side of a coupler which may be opened when lines are full.

R614-7-2. Grizzlies Over Chutes, Bins, and Tank Openings.

A. Employees shall be furnished with and be required to use approved type safety harnesses and shall be tied off securely so as to suspend him above the level of the product before entering any bin, chute, or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

B. Employees shall not work on top of material stored or piled above chutes, draw holes or conveyor systems while material is being withdrawn unless protected.

C. Chutes, bins, drawholes, and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

D. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

R614-7-3. Cranes and Derricks.

Two Blocking Damage Preventive Feature. On hydraulic cranes with power telescoping booms, an "Anti Two-Blocking" feature, warning device, or other arrangement, shall be provided to warn the crane operator to avoid colliding ("two blocking") the hook block with the boom point when hoisting the load, when extending the boom or when booming up or down.

R614-7-4. Residential-Type Construction, Raising Framed Walls.

A. Scope and Application

This section applies to work directly associated with the raising of framed walls in new buildings or structures in

residential-type construction.

B. Definitions

1. "Residential-type Construction" means construction using the operations, methods, and procedures associated with residential and light commercial construction characterized by joists or trusses resting on stud walls and using wood and/or light gage steel frame construction.

2. "Bottom Plate" means the bottom horizontal member of a frame wall.

C. Standards For Raising Walls.

1. At no time during the raising of the framed wall shall an employee who is not performing the actual lift be allowed under the wall system unless a mechanical bracing system is in place to arrest the fall of a wall.

2. Before manually raising framed walls that are 10 feet or more in height, temporary restraints such as cleats on the foundation/floor system or straps on the wall bottom plate shall be installed to prevent inadvertent horizontal sliding or uplift of the framed wall bottom plate. Anchor bolts and/or toe nails, are not sufficient for use in blocking or bracing the framed wall.

3. Framed walls 18 feet or more in height shall be raised using mechanical lifting devices.

D. Standards For Training.

1. The employer shall provide a training program to employees engaged in raising framed walls. The program shall enable employees to recognize the hazards associated with raising framed walls and shall include procedures to minimize those hazards, including:

a. Where required by the standard, the use of and limitations to temporary restraints used to prevent inadvertent sliding and uplift on the bottom plate;

b. the use of mechanical lifting devises;

c. the use of mechanical bracing systems; and

d. the role of each employee involved in the raising of a framed wall.

KEY: safety
February 22, 2010 **34A-6**
Notice of Continuation October 19, 2017

R628. Money Management Council, Administration.
R628-19. Requirements for the Use of Investment Advisers by Public Treasurers.
R628-19-1. Authority.

This rule is issued pursuant to Section 51-7-18(2)(b).

R628-19-2. Scope.

This rule establishes basic requirements for public treasurers when using investment advisers.

R628-19-3. Purpose.

The purpose of this rule is to outline requirements for public treasurers who are considering utilizing investment advisers to invest public funds.

R628-19-4. Definitions.

(1) The following terms are defined in Section 51-7-3 of the Act, and when used in this rule, have the same meaning as in the Act:

(a) "Certified investment adviser";

(b) "Council":

(c) "Director"; and

(d) "Investment adviser representative".

(2) For purposes of this rule:

(a) "Investment adviser" means either a federal covered adviser as defined in Section 61-1-13 or an investment adviser as defined in Section 61-1-13.

R628-19-5. General Rule.

1. A public treasurer may use an investment adviser to conduct investment transactions on behalf of the public treasurer as permitted by statute, rules of the Council, and local ordinance or policy.

2. A public treasurer using an investment adviser to conduct investment transactions on behalf of the public treasurer is responsible for full compliance with the Act and rules of the Council.

3. Due diligence in the selection of an investment adviser and in monitoring compliance with the Act and Rules of the Council and the performance of investment advisers is the responsibility of the public treasurer. (The Council advises public treasurers that reliance on certification by the Director may not be sufficient to fully satisfy prudent and reasonable due diligence.)

4. The public treasurer shall assure compliance with the following minimum standards:

(a) A public treasurer may use a Certified investment adviser properly designated pursuant to R628-15.

(b) A public treasurer's use of a Certified investment adviser shall be governed by a written investment advisory services agreement between the public treasurer and the Certified investment adviser. Terms of the agreement shall conform to the requirements of R628-15, and shall be adopted pursuant to all procurement requirements of statute and local ordinance or policy.

(c) Prior to entering into an investment advisory services agreement with a Certified investment adviser, the public treasurer shall request and the investment adviser shall furnish, the SEC Form ADV Part II for review and consideration by the public treasurer.

(d) All investment transactions and activities of the public treasurer and the Certified investment adviser must be in full compliance with all aspects of the Money Management Act and Rules of the Council particularly those requirements governing criteria for investments, safekeeping, and purchasing only the types of securities listed in 51-7-11., 51-7-12. and 51-7-13. as applicable.

(e) Prior to entering into an investment advisory services agreement with a Certified investment adviser, the public treasurer shall request and the investment adviser shall furnish a clear and concise explanation of the investment adviser's program, objectives, management approach and strategies used to add value to the portfolio and return, including the methods and securities to be employed.

5. If selection of a Certified investment adviser to provide investment advisory services to a public treasurer is based upon the investment adviser's representation of special skills or expertise, the investment advisory services agreement shall require the Certified investment adviser to act with the degree of care, skill, prudence, and diligence that a person having special skills or expertise acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

6. The public treasurer is advised to review and consider standards of practice recommended by other sources, such as the Government Finance Officers Association, in the selection and management of investment adviser services.

R628-19-6. Reporting to the Council.

When a public treasurer has contracted with an investment adviser for the management of public funds, the public treasurer shall provide the detail of those investments to the Council, pursuant to Section 51-7-18.2.

KEY: securities, investment advisers, public funds
May 5, 2005 51-7-18(2)(b)
Notice of Continuation February 10, 2014 61-1-13

R653. Natural Resources, Water Resources.
R653-6. Privatization Projects.
R653-6-1. Authority.

The purpose of this rule is to provide a form for the implementation of Section 73-10d-6(2).

R653-6-2. Procedure.

Any political subdivision that establishes ordinances, franchises, or other forms of regulation under the Utah Privatization Act shall complete and file a Privatization Report Form that is provided by the Water Development Coordinating Council. The form is due on a periodic basis coinciding with the date on which the political subdivision is required to file audits with the State Auditor.

KEY: water, privatization
1988 73-10d-6(2)
Notice of Continuation October 20, 2017

R653. Natural Resources, Water Resources.
R653-7. Administrative Procedures for Informal Proceedings.
R653-7-1. Authority and Effective Date.

This rule establishes and governs administrative proceedings before the Utah Division of Water Resources and the Utah Board of Water Resources, respectively, as required by Sections 63-46b-1, et seq.

R653-7-2. Designation of Informal Proceedings.

All adjudicative proceedings of the Division of Water Resources and the Board of Water Resources are hereby designated as informal.

R653-7-3. Definitions.

1. Terms used in this rule are defined in Section 63-46b-2.
2. In addition:
a. "Division" means the Utah Division of Water Resources.
b. "Board" means the Utah Board of Water Resources.
c. "Director" means the Director of the Division of Water Resources.
d. "Staff" means the staff of the Division of Water Resources.

R653-7-4. Construction -- Computation of Time.

1. This rule shall be construed in accordance with the Utah Administrative Procedures Act and supersedes any conflicting provision of procedural rules promulgated by the Division or Board.
2. This rule shall be liberally construed to secure a just and speedy determination of all issues presented to the Division or Board.
3. For good cause, and where no party is prejudiced, the Division or Board may permit deviation from this rule except where precluded by statute.

The time within which any act shall be done 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.

R653-7-5. Commencement of Proceedings.

1. All informal adjudicative proceedings commenced by the Division or Board shall be initiated as provided by Subsection 63-46b-3.
2. All informal adjudicative proceedings commenced by a person other than the Division or Board shall be commenced by either completing prepared forms on file at the Division requesting agency action, or by submitting in writing a request for agency action in accordance with Subsection 63-46b-3.

R653-7-6. Answer or Responsive Pleading.

After a notice of agency action or a request for agency action has been issued or filed, any party may file an answer or response.

R653-7-7. 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 documents which are governed by specific statutory provisions shall be amended only as provided by statute.

R653-7-8. Intervention.

Intervention is prohibited except as otherwise required by a federal or State statute.

R653-7-9. Hearings.

1. The Division, Board or a Presiding Officer shall hold a hearing if a hearing is required by statute, or if a hearing is permitted by statute and is requested by a party within 30 days of the commencement of the adjudicative proceeding. The Division, Board or a Presiding Officer may at their discretion initiate a hearing to determine matters within their authority.
2. Notice of the hearing will be served on all parties by regular mail at least ten days prior to the hearing.
3. If no hearing is held in a particular adjudicative proceeding, the Presiding Officer shall issue a decision within a reasonable time.

R653-7-10. Pre-Hearing Procedure.

The Presiding Officer may, upon written notice to all parties of record, hold a pre-hearing conference for purposes of formulating or simplifying the issues, obtaining admissions of fact and 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.

R653-7-11. 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.

R653-7-12. Parties to a Hearing.

1. All persons defined as a "party" are entitled to participate in hearings before the Division or Board.
2. All parties shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and fully participate in the proceeding.

R653-7-13. Appearances and Representation.

1. Parties shall enter their appearances at the beginning of a hearing or at a time as may be designated by the Presiding Officer by giving their names and addresses and stating their positions or interests in the proceeding.
2. 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.
3. Any party may be represented by an attorney licensed to practice in the State of Utah.

R653-7-14. 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 may continue the matter or may enter an order of default as provided by Section 63-46b-11, or may proceed to hear the matter in the absence of the defaulting party.

R653-7-15. Discovery, Testimony, Evidence and Argument.

1. Discovery is prohibited and the Division or Board may not issue subpoenas or other discovery orders.
2. All parties shall have access to non-confidential and non-privileged information contained in Division and Board files that are public record and to all materials and information gathered in any investigation, to the extent permitted by law.
3. At any hearing, the Presiding Officer shall accept oral or written testimony from any party. Further, the Presiding Officer shall have the right to question and examine any witness called to present testimony. Testimony and statements received at hearings may be under oath.
4. 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. Hearsay evidence may not be excluded solely because it is hearsay.

5. 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.

6. The Presiding Officer may take official notice of the following matters:

a. Rules, guidelines, official reports, written decisions, orders or policies of the Board of Water Resources, Division of Water Resources and any other regulatory agency, State or federal;

b. Official documents introduced into the record by proper reference; provided, the documents shall be made available so that parties to the hearing may examine the documents and present rebuttal testimony if they so desire; and

c. Matters of common knowledge and generally-recognized technical or scientific facts within the Division's or Board's specialized knowledge and of any factual information which the Presiding Officer may have gathered from a field inspection.

7. 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.

R653-7-16. Record of Hearing.

1. A record of any hearing shall be recorded at the Division's or Board's expense. When a record is made by the Division or Board, 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 or Board prepare a transcript from the record of the hearing.

2. 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 or Board free of charge. This transcript shall be available at the Division office to any party to the hearing.

R653-7-17. Decisions and Orders.

1. 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:

a. the decision;

b. the reasons for the decision;

c. a notice of the rights of the parties to request Division or Board review, reconsideration or judicial review, as appropriate; and

d. notice of time limits for filing a request for review, reconsideration or court appeal.

2. The order shall be based on facts appearing in any of the Division's files or records and on facts presented in evidence at any hearings.

3. A copy of the Presiding Officer's order shall be mailed by regular mail to each of the parties.

R653-7-18. Request for Reconsideration.

1. Any aggrieved party may file a request for reconsideration by following the procedures of Section 63-46b-13. A request is not a prerequisite for judicial review.

2. The Division Director or Board shall issue a written order granting or denying the request for reconsideration. If an order is not issued within 20 days after the filing of a request, the request for rehearing shall be considered denied. Any order granting rehearing shall be strictly limited to the matter specified in the order.

R653-7-19. Judicial Review.

Any party aggrieved by final agency action may obtain judicial review of the action pursuant to Sections 63-46b-14 and 15, except where judicial review is not permitted. A petition for judicial review shall be filed within 30 days after the date that the order constituting final agency action is issued.

R653-7-20. Declaratory Orders.

1. Any interested person may file a request for agency action requesting that the Division or Board issue a declaratory order determining the applicability of any statute, rule, or order within the primary jurisdiction of the Division or Board pursuant to Section 63-46b-21.

2. A request for a declaratory order shall be filed in accordance with Section 63-46b-21 which request commences an informal adjudicative proceeding and shall set forth in detail:

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; and

d. the specific question for which a declaratory order is requested.

3. The Division or Board may in their discretion decline to issue declaratory orders where the facts presented are deemed to be conjectural, abstract, insubstantial or where the public interest would best be served by not issuing an order.

R653-7-21. Emergency Orders.

The Division or Board may issue an order on an emergency basis without complying with these rules under the circumstances and procedures set forth in Section 63-46b-20.

KEY: administrative procedure
February 18, 1998 63-46b-1
Notice of Continuation October 20, 2017

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-910. Non-Reportable Traffic Offenses.
R722-910-1. Purpose.

The purpose of this rule is to establish procedures regarding the collection and dissemination of non-reportable traffic offenses.

R722-910-2. Authority.

This rule is authorized by Subsection 53-10-104(13).

R722-910-3. Definitions.

(1) Terms used in this rule are defined in Section 53-10-102.

(2) In addition:

(a) "traffic offense" has the same meaning as defined in Subsection 77-40-102(12).

R722-910-4. Dissemination of Criminal History Record Information.

(1) The division shall collect and disseminate criminal history record information in accordance with Section 53-10-101 et seq., except when it is information corresponding to a non-reportable traffic offense as defined in Subsection 77-40-102(12).

(2) A law enforcement agency is not required to submit fingerprints as provided in Section 53-10-207 in connection with any offense that meets the definition of a non-reportable traffic offense.

KEY: criminal offenses, fingerprints, non-reportable offenses
December 22, 2015 **53-10-104(13)**
53-10-102
77-40-102(12)

R746. Public Service Commission, Administration.
R746-1. Public Service Commission Administrative Procedures Act Rule.
R746-1-101. Title and Organization.

This rule R746-1 is:

(1) known as the "Public Service Commission Administrative Procedures Act Rule"; and

(2) organized into the following Parts:

(a) Part 100: General provisions;

(b) Part 200: Complaints and pleadings;

(c) Part 300: Motions;

(d) Part 400: Pre-hearing briefs, comments, and testimony;

(e) Part 500: Discovery;

(f) Part 600: Confidential and highly confidential information;

(g) Part 700: Hearings; and

(h) Part 800: Post-hearing proceedings.

R746-1-102. Authority.

This rule is adopted under Utah Code Section 54-1-1.

R746-1-103. Definitions.

(1) "Applicant" means any person:

(a) applying for a license, right, or authority; or

(b) requesting agency action from the Commission.

(2) "Commission" is defined at Utah Code Subsection 54-2-1(4).

(3) "Complainant" means a person that files a complaint with the Commission, pursuant to R746-1-201.

(4) "Division" means the Division of Public Utilities, State of Utah Department of Commerce.

(5) "Intervenor" means a person that:

(a) files with the Commission a petition for intervention in a pending matter; and

(b) receives Commission approval to participate as a party.

(6) "Office" means the Office of Consumer Services, State of Utah Department of Commerce.

(7) "Party" means a person that is entitled to participate in a proceeding, pursuant to Utah Code Subsection 63G-4-103(1)(f).

(8) "Person" is defined at Utah Code Subsection 63G-4-103(1)(g).

(9) "Presiding officer" is defined at Utah Code Subsection 63G-4-103(1)(h).

(10)(a) "Proceeding" or "adjudicative proceeding" means an action before the Commission, initiated by:

(i) a notice of agency action, pursuant to Utah Code Subsection 63G-4-201(1)(a);

(ii) a request for agency action, pursuant to Utah Code Subsection 63G-4-201(1)(b); or

(iii) a filing made pursuant to Utah Code Subsection 54-7-12(5).

(b) "Proceeding" does not include:

(i) an informal or preliminary inquiry or investigation undertaken by the Commission to determine whether a proceeding is warranted; or

(ii) rulemaking pursuant to Utah Code Title 63G, Chapter 3, the Utah Administrative Rulemaking Act.

(11) "Respondent" means a person:

(a) against whom a notice of agency action or request for agency action is directed; or

(b) required, or permitted by statute, to respond to an application, petition, or other request for agency action.

(12) "Responsive pleading" means any rejoinder to an initial pleading, including:

(a) an answer;

(b) a protest or opposition; or

(c) other similar filing.

R746-1-104. Designation of Adjudicative Proceedings.

(1) The following requests for agency action shall be adjudicated as informal proceedings:

(a) an unopposed application for a certificate of public convenience and necessity;

(b) a request for acknowledgment or approval of a telecommunications utility's name change; and

(c) an unopposed request for acknowledgment or approval of a merger, acquisition, or similar organizational restructuring that does not alter or affect the services provided by a telecommunications utility.

(2) A request for agency action not listed in Subsection R746-1-104(1) shall be adjudicated as a formal proceeding.

R746-1-105. Utah Rules of Civil Procedure.

The Utah Rules of Civil Procedure and case law interpreting these rules are persuasive authority in Commission adjudications unless otherwise provided by:

(1) Title 63G, Chapter 4, Administrative Procedures Act;

(2) Utah Administrative Code R746; or

(3) an order of the Commission.

R746-1-106. Computation of Time.

(1) Unless Subsection R746-1-106(2) applies, periods of time in Commission proceedings shall be computed pursuant to Utah Code Sections 68-3-7 and 68-3-8.

(2) Subsection R746-1-106(1) is superseded by any conflicting:

(a) order of the Commission;

(b) statute; or

(c) rule.

R746-1-107. Representation of Parties.

(1) A party may:

(a) be represented by:

(i) an attorney licensed to practice in Utah; or

(ii) an attorney licensed in a foreign state, if the attorney provides the Commission with a certificate of good standing from the state where licensed;

(b) represent oneself individually; or

(c) if not an individual, represent itself through an officer or employee.

(2) An attorney who appears pursuant to Subsection R746-1-107(1)(a)(ii) is not required to:

(a) apply for pro hac vice admission to the Utah State Bar; or

(b) partner with counsel licensed in Utah.

R746-1-108. Intervention.

(1) A person that wishes to intervene in a proceeding shall comply with Utah Code Section 63G-4-207.

(2) A person that is granted intervenor status:

(a) shall comply with the scheduling order issued in the docket; and

(b) may not file public comments unless the Commission's scheduling order provides for the filing of comments by a party.

R746-1-109. Deviation from Rules.

(1) A party may move the Commission to deviate from a specified rule.

(2) The party making the motion to deviate has the burden to demonstrate that the rule imposes a hardship that outweighs the benefit(s) of the rule.

R746-1-110. Electronic Meetings.

(1) An electronic meeting may be scheduled:

(a) by the Commission on its own initiative; or

(b) at the request of an interested person who is unable to attend in person.

(2) A person who requests an electronic meeting pursuant to R746-1-110(1)(b) shall submit the request to the Commission at least three business days prior to the scheduled meeting date and time.

(3) A quorum of the Commission is not required to be present at a single anchor location for an electronic meeting.

(4) Any number of separate connections for participants is allowed for an electronic meeting, unless the Commission limits the number of separate connections based on available equipment capability or other relevant and reasonable considerations.

(5) An electronic meeting will not be separately noticed solely to inform the public that one or more participants, including Commissioners, will participate telephonically.

R746-1-111. Minutes of Open Meetings.

(1) The Commission's written decision or order issued after the hearing held in a docket shall constitute its approved minutes for purposes of the Open and Public Meetings Act.

(2) The hearing transcript may augment the Commission's approved minutes to clarify any requirement of Utah Code Ann. Section 52-4-203 that is not contained in the written decision or order.

R746-1-201. Complaints.

A person that files a complaint with the Commission shall demonstrate:

(1) that the person has attempted to work with the utility to resolve the complaint;

(2) that the Division has reviewed the complaint and determined that Commission action is warranted; and

(3) that the complaint has been served on the public utility, pursuant to R746-1-203(1)(f).

R746-1-202. Title of Pleadings.

(1) This Subsection R746-1-202 does not apply to complaints.

(2) A person that files a pleading shall include the following information in the title:

(a)(i) name and bar number of attorney preparing the pleading; or

(ii) if no attorney is involved, name of the person signing the pleading;

(b) address, telephone number, and e-mail address of the person identified in Subsection R746-1-202(2)(a);

(c) nature of the request;

(d) description of the action or relief requested;

(e) type of pleading; and

(f) docket number, if known.

R746-1-203. Form and Content of Complete Filing.

(1) In order to be considered complete, a filing other than a complaint shall:

(a) be presented as a functional and searchable spreadsheet document, portable document file (PDF), or other electronic word processing document, as applicable;

(b) unless Subsection R746-1-203(5) applies, be filed electronically:

(i) by e-mail to psc@utah.gov, if the filing is strictly non-confidential; or

(ii) through the Commission's secure file transfer protocol (SFTP) server;

(c) be identified by an electronic file name that includes the following information, as applicable, in the following order:

(i) docket number;

(ii) identification of the type of filing, such as:

(A) testimony, specified as:

(I) confidential or redacted; and

(II) direct, rebuttal, surrebuttal, etc.;

(B) exhibit or workpaper:

(I) including exhibit or workpaper number; and

(II) specified as confidential or redacted;

(C) motion, including description; or

(D) response or reply to specified motion;

(iii) last name of the person providing the content of the filing; and

(iv) name of the party on whose behalf the filing is made;

(d) be type-written in 12-point font, double spaced, and in a format that, if printed, would require 8-1/2 x 11-inch paper;

(e) per Utah Rule of Civil Procedure 11, be signed by an individual who has read the filing and believes that it is supported in fact and in law, which individual may include:

(i) the party;

(ii) the party's counsel; or

(iii) other authorized representative of the party; and

(f) include a certificate of service:

(i) stating that a true and correct copy of the filing was served upon each of the parties;

(ii) identifying the manner of service; and

(iii) identifying the date of service.

(2)(a) An electronic filing that does not comply with R746-1-203(1)(c) shall be rejected and, if re-filed, may be deemed untimely.

(b) In creating an electronic filing name pursuant to R746-1-203(1)(c), a person may use abbreviations that are reasonably calculated to convey the required information.

(3) An initial pleading shall:

(a) comply with Utah Code Subsection 63G-4-201(3)(a); and

(b) if a statute, rule, regulation, or other authority requires the Commission to act within a specific time period, include a specific section setting forth:

(i) a reference or citation to the statute, rule, regulation, or other authority;

(ii) the applicable time period; and

(iii) the expiration date of the applicable time period, identified by day, month, and year.

(4) A person that is requested by the Commission or by another party to provide a paper copy of a filing shall do so within a reasonable time.

(5)(a) A person that is unable to use e-mail or the Commission's SFTP server for electronic filing may file by paper or by disc if:

(i) the filing is accompanied by a motion for permission to deviate from the electronic filing rule; and

(ii) if submitted on paper, the filing is typed in a font of at least 12 points and double-spaced on 8-1/2 by 11-inch paper.

(b) If the SFTP server is unable to receive a document on the day it is due, the filing shall be deemed timely if uploaded to the SFTP server during business hours of the first business day on which the SFTP server again becomes available.

R746-1-204. Effective Date of Filing.

(1) If filed with the Commission during regular business hours, a complete filing is effective on the date filed.

(2) If filed with the Commission after regular business hours, a complete filing is effective on the next business day.

R746-1-205. Amendment of Complaint or Initial Pleading.

(1) A party that has filed a complete and effective complaint or initial pleading may amend the filing without leave of the Commission at any time before:

(a) a responsive pleading has been filed; or

(b) the time for filing a responsive pleading has expired.

(2) If a defect in a complaint or initial pleading does not affect the substantial rights of the parties, it does not require amendment.

(3) After a responsive pleading has been filed or the

deadline for filing a responsive pleading has passed, a party may amend an initial pleading only with leave from the Commission.

R746-1-206. Responsive Pleadings.

A response to a complaint or an initial pleading shall be filed in accordance with Utah Code Section 63G-4-204, unless the Commission establishes a different response deadline.

R746-1-301. Motions.

Unless otherwise ordered by the Commission, briefing on a motion shall be as follows:

(1) Any response shall be filed within 15 days of the service date of the motion.

(2) Any reply shall be filed within 10 days of the service date of the response.

R746-1-401. Pre-hearing Briefs, Comments, and Testimony - General Requirements.

(1) A party to a docket may file briefs, comments, or testimony, as applicable, only as required or permitted in the Commission's scheduling order, or as otherwise directed by the Commission.

(2) Pre-hearing filings and accompanying exhibits shall:

(a) utilize a sequential line numbering system; and

(b) comply with Subsection R746-1-203(1).

(3) If a filing includes any calculation, the calculation shall be provided in the original format with formulas intact.

R746-1-402. Pre-hearing Testimony - Inclusion in Record.

(1)(a) A party may move the Commission to accept pre-hearing testimony into evidence without having it read under oath.

(b) Any such motion shall be subject to objection and argument.

(2) Pre-hearing testimony that is entered into evidence shall be subject to cross-examination.

R746-1-501. Discovery.

(1) Parties shall attempt to complete informal discovery through written requests for information and records (data requests).

(2) If a party considers informal discovery pursuant to Subsection R746-1-501(1) to be insufficient, the party may move the Commission for formal discovery according to Rules 26 through 37 of the Utah Rules of Civil Procedure, with the following exceptions and modifications:

(a)(i) If no responsive pleading is required in a proceeding, parties may begin discovery immediately upon the filing and service of an initial pleading.

(ii) If a responsive pleading is required, discovery shall not begin until ten days after the time limit for filing the responsive pleading.

(b) Rule 26(a)(4) of the Utah Rules of Civil Procedure, which restricts discovery, shall not apply. The opinions, conclusions, and data developed by experts engaged by parties shall be freely discoverable unless a protective order is issued by the Commission.

(c) Discovery requests, regardless of how denominated, discovery responses, and transcripts of depositions shall not be filed with the Commission.

(d) Any reference in an applicable Rule of Civil Procedure to "the court" shall be considered a reference to the Commission.

(3) On request from a party or on the presiding officer's own initiative, the presiding officer may include in a scheduling order deadlines for:

(a) filing a petition for intervention;

(b) objecting to a discovery request;

(c) responding to a discovery request;

(d) serving disclosures of evidence to be presented at hearing;

(e) completing discovery;

(f) filing dispositive and evidentiary motions; and

(g) filing pre-hearing testimony.

(4) An intervenor shall serve any request for discovery on the other parties to the docket.

(5) A party that requires a subpoena for discovery purposes shall:

(a) present the subpoena to the Commission for signature; and

(b) serve the subpoena pursuant to Utah Rule of Civil Procedure 45(b)(1).

R746-1-601. Identification of Information Claimed to Be Confidential or Highly Confidential in Commission Proceedings.

(1) A party to a docket may request that information provided to another party or included in the record be treated as confidential by:

(a) placing the information on a document with yellow background;

(b) highlighting the information with shading, text boxes, borders, asterisks, or other conspicuous formatting; and

(c) including the following designation, as applicable, on each page containing confidential information:

(i) "CONFIDENTIAL - - SUBJECT TO UTAH PUBLIC SERVICE COMMISSION RULES R746-1-602 and 603"; or

(ii) "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER".

(2)(a) A person that files or is requested to provide information that the person considers to be highly confidential shall promptly:

(i) negotiate with the other parties mutually agreeable protections; or

(ii) petition the Commission for an order granting additional protective measures.

(b) The petitioning party shall set forth:

(i) the particular basis for the claim;

(ii) the specific, additional protective measures requested, which may include restricting or prohibiting specific individuals from accessing information; and

(iii) the reasonableness of the requested, additional protection.

(c) Any other party may oppose the petition or propose alternative protective measures.

(d) If the Commission grants a petition for additional protective measures, the party providing the highly confidential information shall:

(i) place the information on a document with a pink background;

(ii) highlight the information with shading, text boxes, borders, asterisks, or other conspicuous formatting; and

(iii) include the following designation, as applicable, on each page containing highly confidential information:

(A) "HIGHLY CONFIDENTIAL - - SUBJECT TO UTAH PUBLIC SERVICE COMMISSION RULES R746-1-602 and 603"; or

(B) "HIGHLY CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER".

(3) A person that files with the Commission a document containing confidential or highly confidential information shall:

(a) file a redacted version for public access; and

(b) ensure that the line numbering and formatting in the redacted version match, as closely as practicable, that appearing in the unredacted version.

R746-1-602. Persons Entitled to Review Confidential and Highly Confidential Information.

(1)(a) The following persons are entitled to receive and review confidential and highly confidential information:

(i) Commission, including counsel and staff;

(ii) Division, including counsel and staff; and

(iii) Office, including counsel and staff.

(b)(i) Except as provided in Subsection R746-1-602(2), the following persons are entitled to receive and review confidential and highly confidential information after signing a non-disclosure agreement:

(A) counsel or other designated representative of each party, including, to the extent reasonably necessary, the counsel's or representative's:

(I) paralegals;

(II) administrative assistants; and

(III) clerical staff;

(B) persons designated by a party as an expert witness, including, to the extent reasonably necessary, the experts':

(I) administrative assistants; and

(II) clerical staff;

(C) persons employed by the parties, to the extent reasonably necessary; and

(D) any other person that signs a non-disclosure agreement.

(ii) Subsection R746-1-602(1)(b)(i) is superseded by any conflicting:

(A) agreement of the parties; or

(B) order of the Commission.

(c) The non-disclosure agreement required under Subsection R746-1-602(1)(b) shall read substantially as follows: "I have reviewed Public Service Commission of Utah Rule R746-1-603 and/or the Protective Order entered by the Public Service Commission of Utah in Docket No. XX-XXX-XX with respect to the review and use of confidential information and agree to comply with the terms and conditions of the rule and/or Protective Order."

(2)(a) A person, including an expert who is employed or retained by a party, may not receive confidential or highly confidential information if, in performing the person's normal job functions, the person could use the information to the competitive disadvantage of the person providing the information.

(b) The party that wishes to restrict or deny access to confidential or highly confidential information under Subsection R746-1-602(2)(a) has the burden to demonstrate the competitive disadvantage claimed.

R746-1-603. Treatment of Confidential and Highly Confidential Information.

(1) A person that receives confidential or highly confidential information may not use or disclose the information except:

(a) for the purpose of the Commission proceeding in which it was obtained, provided that the use within the Commission proceeding maintains confidentiality; or

(b) outside of a Commission proceeding, as required by law, provided that the person complies with Subsection R746-1-603(2).

(2) A person that is required by law to disclose confidential or highly confidential information outside of a Commission proceeding shall, prior to providing the information:

(a) give notice of the disclosure requirement, by telephone and in writing, to the person that first provided the information; and

(b) cooperate with the person that first provided the information to obtain a protective order or similar assurance of confidentiality.

(3) Notes made pertaining to, or as the result of, a review of confidential or highly confidential information shall be treated according to this Subsection R746-1-603.

R746-1-604. Challenge to Claim of Confidentiality.

(1) A party may challenge another party's claim of confidentiality by filing a motion for an in camera proceeding.

(2) If granted, the record of an in camera proceeding shall be marked, as applicable, substantially as follows:

(a) "CONFIDENTIAL--SUBJECT TO RULE R746-1-604"; or

(b) "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER".

(3)(a) An in camera hearing may be transcribed only upon:

(i) agreement of the parties; or

(ii) order of the Commission.

(b) Any transcription of an in camera hearing shall be separately bound, segregated, and withheld from any person not a party to the in camera hearing.

(4) Following an in camera hearing, if the Commission issues an order overturning a party's claim of confidentiality, the order:

(a) shall be subject to Utah Code Section 63G-4-301; and

(b) shall go into effect no sooner than 10 days after issuance.

R746-1-605. Receipt of Confidential and Highly Confidential Information into Evidence.

(1)(a) A party that considers it necessary to discuss confidential information in a filing shall, to the extent possible, refer to the information by title, exhibit number, or other non-confidential description.

(b) A party that is not able to comply with Subsection R746-1-605(1)(a) shall:

(i) place the confidential information in a separate section of the filing;

(ii) mark the separate section "CONFIDENTIAL"; and

(iii) ensure that the confidential section of the filing is served only on:

(A) counsel of record or other designated representative of the party (one copy each) who has signed a nondisclosure agreement;

(B) counsel for the Division; and

(C) counsel for the Office.

(2)(a) A party that proposes to use another person's confidential or highly confidential information as evidence in a Commission proceeding shall arrange with the owner of the information circumstances that will allow the information to be used while keeping trade secrets and proprietary material confidential.

(b) If efforts taken pursuant to Subsection R746-1-605(2)(a) fail, the owner of the information shall move the Commission to segregate and withhold any portion of the record that would reveal trade secrets or proprietary information.

(c) If the Commission grants a motion to segregate and withhold a record, the moving party shall mark the record, as applicable, substantially as follows:

(i) "CONFIDENTIAL/HIGHLY CONFIDENTIAL--SUBJECT TO PUBLIC SERVICE COMMISSION OF UTAH RULE R746-1-605"; or

(ii) "CONFIDENTIAL/HIGHLY CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER".

(3) A party that considers it necessary to discuss a segregated confidential record during a Commission proceeding shall move the Commission for an in camera hearing.

(4)(a) Other than the Division, the Office, and counsel for a party, a person that obtains another person's confidential or highly confidential information during a proceeding shall, within 30 days after the docket is concluded:

(i) return to the owner of the information all records in the party's possession that reference the confidential information; or

(ii) certify that the information has been:
(A) turned over, in its entirety, to the person's counsel; or
(B) destroyed.
(b) The Division, the Office, and counsel for a party may retain confidential information as part of notes, workpapers, and other documents:
(i) constituting work product; and
(ii) subject to privilege or other applicable disclosure restriction.

R746-1-606. Commission Compliance with the Utah Government Records Access and Management Act.
(1) A party's marking information as confidential or highly confidential does not ensure a classification of "private," "protected," or "classified" under the Utah Government Records Access and Management Act, Utah Code Title 63G, Chapter 2.
(2) A party whose confidential or highly confidential information is requested pursuant to Utah Code Title 63, Chapter 2, shall collaborate with the Commission to determine how the information should be classified under the statute.

R746-1-701. Witness Subpoenas.
(1) A party that wishes to subpoena a witness for hearing shall:
(a) file the subpoena with the presiding officer at least 20 days prior to hearing;
(b) serve the subpoena on the witness pursuant to Utah Rule of Civil Procedure 45(b)(1); and
(c) pay the witness the statutory mileage and witness fees, unless the witness waives payment.
(2) Failure to obey the Commission's subpoena shall be considered contempt pursuant to Utah Code Subsection 54-7-23(2).

R746-1-702. Continuance of Scheduled Hearing.
(1) A person requesting to continue a scheduled hearing shall demonstrate that:
(a) the request is supported by good cause; or
(b) all parties stipulate to the continuance.
(2) Unless otherwise ordered by the presiding officer, any objection to a request for continuance shall be filed no later than five days following the date on which the request is filed and served.

R746-1-703. Closing a Hearing.
A party that wishes to close a hearing shall comply with Utah Code Subsection 54-3-21(4).

R746-1-704. Public Witness Evidence.
(1) A person not a party to a docket may:
(a) file comments prior to hearing; or
(b) appear during any public witness portion of a hearing to provide unsworn testimony.
(2) A party to a docket may file comments only if the Commission's scheduling order provides for the filing of comments by a party.

R746-1-705. Exhibits Offered at Hearing.
(1) Parties shall:
(a) mark their exhibits before hearing;
(b) provide the original of each exhibit to the court reporter, if applicable; and
(c) provide a copy of each exhibit to:
(i) the presiding officer; and
(ii) each party.
(2) If an exhibit offered at hearing contains information claimed to be confidential or highly confidential, the party offering the exhibit shall comply with Subsection R746-1-605.

R746-1-801. Post-hearing Proceedings.
(1) Proceedings on review shall be in accordance with Utah Code Section 54-7-15.
(2) A person that challenges a finding of fact in a proceeding brought under Subsection R746-1-801(1) shall marshal the record evidence that supports the challenged finding, as set forth in State v. Nielsen, 2014 UT 10, Sections 33-44, 326 P.3d 645.
(3) Following the filing of a petition pursuant to Subsection R746-1-801(1), opposing parties may file responsive memoranda or pleadings within 15 days.
(4) A petition for rehearing pursuant to Utah Code Section 54-7-15 is required in order for a party to exhaust its administrative remedies prior to appeal.

KEY: public utilities, administrative proceedings, electronic filings and meetings, confidential information
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R746. Public Service Commission, Administration.
R746-360. Universal Public Telecommunications Service Support Fund.
R746-360-1. General Provisions.

A. Authorization -- Section 54-8b-15 authorizes the Commission to establish an expendable trust fund, known as the Universal Public Telecommunications Service Support Fund, the "universal service fund," "USF" or the "fund," to promote equitable cost recovery and universal service by ensuring that customers have access to basic telecommunications service at just, reasonable and affordable rates, consistent with the Telecommunications Act of 1996.

B. Purpose -- The purposes of these rules are:

1. to govern the methods, practices and procedures by which:

a. the USF is created, maintained, and funded by end-user surcharges applied to retail rates;

b. funds are collected for and disbursed from the USF to qualifying telecommunications corporations so that they are able to recover the reasonable and prudent costs of providing basic telecommunications service while charging just, reasonable and affordable rates; and,

2. to ensure funds collected and disbursed from the USF are used efficiently and in the public interest.

C. Application of the Rules -- The rules apply to all retail providers that provide intrastate public telecommunications services.

R746-360-2. Definitions.

A. Affordable Base Rate (ABR) -- means the monthly per line retail rates, charges or fees for basic telecommunications service which the Commission determines to be just, reasonable, and affordable for a designated support area. The Affordable Base Rate shall be established by the Commission. The Affordable Base Rate does not include the applicable USF retail surcharge, municipal franchise fees, taxes, and other incidental surcharges.

B. Average Revenue Per Line -- means the average revenue for each access line computed by dividing the sum of all revenue derived from a telecommunications corporation's provision of public telecommunications services, including, but not limited to, revenues received from the provision of services in both the interstate and intrastate jurisdictions, whether designated "retail," "wholesale," or some other categorization, all revenues derived from providing network elements, services, functionalities, etc. required under the Federal Telecommunications Act of 1996, Pub. L. 104-104,110 Stat.56 or the Utah Telecommunications Reform Act, Laws of Utah 1995, Chapter 269, all support funds received from the Federal Universal Service Support Fund, and each and every other revenue source or support or funding mechanism used to assist in recovering the costs of providing public telecommunications services in a designated support area by that telecommunications corporation's number of access lines in the designated support area.

C. Basic Telecommunications Service -- means a local exchange service consisting of access to the public switched network; touch-tone, or its functional equivalent; local flat-rated, unlimited usage, exclusive of extended area service; single-party service with telephone number listed free in directories that are received free; access to operator services; access to directory assistance, lifeline and telephone relay assistance; access to 911 and E911 emergency services; access to long-distance carriers; access to toll limitation services; and other services as may be determined by the Commission.

D. Designated Support Area -- means the geographic area used to determine USF support distributions. A designated support area, or "support area," need not be the same as a USF proxy model's geographic unit. The Commission will determine the appropriate designated support areas for determining USF support requirements. Unless otherwise specified by the Commission, the designated support area for a rate-of-return regulated Incumbent telephone corporation shall be its entire certificated service territory located in the State of Utah.

E. Facilities-Based Provider -- means a telecommunications corporation that uses its own facilities, a combination of its own facilities and essential facilities or unbundled network elements obtained from another telecommunications corporation, or a telecommunications corporation which solely uses essential facilities or unbundled network elements obtained from another telecommunications corporation to provide public telecommunications services.

F. Geographic Unit -- means the geographic area used by a USF proxy cost model for calculating costs of public telecommunications services. The Commission will determine the appropriate geographic area to be used in determining public telecommunications service costs.

G. Net Fund Distributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues collected by that company, when the former amount is greater than the latter amount.

H. Net Fund Contributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues generated by that company, when the latter amount is greater than the former amount.

I. USF Proxy Model Costs -- means the total, jurisdictionally unseparated, cost estimate for public telecommunications services, in a geographic unit, based on the forward-looking, economic cost proxy model(s) chosen by the Commission. The level of geographic cost disaggregation to be used for purposes of assessing the need for and the level of USF support within a geographic unit will be determined by the Commission. These models shall be provided by the Commission by January 2, 2001.

J. Universal Service Fund (USF or fund) -- means the Universal Public Telecommunications Service Support Fund established by 54-8b-15 and set forth by this rule.

R746-360-3. Duties of Administrator.

A. Selection of Administrator -- The Division of Public Utilities will be the fund administrator. If the Division is unable to fulfill that responsibility, the administrator, who must be a neutral third party, unaffiliated with any fund participant, shall be selected by the Commission.

B. Cost of Administration -- The cost of administration shall be borne by the fund; unless administered by a state agency.

C. Access to Books -- Upon reasonable notice, the administrator shall have access to the books of account of all telecommunications corporations and retail providers, which shall be used to verify the intrastate retail revenue assessed in an end-user surcharge, to confirm the level of eligibility for USF support and to ensure compliance with this rule.

D. Maintenance of Records -- The administrator shall maintain the records necessary for the operation of the USF and this rule.

E. Report Forms -- The administrator shall develop report forms to be used by telecommunications corporations and retail providers to effectuate the provisions of this rule and the USF. An officer of the telecommunications corporation or retail provider shall attest to and sign the reports to the administrator.

F. Administrator Reports -- The administrator shall file reports with the Commission containing information on the average revenue per line calculations, projections of future USF needs, analyses of the end-user surcharges and Affordable Base Rates, and recommendations for calculating them for the

following 12-month period. The report shall include recommendations for changes in determining basic telecommunications service, designated support areas, geographic units, USF proxy cost models and ways to improve fund collections and distributions.

G. Periodic Review -- The administrator, under the direction of the Commission, shall perform a periodic review of fund recipients to verify eligibility for future support and to verify compliance with all applicable state and federal laws and regulations.

H. Proprietary Information -- Information received by the administrator which has been determined by the Commission to be proprietary shall be treated in conformance with Commission practices.

I. Information Requested -- Information requested by the administrator which is required to assure a complete review shall be provided within 45 days of the request. Failure to provide information within the allotted time period may be a basis for withdrawal of future support from the USF or other lawful penalties to be applied.

R746-360-4. Application of Fund Surcharges to Customer Billings.

(1)(a) "Access line" is defined at Utah Code Subsection 54-8b-2(1).

(b) For purposes of applying the statutory definition of "access line," the term "connection" is defined at Utah Code Subsection 54-8b-15(1)(c).

(c)(i) Providers of access lines and providers of connections are hereafter referred to jointly as "providers."

(ii) Access lines and connections are hereafter referred to jointly as "access lines."

(2) Through December 31, 2017, providers shall remit to the Commission 1.65 percent of billed intrastate retail rates.

(3) As of January 1, 2018, the Utah Universal Public Telecommunications Service Support Fund (UUSF) shall be funded as follows.

(a) Unless Subsection R746-360-4(5) applies, providers shall collect from their end-user customers $0.36 per month per access line that, as of the last calendar day of each month, has a primary place of use within the State of Utah.

(b)(i) "Primary place of use means the street address representative of where the customer's use of the telecommunications service primarily occurs.

(ii) A provider of mobile telecommunications service shall consider the customer's primary place of use to be the customer's residential street address or primary business street address.

(iii) A provider of non-mobile telecommunications service shall consider the customer's primary place of use to be:

(A) the customer's residential street address or primary business street address; or

(B) the customer's registered location for 911 purposes.

(c)(i) The surcharge shall apply as an explicit charge to each end-user.

(ii) A provider may include the surcharge in an all-inclusive rate plan.

(d) A provider that offers a multi-line service shall apply the surcharge to each concurrent real-time voice communication call session that an end-user can place to or receive from the public switched telephone network.

(4)(a) A provider shall remit to the Commission no less than 98.69 percent of its total monthly surcharge collections.

(b) A provider may retain a maximum of 1.31 percent of its total monthly surcharge collections to offset the costs of administering this rule.

(5)(a) A provider may omit the UUSF surcharge in billing an access line that:

(i) is described in Subsection R746-360-4(3); and

(ii) generates revenue that is subject to a universal service fund surcharge in a state other than Utah.

(b)(i) An end-user may petition the Commission for a waiver of the surcharge set forth in Subsection R746-360-4(3). Any such petition shall be adjudicated as an informal administrative proceeding.

(ii) An end-user that petitions for a waiver of the surcharge has the burden to provide:

(A) call records demonstrating that, at all times and continuously during the six calendar months preceding the date of petition, the access line being assessed was not used to access Utah intrastate telecommunications services; or

(B) billing records demonstrating that the access line is assessed a universal service fund surcharge in a state other than Utah.

(iii) A provider may not petition the Commission under Subsection R746-360-4(5)(b) for a waiver of the surcharge on behalf of:

(A) a customer; or

(B) a group of customers.

(iv)(A) An exemption granted under Subsection R746-360-4(5)(b) is valid for a period of one calendar year from the date of issuance.

(B) Following the expiration of an exemption, and upon notice from the Commission, the end-user's provider shall assess the UUSF surcharge each month, until such time as the provider is notified by the Commission that a renewed exemption has been granted.

(C) Any assessment remitted to the Commission between the expiration of an exemption and the approval of a petition for renewal of the exemption shall be non-refundable.

(D)(I) The end-user shall bear the sole responsibility to know the expiration date of an exemption granted to the end-user and to ensure that an application for renewal is filed at least 30 days prior to the date of expiration.

(II) At any proceeding to review a petition for renewal of an exemption, evidence that the end-user was unaware of the expiration date shall be inadmissible.

(III) A petition for renewal of an exemption is deemed granted unless the Commission issues an order of denial within 30 days of the date on which the petition is filed.

R746-360-5. Fund Remittances and Disbursements.

A. Remitting Surcharge Revenues --

1. Telecommunications corporations, not eligible for USF support funds, providing telecommunications services subject to USF surcharges shall collect and remit surcharge revenues to the Commission as follows:

a. if the average monthly USF surcharge collections over the prior six months was ten dollars or greater, within 45 days after the end of each month,

b. if the average monthly USF surcharge collections over the prior six months was less than ten dollars, the telecommunications corporation may accrue the USF surcharge collections and submit the accrued collections on a semiannual basis.

2. Telecommunications corporations eligible for USF support funds shall make remittances as follows:

a. Prior to the end of each month, the fund administrator shall inform each qualifying telecommunications corporation of the estimated amount of support that it will be eligible to receive from the USF for that month.

b. Net fund contributions shall be remitted to the Commission within 45 calendar days after the end of each month. If the net amount owed is not received by that date, remedies, including withholding future support from the USF, may apply.

3. The Commission will forward remitted revenues to the Utah State Treasurer's Office for deposit in a USF account.

B. Distribution of Funds -- Net Fund distributions to

qualifying telecommunications corporations for a given month shall be made 60 days after the end of that month, unless withheld for failure to maintain qualification or failure to comply with Commission orders or rules.

R746-360-6. Eligibility for Fund Distributions.

A. Qualification --

1. To qualify to receive USF support funds, a telecommunications corporation shall be designated an "eligible telecommunications carrier," pursuant to 47 U.S.C. Section 214(e), and shall be in compliance with Commission orders and rules. Each telecommunications corporation receiving support shall use that support only to provide basic telecommunications service and any other services or purposes approved by the Commission.

2. Additional qualification criteria for Incumbent telephone corporations - In addition to the qualification criteria of R746-360-6A.1.,

a. Non-rate-of-return Incumbent telephone corporations, except Incumbent telephone corporations subject to pricing flexibility pursuant to 54-8b-2.3 shall make Commission approved, aggregate rate reductions for public telecommunications services, provided in the State of Utah, equal to each incremental increase in USF distribution amounts received after December 1, 1999.

b. Rate-of-return Incumbent telephone corporations shall complete a Commission review of their revenue requirement and public telecommunications services' rate structure prior to any change in their USF distribution which differs from a prior USF distribution, beginning with the USF distribution for December, 1999.

B. Rate Floor.

1. Unless a petition brought pursuant to Subsection (B)(2) is granted after adjudication, to be eligible for USF subsidization, a telecommunications corporation shall charge, at a minimum, $18 per line for basic telecommunications service.

2.a. A telecommunications corporation may petition the Commission to deviate from the Affordable Base Rate set forth in this Subsection (B)(1).

b. A telecommunications corporation that files a petition under this Subsection (B)(2)(a) shall:

i. demonstrate that the Affordable Base Rate is not reasonable in the particular geographic area served; or

ii. impute income up to the Affordable Base Rate in calculating the telecommunications corporation's state USF subsidization.

C. Lifeline Requirement -- A telecommunications corporation may qualify to receive distributions from the fund only if it offers Lifeline service on terms and conditions prescribed by the Commission.

D. Exclusion of Resale Providers -- Only facilities-based providers, will be eligible to receive support from the fund. Where service is provided through one telecommunications corporation's resale of another telecommunications corporation's service, support may be received by the latter only.

R746-360-7. Calculation of Fund Distributions in Non-rate-of-Return Regulated Incumbent Telephone Corporation Territories.

A. Use of Proxy Cost Models -- The USF proxy cost model(s) selected by the Commission and average revenue per line will be used to determine fund distributions within designated support areas.

B. Use of USF Funds --Telecommunications corporations shall use USF funds to support each primary residential line in active service which it furnishes in each designated area.

C. Determination of Support Amounts --

1. Incumbent telephone corporation - Monies from the fund will equal the numerical difference between USF proxy model cost estimates of costs to provide residential Basic Telecommunications Service in the designated support area and the product of the Incumbent telephone corporation's Average Revenue per line, for the designated support area, times the number of Incumbent telephone corporation's active residential access lines in the designated support area.

2. Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the Incumbent telephone corporation's average residential access line support amount for the respective designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active residential access lines in the designated support area, times the eligible telecommunications corporation's number of active residential access lines.

D. Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

E. Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-8. Calculation of Fund Distributions in Rate-of-Return Incumbent Telephone Corporation Territories.

(A) Determination of Support Amounts --

(1) Incumbent telephone corporation - Monies from the fund will equal the numerical difference between the Incumbent telephone corporation's total embedded costs of providing public telecommunications services, for a designated support area, less the product of the Incumbent telephone corporation's Average Revenue Per Line, for the designated support area, times the Incumbent telephone corporation's active access lines in the designated support area. To the extent the Commission finds that inclusion of any cost will result in an inefficient use of USF funds or in a use of USF funds that is inconsistent with the public interest, such cost will be excluded from total embedded costs. Total embedded costs shall include a weighted average rate of return on capital of the intrastate and interstate jurisdictions. For example, in the case of an Incumbent telephone corporation whose costs are allocated fifty percent to each jurisdiction and whose interstate return is 11.25 percent and whose intrastate return authorized by the Commission is 9 percent, the weighted average return on capital would be 10.125 percent.

(a) In order to determine the interstate return on capital to calculate the weighted average rate of return on capital for Incumbent telephone corporations, the Commission shall:

(i) use the prior year return reported by the National Exchange Carriers Association (NECA) to the Federal Communications Commission (FCC) on FCC Form 492 for Incumbent telephone corporations that do separations between intrastate and interstate jurisdictions under 47 CFR Part 36. In the event that the Incumbent local telephone corporation uses a future test period as provided in Utah Code Ann. Subsection 54-4-4(3)(b)(i), the interstate return for these Incumbent telephone corporations shall be the average of the actual return for the prior three years as reported on FCC Form 492.

(ii) use NECA's most recent interstate allocation computation filed at the FCC under 47 CFR Part 69.606 and the actual interstate return on capital reported by NECA as described in R746-360-8 A.1.a.i. for average schedule Incumbent telephone corporations.

(iii) use the actual interstate return of an Incumbent telephone corporation's relevant tariff group reported to the FCC

in its most recent FCC Form 492A for Incumbent telephone corporations that are regulated on a price-cap basis in the interstate jurisdiction.

(2) Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the respective Incumbent telephone corporation's average access line support amount for the designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active access lines in the designated support area, times the eligible telecommunications corporation's number of active access lines in the designated support area.

(B) Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission-approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

(C) Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-9. One-Time Distributions From the Fund.

A. Applications for One-Time Distributions -- Telecommunications corporations, whether they are or are not receiving USF funds under R746-360-7 or R746-360-8, potential customers not presently receiving service because facilities are not available, or customers receiving inadequate service may apply to the Commission for one-time distributions from the fund for extension of service to a customer, or customers, not presently served or for amelioration of inadequate service.

1. These distributions are to be made only in extraordinary circumstances, when traditional methods of funding and service provision are infeasible.

2. One-time distributions will not be made for:

a. New subdivision developments;

b. Property improvements, such as cable placement, when associated with curb and gutter installations; or

c. Seasonal developments that are exclusively vacation homes.

i. Vacation home is defined as: A secondary residence which is primarily used for recreation and is unoccupied for a period of four consecutive weeks per year.

3. An application for a one-time distribution may be filed with the Commission by an individual or group of consumers desiring telephone service or improved service, a telecommunications corporation on behalf of those consumers, the Division of Public Utilities, or any entity permitted by law to request agency action. An application shall identify the service(s) sought, the area to be served and the individuals or entities that will be served if the one-time distribution is approved.

4. Following the application's filing, affected telecommunications corporations shall provide engineering, facilities, costs, and any other pertinent information that will assist in the Commission's consideration of the application.

5. In considering the one-time distribution application, the Commission will examine relevant facts including the type and grade of service to be provided, the cost of providing the service, the demonstrated need for the service, whether the customer is within the service territory of a telecommunications corporation, whether the proposed service is for a primary residence, the provisions for service or line extension currently available, and other relevant factors to determine whether the one-time distribution is in the public interest.

B. Presumed Reasonable Amounts and Terms -- Unless otherwise ordered by the Commission, the maximum one-time distribution will be no more than $10,000 per customer for customers of rate-of-return regulated companies. For customers of non-rate of return companies, the maximum one-time distribution shall be calculated so that the required customer payments would equal the payments required from a customer of a rate-of-return regulated company. The Commission will presume a company's service or line extension terms and conditions reasonable, for a subscriber in connection with one-time universal service fund distribution requests, if the costs of service extension, for each extension, are recovered as follows:

1. For rate-of-return regulated Local Exchange Carriers who request USF One-Time Distribution support for facility placement: The first $2,500 of cost coverage per account is provided by the company; and for cost amounts exceeding $2,500 per account up to two times the statewide average loop investment per account for rate-of-return regulated telecommunication companies, as determined annually by the Division of Public Utilities, the company will pay 50 percent of the costs of the project.

2. For non-rate-of-return Local Exchange Carriers who request USF One-Time Distribution support for facility placement the first $2,500 of cost coverage per account is provided by the company; and all other costs are shared between the customer and the fund as provided herein.

3. For projects that exceed $2,500 per account, but are equal to or less than $10,000 per account, the customer shall pay 25 percent of the costs that exceed $2,500. For projects that exceed $10,000 per account, but are equal to or less than $20,000 per account, the customer shall pay 50 percent of the costs that are greater than $10,000 plus the previously calculated amount. For projects exceeding $20,000 per account the customer shall pay 75 percent of the cost above $20,000 until the State Universal Service Support Fund has paid the maximum amount as provided herein, any project costs above that level will be paid for 100 percent by the customer.

4. The State Universal Service Support Fund shall pay the difference between the sum of the defined company contributions plus customer contribution amounts and the total project cost up to the maximum amount provided herein. To the extent the Commission finds that inclusion of any cost will result in an inefficient use of USF funds or in a use of USF funds that is inconsistent with the public interest, such cost will be excluded from the total project cost.

5. Other terms and conditions for service extension shall be reviewed by the Commission in its consideration of an application and may be altered by the Commission in order to approve the use of universal service funds through the requested one-time distribution.

C. Combination of One-Time Distribution Funds with Additional Customer Funds and Future Customer Payment Recovery --

1. At least 51 percent of the potential customers must be full-time residents in the geographic area being petitioned for and must be willing to pay the initial up-front contribution to the project as calculated by the Commission or its agent.

2. Qualified customers in the area shall be notified by the telecommunications corporation of the nature and extent of the proposed service extension including the necessary customer contribution amounts to participate in the project. Customer contribution payments shall be made prior to the start of construction. In addition to qualified customers, the Local Exchange Company needs to make a good faith effort to contact all known property owners within the geographic boundaries of the proposed project and invite them to participate on the same terms as the qualified customers. Local Exchange Companies may ask potential customers to help in the process of contacting other potential customers.

3. New developments and empty lots will not be considered in the cost analysis for USF construction projects unless the property owner is willing to pay the per account costs for each lot as specified in this rule.

4. Potential customers who are notified and initially decline participation in the line extension project, but subsequently decide to participate, prior to completion of the project, may participate in the project if they make a customer contribution payment, prior to completion of the project, of 105 percent of the original customer contribution amount.

5. For a period of five years following completion of a project, new customers who seek telecommunications service in the project area, shall pay a customer contribution payment equal to 110 percent of the amount paid by the original customers in the project.

6. The telecommunications corporation shall ensure that all customer contribution payments required by R746-360-9(C)(3), (4), and (5) are collected. Funds received through these payments shall be sent to the universal service fund administrator. The company is responsible for tracking and notification to the Commission when the USF has been fully compensated. All monies will be collected and reported by the end of each calendar year, December 31st.

7. For each customer added during the five-year period following project completion, the telecommunications corporation and new customers shall bear the costs to extend service pursuant to the company's service or line extension terms and conditions, up to the telecommunications corporation's original contribution per customer for the project and the customer contributions required by this rule. The company may petition the Commission for a determination of the recovery from the universal service fund and the new customer for costs which exceed this amount.

D. Impact of Distribution on Rate of Return Companies -- A one-time distribution from the fund shall be recorded on the books of a rate base, rate of return regulated LEC as an aid to construction and treated as an offset to rate base.

E. Notice and Hearing -- Following notice that a one-time distribution application has been filed, any interested person may request a hearing or seek to intervene to protect his interests.

F. Bidding for Unserved Areas -- If only one telecommunications corporation is involved in the one-time distribution request, the distribution will be provided based on the reasonable and prudent actual or estimated costs of that company. If additional telecommunications corporations are involved, the distribution will be determined on the basis of a competitive bid. The estimated amount of the one-time distribution will be considered in evaluating each bid. Fund distributions in that area will be based on the winning bid.

R746-360-10. Altering the USF Charges and the End-User Surcharge Rates.

The uniform surcharge shall be adjusted periodically to minimize the difference between amounts received by the fund and amounts disbursed.

R746-360-11. Support for Schools, Libraries, and Health Care Facilities. Calculation of Fund Distributions.

The Universal Service Fund rules for schools, libraries and health care providers, as prescribed by the Federal Communications Commission in Docket 96-45, 97-157 Sections X and XI, paragraphs 424 - 749, of Order issued May 8, 1996, and CFR Sections 54.500 through 54.623 inclusive, incorporated by this reference, is the prescribed USF method that shall be employed in Utah. Funding shall be limited to funds made available through the federal universal service fund program.

KEY: affordable base rate, public utilities, telecommunications, universal service fund

October 11, 2017 54-3-1
Notice of Continuation November 13, 2013 54-4-1
54-8b-15

R850. School and Institutional Trust Lands, Administration.
R850-83. Administration of Previous Sales to Subdivisions of the State.
R850-83-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the Director of the School and Institutional Trust Lands Administration to establish rules for sales of land to subdivisions of the state.

R850-83-150. Scope.

The intent of this rule is to provide a process for administering reversions of land sold under Sections 65-1-29 and 65A-7-4(5), both of which have been repealed.

R850-83-200. Definitions.

The following term, as used in this section, is defined as follows:

1. Public Purpose - Use by a subdivision of the state that benefits the general public of the subdivision or public at large and that is approved by the agency.

R850-83-300. Remedies for Breach of Determinable Fee Sale.

1. The conditions of a determinable fee sale are breached, and a determinable fee estate shall terminate, upon the violation of any of the following:

(a) A provision of Utah common law or other applicable law or rule, such as a provision of Section 65-1-29 or 65A-7-4(5) as applicable at time of sale; or

(b) A "public purpose", a "subdivision of the state", or other condition relating to the grant of a determinable fee as stated in the deed or other instrument of conveyance.

2. In the event of a breach of a determinable fee sale provision, in which case all of the subject property shall revert, the agency may elect one, or a combination of, the following remedies consistent with the trust land management objectives listed in R850-2-200:

(a) Allow the reversion of the entire property to stand without further action by the agency.

(b) Enter into an agreement providing for final resolution of the breach, which agreement may include exchange of all or part of the reverted property, payment for all or part of the reverted property, or retention of all or part of the reverted property; provided the agreement fully compensates the trust for reasonably foreseeable losses caused in whole or part by the breach.

3. Any costs involved in the transaction described above shall be borne entirely by the applicant and, if applicable, shall be based on the current agency fee schedule.

4. The provisions of this rule are not intended to compel the agency to accept a particular resolution of a breach of a determinable fee limitation and shall not preclude the agency from settlement of disputes involving a breach of determinable fee sale on terms that are otherwise in the best interest of the applicable trust beneficiaries.

KEY: subdivisions, sale procedures, administrative procedure
1993 53C-1-302(1)(a)(ii)
Notice of Continuation October 30, 2017 53C-4-101(1)

R909. Transportation, Motor Carrier.
R909-2. Utah Size and Weight Rule.
R909-2-1. Purpose and Applicability.

The purpose of this rule is to protect and preserve Utah's highway infrastructure, enhance safety, and facilitate commerce. All commercial motor vehicle operators, and motor carriers engaged in the movement of over dimensional and overweight vehicles and loads must comply with permit conditions as specified in the Utah Size and Weight rule. These conditions apply to all over dimensional vehicles and loads.

R909-2-2. Authority.

This rule is enacted under the authority of Sections 41-1a-231, 41-1a-1206, 72-1-201, 72-7-402, 72-7-404, 72-7-406, 72-7-407, 72-9-301, and 72-9-502.

R909-2-3. Definitions.

(1) "Appurtenance" as defined in CFR 23-658 and Section 72-7-402.

(2) "Articulated vehicle" consists of two or more vehicles that are connected by a joint that can pivot.

(3) "Bridge formula" is a bridge protection formula used by federal and state governments to regulate the amount of weight that can be put on each of a vehicle's axles, or the number of axles, and the distance between the axles or group of axles must be to legally carry a given weight.

(4) "Cargo or cargo carrying length" means the total length of a combination of trailers or load measured from the foremost of the first trailer or load to the rearmost of the last trailer or load including all coupling devices.

(5) "CSA" means the Compliance, Safety, Accountability program administered by the Federal Motor Carrier safety Administration, where they work together with state partners and industry to further reduce commercial motor vehicle crashes, fatalities, and injuries on our nation's highways.

(6) "Commercial vehicle" as defined in CFR 390.5 and Section 72-9-102.

(7) "Covered heavy-duty and recovery vehicle" means a vehicle that is transporting a disabled vehicle from the place where the vehicle became disabled to the nearest appropriate repair facility; and has a gross vehicle weight that is equal to or exceeds the gross vehicle weight of the disabled vehicle being transported.

(8) "Daylight" means one-half hour before sunrise and one-half hour after sunset.

(9) "Department" means the Utah Department of Transportation.

(10) "Divisible load" a load that can reasonably be dismantled or disassembled and does not meet the definition of non-divisible as defined in this section.

(11) "Division" means the Motor Carrier Division.

(12) "Drawbar" means the connection between two vehicles, measured from box to box or frame to frame or actual drawbar, one of which is towing or drawing the other on a highway.

(13) "Dromedary unit" is a truck-tractor capable of carrying a load independent of a trailer. Units manufactured prior to December 1, 1982 are exempt as a truck-trailer.

(14) "Emergency vehicle" means a vehicle designed to be used under emergency conditions: to transport personnel and equipment; and to support the suppression of fires and mitigation of other hazardous situations.

(15) "Fixed axle" means an axle that is not steerable, self-steering or retractable.

(16) "Flagger" is a person that is trained to direct traffic using signs or flags to aid the over-dimensional load or vehicles in the safe movement along the highway as designated on the over-dimensional load permit.

(17) "Full trailer" a vehicle without motive power designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(18) "High-risk motor carrier" is a carrier that is:

(a) above the threshold in the Crash or Fatigue or Unsafe BASIC that is greater than or equal to 85%, plus one other BASIC at or above the "all other" motor carrier threshold; or

(b) a motor carrier with any four or more BASIC's at or above the "all other" motor carrier threshold.

(19) "Highway" any public road, street, alley, lane, court, place, viaduct, tunnel, culvert, bridge, or structure laid out or erected for public use, or dedicated or abandoned to the public, or made public in an action for the partition of real property, including the entire area within the right-of-way.

(20) "Implement of husbandry" means every vehicle designed or adapted or used exclusively for an agricultural operation and only incidentally operated or moved upon the highways.

(21) "Incidental" means transportation that occurs occasionally or by chance, but does not exceed a distance of 20 miles.

(22) "Interstate system" means any highway designated as an interstate or freeway. For the purpose of this rule: I-15, I-215, I-80, I-70, US 89 between I-84 and I-15 and SR 201 between I-15 and I-80 will be considered interstate.

(23) "Laden" means carrying a load.

(24) "Longer combination vehicle" or an LCV is a combination of truck, truck tractor, semi-trailer and trailers, which exceeds legal dimensions and operates on highways by permit for transporting divisible loads.

(25) "Longer combination vehicle authority" means an authorization given to a specific company to exceed standard permitted length allowances for vehicle configuration on pre-approved routes.

(26) "Manufactured home" a transportable factory built housing unit constructed on or after June 15, 1976, in one or more sections, and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.

(27) "Manufactured mobile home" means a transportable factory built housing unit built prior to June 15, 1976, in accordance with a state mobile home code, which existed prior to the Federal Manufactured Housing and Safety Standards Act.

(28) "Motor carrier" as defined in Section 72-9-102.

(29) "MVR" means motor vehicle record.

(30) "MUTCD" means Manual on Uniform Traffic Control Devices.

(31) "Multi-trip" means two or more daily or a minimum of 10 weekly trips in the proximity of a port-of-entry.

(32) "Natural gas vehicle" means the vehicle's engine is fueled primarily by natural gas.

(33) "Non-divisible" any load or vehicle exceeding applicable length, width, or height or weight limits which, if separated into smaller loads or vehicles would:

(a) compromise the intended use of the load or vehicle;

(b) destroy the value of the load or vehicle; or

(c) require more than eight work hours to dismantle using appropriate equipment.

(34) "Out-of-service" is a condition where a motor vehicle, because of mechanical condition or loading, is considered imminently hazardous and likely to cause an accident or breakdown; or where a driver violation renders a commercial vehicle operator unqualified to drive.

(35) "Pole trailer" every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and is ordinarily used for transporting long or irregular shaped loads

such as poles, pipes, or structural members generally capable of sustaining themselves as beams between the supporting connections.

(36) "Port-of-entry by-pass permit" allows a motor carrier a temporary permit that would allow by-pass of a designated port of entry.

(37) "Quad axle group" means a group of four consecutive fixed axles.

(38) "Recreational vehicle" is a vehicle or vehicles that are driven solely as family or personal conveyances for non-commercial purposes.

(39) "Retractable axle" is an axle which can be mechanically raised and lowered by the driver of the vehicle, but which may not have its weight-bearing capacity mechanically regulated.

(40) "Rocky mountain doubles" a tractor and two trailers, consisting of a long and a short trailer.

(41) "Saddle mount" means a truck or tractor towing other vehicles with the front axle of each towed vehicle mounted on top of the frame of the proceeding vehicle or vehicles.

(42) "Secondary highway" is all other routes not designated as interstate or freeway. Two-lane, two-way highways are synonymous with secondary highways.

(43) "Semi trailer" means every vehicle without motive power designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and its load rests on or is carried by another vehicle.

(44) "Special event" means the movement of an over-dimensional load or vehicle.

(45) "Special mobile equipment" or an SME means a vehicle or vehicles exempt from registration that is not designed or used primarily for the transportation of persons or property; is not designed to operate in traffic; and is only incidentally operated or moved over the highways.

(46) "Special truck equipment" or an STE means a vehicle by nature of design that cannot meet the non-divisible weight allowances such as cement pump trucks, well boring trucks, or cranes with a lift capacity of five or more tons.

(47) "Spread axle" is two single axles that exceed 96 inches apart.

(48) "Tandem axle" means two axles spaced not less than 40 inches nor more than 96 inches apart and having at least one common point of weight suspension.

(49) "Towaway trailer transporter combination" means a combination of vehicles consisting of a trailer transporter towing unit and 2 trailers or semitrailers.

(50) "Trailer transporter towing unit" means a power unit that is not used to carry property when operating in a towaway trailer transporter combination.

(51) "Tridem axle" means any three consecutive axles whose extreme centers are not more than 144 inches apart, and are individually attached to or articulated from, or both, a common attachment to the vehicle including a connecting mechanism designed to equalize the load between axles.

(52) "Triple trailer" means a tractor and three trailers of approximately equal length.

(53) "Truck" means any self-propelled motor vehicle, except a truck tractor, designed or used for the transportation of property, laden or un-laden.

(54) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load that is drawn.

(55) "Trunnion axle" an axle configuration with two individual axles mounted in the same transverse plane, with four tires on each axle.

(56) "Trunnion axle group" two or more consecutive trunnion axles that are attached to the vehicle by a weight equalizing suspension system and whose consecutive centers are more than 40 inches, but not more than 96 inches apart.

(57) "Turnpike doubles" means a tractor and two trailers of equal length.

(58) "UCR" means Unified Carrier registration.

(59) "Un-laden" means a vehicle is not carrying a load.

(60) "Variable load suspension axle" or VLS is an axle that can be adjusted mechanically to various weight bearing capacities and can also be mechanically raised and lowered.

(61) "Vehicle" every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon rails or tracks.

R909-2-4. Legal Size Vehicle Dimensions.

(1) Maximum legal vehicle dimensions, laden and un-laden, that may be operated without special permits on Utah Highways:

(a) height: 14 feet

(b) width: 8 feet 6 inches; and

(c) length: See Table 1 Legal Size Vehicle Dimensions

TABLE 1

Legal Size Vehicle Dimensions

Vehicle	Maximum Length	Comments
Single motor vehicle	45 feet	Measured from bumper to bumper.
Semi-Trailer	53 feet	A trailer may not exceed 53 feet.
Double trailer combinations	61 feet	Measured from the front of the first trailer to the rear of the second trailer, excluding appurtenances. There is no overall length limitation on a truck tractor and double trailer combination when the trailers coupled together measure 61 feet or less.
Stinger-steered	Less than 80 feed	Stinger-steered combinations are measured from bumper to bumper. Transporters may have front overhang of less than 4 feet and a rear overhang of less than 6 feet, with a maximum vehicle length limitation of less than 80 feet (excluding overhangs).
Saddle Mount	97 feet	This will allow a maximum of three saddle mount vehicles, one power unit and one full mount.
Truck trailer combination	65 feet	Measured from bumper to bumper.
Dromedary unit	65 feet	Truck tractor, unloaded box deck and trailer. A dromedary unit is considered a truck trailer configuration whether laden or un-laden.
	75 feet	Dromedary units transporting Class 1 Explosives or munitions related Security materials, as specified by the Department of Defense, are allowed up to 75 feet of overall length on the interstates. US highways and reasonable access routes without requiring a permit. Reasonable access means to the Interstate or US highway system.
All other combinations including recreational vehicles	65 feet	Measured from bumper to bumper.
Overhang	3 feet front 6 feet	Overhang may not carry any load extending more than 3 feet beyond the front of the power unit or more than 6 feet beyond the rear of the

		bed or body of the vehicle.
Drawbar	15 feet	The drawbar or other connection between any two vehicles, one of which is towing or drawing the other on a highway, may not exceed 15 feet in length from one vehicle to the other, measured from box to box or frame to frame, except in the case of a connection between any two vehicles transporting poles, pipe, machinery, or structural material that cannot be dismembered when transported upon a pole trailer.
Commercial delivery of light and medium duty trailers	Less than 82 feet	Consisting of a trailer transporter towing unit and 2 trailers or semitrailers with a total weight not to exceed 26,000 lbs; and in which the trailers or semitrailers carry no property and constitute inventory property of a manufacturer, distributor, or dealer of such trailers or semitrailers, may have an overall length limitation of less than 82 feet on a towaway trailer transporter combination.

R909-2-5. Legal Weight Limitations.

(1) The maximum gross and axle weight limitations are noted in Table 2 and may not be operated in excess of:

TABLE 2

Maximum Gross and Axle Weight Limitations

Single Wheel	10,500 pounds
Single Axle	20,000 pounds
Tandem Axle	34,000 pounds
Tridem Axle	must comply with bridge formula
Gross Vehicle Weight	80,000 pounds

(2) An overweight permit must be obtained to authorize any exception to the maximum weight limitations listed in Table 2.

(3) The weight limitation in Table 2 does not apply to a covered heavy-duty tow and recovery vehicle.

(4) Emergency vehicles may exceed the weight limits (up to a maximum gross vehicle weight of 86,000 pounds) of less than - 24,000 pounds on a single steering axle; 33,500 pounds on a single drive axle; 62,000 pounds on a tandem axle; or 52,000 pounds on a tandem rear drive steer axle.

(5) A natural gas vehicle may exceed any vehicle weight limit (up to a maximum gross vehicle weight of 82,000 pounds) by any amount that is equal to the difference between: the weight of the vehicle attributable to the natural gas tank and fueling system carried by that vehicle; and the weight of a comparable diesel tank and fueling system.

R909-2-6. Tire Load Provisions.

(1) The use of narrow single tires, that are less than 14 inches wide, on any combination vehicle requiring an overweight or oversize permit shall not be allowed on single axles, except for steering axles, including self-steering VLS, or retractable axles, or wide base tires, that are 14 inches or greater.

(2) All axles having a weight in excess of 10,000 pounds shall be equipped with four tires per axles, or wide base single tires.

(3) In circumstances where weight limitations are based on tire width, the manufacturer's size, as indicated on the sidewall will be used to determine maximum tire width:

(a) for non-permitted or legal vehicles, no tire shall exceed 600 pounds per inch of tire width as indicated on the sidewall;

(b) tire loading on vehicles requiring an oversize or overweight permit shall not exceed 500 pounds per inch of tire width for tires 11 inches wide or greater;

(c) tires less than 11 inches wide shall not exceed 450 pounds per inch of tire width; and

(d) except as provided in R909-2-6, single axle loading shall not exceed 20,000 pounds, and tandem axle loading shall not exceed 34,000 pounds.

(4) Except for steering axles, self-steering VLS and retractable axles, or wide based tires, that are 14 inches wide or greater as indicated by the manufacturer's sidewall rating, all axles weighing more than 10,000 pounds shall have at least four tires per axle.

(a) For example: A tridem axle group that is designed for equalized weight distribution, equipped with single tires less than 14 inches in width, will be allowed 30,000 pounds. A tandem axle group that is designed for equalized weight distribution, equipped with single tires less than 14 inches in width will be allowed 20,000 pounds. All axles in the group must be duals or super singles to be allowed maximum weight.

(5) Dual or super single tires, that are 14 inches or greater, are required on all trailer axles.

R909-2-7. Variable Load Axles.

(1) Vehicles with variable load axles are limited as follows:

(a) no more than three fixed axles shall be allowed in any group;

(b) retractable or variable load suspension axles installed after January 1990 shall be self-steering on power units or when augmenting a tridem group on trailers;

(i) Non-divisible loads may be exempt from these restrictions upon written approval from the division.

(c) no axle in a group with a retractable or VLS axle shall exceed legal or bridge formula weight requirements, or the manufacturer's tire rating; and

(d) Controls for raising or lowering retractable or VLS axles may be located in the cab of the power unit. The pressure regulator valve shall be positioned outside of the cab and be inaccessible from the driver's compartment.

R909-2-8. General Oversize or Overweight Provisions.

(1) Except when entering on Northbound I-15 at the St. George Port of Entry, Westbound I-80 at the Echo Port of Entry, and Eastbound I-80 at the Wendover Port of Entry, the appropriate permit must be obtained prior to operating within the State of Utah.

(2) Each oversize or overweight permit shall be carried in the vehicle or combination vehicles.

(a) The permit may be in paper or electronic format.

(3) The conditions that must be met to obtain an oversize or overweight permit are:

(a) the motor carrier complies with the financial responsibility obligations;

(b) the vehicle or vehicles must be properly registered;

(c) the driver or drivers are properly licensed with appropriate endorsements;

(d) the motor carrier complies with the Federal Motor Carrier Safety Regulations;

(e) the motor carrier complies with the Hazardous Material Regulations; and

(f) the motor carrier complies with the Unified Carrier Registration or UCR as required.

(4) Exception. Length limitations do not apply to combinations of vehicles operated at night by a public utility when required for emergency repair of public service facilities or properties, or when operated with an oversize or overweight permit.

(5) Liability of permittee. The applicant or permittee, as a condition for obtaining an oversize permit, shall assume all responsibility for crashes, including injury to any persons or damage to public or private property caused by their operations.

(6) Indemnity clause. The applicant or permittee, agrees

to indemnify and hold harmless the department from any and all claims resulting directly or indirectly from the operation and transportation of vehicles or combination of vehicles operating under an oversize or overweight permit.

R909-2-9. Transfer or Replacement of Permits.

(1) Division personnel may transfer permits from one vehicle to another for a fee under the following conditions:

(a) annual and semi-annual permits may be transferred to another unit within the same company;

(b) the customer has sold or purchased a vehicle; or

(c) lease changes from one company to another by providing evidence of permit ownership.

(2) A transfer permit will be issued with the same expiration date as the original permit.

R909-2-10. Permit Revocation, Suspension and Confiscation.

(1) Violations of any permit that may result in the revocation, suspension or confiscation of the permit include, but are not limited to:

(a) speeding in excess of the posted speed limit or the speed indicated on the permit;

(b) lane travel;

(c) weather;

(d) load securement;

(e) violations of the Federal Motor Carrier Safety Regulations; and

(f) violations of the Hazardous Material Regulations.

(2) Before a vehicle can be moved, it must be made legal, properly permitted and all of the out-of-service violations corrected.

(3) Patterns of non-compliance at a carrier level may result in the following actions:

(a) civil penalties;

(b) suspension or revocation of permit privileges; or

(c) an order to cease and desist operations.

R909-2-11. Weather Travel Restrictions.

(1) No carrier shall operate a longer combination vehicle (LCV), a tractor trailer combination in excess of 81 feet or a truck and two-trailer combination in excess of 92 feet, when the following conditions exist:

(a) wind in excess of 45 m.p.h.;

(b) any accumulation of snow and ice on the roadway; or

(c) visibility less than 1,000 feet.

(2) No carrier shall operate an oversize vehicle or load in excess of 10 feet wide, 105 feet long, 10 feet front or rear overhang when the following conditions exist:

(a) any accumulation of snow and ice on the roadway; or

(b) visibility less than 1,000 feet.

R909-2-12. Curfew Congestion Restrictions.

(1) Unless otherwise authorized, travel is prohibited for loads or vehicles in excess of 10 feet wide, 105 feet overall length, and 14 feet in height, Monday thru Friday between 6 a.m. and 9 a.m. and between 3:30 p.m. and 6 p.m. mountain time on the following highways:

(a) all highways south of Perry Willard Interchange, I-15, Exit #357;

(b) all highways in Weber, Davis, and Salt Lake Counties;

(c) all highways in Utah County north of I-15, Exit #261;

(d) SR 68, North of mile post 16 in Utah County;

(e) I-80 East side of Salt Lake County mile post 139 to mile post 101 on the West side of Salt Lake County; and

(f) I-84 west of mile post 91.

(2) The division may authorize exceptions to the curfew congestion restrictions based on mitigating circumstances.

R909-2-13. Holiday Travel Restrictions.

(1) Travel is prohibited for loads in excess of 10 feet wide, 105 feet overall length, and 14 feet in height during the following holidays:

(a) Christmas Day;

(b) New Year's Day;

(c) Memorial Day;

(d) Independence Day;

(e) Labor Day; and

(f) Thanksgiving Day.

(2) Monday holiday observance:

(a) Holiday restrictions to begin at 2:00 p.m. the day before the holiday and extend to sunrise the day after the holiday.

(3) Monday holidays and Monday observed holiday restrictions begin at 2:00 p.m. through midnight on the Friday prior to the holiday. Normal travel may resume from sunrise on Saturday through Sunday at midnight. Monday holiday restriction continues at 12:01 a.m. on Monday and ends Tuesday at sunrise.

(4) The division may authorize exceptions to the holiday travel restriction based on mitigating circumstances.

(5) The division may prohibit movement of oversize loads during days of anticipated high traffic volume such as those that occur during hunting seasons, other holidays, weather conditions, or special events.

R909-2-14. Night Time Restrictions.

(1) Loads exceeding the following dimensions are restricted to daylight hours except as provided in R909-2-15:

(a) 14 feet high;

(b) 10 feet wide;

(c) 105 feet in length; or

(d) overhang in excess of 10 feet.

R909-2-15. Night Time Travel Provisions.

(1) The movement of oversize loads at night will be allowed under the following conditions:

(a) loads may not exceed 12 feet wide on secondary highways, 14 feet wide on interstates, or 14 feet high on all roadways;

(b) loads exceeding 10 feet wide, 105 feet overall length, or 10 feet front or rear overhang are required to have one certified pilot escort on interstate highways and two on all secondary highways;

(i) Exception. A tow truck towing vehicles with a total length of 120 feet or 10 feet wide may travel during hours of darkness and does not require a pilot escort.

(c) loads exceeding 92 feet overall length are required to have proper lighting every 25 feet, with amber lights to the front and sides of the load marking extreme width, and red to the rear; and

(d) night time travel authorization does not supersede adverse weather conditions.

(2) The division may authorize exceptions to the night time travel provisions based on mitigating circumstances.

R909-2-16. Oversize Divisible Load Provisions.

(1) An oversize permit may be issued for moving a combination of vehicles and loads exceeding the legal limits under the following conditions:

(a) the height of the combination or load does not exceed 14 feet 6 inches;

(b) the width of the combination or load does not exceed 8 feet 6 inches.

(c) in combinations, a longer trailer shall precede the shorter trailer;

(d) in multiple trailer combinations, a lighter trailer may not be placed in front of a heavier trailer when the weight

difference is greater than 4000 pounds; and

(e) drawbars exceeding 15 feet in length shall be marked with retro-reflective tape the entire length of the drawbar on both the left and right side of the drawbar.

(i) The drawbar shall display an amber light on both the right and left side of the drawbar located near the center of the drawbar.

R909-2-17. Oversize Non-Divisible Load Provisions.

(1) Permitted vehicles must comply with the following conditions:

(a) all vehicles and loads shall be reduced to the minimum practical dimensions;

(b) semi-annual and annual permits may be issued for dimensions up to, but not exceeding:

(i) 14 feet in height,

(ii) 14 feet 6 inches in width, and

(iii) 105 feet in length.

(2) Exceptions may be granted by the division for annual permitted loads in excess of this section.

(3) Bulldozer blades, loader buckets or similar equipment exceeding 16 feet in width shall be removed for transport and may be hauled on the same load with the machinery after removal.

(4) Loads exceeding 17 feet in width on two-lane routes, 20 feet in width on interstates, or 17 feet 6 inches in height on all public highways may be allowed under the following terms and conditions:

(a) the permittee shall notify the division by submitting a permit application online, of the dimensions of the oversize vehicle or load and the proposed route to be used;

(b) the division will notify the department region or district permit official affected by the proposed route, and will obtain authorization for the move;

(c) permittee must request authorization through the online system at least 48 hours in advance of the movement;

(d) permit is not valid until the permittee has assumed the cost and responsibility to obtain utility company authorizations and clearances; and

(e) the permittee will assume all costs when a certified police escort or escorts are required.

(5) Tow trucks may purchase a semi-annual or annual non-divisible oversize permit up to 10 feet wide and 120 feet in length.

(a) Loads exceeding 10 feet wide and 120 feet long shall purchase a single trip permit.

R909-2-18. Oversize Non-Divisible Load Provisions Requiring Pilot Escort Vehicles.

(1) One pilot vehicle is required for vehicles or loads, which exceed the following dimensional conditions:

(a) 12 feet in width on secondary highways for non-interstate, and 14 feet in width on divided highways for interstates;

(b) 105 feet in length on secondary highways and 120 feet in length on divided highways; and

(c) overhangs in excess of 20 feet shall have a pilot escort vehicle positioned to the front for front overhangs and to the rear for rear overhangs.

(2) Two pilot escort vehicles are required for vehicles or loads which exceed the following dimensional conditions:

(a) 14 feet in width on secondary highways;

(b) 16 feet in width on divided highways;

(i) mobile and manufactured homes with eaves greater than 12 inches shall be measured for overall width including eaves and pilot escort vehicles assigned as specified; or

(c) 120 feet in length on secondary highways;

(d) 16 feet in height on all highways; or

(e) when otherwise required by the division.

R909-2-19. Oversize Non-Divisible Load Provisions Requiring Police Escorts.

(1) Police escorts are required for vehicles with loads which exceed:

(a) 17 feet wide or 17 feet 6 inches high on secondary highways; or

(b) 20 feet wide or 17 feet 6 inches high on all highways; or

(c) All loads in excess of 175 feet in length must have a minimum of one police escort;

(d) All loads in excess of 200 feet in length will require a minimum of two police escorts.

(2) The division may require police escorts based on extenuating circumstances.

R909-2-20. Oversize Non-Divisible Load Lighting, Signing and Flag Requirements.

(1) Oversize non-divisible load lighting:

(a) warning lights required when headlights are necessary;

(b) front overhang in excess of three feet shall be marked with a steady, amber marker light and red flag;

(c) rear overhang exceeding four feet shall be marked with red clearance lights for night travel;

(d) vehicles with front or rear overhang exceeding 20 feet from the front or rear bumper of a vehicle, or from the center of the closest axle in the absence of a bumper, a rotating or flashing beacon visible from a minimum of 500 feet, and shall be displayed at a minimum height of four feet above ground;

(e) tow vehicle headlights shall be operated on low beam, day or night, as an additional warning to traffic; and

(f) night time travel, when authorized by the division may be permitted with marker lights indicating extreme width using amber lights front and center, and red lights to the rear.

(2) Oversize non-divisible load sign requirements. Non-divisible oversize loads exceeding 10 feet in width, 14 feet in height and 105 feet in length shall display an "OVERSIZE LOAD" sign, to warn the motoring public that extra-large vehicles are in operation. Signs must:

(a) be 7 feet by 18 inches;

(b) have a yellow background with 10 inch high black letters that are painted with 1 5/8 inches wide stroke to read: "OVERSIZE LOAD";

(c) be impervious to moisture;

(d) have front signs mounted on front bumper or on top of vehicle cab with letters presented toward the front of the vehicle;

(e) have rear signs positioned at the rear most part of the Vehicle or load as feasible, ensuring in all cases that the load does not obstruct the view of the sign;

(f) if possible, have the bottom edge of the sign be positioned not more than 5 feet above the road surface;

(g) be mounted with adequate supporting anchorage, constructed, maintained, and displayed so that they are clearly legible at all times;

(h) be covered, removed or placed face down when the vehicle is not engaged in an oversize movement; and

(i) oversize loads signs are not required on LCVs.

(3) Oversize non-divisible load flag requirements. Red or orange flags must be affixed on all extremities when:

(a) vehicle or load exceeds 10 feet in width;

(b) loads on a vehicle exceeding three feet to the front or four feet to the rear of the bed or body while in operation;

(c) flags shall be completely clean and not torn, faded, or worn out and shall be fastened so as to wave freely; and

(d) over dimensional flagging is not required on LCVs.

R909-2-21. Convoys.

(1) The movement of more than one permitted vehicle is allowed provided prior authorization is obtained from the

division with the following conditions:

(a) the number of permitted vehicles in the convoy shall not exceed two;

(b) loads may not exceed 12 feet wide or 150 feet overall length;

(c) distance between vehicles shall not be less than 500 feet or more than 700 feet;

(d) distance between convoys shall be a minimum of one mile;

(e) all convoys shall have a certified pilot escort in the front and rear with proper signs;

(f) police escorts or department personnel may be required;

(g) convoys must meet all lighting requirements;

(h) convoys are restricted to freeway and interstate systems; and

(i) approval for convoys or night time travel may be obtained by contacting the division, and exceptions may be granted by the division on a case by case basis.

R909-2-22. Trailers in excess of 53 to 57 Feet in Length.

Trailers exceeding 53 feet but not to exceed 57 feet may acquire a single trip, semiannual or annual permit. Trailers in excess of 53 feet must have LCV authority to purchase semi-annual and annual permits.

R909-2-23. Longer Combination Vehicles.

(1) Motor Carriers operating longer combination vehicles or LCV's must apply and be approved to operate on designated routes on Utah's interstate system.

(2) Authorized motor carriers may operate interstate LCV's with a cargo or cargo carrying length as follows:

(a) a tractor trailer or tractor trailer combination in excess of 81 feet not to exceed 95 feet cargo or cargo carrying length; or

(b) a truck and two-trailer combination in excess of 92 feet not to exceed 95 feet in length, 14 feet in height, or 8 feet 6 inches in width.

(3) LCV conditions for operation:

(a) in combinations, a longer trailer shall precede the shorter trailer;

(b) non-divisible dimensions with a width greater than 8 feet 6 inches or height greater than 14 feet, may not be transported on LCV's; and

(c) acceptable travel conditions exist in accordance with hazardous conditions for loads in excess of 81 feet cargo or cargo carrying length.

(4) A truck and single trailer exceeding legal length may be permitted up to 88 feet, and requires LCV authority exceeding 88 feet up to 92 feet.

(5) A dromedary unit when exceeding legal length may be permitted up to 88 feet.

(6) LCV's and double trailers exceeding 81 feet cargo carrying length may not operate on secondary highways other than those pre-approved by the division.

R909-2-24. Overweight Divisible Load Provisions.

(1) An overweight divisible load permit may be issued for moving a combination of vehicles and loads exceeding the legal limits under the following conditions:

(a) The vehicle or combination of vehicles is properly registered for 78,001 to 80,000 pounds;

(b) The width of the vehicle does not exceed 8 feet 6 inches wide or 14 feet high;

(c) All axles weighing more than 10,000 pounds are required to have at least four tires per axle except for steering axles, self-steering variable load suspension or retractable axles, or wide base single tires, that are 14 inches or greater as indicated by the manufacturer's sidewall rating.

(2) Overweight divisible load options are:

(a) dual tires on all axles;

(b) super wide single tires that are 14 inches wide or greater;

(c) not to exceed 10,000 pounds per axle;

(d) the axle, groups of axles, and GVW do not exceed the bridge formula $W = 500(LN/(N-1) + 12N+36)$; and

(e) all axles in the group must be duals or super singles to be allowed maximum authorized weight.

(3) The combination unit will conform to the bridge formula and the legal axle and gross vehicle weight limits.

(4) A divisible load permit may not be used to transport a non-divisible load.

(a) Exception. An overweight non-divisible load may operate with a divisible overweight permit provided the axle, gross and bridge limitations do not exceed those specified on the permit.

R909-2-25. Overweight Non-Divisible Load Provisions.

(1) Permitted vehicles must comply with the following conditions:

(a) all vehicles and loads shall be reduced to the minimum practical dimensions; and

(b) the vehicle or combination of vehicles is properly registered for 78,001 to 80,000 pounds or the total gross weight of the vehicle.

(2) Actual weight must comply with the bridge table formula ~1.47 x 500 (LN/N-1 + 12N + 36).

(3) A permit for a non-divisible load may not be used to transport a divisible load.

(4) Vehicles with a gross vehicle weight of less than 125,000 may be permitted on a single trip, semiannual trip, or annual trip basis as described in Table 3:

TABLE 3

Single Trip, Semi-Annual Permits allowed up to:

Single Axle	29,000 pounds
Tandem Axle	50,000 pounds
Tridem Axle	61,750 pounds
Trunnion Axle	60,000 pounds
Gross Weight	125,000 pounds

(5) Tow-trucks may purchase a semi-annual, or annual non-divisible overweight permit as specified in Table 3.

(a) Tow-truck loads exceeding the maximum limits in Table 3 shall purchase a single trip permit.

(6) Vehicles transporting milk products may exceed the gross weight limit of 80,000 pounds or the maximum weight allowed by the Federal Bridge Formula. This requires an appropriate non-divisible permit issued by the Department.

(a) Milk products being carried using multiple trailers will be required to abide by divisible requirements and do not get the non-divisible exception.

R909-2-26. Overweight Non-Divisible Loads Exceeding 125,000 Pounds Gross or Axle Weights.

(1) Loads exceeding 125,000 pounds gross, or axle weights in R909-2-24, may only purchase single trip permits.

(2) Axle, bridge, and gross weight allowances will be determined based on the non-divisible bridge table formula ~1.47 x 500 (LN/N-1 + 12N + 36) or in accordance with the bridge table.

(3) 9 feet wide axles are allowed 7.5% more weight than 9 feet wide axles.

(4) 10 feet wide axles are allowed 15% more weight than 8 feet wide axles.

(5) When using an axle equipped with eight tires, rather than four, add 10% to the weight authorized for an 8 foot wide axle group.

(6) All tires shall be in compliance with the manufacturers

tire load rating as indicated on the tire side wall.

(7) All STE operations must have an STE profile sheet when the axle limitations specified in Table 3 or bridge table are exceeded.

R909-2-27. Mobile and Manufactured Homes.

(1) Mobile and manufactured homes exceeding 14 feet 6 inches to 16 feet in wall-to-wall width, transported on their own running gear, may be issued a single trip permit under the following conditions:

(a) all trailer axles shall be equipped with operational brakes; and

(b) axle and suspensions shall not exceed manufacturer's capacity rating.

(2) Paneling requirements of the open sides of a mobile manufactured home:

(a) a rigid material of 0.5 millimeter plastic sheathing backed by a rigid grillwork not exceeding squares of four feet to prevent billowing must fully enclose the open sides of the units in transit.

(3) Rear mounted stop and turn signal lights shall be a minimum 6 inches in diameter with a type 35 red reflector lens.

(a) The lens shall be mounted not more than 18 inches from the outer edge of the unit and not less than 15 inches or more than 8 feet above the road surface.

(b) Houses, buildings, and structures not manufactured or built to be transported, will not require tail, brake, or signal lights mounted on the structures as certified pilot and police escort vehicles provide sufficient warning of the intent to brake, turn or stop.

(4) Two safety chains shall be used, one each on the right and left sides but separate from the coupling mechanism connecting the tow vehicle and the mobile and manufactured home while in transit.

(5) Tow Vehicles. Tow vehicles shall comply with the following minimum requirements:

(a) conventional or cab-forward configuration shall have a minimum wheelbase of 120 inches;

(b) cab-over engine tow vehicles shall have a minimum wheelbase of 89 inches;

(c) have a minimum of four rear tires; and

(d) mirrors on each side of the tow vehicle shall be arranged so that the driver can see the entire length of both sides of the towed unit.

(6) Trailer brake requirements:

(a) mobile manufactured homes in excess of 8 feet 6 inches wide, up to 12 feet wide and equipped with one axle, must have operational brakes; and

(b) a minimum of two axles equipped with operative brake assemblies is required on each mobile manufactured home unit in excess of 12 feet wide.

R909-2-28. Pilot Escort Requirements and Certification Program.

(1) Pilot escort driver requirements. Individuals who operate a pilot escort vehicle must meet the following requirements:

(a) must be a minimum of 18 years of age;

(b) must possess a valid driver's license for the state jurisdiction in which the driver resides;

(c) must obtain a certification card by an authorized qualified certification program as outlined in this section, and shall have it in their possession at all times while in pilot escort operations;

(d) within 30 days pilot escort drivers must provide a current Motor Vehicle Record (MVR) certification to the qualified certification program at the time of the course;

(e) no passengers under 16 years of age are allowed in pilot escort vehicles during movement of oversize loads;

(f) a pilot escort driver may not perform as a tillerman while performing pilot escort operations; and

(g) a pilot escort driver must meet the requirements of 49 CFR 391.11 if using a vehicle for escort operations in excess of 10,000 lbs.

(2) Driver certification process.

(a) Drivers domiciled in Utah must complete a Utah pilot escort certification course authorized by the division. A list of authorized instructors may be obtained by contacting (801) 965-4892.

(b) Pilot escort drivers domiciled outside of Utah may operate as a certified pilot escort driver with another state's certification credential, provided the course meets the minimum requirements outlined in the Pilot Escort Training Manual - Best Practices Guidelines as endorsed by the Specialized Carriers and Rigging Association, Federal Highway Administration, and the Commercial Vehicle Safety Alliance.

(c) The department may enter into a reciprocal agreement with other states provided they can demonstrate that course materials are comprehensive and meet minimum requirements outlined by the department.

(i) A current listing of reciprocity states may be obtained by contacting the division at 801-965-4892.

(d) The pilot escort driver's initial certification expires four years from the date issued, and it is the responsibility of the driver to maintain certification.

(i) One additional four-year certification may be obtained through a mail-in or on-line re-certification process provided by a qualified pilot escort training entity.

(3) Suspensions and revocations.

(a) Pilot escort drivers may have their certification denied, suspended, or revoked by the division if it is determined that a disqualifying offense has occurred within the previous four years.

(b) Drivers convicted of serious traffic violations such as excessive speed, reckless driving and driving maneuvers reserved for emergency vehicles, driving under the influence of alcohol or controlled substances may have their certification denied, suspended, or revoked by the division.

(c) The division may suspend for first offenses up to one year. Subsequent offenses may result in permanent revocation of driver certification.

(d) When a driver is denied pilot escort driving privileges for reasons other than the conditions set forth in this rule, the individual may file an appeal.

(i) The appeals shall be handled by a steering committee created by the division.

(e) The steering committee shall have the powers granted to the deputy director in R907-1-3 for appeals from other division administrative actions. This committee's decision, if adopted by the director of the division, will be considered a final agency order under Administrative Procedures in R907-1.

(4) Pilot escort vehicle standards.

(a) Pilot escort vehicles may be either a passenger vehicle or a two-axle truck with a 95 inch minimum wheelbase and a maximum gross vehicle weight of 12,000 lbs and properly registered and licensed as required under Sections 41-1a-201 and 41-1a-401.

(b) Equipment shall not reduce visibility or mobility of pilot escort vehicle while in operation.

(c) Trailers may not be towed at any time while in pilot escort operations.

(d) Pilot escort vehicles shall be equipped with a two-way radio capable of transmitting and receiving voice messages over a minimum distance of one-half mile.

(i) Radio communications must be compatible with accompanying pilot escort vehicles, utility company vehicles, permitted vehicle operator and police escort, when necessary.

(ii) When operating with police escorts a CB radio is

required.

(e) Pilot escort vehicles may not carry a load.

(5) Pilot escort vehicle signing requirements. Sign requirements on pilot escort vehicles are as follows:

(a) pilot escort vehicles must display an " OVERSIZE LOAD" sign, which must be mounted on the top of the pilot escort vehicle;

(b) signs must be a minimum of 5 feet wide by 10 inches high visible surface space, with a solid yellow background and 8 inch high by 1 inch wide black letters. Solid is defined as when being viewed from the front or rear at a 90-degree angle, no light can transmit through;

(c) the sign for the front pilot escort vehicle shall be displayed so as to be clearly legible and readable by oncoming traffic at all times; and

(d) the rear pilot escort vehicle shall display its sign so as to be readable by traffic overtaking from the rear and clearly legible at all times.

(6) Pilot escort vehicle lighting requirements. Two methods of lighting are authorized by the division. Requirements are as follows:

(a) two AAMVA approved amber flashing lights mounted with one on each side of the required sign. These shall be a minimum of six inches in diameter with a capacity of 60 flashes per minute with warning lights illuminated at all times during operation;

(b) an AAMVA approved amber rotating, oscillating, or flashing beacon or light bar mounted on top of the pilot escort vehicle. This beacon light bar must be unobstructed and visible for 360 degrees with warning lights illuminated at all times during operation; and

(c) incandescent, strobe or diode lights may be used provided they meet the above criteria.

(7) Pilot escort vehicle equipment requirements. Pilot escort vehicles shall be equipped with the following safety items:

(a) standard 18-incH or 24-inch red and white "STOP" and black and orange "SLOW" paddle signs. For nighttime travel moves, signs must be reflective in accordance with MUTCD standards;

(b) nine reflective triangles or 18-inch reflective orange traffic cones, not to replace or be replaced by items (c) or (d);

(c) eight red-burning flares, glow sticks or equivalent illumination device approved by the division;

(d) three orange 18 inch high cones;

(e) a flashlight with a minimum 1 1/2 inch lens diameter, with extra batteries or charger. An emergency type shake or crank flashlight will not be allowed;

(f) 6-inch minimum length red or orange cone or traffic wand for use when directing traffic;

(g) an orange hardhat and class 2 safety vest for personnel involved in pilot escort operations. Class 3 safety vests are required for nighttime travel moves;

(h) a height-measuring pole made of a non-conductive, non-destructive, flexible or frangible material, only required when escorting a load exceeding 16 feet in height;

(i) a fire extinguisher;

(j) a first aid kit that is clearly marked;

(k) one spare "OVERSIZE LOAD" sign, 7 feet by 18 inches;

(l) one serviceable spare tire, tire jack and lug wrench;

(m) a handheld two way simplex radio or other compatible form of communication for operations outside pilot escort vehicles; and

(n) vehicles shall not have unauthorized equipment on the vehicle such as those generally reserved for law enforcement personnel.

(8) Police escort vehicle equipment and safety requirements. Police escort vehicles shall be equipped with the following safety items:

(a) all officers must have a CB radio to communicate with the pilot and transport vehicles;

(b) officers shall complete a Utah Law Enforcement Check List and Reporting Criteria Form;

(c) officers shall verify that all pilot escorts are in possession of current pilot escort inspections, or they shall complete an inspection prior to load movement;

(d) police vehicles must be clearly marked with emergency lighting visible 360 degrees; and

(e) officers shall be in uniform while conducting police escort moves.

(9) Insurance for pilot escort vehicles.

(a) Driver shall posses a current certificate of insurance or endorsement which indicates that the operator, or the operator's employer, has in full force and effect not less than $750,000 combined single limit coverage for bodily injury and property damage as a result of the operation of the escort vehicle, the escort vehicle operator, or both causing the bodily injury and property damage arising out of an act or omission by the pilot escort vehicle operator of the escort duties required by the regulations. Such insurance or endorsement, as applicable, must be maintained at all times during the term of the pilot escort certification.

(b) Pilot escort vehicles shall have a minimum amount of $750,000 liability. This is not a cumulative amount.

(10) Pre-trip planning and coordination requirements. A co-ordination and planning meeting shall be held prior to load movement. The drivers carrying or pulling the oversize loads, the pilot escort vehicle drivers, law enforcement officers, department personnel, and public utility company representatives shall attend as required. When police escorts are present, a Utah Law Enforcement Check List and Reporting Criteria Form must be completed. This meeting shall include discussion and coordination on the conduct of the move, including at least the following topics:

(a) the person designated as being in charge such as a department representative or a law enforcement officer;

(b) all documentation for authorized routing and permit conditions is distributed to all appropriate individuals involved in the move;

(c) communication and signals coordination;

(d) permitted dimensions will be verified with measurement of load dimensions; and

(e) copies of permit and routing documents shall be provided to all parties involved with the permitted load movement.

(11) Permitted vehicle restrictions on certain highways. Certified pilot escort operators must refer to highway restrictions specified in the secondary highway restrictions prior to all load movements.

(12) Flagging requirements. During the movement of an over-dimensional load or vehicle, the pilot escort driver, in the performance of the flagging duties required by R909-2-28, may control and direct traffic to stop, slow or proceed in any situations where it is deemed necessary to protect the motoring public from the hazards associated with the movement of the over-dimensional load or vehicle. The pilot escort driver, acting as a flagger, may aid the over-dimensional load or vehicle in the safe movement along the highway designated on the over-dimensional load permit and shall:

(a) assume the proper flagger position outside the pilot escort vehicle, and as a minimum standard, have in use the necessary safety equipment as defined in 6E.1 of the MUTCD;

(b) use "STOP" and "SLOW" paddles or a 24-inch red or florescent orange or red square flag to indicate emergency situations, and other equipment as described in 6E.1 of the MUTCD; and

(c) comply with the flagging procedures and requirements

as set forth in the MUTCD and the Utah Department of Transportation Flagger Training Handbook.

R909-2-29. Requirements for Pilot Escort Qualified Training and Certification Programs.

(1) Application process. Application to become a third-party pilot escort trainer or instructor shall be made on a form furnished by the division, and shall include the following:

(a) name and address of entity;

(b) list of instructors;

(c) resumes of each instructor outlining related experience in the pilot escort, heavy haul, academia, or commercial vehicle enforcement fields;

(d) a copy of entity's business license;

(e) sample of digital image certification card that will be issued to students upon completion of the course;

(f) sample of "Flagger" certification card that will be issued to students upon completion of the course;

(g) procedural guidelines that outline security measures implemented to safeguard student's personal information; and

(h) copies of all course curriculum and testing materials. Course materials will be reviewed and approved by the division to ensure that all requirements are met.

(2) Course curriculum requirements. An extensive course curriculum description and information can be obtained by contacting the division at (801) 965-4892. Course curriculum to certify pilot escort drivers to operate in Utah must cover the following topics:

(a) division rules governing over-size load movements;

(b) pilot escort operations;

(c) flagging maneuvers for over dimensional loads;

(d) oversize or overweight load movement, coordination, planning and communication requirements and best practices;

(e) pilot escort vehicle positioning and situational training;

(f) rail grade crossing safety;

(g) routing techniques, including pre-trip surveys; and

(h) insurance coverage requirements and liability issues.

(3) Testing procedures.

Testing materials shall be submitted to the division for approval. Tests should be structured with a minimum of 40 questions per exam. A minimum of two different examinations shall be submitted and used randomly during the instruction of the course and structured as follows:

(a) 12 Fill in the blank;

(b) 12 Multiple choice;

(c) 12 true and false questions;

(d) one to six questions dealing with safety equipment;

(e) one to four questions dealing with the duties of pilot escort drivers;

(f) one to six questions dealing with maintenance of equipment; and

(g) one to six questions dealing with items that must be collected in a route survey.

(4) Grading of examinations. Entity must provide an explanation of how the test will be administered.

(5) Students must pass with an 80% score to be certified.

(6) Students receiving less than 80% score will be allowed to attend one additional class without additional cost except for reimbursement of any additional materials and postage costs.

(7) When a contract is terminated with the third party pilot and escort trainer, it will be the responsibility of the entity to provide an electronic database to the division, of all students that have completed the course.

(8) Applicant Recertification Procedures.

(a) Entity shall provide means in which an individual may be re-certified either by mail or the internet.

(b) Entity shall submit written procedures documenting the process for the examination that will allow the applicant re-certification. The examination shall not be a duplicate of the examination used during the initial certification process and should be constructed as to educate the student on updates pertaining to pilot escort certification and legal requirements.

(c) Re-certification tests shall be structured as outlined in R-909-2-29.

(d) Applicant's receiving less than 80% score will be allowed to retake the certification exam one additional time at no additional class without additional cost except for reimbursement of any additional materials and postage costs.

(e) Students receiving less than 80% score will be allowed to attend one additional class or certify by mail or online without additional cost except for reimbursement of any additional materials and postage costs.

(9) Training costs. Costs associated with providing classroom instruction, materials, testing and credentialing will be the responsibility of the authorized training entity.

(a) These costs may be passed on to the students for certification in the form of tuition determined by the training entity based on business model and expenses.

(b) Cost proposal and course fees must be submitted to the division for approval as part of the application process.

(10) Suspensions and revocations of pilot escort training entities.

(a) The division may suspend or revoke the entity's ability to provide services if the entity fails to meet conditions and requirements set forth in r909-2-29.

(b) If an entity has its authority to provide services revoked or suspended, the entity may appeal the decision.

(i) The appeals shall be handled by a steering committee created by the division.

(ii) The steering committee shall have the powers granted to the department's deputy director for appeals from other division administrative actions.

(iii) This committee's decision, if adopted by the director of the division, will be considered a final agency order under the Utah Administrative Procedures Act.

(11) The division has the right to review:

(a) rates;

(b) fees;

(c) procedures; and

(d) the certification process established by the entity whenever the division deems it necessary to ensure compliance with this rule.

(12) Record retention and data management requirements. Authorized pilot escort qualified training and certification entities or institutions shall maintain the following certification and recertification records for a period of eight years:

(a) student's name, address, and contact information;

(b) driver's license number, original MVR and original proof of insurance information from insurance provider;

(c) copy of each student's written exam;

(d) digital copy of certification flagger card, including photo;

(e) training and expiration dates on all students;

(f) re-certification and expiration dates; and

(g) list of instructors, proctors, administrators, and a copy of their resumes and date of classroom instruction and recertification dates providing services.

(13) Records may be scanned and kept electronically provided entity has necessary data backup and retrieval procedures.

(a) The division has the right to review any records retained and may observe the instruction given both in the classroom and through the re-certification process whenever the division deems it necessary to insure compliance with this rule.

(b) The loss, mutilation or destruction of any records which an entity is required to maintain, must be immediately reported by the entity by affidavit stating the date such records were lost, mutilated, or destroyed, and the circumstances

involving such loss, mutilation, or destruction.

(c) All records must be retained by the entity for eight years, with the exception of the computerized file, which is to be kept permanently, during which time the entity shall be subject to inspection by the division during reasonable business hours. In the event that the entity goes out-of-business, the permanent record shall be submitted by the entity to the division.

(d) It is the responsibility of the entity to provide a list of applicants that have successfully re-certified along with the corresponding grade to the division at the end of each quarter of each calendar year.

(e) All records, including computerized records, must be provided to the division when requested for the purpose of an audit or review of the entities records. Failure to provide all records as requested by the division is a violation of this rule.

(f) Entities shall maintain accurate, up to date records.

R909-2-30. Farmers, Implements of Husbandry and Agricultural Operations.

(1) Vehicle combinations for hay truck operations may transport two rolls or bales of hay side by side when:

(a) the two rolls or bales are 10 feet or less in combined width;

(b) the load is being operated with a valid non-divisible oversize permit;

(c) oversize loads exceeding 8 feet 6 inches may not be transported on double trailers exceeding 61 feet cargo or cargo carrying length;

(d) the load must meet all other divisible load requirements in R909-2-24; and

(e) loads are properly secured.

(2) Implements of husbandry moved by a farmer, rancher, or his employees in connection with an agricultural operation must comply with:

(a) every farm tractor and towed farm equipment, towed or self-propelled implements of husbandry, designed for operation at speeds not in excess of 25 miles per hours, shall at all times be equipped with a slow moving vehicle emblem mounted on the rear; and

(b) every farm tractor and every self-propelled implement of husbandry manufactured or assembled after January 1970 shall be equipped with vehicular hazard warning lights visible from a distance of not less than 1,000 feet to the front and rear in normal sunlight, which shall be displayed whenever any such vehicle is operated upon a highway.

R909-2-31. Snow Plow Operations.

(1) Blades in excess of 8 feet 6 inches must be equipped with a yellow, rotating beacon warning light.

(2) Snow plows with up to 12 feet wide blades may operate without oversize permits, when they are in compliance with:

(a) lights which provide adequate illumination when the blade is in either the up, or down position;

(b) signaling lights shall not be obscured; and

(c) blades must be angled so that the minimum width is exposed to oncoming traffic during periods of travel between jobs.

R909-2-32. Parade Floats.

(1) Parade floats are not required to obtain an overweight or oversize permit, but they must meet the following requirements:

(a) all floats must have sufficient proof of insurance;

(b) all floats must carry the necessary safety equipment for the safe operation of the vehicle during movement;

(c) the float driver must have a clear 360 degree visibility;

(d) movement to and from parades should be made only during daylight hours unless the vehicle is adequately lighted and there is minimal congestion; and

(e) floats in excess of 14 feet in height, must be routed by the division.

R909-2-33. Transportation of Utility Poles.

(1) Utility poles may be transported up to 120 feet in overall length, including overhangs, with single trip, semi-annual or annual permit in accordance with:

(a) oversize load restrictions;

(b) pilot escort requirements;

(c) travel restrictions; and

(d) signing and lighting requirements.

(2) Permits are issued to the trailer transporting the poles using the trailer registration information.

(a) Upon company request, the permit may be issued to the truck or truck tractor.

(b) Utility poles exceeding 120 feet shall purchase a single trip, non-divisible oversize permit.

R909-2-34. Special Mobile Equipment.

(1) Special mobile equipment or SME refers to vehicles:

(a) not designed or used primarily for the transportation of persons or property;

(b) not designed to operate in traffic; and

(c) only incidentally operated or moved over the highways.

(2) Special mobile equipment exempt from registration includes:

(a) farm tractors; and

(b) off road motorized construction or maintenance equipment including backhoes, bulldozers, compactors, graders, loaders, road rollers, tractors, trenchers, and ditch digging apparatus.

(3) Heavy equipment designed for off-highway use such as scrapers, loaders, off highway cranes, and rock trucks, but not tracked vehicles may be issued single trip permits to operate under their own power, on approved routes other than interstate highways, as follows:

(a) the distance traveled shall not generally exceed 20 miles;

(b) only daylight operations are authorized and all oversize restrictions apply;

(c) weights must comply with the bridge formula for non-divisible loads;

(d) single axles equipped with single tires shall not be authorized to exceed 40,000 pounds;

(e) a minimum of one pilot escort vehicle is required; and

(f) special mobile equipment shall be routed by the division.

(4) Special mobile equipment or SME affidavit. All persons who operate or cause to operate an SME exempt from registration shall submit a completed special mobile equipment affidavit to the division.

(a) To be deemed complete, an affidavit must be on the form provided by the division and all required fields filled in. Affidavits will be available at all ports of entry. Affidavits shall be turned into a port of entry.

(b) Special mobile equipment exempt from registration shall carry a copy of the approved affidavit in the vehicle at all times;

(c) Vehicles that are not special mobile equipment shall register with the Utah State Tax Commission prior to operating the vehicle on a public highway.

(d) Upon receipt of a denial of special mobile equipment, if the owner or operator wishes to appeal the decision of the division, a petition may be filed with the department, within 30 days.

(i) A response to an appeal from the department will be made in writing within 30 days.

R909-2-35. Special Truck Equipment.

(1) The following vehicle configurations are considered special truck equipment:

(a) concrete pumper trucks;

(b) cranes or trucks performing crane service with a crane lift capacity of five tons or more; and

(c) well boring trucks.

(2) Vehicles classified as special truck equipment may be issued an oversize or overweight permit when exceeding legal dimensions.

(a) An approved profile sheet for special truck equipment shall be carried in the vehicle with the permit, when the axle limitations specified in R909-2-5 Table 2 or actual bridge or gross are exceeded.

(3) Vehicles classified as special truck equipment are eligible for a 50 % registration fee reduction.

R909-2-36. Port-of-Entry By-Pass Permit Provisions.

(1) A temporary by-pass permit may be issued to accommodate the multi-trip, highway transportation needs to motor carriers who meet the following criteria.

(a) Motor carriers shall meet the "Multi-trip" definition to receive and maintain by-pass privileges.

(i) A motor carrier may receive an exception from this requirement on a case-by-case basis, if the motor carrier is able to demonstrate that denial of a by-pass permit will cause a hardship if the vehicle has to be diverted to a port-of-entry.

(b) The basis for qualification to participate in the by-pass program is based in part on the carrier's safety history as shown in the Federal Motor Carrier Safety Administration's Safety Measurement System.

(i) A carrier with a CSA basic scores equal to or greater than the intervention thresholds noted in Table 4 for General, HM and Passenger, plus one other BASIC at or above the motor carrier threshold is not eligible to participate in the by-pass program.

(ii) A carrier is not eligible for a by-pass permit when the carrier meets the definition of a High-Risk Motor Carrier in Table 4.

TABLE 4

High Risk Motor Carrier Criteria

BASIC	General	HM	Passenger
Unsafe Driving	65%	60%	50%
Fatigue Driving (HOS)	65%	60%	50%
Driver Fitness	80%	75%	65%
Controlled Substances and Alcohol	80%	75%	65%
Vehicle Maintenance	80%	75%	65%
Cargo-Related	80%	75%	65%
Crash Indicator	65%	60%	50%

(c) A carrier may become eligible for a by-pass permit after a focused or comprehensive review indicates that the carrier is in compliance.

(d) As a condition of receiving a by-pass permit, a motor carrier is subject to audits, safety assessments, and inspections as the division considers necessary in order to carry out state and federal law.

(e) Vehicles that obtain by-pass privileges must have a weight ticket, from a scale certified by the Department of Agriculture, available for inspection by law enforcement. Scale tickets must be electronically printed and shall specify the time, date, unit-specific information, and destination.

(2) By-pass applications shall be submitted to the division.

(a) By-pass privilege carriers must re-apply yearly.

(b) Subcontractors operating under their own authority must apply for by-pass privileges independently.

(c) Carriers who lease vehicles from a subcontractor must ensure that the established by-pass criterion is met to maintain privileges.

(d) By-pass permit privileges are valid from the approval date and expire at the end of the application year on December 31.

(e) Applications must show routing information including point of origin, destination, and routine routes traveled.

(3) Approved vehicles within a motor carrier's fleet will be issued a by-pass decal, specific to each individual vehicle, and will receive a by-pass certificate that shall be carried in the vehicle.

(4) By-pass privileges may be granted to carriers traversing multiple ports of entry within the same route.

(5) Authorized by-pass routes are allowed for the following Port of Entries:

(a) Daniels Port of Entry on SR 40 with empty vehicles, traveling eastbound only;

(b) Kanab Port of Entry on Highway 89 from Kanab's Main Street to the Kanab Port of Entry, while traveling on Hwy 389 between Las Vegas, Nevada and Page, Arizona, and all vehicles must clear the St. George Port of Entry;

(c) Perry Port of Entry may be by-passed and travel on Highway 89 between Brigham City and Ogden; and

(d) Monticello Port of Entry may be by-passed on US-191 with empty vehicles only.

(6) By-pass privileges may be revoked or temporarily suspended should a carrier fail to meet the safety standards as set forth in the:

(a) Compliance, Safety, Accountability (CSA) program of the Federal Motor Carrier Safety Administration;

(b) Federal Motor Carrier Safety Regulations;

(c) size and weight limitations;

(d) by-pass zone routes; and

(e) out-of-service criteria.

(7) When an application for a by-pass permit is denied the motor carrier may file an appeal.

(a) The appeal shall be handled by the division hearing officer.

(8) The division will notify local law enforcement agencies of those carriers meeting the criteria for by-pass privileges.

R909-2-37. Annual Review of Permit Regulations and Conditions.

(1) During the regularly scheduled Motor Carrier Advisory Board meeting in April of each year, the board will review permit conditions and regulations as needed. The board is not required to review each of these items every year.

(2) This meeting will provide a forum for interested parties to provide evidence in support of regulation or permit condition modification.

(3) All interested parties must notify the division of these issues by March 1st of each year to ensure placement on the agenda.

(4) Any approved changes to permit conditions or regulations will be incorporated into this rule.

KEY: permits, safety regulations, size and weight, trucks

October 10, 2017	**72-1-201**
Notice of Continuation June 16, 2014	**72-7-406**
	72-9-303
	41-1a-102
	41-1a-231
	41-1a-1206
	72-7-402
	72-7-404
	72-7-407
	72-9-301
	72-9-502

R920. Transportation, Operations, Traffic and Safety.
R920-30. State Safety Oversight.
R920-30-1. Purpose and Authority.

The purpose of this rule is to adopt the Federal Transit Administration standards for State Safety Oversight. This rule is authorized by Sections 72-1-201, 72-1-208, and 72-1-214.

R920-30-2. Adoption of Federal Regulation.

The Federal Transit Administration, State Safety Oversight, Final Rule, Title 49 CFR Part 674 (eff. April 15, 2016) as it applies to the management of the State Safety Oversight Program, is incorporated by reference.

R920-30-3. Subpart A -- General Provisions.

A. Section 674.1 Purpose.
B. Section 674.3 Applicability.
C. Section 674.5 Policy.
D. Section 674.7 Definitions.
E. Section 674.9 Transition from Previous Requirements for State Safety Oversight.

R920-30-4. Subpart B -- Role of the State.

A. Section 674.11 State Safety Oversight Program.
B. Section 674.13 Designation of Oversight Agency.
C. Section 674.15 Designation of Oversight Agency for Multi-State System.
D. Section 674.17 Use of Federal Financial Assistance.
E. Section 674.19 Certification of a State Safety Oversight Program.
F. Section 674.21Withholding of Federal Financial Assistance for Noncompliance.
G. Section 674.23Confidentiality of Information.

R920-30-5. Subpart C -- State Safety Oversight Agencies.

A. Section 674.25 Role of the State Safety Oversight Agency.
B. Section 674.27 State Safety Oversight Program Standards.
C. Section 674.29 Public Transportation Agency Safety Plans: ?General Requirements.
D. Section 674.31 Triennial Audits: ?General Requirements.
E. Section 674.33 Notifications of Accidents.
F. Section 674.35 Investigations.
G. Section 674.37 Corrective Action Plans.
H. Section 674.39 State Safety Oversight Agency Annual Reporting to Fta.
I. Section 674.41 Conflicts of Interest.

KEY: state safety oversight, transit, safety
October 10, 2017 **72-1-201**
72-1-208
72-1-214

R920. Transportation, Operations, Traffic and Safety.
R920-50. Ropeway Operation Safety.
R920-50-1. Purpose.

This rule establishes regulations, requirements, and provides standards for the design, construction, and operation of a passenger ropeway, except private residence passenger ropeways as defined in Section 72-11-102(11), and establishes the procedures necessary to implement the powers and duties of the Utah Passenger Ropeway Safety Committee (Committee). Previously the Committee was known as the Utah Passenger Tramway Safety Committee. The Committee has also been referred to as the Tramway Board.

R920-50-2. Authority.

This rule is authorized by Section 72-11-210 to implement Title 72, Chapter 11, Passenger Ropeway Systems Act.

R920-50-3. Definitions.

In addition to terms defined at Section 72-11-102, the following terms are defined:

(1) "Aerial lift specialist" as used in American National Standards Institute (ANSI) B77.1 sections 3.3.4.1 and 4.3.4.1, means a Ropeway Inspector.

(2) "Aerial tramway specialist" as used in ANSI B77.1 section 2.3.4.1 means a Ropeway Inspector.

(3) "Air Space" means the area bounded by vertical planes commencing at a point thirty-five (35) feet from the intersection of the vertical planes of the ropes and ground surface.

(4) "Annual general inspection" means an inspection of a passenger ropeway made by a Ropeway Inspector to verify preservation of original design integrity and to determine that components and systems of the passenger ropeway are in proper working order and in accordance with this rule.

(5) "Audible warning devices" means an audible warning device that signals an impending start of the aerial lift.

(6) "Conveyor specialist" as used in ANSI B77.1 section 7.3.4.1 means a Ropeway Inspector.

(7) "Dynamic Testing Logs" means a record of the data collected during the dynamic test.

(8) "Experienced personnel" means an individual who has acquired knowledge and skills through study, training, or experience in ropeway maintenance, operation, or testing.

(9) "Existing ropeway" means any passenger ropeway that shall have been operated for passengers in excess of one calendar year.

(10) "Governing Standard" means "ANSI B-77.1, 2011" and "ANSI B77.2, 2014" as modified by rule of the Committee for use in the State of Utah. Use of these standards is authorized by Section 72-11-201.

(11) "Incident inspection" means an inspection of a passenger ropeway incident made by an approved Ropeway Inspector or a qualified engineer at the request of the Committee.

(12) "Land surveyor" means an individual licensed under Section 58-22-102 as a professional land surveyor.

(13) "Modification" means any change as defined in ANSI B77.1 Section 1.2.4.4, ANSI B77.2 Section 1.2.4.4, and the replacement of a ropeway component by one that alters the certified design or construction provided by the passenger ropeway manufacturer or designer.

(14) "New ropeway" means any passenger ropeway that is registered for the first time for passenger operation during its first calendar year of operation.

(15) "Operational inspection" means an inspection of a passenger ropeway made by a Ropeway Inspector to determine compliance with the operation and maintenance requirements of the Governing Standard and with this rule.

(16) "Operating personnel" means persons employed by the operator for the purpose of supervising the operation, or engaged in servicing, checking, inspecting or maintaining the machinery or structures of a ropeway and when specifically on duty for such purpose on that ropeway.

(17) "Passenger" means any person riding a ropeway, other than "operating personnel."

(18) "Passenger Ropeway Incident" means:

(a) Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component that results in bodily injury to any person on, or inside the load or unload zone of, a passenger ropeway;

(b) Any deropement regardless of whether or not the passenger ropeway is evacuated;

(c) Any evacuation of the passenger ropeway other than by prime mover or auxiliary power unit, regardless of cause;

(d) Any fire involving a passenger ropeway component or adjacent structure;

(e) Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component that results in a loss of control of the passenger ropeway as defined in ANSI B77.1 Section X.2.3.1 or ANSI B77.2 Section 2.2.1.7.2;

(f) Any wire rope damage which exceeds the requirement in ANSI B77.1 Section A.4.1.3 or ANSI B77.2 Section 3.4.1.1; and

(g) Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component or its primary connection that has the apparent potential for causing bodily injury to any person, including but not limited to, the following:

(i) Terminal Structure;
(ii) Bullwheel;
(iii) Brake System;
(iv) Tower Structure;
(v) Sheave, Axle, or Sheave Assembly;
(vi) Carrier; and
(vii) Grip.

(19) "Portable Ropeway" means a ropeway expressly designed to be portable, operated without a permanent foundation, and that has a design range of maximum grade.

(20) "Pre-operational inspection" means an inspection made by a Ropeway Inspector prior to the operation of any new or modified passenger ropeway requiring an Acceptance Inspection and Test.

(21) "Qualified engineer" means any engineer who is licensed to practice engineering in the state of Utah and who has been approved by the Committee.

(22) "Qualified personnel" as used in ANSI B77.1 sections 2.1.1.11, 3.1.1.11, 4.1.1.11, 5.1.1.11, 6.1.1.11, and 7.1.1.11 means a qualified engineer.

(23) "Relocated ropeway" means any passenger ropeway moved to a new location.

(24) "Responsible charge" means effective control and direction of the installation or modification of a passenger ropeway.

(25) "Ropeway Inspector" means an engineer licensed to practice engineering in the state of Utah, independent of the ropeway owner, and approved by the Committee to inspect passenger ropeways.

(26) "Structure" means any edifice, including residential and public buildings, or any other structure or equipment that could reasonably be expected to interfere with the safe operation of a ropeway. Ropeway components required for the operation of the ropeway are not structures.

(27) "Surface lift specialist" as used in ANSI B77.1 section 5.3.4.1, means a Ropeway Inspector.

(28) "Testing Personnel" means individuals that are performing non-destructive testing (NDT) inspections (i.e., manufacturer, inspection agency, other personnel, or in-house personnel) who shall be qualified in accordance with nationally recognized NDT personnel qualifications standards: ANSI/ASNT-CP189, SNT-TC-1A, MIL STD 410, NAS-410, or

equivalent.

(29) "Tow specialist" as used in ANSI B77.1 section 6.3.4.1 means a Ropeway Inspector.

R920-50-4. General Requirements for Passenger Ropeways.

(1) Passenger ropeways operating in the State of Utah shall be registered annually with the Committee, and no passenger ropeway shall be operated for passengers without a valid certificate of registration.

(2) Ropeways require a qualified engineer to certify the design, manufacturing, and construction of the ropeway. A Qualified Engineer or Land Surveyor is required to complete the "as-built" profile and certification.

(3) Existing ropeways, when removed and reinstalled, shall be classified as new installations.

(4) Ropeway operators shall be covered by a liability insurance of a minimum of $300,000. The Utah Passenger Ropeway Safety Committee shall be notified of a lapse or termination of insurance coverage pursuant to the terms of the policy.

R920-50-5. Application to Register a Passenger Ropeway.

(1) Each year prior to operating a passenger ropeway the ropeway operator shall apply to the Committee, for a Certificate of Registration. In the event a new operator is assigned, the operator shall notify the Committee of such action and shall apply for a Certificate of Registration.

(2) Term - Passenger ropeways shall be registered annually starting November 1st of each year, and each registration expires on October 31st next following date of issue.

(3) Application for Certificate of Registration for existing ropeways shall include the following:

(a) Annual General Inspection Report;

(b) Annual registration fee;

(c) Approved request for exception, if applicable;

(d) Certification of Compliance; and

(e) Certificate of Insurance.

(4) Application for Certificate of Registration for new ropeways shall include the following:

(a) Annual registration fee;

(b) Approved request for exception, if applicable;

(c) Certification of Compliance;

(d) Certificate of Insurance;

(e) Certifications required in R920-50-6;

(f) Documents required in R920-50-7; and

(g) Preoperational Inspection Report.

(5) Submittal of application for registration of ropeways - All applications for registration of new or existing ropeways shall be submitted in such form as the Committee shall designate and in accordance with requirements of these rules. Applications shall be made in writing and addressed to:

Utah Department of Transportation
Passenger Ropeway Safety Committee
Traffic and Safety Division
4501 South 2700 West
Salt Lake City, Utah 84119

R920-50-6. Certifications Required for Ropeways.

(1) The Certifications listed below must include the following information:

(a) Name, address and telephone number of operator of the ropeway, name of ropeway supervisor, operator's designation of the ropeway;

(b) Designated certifying statement;

(c) A certification of design, and construction must also include the name, address, seal, and Utah license of the qualified engineer making the certification; and

(d) A certification of "as-built" profile must also include the name, address, seal, and Utah license of the qualified engineer or land surveyor making the certification.

(2) A Certification of Compliance for Passenger Ropeway shall be made on the Application for Certificate of Registration for the Ropeway.

(a) The certification shall be signed and dated by the ropeway owner or area operator.

(b) The certification shall include the following statement: "I certify that the reports, requests and certificates attached hereto were provided and signed by the persons required by law to provide them, and the deficiencies noted in the inspection report have been corrected with the exception of those listed in the Request for Exception from Standards for Passenger Ropeway."

(3) A Certification of Ropeway Design for New or Modified Passenger Ropeways, must be submitted.

(a) The Qualified Engineer in responsible charge of the design shall certify to the Committee that the design, plans and specifications conform to the Utah Passenger Ropeway Safety Act, the Governing Standard and the Utah Ropeway Operation Safety Rule.

(b) The Certification must be submitted prior to the performance of the Acceptance Inspection and Test.

(c) The certification must state the following:

"I hereby certify that the design for this ropeway or ropeway modification is in complete compliance with the Utah Passenger Ropeway Safety Act, Governing Standard and the Utah Ropeway Operation Safety Rule."

(d) This statement shall be placed on the top of the drawing packet and signed and sealed by the qualified engineer. Each additional sheet of this drawing packet shall be sealed by the qualified engineer.

(e) The drawings and specifications shall include the quality assurance methods used for the evaluation of the re-used components and shall be submitted for review a minimum of 30 days prior to installation. Any component on the Utah Passenger Ropeway Safety Committee Lift Data Form must be addressed.

(4) A Certification of Construction for Passenger Ropeways must be submitted by a Qualified Engineer directly responsible for the construction for the ropeway.

(a) The Certification must be submitted prior to the performance of the Acceptance Inspection and Test.

(b) The certification must state the following:

"I hereby certify that the construction and installation has been completed in accordance with the drawings and specifications issued for this ropeway or ropeway modification by the Qualified Design Engineer."

(5) A Certification of "as-built" profile for the Passenger Ropeway must be submitted by a Qualified Engineer or Land Surveyor licensed in the State of Utah.

(a) The "as-built" profile must be submitted prior to the performance of the Acceptance Inspection and Test.

(b) The certification must state the following:

"I hereby certify that the attached "as-built" profile of the herein-identified ropeway is as represented on the attached profile drawing and that the completed ropeway conforms to the profile as identified in the plans and specifications prepared by the Qualified Design Engineer."

R920-50-7. Documents Required for Ropeways.

(1) A Utah Passenger Ropeway Safety Committee Lift Data Form must be submitted along with other requested supporting documents. This form must be submitted prior to the performance of the Acceptance Test.

(2) A copy of the acceptance test procedure proposed and submitted by the designer or manufacturer must be provided to the Committee for review at least fourteen (14) days before acceptance testing begins. The qualified engineer determines the acceptance test requirements.

(3) The owner or area operator shall notify the Committee in writing before the acceptance test that the continuous operation requirements of ANSI B77.1 section X.1.1.11 or ANSI B77.2 section 2.1.1.11.2 have been completed.

(4) A final acceptance test report must be submitted to the Committee prior to opening the lift to the public. The qualified engineer shall approve any changes to the acceptance test procedure.

(5) "As-built" drawings for each passenger ropeway shall be submitted no later than 60 days after the project is completed and the Acceptance Test is finished. Any variation from the design drawings shall be noted in the as-built drawings and approved by the Qualified Design Engineer.

(6) The area operator shall send a "letter of intent" to the Committee at least 45 days prior to beginning the construction of a new lift. The letter of intent must include the name of the qualified engineer, the design standard, the anticipated dates to begin and complete construction, and the available lift manufacturing data.

R920-50-8. Certificate of Registration.

(1) If the application for Certificate of Registration and supporting documentation attest that the ropeway complies with the Governing Standard and this rule, the Committee, if satisfied with the facts stated in the application, shall issue a Certificate of Registration to the operator.

(2) Identification number - For each ropeway, upon receipt of the first application for a Certificate of Registration, the Committee shall assign an identification number to the ropeway, which shall remain as a permanent identification number for the life of the ropeway. All correspondence with the Committee pertaining to any ropeway shall refer to the identification number assigned to that ropeway.

R920-50-9. Governing Standards.

(1) The Utah Passenger Ropeway Safety Committee reserves the right to add, alter, or delete provisions included in the Governing Standard for use in the State of Utah.

(2) Existing installations need not comply with the new or revised requirements of the Governing Standard and this rule except as set forth in R920-50-11 "Applicable Provisions."

R920-50-10. Revised and Additional Provisions.

The revised and additional provisions of this section shall only apply when referenced in R920-50-11 "Applicable Provisions."

(1) "New installations and relocated installations." ANSI B77.1 Section 1.2.4.3 is modified by the following requirement: New ropeways and relocated ropeways shall comply with the new or revised requirements of the Governing Standard and with these rules at the time of the acceptance test.

(2) "Auxiliary drives." Installations shall meet the requirements for auxiliary drives, as set forth in ANSI B77.1-1992, 2.1.2.1.1, 3.1.2.1.1, 4.1.2.1.1.

(3) "Electronic speed-regulated drives." Installations shall meet the requirements for electronic speed-regulated drives as set forth in ANSI B77.1-1992, 2.2.1.8.2, 3.2.1.8.2, 4.2.1.8.2, 5.2.1.8.2, 6.2.1.8.2.

(4) "Rope position monitoring." Installations shall meet the requirements for rope position monitoring, as set forth in ANSI B77.1-1992, 3.1.3.3.2, paragraph 6.

(5) "Friction type brakes." Installations shall meet the requirements for friction type brakes, as set forth in ANSI B77.1-1992, 2.1.2.5, 3.1.2.5, 4.1.2.5, 5.1.2.5, 6.1.2.5.

(6) "Fire detection." All machine rooms that are in an enclosed structure located adjacent to the rope of the tramway (vaulted) shall have a fire detection system installed in accordance with the National Fire Alarm Code. This system shall initiate a visual and audible alarm monitored at the drive terminal operator station.

(7) "Grips, clips, and carrier testing." Testing shall be completed according to section ANSI B77.1 sections 2.3.4.3, 3.3.4.3, 4.3.4.3, and ANSI B77.2 section 2.3.4.4 except as modified by this rule.

(a) Testing personnel performing non-destructive testing (NDT) inspections (i.e., manufacturer, inspection agency, other personnel, or in-house personnel) shall be qualified in accordance with nationally recognized NDT personnel qualifications standards: ANSI/ASNT-CP189, SNT-TC-1A, MIL STD 410, NAS-410, or equivalent. Certification of qualification of personnel performing testing shall be provided.

(b) Testing personnel shall certify to the owner or area operator that the passenger ropeway components tested were non-destructively tested in accordance with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

(c) Sampling size and method of obtaining the sample shall comply with the Governing Standard or the manufacturer's requirement, which ever is more stringent.

(d) Rejection rate and retest procedures shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

(e) Types of inspections to be performed and the procedures to be used shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

(f) Criteria for acceptance/rejection of samples shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

(8) "Wire rope inspection." Inspections shall be performed according to ANSI B77.1 Annex A.4.1 and ANSI B77.2 3.4.1 and shall be performed by a competent inspector defined by the Governing Standard and who is approved by the Committee. The wire rope inspector shall certify to the owner or area operator whether the wire rope in its present condition meets requirements for continued operation.

(9) "Operation and maintenance." All installations shall comply with the Operation and Maintenance requirements of the Governing Standard. These requirements are stated in ANSI B77.1, 2.3, 3.3, 4.3, 5.3, 6.3, 7.3, and ANSI B77.2 2.3.

(10) "Audible warning devices." Requirements for audible warning devices.

(a) Installations shall meet the requirements for audible warning devices as specified by ANSI B77.1, 2.2.10, 3.2.10.

(b) ANSI B77.1 Section 4.2.10 is modified by the following requirement: The aerial lift shall incorporate an audible warning device that signals an impending start of the aerial lift. After the start button is pressed, the device shall sound an audible alarm for a minimum of two seconds before the aerial lift begins to move. The audible device shall be heard inside and outside all terminals and machine rooms above the ambient noise level.

(11) "Conveyor Standards."

(a) Loading and unloading area requirements of ANSI B77.1 section 7.1.1.9 shall also accommodate the use of adaptive devices.

(b) Power units referred to in ANSI B77.1 section 7.1.2.1 may not have reverse capability.

(c) "Power supply cords" referred to in ANSI B77.1 section 7.2.1.5.6 shall be protected from snow grooming, skiers, and other equipment and shall be ground fault protected.

(d) The belt transition entry stop device referred to in ANSI B77.1 section 7.2.3.3 shall include redundant (double) sensors. Each sensor shall be part of an independent control

circuit that can initiate an emergency shutdown of the conveyor. The device shall be so designed and maintained that no single point of failure can cause the entry stop device to malfunction. The device shall not be remotely resettable and shall require the operator to reset the device prior to restarting the conveyor.

(12) "Dynamic Testing Logs." Maintenance logs shall include documentation of the dynamic testing.

(13) "Air Space Requirements." ANSI B77.1, section 2.1.1.4, 3.1.1.4, 4.1.1.4, 5.1.1.4, and 6.1.1.4 and ANSI B77.2 section 2.1.1.4 shall also include the following: No structure (temporary or permanent) shall be permitted to encroach into the air space of the ropeway.

(14) "Portable Ropeways." Portable ropeways shall not be considered new ropeways when moved to different locations but remaining under the jurisdiction of the same operator.

(15) "Tows Requirements."

(a) The requirements of ANSI B77.1 section 6.2.3.2.b) shall also require the stop gate to extend across the incoming and outgoing rope.

(b) Handle Tows shall have stop gates above and below the rope.

(16) "Existing Installations - Annex F" ANSI B77.1-2011 Section 1.2.4.1 Existing installations is modified by the following: Operation and maintenance is not required to comply with normative Annex F Combustion engine(s) and fuel handling.

R920-50-11. Applicable Provisions.

Installations shall comply with the "Revised and Additional Provisions" of R920-50-10 in the categories listed below, on or before the date specified. These provisions establish the minimum requirement.

(1) The following apply to all ropeways:

(a) New installations and relocated installations R920-50-10(1);

(b) Fire detection R920-50-10(6); effective November 1, 1995;

(c) Wire rope inspection R920-50-10(8); and

(d) Operation and maintenance R920-50-10(9).

(e) Existing Installations - Annex F R920-50-10(16); effective June 7,2012.

(2) The following provisions apply to an Aerial Tramway:

(a) Auxiliary drives R920-50-10(2); effective November 1, 1994;

(b) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(c) Friction type brakes R920-50-10(5); effective November 1, 1995;

(d) Grips, clips, and carrier testing R920-50-10(7);

(e) Audible warning devices R920-50-10(10); effective November 1, 2001;

(f) Dynamic testing logs R920-50-10(12); and

(g) Air space requirements R920-50-10(13); effective November 1, 2006.

(3) The following provisions apply to a Detachable Grip Aerial Lift:

(a) Auxiliary drives R920-50-10(2); effective November 1, 1994;

(b) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(c) Rope position monitoring R920-50-10(4); effective November 1, 1994;

(d) Friction type brakes R920-50-10(5); effective November 1, 1995;

(e) Grips, clips, and carrier testing R920-50-10(7);

(f) Audible warning devices R920-50-10(10);

(g) Dynamic testing logs R920-50-10(12); and

(h) Air space requirements R920-50-10(13); effective November 1, 2006.

(4) The following provisions apply to a Fixed Grip Aerial Lift:

(a) Auxiliary Drives R920-50-10(2); effective November 1, 1994;

(b) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(c) Friction type brakes R920-50-10(5); effective November 1, 1995;

(d) Grips, clips, and carrier testing R920-50-10(7);

(e) Audible warning devices R920-50-10(10);

(f) Dynamic testing logs R920-50-10(12); and

(g) Air space requirements R920-50-10(13); effective November 1, 2006.

(5) The following provisions apply to a Surface Lift:

(a) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(b) Friction type brakes R920-50-10(5); effective November 1, 1995; and

(c) Air space requirements R920-50-10(13); effective November 1, 2006.

(6) The following provisions apply to a Rope Tow:

(a) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(b) Friction type brakes R920-50-10(5); effective November 1, 1995;

(c) Air space requirements R920-50-10(13); effective November 1, 2006;

(d) Tow requirements R920-50-10(15); and

(e) Portable Ropeways R920-50-10(14).

(7) The following provisions apply to a Conveyor:

(a) Conveyor standards R920-50-10(11); and

(b) Portable Ropeways R920-50-10(14).

R920-50-12. Exceptions to Standards.

(1) In the event that the ropeway does not conform with the governing standards and the Ropeway Operation Safety Rule, the Committee may issue a certificate of registration with an exception. Two types of exceptions may be granted after a Request for Exception from Standards is submitted.

(a) Annual Exception - This type of exception must be reviewed annually by the Committee. This type of exception is subject to cancellation at any time pursuant to a determination by the Committee that a change is necessary.

(b) Limited Exception - This type of exception is granted only for a fixed time period to be determined by the Committee.

(2) The nature of the exception shall be stated in the Request for Exception from Standards.

(3) The Committee shall, as expeditiously as possible, and within thirty (30) days of receipt of a Request for Exception from Standards, notify the operator in writing of its action on the Request.

(4) The Request for Exception from Standards shall include the following information:

(a) Reasons for requesting an exception;

(b) Identification of the manner in which the ropeway does not conform to the governing standards or this rule; and

(c) Procedures, with estimated time and cost, which would be required to bring the ropeway into conformance.

(5) Except as required in R920-50-12(7), the Committee shall issue a Certification of Registration with an exception if the operator satisfies the requirements stated in R920-50-12(4) and also supplies the following for new or existing ropeways:

(a) New Ropeways.

(i) A design certification by a qualified engineer attesting that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those that meet requirements set forth in the Governing Standard and this rule.

(ii) Any known items that require a Request for Exception

from Standards for Passenger Ropeways must be submitted to the Committee before work begins.

(b) Existing Ropeways.

(i) A design certification by a qualified engineer attesting that the ropeway is so designed and equipped that it's devices or methods provide features that are comparable in performance and safety to the requirements of the Governing Standard and this rule.

(ii) A statement by the operator certifying that the ropeway feature for which the exception is requested has been operated safely and without any passenger ropeway incident, as defined in R920-50-3(17) item (a) or (g), for at least 2 years prior to the date of the Request for Exception from Standards.

(6) In exceptional circumstances, the Committee may issue a certificate of registration with an exception even if the operator does not satisfy the requirements defined in the Governing Standard or this rule if the Committee determines that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety.

(7) Where doubt exists as to the safety of a ropeway, the Committee may require an inspection to ascertain that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those of the governing standards and this rule.

(8) The issuance of a certificate of registration with an annual exception shall not bind the Committee to issue such a certificate for the ropeway involved in subsequent years, nor to issue such a certificate for another ropeway of same or similar design.

R920-50-13. Operation of Ropeways.

(1) Every passenger ropeway incident shall be reported to the Committee regardless of the time of year in which it occurs and regardless of whether or not the ropeway was open to the public at the time of the incident. The operator shall meet the requirements stated in R920-50-14.

(2) When a ropeway is modified the ropeway operator shall notify the Committee, or its appointed representative. The operator shall meet the requirements stated in R920-50-15.

R920-50-14. Incidents.

(1) Reporting of Incidents.

(a) Every passenger ropeway incident, as defined in R920-50-3(18) shall be verbally reported to the Committee, or the Committee's appointed representative, as soon as reasonably possible, but no later than twenty-four (24) hours after the time of the incident. A written report shall be delivered to the Committee within five (5) days of the incident.

(b) The reports required by this section are to be maintained for administrative enforcement, licensing and certification purposes only. The reports are "protected" records under the Government Records Management Act, Section 63G-2-305 and are also governed by Section 63G-2-207.

(2) Suspension of Operations. When a passenger ropeway incident, as defined in R920-50-3(17) (a) or (g), occurs, the owner or area operator of the ropeway shall suspend operation of the ropeway and shall notify the Committee through the Committee's appointed representative. The owner or area operator of the ropeway, with the Committee or the Committee's appointed representative, shall perform a joint incident inspection of the ropeway. The inspection shall precede any authorization to resume public operation of the passenger ropeway.

R920-50-15. Modification of a Ropeway.

(1) The Committee, or its appointed representative shall determine the certifications that will be required.

(2) Depending on the nature and extent of the modification the Committee, or its appointed representative may require an Acceptance Inspection and Test.

(3) The following certifications may be required: design; construction, and As-Built profile.

(4) The certifications must be submitted by a qualified engineer and attached to the cover of the modification documents. The modification documents shall include the drawings, descriptions, or specifications pertaining to the affected systems and their connections with existing systems.

(5) A revised lift data form shall be submitted.

(6) The ropeway shall not resume operating until authorized by the Committee, or its appointed representative.

R920-50-16. Inspections and Testing.

(1) Inspections shall verify that the intent of the design and operational requirements imposed by the Governing Standard and this rule are met. The Committee may order other inspections in accordance with Section 72-11-211. Ropeway inspectors may inspect ropeways at any time during the operation of the ropeway (spot check). All reports, logs, etc. shall be made available to them upon request.

(2) Acceptance Inspection and Test.

(a) The Committee, or its appointed representative, will schedule acceptance inspection and test as the procedures are received.

(3) Annual General Inspection.

All existing ropeway shall have an annual general inspection.

(a) A ropeway inspector shall make the inspection.

(b) The inspection shall occur prior to approval of any registration application.

(c) A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance shall be filed with the owner.

(d) The report shall include the name and address of the inspector and the date of the inspection.

(e) The area operator shall notify the Committee, or its appointed representative of the annual general inspection. The area operator should give 7 days notice of the inspection.

(f) The owner shall correct all deficiencies and noncompliance items listed in the Ropeway Inspector's report.

(4) Incident Inspection.

Incident inspections shall occur as required in R920-50-14.

(5) Operational Inspection.

An Operational inspections may be made periodically during each season of use.

(a) A ropeway inspector shall make the inspection.

(b) A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance shall be filed with the owner.

(c) The report shall include the name and address of the inspector and the date of the inspection.

(d) The owner shall correct all deficiencies and noncompliance items listed in the Ropeway Inspector's report.

(6) Pre-operational Inspection.

A pre-operational inspection is required for new and modified lifts.

(a) A ropeway inspector shall make the inspection.

(b) The inspection shall occur prior to approval of any registration application.

(c) A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance shall be filed with the owner.

(d) The report shall include the name and address of the inspector and the date of the inspection.

(e) If the inspection does not take place at the acceptance inspection and testing the area operator shall notify the Committee, or its appointed representative of the inspection. The area operator should give 7-days notice of the inspection.

(f) The owner shall correct all deficiencies and

noncompliance items listed in the Ropeway Inspector's report.

R920-50-17. Ropeway Inspector and Qualified Engineer.

(1) General.

(a) Any person performing inspection services must be a "ropeway inspector" as required by this rule, and any person performing design services must be a "qualified engineer", as required by this rule.

(b) The Committee shall maintain up-to-date lists of qualified engineers and ropeway inspectors, which lists shall be open to inspection by the public.

(c) Any person desiring to be approved by the Committee as a ropeway inspector or qualified engineer shall submit a written request to the Committee enumerating his or her professional experience and attesting as far as possible to meeting the requirements stated in R920-50-17(2).

(2) Requirements.

(a) Applicant shall satisfy the Committee that by his or her education, training and experience gained by participation in ropeway inspections or designs as a principal or an assistant to a recognized ropeway inspector or ropeway designer, he or she is qualified to be, respectively, an approved inspector or designer or both.

(b) Applicant shall satisfy the Committee that he has a working familiarity and understanding of drawings and design data such as are furnished to design, construct, test, and inspect passenger ropeways, and that he or she has an understanding and working knowledge of the governing standard and this rule.

(c) The Committee may approve qualifications based on experience gained by an applicant through work under direct supervision of a qualified ropeway inspector or qualified ropeway designer.

(d) The Committee may approve employees of the state or individuals retained by the state as qualified ropeway inspectors. Such engineers may be given certain assignments where time is of the essence or a private engineer is not available or willing to undertake the inspection or investigation. It shall be the policy of the Committee to use the services and talents of qualified private engineers wherever possible.

(3) Revocation or suspension of approval as ropeway inspector or qualified engineer.

The committee may revoke or suspend the approval of any qualified engineer or ropeway inspector who is found by the committee to have:

(a) practiced any fraud, misrepresentation, or deceit in applying for approval;

(b) caused damage to another by gross negligence in the practice of passenger ropeway designing, construction, or inspection; or

(c) been engaged in acts of unlawful or unprofessional conduct.

R920-50-18. Violations.

The Committee may address violations of this rule pursuant to Sections 72-11-212 and 72-11-213.

R920-50-19. Administrative Procedures.

Appeals from orders issued pursuant to any provision of this rule shall be governed by R907-1.

KEY: transportation safety, tramways, ropeways, tramway permits
October 10, 2017 72-11-201 through 72-11-216
Notice of Continuation July 6, 2017

R930. Transportation, Preconstruction.
R930-3. Highway Noise Abatement.
R930-3-1. Purpose and Authority.

The purpose of this rule is to allow UDOT to address highway noise impacts and to determine the conditions under which noise abatement may be approved. This rule is authorized by the grant of rulemaking authority found in Section 72-6-111. This rule is consistent with the Federal Highway Administration's Procedures for Abatement of Highway Traffic Noise and Construction Noise, 23 CFR 772 (April 1, 2011), which is hereby adopted and incorporated by reference.

R930-3-2. Definitions.

(1) "Existing Noise Level" means the noise level, Leq, resulting from the natural and mechanical sources and human activity, considered to be usually present in a particular area.

(2) "Design Noise Level" means the noise level, Leq, calculated for the worst traffic noise conditions likely to occur on a regular basis using a method approved by FHWA.

(3) "Type I Project" means a highway construction project that is related to an increase in traffic noise - construction of a highway on new location or the physical alteration of an existing highway which substantially changes the alignment or increases the number of through-traffic lanes or the addition of auxiliary lanes or interchange ramps.

(4) "Type II Project" means a proposed highway project strictly for noise abatement on an existing highway.

(5) "UDOT" means Utah Department of Transportation.

(6) "FHWA" means Federal Highway Administration.

(7) "dBA" means decibels of sound expressed or measured using the "A" weighting scale of a sound-pressure level meter.

(8) "Leq" means the equivalent (average) sound level reported in units of dBA.

(9) "AASHTO" means American Association of State Highway and Transportation Officials.

R930-3-3. Applicability.

(1) Type I Projects. Noise abatement shall be considered for Type I projects where noise impacts are identified. A new or proposed subdivision or other development must have a formal building permit before the issuance of the final environmental decision document to be considered for noise abatement.

(2) Type II Projects. UDOT does not provide a noise retrofit (Type II) program to construct noise abatement measures along existing state transportation facilities.

R930-3-4. Noise Impact Determination.

A traffic noise impact occurs, for purposes of this policy, when either of the following conditions exists at a sensitive land use:

(1) The design noise level is greater than or equal to the UDOT Noise Abatement Criterion (NAC) in Table 1 for each corresponding land use category; or

(2) The design noise level substantially exceeds (ten dBA or more) the existing noise level.

R930-3-5. Noise Abatement Objective.

When noise abatement measures are being considered, every reasonable effort shall be made to obtain substantial noise reductions consistent with Department procedures.

R930-3-6. Noise Abatement Conditions.

In order to be considered for noise abatement, all of the following conditions must be met:

(1) Noise abatement shall not be installed where it will create a hazard or violate design standards. Specifically, noise abatement walls shall not be added within the highway clear zone as defined in the AASHTO Roadside Design Guide;

(2) At least seven dBA of noise reduction must be achievable at 35% of front row receptors; and

(3) Noise abatement measures must be cost effective.

(a) For residential areas (Category B, Table 1), Cost effectiveness is based on the cost of abatement divided by the number of benefited receptors. Benefited receptors must be considered in determining a noise barrier's cost per receptor regardless of whether or not they were identified as impacted. A benefited receptor is any impacted or non-impacted receptor that gets a noise reduction of 5 dBA or more as a result of the noise barrier. The maximum cost used to determine reasonableness to provide noise abatement is listed in the Noise Abatement Procedures. This cost may be periodically reviewed by the Department for reasonableness and updated, as needed.

(b) For non-residential areas (Category A, C, D or E, Table 1): Cost effectiveness depends on the height of noise wall required and corresponding length of frontage. In any case, a reasonable cost for noise abatement will not exceed the cost effectiveness criteria listed in the Noise Abatement Procedures section of the UDOT Noise Policy.

R930-3-7. Declaration of Intent.

Environmental study documents will indicate those areas where noise impacts are projected and areas where abatement appears reasonable and feasible. A final decision on the installation of abatement measures will be made after completing final design and the balloting process.

R930-3-8. Public Involvement.

(1) As part of the final design phase of projects, the Department needs to establish whether property owners and residents are in favor of noise abatement measures. This process involves sending ballots to the following groups so they can indicate their preference for or against noise abatement measures:

(a) All benefited receptors (property owners and residents/renters). A benefited receptor is one that would receive a reduction of 5 dBA or more as a result of noise abatement; and

(b) Receptors that border or are directly adjacent to the end of a proposed noise wall that are not, by definition, benefited by the wall.

(2) The number of votes is established as follows:

(a) Owner occupied residences: The owner will have 1 vote.

(b) Rental homes, multi-family residences and apartments: The owner will have 1 vote per unit and the resident/renter will have 1 vote for the unit.

(c) Day care centers, hospitals, libraries, medical facilities, parks, picnic areas, places of worship, playgrounds, public meeting rooms, public or nonprofit institutional structures: The owner will have 1 vote.

(d) Commercial/industrial businesses: The owner will have 1 vote for the unit and, if applicable, the tenant will have 1 vote for the unit.

(e) Mobile home parks: The mobile home owner will have 1 vote. The lot owner, if different than the home owner, will have 1 vote.

(3) Properties owned by UDOT - It is the policy of UDOT to abstain from voting as a receptor and these votes will not be calculated in the denominator of total votes described in assessing ballots.

(4) Assessing ballots - When votes are counted, property owners' votes will receive a multiplier factor of 5 compared to residents (non-owners) factor of 1.

(a) Noise abatement will only be recommended if 75 percent of votes counted, favor noise abatement. The denominator used to calculate this percentage will equal the total number of votes. In addition, at least 75 percent of the

total number of completed ballots must be returned to adequately assess if noise abatement measures are desired. If less than 75 percent of ballots are returned after balloting efforts are completed, then noise abatement measures will be deemed not reasonable.

(b) Ballots sent by mail are deemed by the Department as "due diligence" in notifying the affected property owners and residents/renters of possible noise mitigation measures in their area. Ballots will be sent by regular mail to each property owner of record and each residing household/resident. Each ballot will include a deadline for return to the Department. For ballots sent but not received by the deadline, a second ballot will be sent by Registered Mail to those who have not returned a ballot.

(c) If the voting process results in a decision not to construct noise abatement, the area will not be considered for noise abatement unless a future transportation project falls under the guidelines of a Type I Project.

R930-3-9. Coordination with Local Officials.

For Type I Projects, the Department will inform local officials of noise compatible planning concepts and an estimate of future noise levels on undeveloped lands or properties within the project limits.

R930-3-10. Local Government Participation.

In instances where noise abatement has already been deemed feasible and reasonable, a third party such as a local municipality, may contribute funds to make functional or aesthetic enhancements to a noise abatement feature.

R930-3-11. Projects Funded From Other Sources.

The Utah Code authorizes the Department to construct and maintain noise abatement measures along state highways in cases where the cost for the noise abatement is provided by citizens, adjacent property owners, developers, or local governments, and meeting other established criteria. These cases may be treated as a special application of Paragraph R930-3-10, in which the Department may design, build, and maintain the abatement measure, and the local government agency shall pay the Department for all preliminary engineering, construction, and maintenance costs.

R930-3-12. Construction Off Right-of-Way.

Normally, noise walls built pursuant to this rule will be constructed within Department right-of-way and owned and maintained by the Department. There are cases in which Department right-of-way is not the most prudent location for noise barriers, yet noise abatement is still feasible and reasonable if built on adjacent property or adjacent public right-of-way. In these cases:

(1) The Department's cost is limited to normal cost for abatement on Department right-of-way.

(2) In no case shall the Department construct a noise barrier unless the adjacent property owners allow access and easements as necessary in order to construct and maintain the barrier.

TABLE 1- UDOT Noise Abatement Criteria (NAC)
(Hourly A- Weighted Sound Level decibels (dB(A)))

Activity Category	UDOT Criteria(1) Leq (h)	Evaluation Location	Activity Description
A	56	Exterior	Lands on which serenity and quiet are of extraordinary significance and serve an important public need and where the preservation of those qualities is essential if the area is to continue to serve its intended purpose.
B	66	Exterior	Residential
C	66	Exterior	Active sports areas, amphitheaters, auditoriums, campgrounds, cemeteries, day care centers, hospitals, libraries, medical facilities, parks, picnic areas, places of worship, playgrounds, public meeting rooms, public or nonprofit institutional structures, radio studios, recording studios, recreation areas, Section 4(f) sites, schools, television studios, trails and trail crossings.
D	51	Interior	Auditoriums, day care centers, hospitals, libraries, medical facilities, places of worship, public meeting rooms, public or nonprofit institutional structures, radio studios, recording studios, schools, and television studios.
E	71	Exterior	Hotels, motels, offices, restaurants/bars, and other developed lands, properties or activities not included in A-D or F.
F	No Limit	-	Agriculture, airports, bus yards, emergency services, industrial, logging, maintenance facilities, manufacturing, mining, rail yards, retail facilities, shipyards, utilities (water resources, water treatment, electrical), and warehousing.
G	No Limit	-	Undeveloped lands that are not permitted.

(1) Hourly A-weighted sound level in decibels reflecting a 1 dBA "approach" value below 23 CFR 772 values.

KEY: transportation, barriers, traffic noise abatement, highways
October 10, 2017 72-1-201
Notice of Continuation October 25, 2016 72-7-101
72-6-111