R23. Administrative Services, Facilities Construction and Management.
R23-5. Contingency Funds.
R23-5-1. Purpose.

(1) This rule establishes policies and procedures regarding contingency funds held by the Division.

(2) It provides guidelines for the source, use and reporting of contingency funds as provided in Title 63A, Chapter 5.

R23-5-2. Authority.

This rule is authorized under Subsection 63A-5-103(2)(a), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management.

R23-5-3. Definitions.

(1) "Appropriated Funds" means funds appropriated to the Division for capital projects to be administered by the Division. This includes state funds such as the General Fund as well as proceeds from state General Obligation Bonds.

(2) "Board" means the State Building Board established under Title 63A, Chapter 5, Part 1.

(3) "Division" means the Division of Facilities Construction and Management established under Title 63A, Chapter 5, Part 2.

(4) "Non-appropriated Funds" means any funds which are provided for a project which are not Appropriated Funds.

(5) "Project Reserve" means the account provided for in Subsection 63A-5-209(3).

(6) "Statewide Contingency Reserve" means the account provided for in Subsection 63A-5-209(1)(c).

R23-5-4. Applicability.

(1) The provisions of this rule shall apply to all projects or portions of projects funded through Appropriated Funds.

(2) The provisions of this rule may be waived to the extent necessary in order to comply with specific requirements associated with the project funds such as specific legislative direction or requirements associated with state revenue bonds.

R23-5-5. General Provisions.

(1) The balances in the Statewide Contingency Reserve and the Project Reserve may be redirected to other purposes by the Legislature.

(2) New projects may not be initiated from the Statewide Contingency Reserve nor from the Project Reserve unless authorized by the Legislature. This prohibition does not apply to remedial work associated with previously authorized and completed projects.

(3) The Division may utilize any number of subaccounts required to maintain separate accounting of Appropriated Funds as required by the source of the funds.

R23-5-6. Funding of Statewide Contingency Reserve.

(1) All Appropriated Funds budgeted for contingencies shall be transferred to the Statewide Contingency Reserve upon their receipt by the Division. This includes budget elements previously referred to as "design contingency" and "project contingency."

(2) The Division shall budget for contingencies based upon a sliding scale percentage of the construction cost.

(a) For new construction, the sliding scale shall range from 4-1/2% to 6-1/2%.

(b) For remodeling projects, the sliding scale shall range from 6% to 9-1/2%.

(c) The sliding scale shall be approved by the Board and kept on file by the Division.

(d) When projects are funded from both Appropriated Funds and Non-appropriated Funds, the amount budgeted for contingencies shall be prorated so that only that portion associated with the Appropriated Funds' share of the project is transferred to the Statewide Contingency Reserve.

R23-5-7. Use of Statewide Contingency Reserve.

(1) The Statewide Contingency Reserve may provide additional funding to a project when:

(a) necessary construction costs arise on projects after the construction has been bid;

(b) costs for other elements of a project exceed the amount budgeted; or

(c) necessary costs arise which were not budgeted for.

(2) As previously directed by the Legislature, unbudgeted costs included in Subsection R23-5-6(1)(c) may include legal services, insurance, surveys, testing and inspection, and bidding costs.

(3) The Statewide Contingency Reserve may be used to fund changes in scope only if the scope change is necessary for the proper functioning of the program that was provided for in the approved project scope. The Division shall take steps as necessary to minimize the utilization of the Statewide Contingency Reserve for scope changes.

(4) With the prior approval of the Board, the Statewide Contingency Reserve may be used to fund unanticipated costs on projects funded through Non-appropriated Funds.

R23-5-8. Funding of Project Reserve.

(1) After all major construction contracts for a project have been awarded, and after setting aside adequate reserves for any remaining construction work which was not included in the construction contracts, any remaining balance of Appropriated Funds in the construction budget shall be transferred to the Project Reserve.

(2) Upon completion of the project, any residual balance of Appropriated Funds in any budget category shall be transferred to the Project Reserve; however, if the residual balance is the result of a reduction in a contract balance which had previously been funded from the Statewide Contingency Reserve, the residual balance shall be transferred instead to the Statewide Contingency Reserve.

R23-5-9. Use of Project Reserve.

The Division may utilize the Project Reserve only for the award of construction contracts which exceed the available construction budget. This may only be done after a review of other options to bring the cost within available funding and a determination that this action is necessary in order to meet the intent of the project.

R23-5-10. Reporting Requirements.

(1) The five-year building plan published annually by the Board shall include a summary report on the Statewide Contingency Reserve and the Project Reserve. This report shall include information on each Reserve summarized as follows for the most recently completed fiscal year:

(a) beginning balance;

(b) increases and decreases by type; and

(c) ending balance.

(2) At least annually, the Division shall analyze the balance in each Reserve and the projected needs based on already approved projects and determine if the balance is in excess of or less than the projected need. The results of this analysis shall be reported to the Legislature in its regular session.

(3) The Division shall report regularly to the Board on the status of the Statewide Contingency Reserve and the Project Reserve.

KEY: buildings, contingency fund
January 23, 2018 63A-5-209 et seq.
Notice of Continuation September 7, 2017

R23. Administrative Services, Facilities Construction and Management.
R23-9. Cooperation with Local Government Planning.
R23-9-1. Purpose and Authority.

(1) This rule provides for cooperation with local government planning efforts when siting, designing, and constructing facilities on state property.

(2) This rule is authorized under Section 63A-5-103 which directs the Building Board to make rules necessary for the discharge of its duties and those of the division.

(3) The statutory provisions that set forth the relationship between the planning and zoning authority of local governments and the construction of facilities on state property are contained in Section 63A-5-206.

R23-9-2. Definitions.

(1) "Director" means the director of the division, including, unless otherwise stated, his duly authorized designee.

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

(3) "Local government" means a "municipality" as defined in Section 10-1-104 or a "county" as defined in Section 17-50-101.

(4) "State property" means land owned by the State of Utah and any department, division, agency, institution, commission, board, or other administrative unit of the State of Utah; including but not limited to, the division, the State Building Ownership Authority, and state institutions of higher education.

R23-9-3. Exemption from Local Government Planning and Zoning Authority.

As provided for in Section 63A-5-206, Section 10-9a-304, and Section 17-27a-304, construction on state property is not subject to the planning and zoning authority of local governments regardless of what entity will own or occupy the resulting facility. Construction on state property is not subject to local government building permit requirements, or plan reviews.

R23-9-4. Consideration of Local Government Planning.

(1) When determining the location and design of facilities to be constructed on state property, the division shall consider input received from local governments and, as appropriate, local government planning and zoning requirements that would apply if the property were not owned by the state. This may include discussions with local government planning officials and/or a review of some or all of the following local government documents:

(a) master plan;

(b) zoning ordinance; and

(c) requirements for ingress, egress, parking, landscaping, fencing, buffering, traffic circulation, and pedestrian circulation.

(2) In any dispute regarding departures from local government requirements, the final determination shall be made by the director.

R23-9-5. Additional Requirements for Secured Facilities.

In addition to the requirements of this rule, the director shall comply with the requirements of Subsection 63A-5-206(12) regarding notice and hearings for projects involving diagnostic, treatment, parole, probation, or other secured facilities.

KEY: construction, planning, zoning
January 23, 2018 63A-5-103
Notice of Continuation September 7, 2017 63A-5-206

R68. Agriculture and Food, Plant Industry.
R68-5. Grain Inspection.
R68-5-1. Authority.

Promulgated under authority of Section 4-2-2(2).

R68-5-2. Grain Inspection Fees.

Fees shall be charged for the inspection and grading services as determined by the department pursuant to 4-2-2(2). A current list of approved fees may be obtained, upon request from the department:

A. Location:

Utah Department of Agriculture and Food
Grain Inspection
P.O. Box 1519 - 128 17th Street
Ogden, UT 84402
Phone (801) 392-2292

B. Hours. Regular working hours are 8:00 a.m. to 5:00 p.m., Monday through Friday.

C. Days Not Worked. Saturdays, Sundays, New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas. Holidays are considered overtime hours.

R68-5-3. Utah Standards For Safflower.

A. Safflower (carthamus tinctorius), for purposes of this rule, shall be construed to include all types and varieties of Safflower.

B. Moisture. The moisture, or water content in Safflower shall be tested in the following manner:

1. Basis of determination.

A moisture determination shall be made on a representative portion from the representative sample, before the removal of foreign material or dockage, by testing exactly the amount of 225 grams of safflower seed product.

2. Certification.

The percentages of moisture content shall be reported on the pan-ticket and the Utah Department of Agriculture and Food-Grain Inspection Certificate, and shall be expressed in whole and tenths of a percent, rounded to the nearest tenth percent.

C. Dockage.

All matter other than whole Safflower Seed which can be removed from a test portion of the original sample, shall be removed by the use of an approved device, and also by handpicking a portion of the machine-cleaned sample to remove all remaining material other than Safflower and other grains.

1. Basis of determination.

A dockage determination test shall be made using approximately 750-850 grams or 1 1/8 to 1 1/2 quarts cut from the original sample.

a. The person making the test shall first determine the mechanically separated dockage. This involves a separation procedure using a Carter Dockage Tester.

b. An arbitrarily handpicked portion of approximately 75 grams shall be cut from the mechanically cleaned Safflower Seed.

2. The following process shall be used to determine dockage with the Carter Dockage Tester.

a. The air control shall be set at number 9 (wide open).

b. The feed control shall be set at number 6.

c. In the Riddle Carriage, the plastic seed riddle, part number 35898, shall be used.

d. A number 2 sieve shall be used in the top sieve carriage.

e. If there is a sieve in the middle or the bottom sieve carriage, it shall NOT be used.

3. Dockage will consist of:

a. Any material removed by the aspirator (air collecting pan).

b. Coarse material, except whole Safflower Seed that passed over the riddle (riddle collecting pan). Whole kernels of Safflower Seed that passed over the riddle shall be returned to the cleaned sample.

c. Any material that passed through the number 2 sieve (bottom collecting pan).

d. Any material other than Safflower seed and other grains removed by handpicking a machine cleaned portion of approximately 75 grams.

4. Certification.

The percentage of dockage shall be reported on the pan ticket and the Utah Department of Agriculture and Food-Grain Inspection Certificate. The percent of dockage shall be stated in terms of whole or half percentages.

D. Test weight per bushel.

1. Basis of determination.

A test weight per bushel shall be performed on a representative portion ranging in size from 1 to 1 1/2 quarts or 750-850 grams after the removal of the mechanically separated dockage.

2. Certification.

The test weight per bushel shall be reported on the sample pan ticket and the Utah Department of Agriculture-Grain Inspection Certificate in whole and half pounds.

E. Hulls.

Hulls shall have less than 1 third (1/3) of the kernels attached.

1. Basis of determination.

A determination for testing the percentage of kernels attached to hulls shall be performed using approximately 30 grams cut from the work portion after the removal of dockage.

2. Certification.

The percentage of kernels attached to hulls shall be reported on the pan ticket and the Utah Department of Agriculture-Grain Inspection Certificate, and shall be expressed to the nearest tenth percent.

F. Dehulled kernels and broken seed.

Dehulled kernels and broken seed shall consist of Safflower or pieces of seed in which the hull has been completely removed from Safflower Seed that have 1 third (1/3) or more of the kernels attached, and also in cases of Safflower seeds that have been so broken that the kernel has been exposed.

1. Basis of determination.

A determination of dehulled and broken seed will be reported on the pan ticket and the Utah Department of Agriculture-Grain Inspection Certificate to the nearest tenth percent.

2. Certification.

The percentage of dehulled and broken seed will be reported on the pan ticket and the Utah Department of Agriculture-Grain Inspection Certificate to the nearest tenth percent.

G. Other grains.

Other grains shall consist of any other grain or domestic kernels which are not removed in the dockage.

1. Basis of determination.

A test to determine the percentage of other grains present in the product, will be performed on approximately 30 grams cut from the work sample after the removal of dockage.

2. Certification.

The percentage of other grains will be reported on the pan ticket and the Utah Department of Agriculture-Grain Inspection Certificate to the nearest tenth percent.

H. Damaged and heat-damaged Safflower Seed.

Amounts of damaged Safflower total kernels and pieces of kernels that are heat damaged, sprout damaged, frost

damaged, green or otherwise materially damaged shall be assessed. Heat damaged means Safflower kernels and pieces of kernels that have been materially discolored and damaged by heat.

1. Basis of determination.

A test to determine the percentage of damaged and heat damaged Safflower kernels will be performed using approximately 30 grams cut from the work portion after the removal of dockage.

2. Certification.

The percentage of heat damaged Safflower Seed and damaged Safflower Seed (total) shall be reported on the pan ticket and the Utah Department of Agriculture-Grain Inspection Certificate, and shown to the nearest tenth percent.

I. Split damage.

A check for split damage in Safflower Seed shall be conducted noting any break, fissure, crack, or tear in the seed kernels, husk or cover.

1. Basis of determination.

A test to determine the percent of split, damaged Safflower kernels will be performed on approximately 30 grams cut from the work portion after the removal of dockage.

2. Certification.

The percentage of split damaged Safflower seeds shall be reported in the split section and included in the damaged Safflower section on the Utah Department of Agriculture-Grain Inspection Certificate, and shown to the nearest tenth percent.

J. Safflower Seed claiming a UTAH grade shall meet the requirements in the following table:

TABLE

Utah Safflower Seed Grade Requirements

Grade	Utah 1	Utah 2	Utah 3	Sample Grade
Minimum Limit				
Test wt. Per bushel	40.0 lbs	38.0 lbs	35.0 lbs	*
Maximum Limit				
Stones (per 100 grams)	2	6	6	*
Hulls	1	2	5	*
Dehulled Kernels and Broken Seed	2	4	8	*
Splits	2	5	8	*
Other Grains	0.5	2	3	*
Damaged Safflower Seeds				
Sprout	1	2	4	*
Heat	0.0	0.2	1	*
Total	3	5	5	*

*Sample grade Safflower shall consist of a Safflower-seed group which:

i. Does not meet the requirements for grade Utah 1 through Utah 3, or

ii. In approximately a 750-850 gram sample, contains 7 or more stones, or

iii. Has a musty, sour or commercially objectionable foreign odor, or

iv. Contains more than 2.5% of earth pellets after the mechanical separation of dockage.

NOTE: 1. Slightly or badly weather stained Safflower Seed may not be rated higher than grade Utah 2 or Utah 3 for purposes of inspection under this rule.

KEY: inspections
December 16, 1997 4-2-2(2)
Notice of Continuation January 30, 2018

R156. Commerce, Occupational and Professional Licensing.
R156-31b. Nurse Practice Act Rule.
R156-31b-101. Title.

This rule is known as the "Nurse Practice Act Rule".

R156-31b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 31b, as defined or used in this rule:

(1) "Accreditation" means formal recognition and approval of a nurse education program by an accrediting body for nursing education that is approved by the United States Department of Education.

(2) "Administering" means the direct application of a prescription drug or device, whether by injection, inhalation, ingestion, or by any other means, to the body of a human patient or research subject by another person.

(3) "APRN" means advanced practice registered nurse.

(4) "APRN-CRNA" means advanced practice registered nurse with registered nurse anesthetist certification.

(5) "Approved continuing education" means:

(a) continuing education that has been approved by a nationally or internationally recognized approver of professional continuing education for health-related industries;

(b) nursing education courses offered by an approved education program as defined in Subsection R156-31b-102(7);

(c) health-related coursework taken from an educational institution accredited by a regional or national institutional accrediting body recognized by the U.S. Department of Education;

(d) continuing education approved by any state board of nursing; or

(e) training or educational presentations offered by the Division.

(6) "Approved education program" means any nursing education program that meets the standards established in Section 58-31b-601 or Section R156-31b-602.

(7) "Approved re-entry program" means:

(a) a program designed to evaluate nursing competencies for nurses;

(b) approved by a state board of nursing; or

(c) offered by an accredited nursing education program; and

(d) includes a minimum of 150 hours of supervised clinical learning.

(8) "CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

(9) "Completed a PN, RN, or APRN pre-licensing program" means graduation from the pre-licensing program, verified by official transcripts showing degree and date of program completion.

(10) "Comprehensive nursing assessment" means:

(a) conducting extensive initial and ongoing data collection:

(i) for individuals, families, groups or communities; and

(ii) addressing anticipated changes in patient conditions as well as emergent changes in patient health status;

(b) recognizing alterations to previous patient conditions;

(c) synthesizing the biological, psychological, spiritual, and social aspects of the patient's condition;

(d) evaluating the impact of nursing care; and

(e) using data generated from the assessments conducted pursuant to this Subsection (a) through (d) to:

(i) make independent decisions regarding patient health care needs;

(ii) plan nursing interventions;

(iii) evaluate any possible need for different interventions; and

(iv) evaluate any possible need to communicate and consult with other health team members.

(11) "Contact hour" in the context of continuing education means 60 minutes, which may include a 10-minute break.

(12) "Delegate" means:

(a) to transfer to another nurse the authority to perform a selected nursing task in a selected situation;

(b) in the course of practice of an APRN who specializes in psychiatric mental health nursing, to transfer to any individual licensed as a mental health therapist selected psychiatric APRN supervisory clinical experiences within generally-accepted industry standards; or

(c) to transfer to an unlicensed person the authority to perform a task that, according to generally-accepted industry standards or law, does not require a nursing assessment as defined in Sections R156-31b-102(10) and (14).

(13) "Delegatee" means one or more persons assigned by a delegator to act on the delegator's behalf.

(14) "Delegator" means a person who assigns to another the authority to perform a task on behalf of the person.

(15)(a) "Disruptive behavior" means conduct, whether verbal or physical, that:

(i) is demeaning, outrageous, or malicious;

(ii) occurs during the process of delivering patient care; and

(iii) places a patient at risk.

(b) "Disruptive behavior" does not include criticism that is offered in good faith with the aim of improving patient care.

(16) "Focused nursing assessment" means an appraisal of a patient's status and situation at hand, including:

(a) verification and evaluation of orders; and

(b) assessment of:

(i) the patient's nursing care needs;

(ii) the complexity and frequency of the required nursing care;

(iii) the stability of the patient; and

(iv) the availability and accessibility of resources, including appropriate equipment, adequate supplies, and other appropriate health care personnel to meet the patient's nursing care needs.

(17) "Foreign nurse education program" means any program that originates or occurs outside of the United States.

(18) "Individualized healthcare plan" or "IHP" means a written document that outlines the provision of student healthcare services intended to achieve specific student outcomes.

(19) "Licensure by equivalency" applies only to the licensed practical nurse and may be warranted if the person seeking licensure:

(a)(i) has, within the two-year period preceding the date of application, successfully completed course work in a registered nurse education program that meets the criteria established in Sections 58-31b-601 and R156-31b-602; and

(ii) has been unsuccessful on the NCLEX-RN at least one time; or

(b)(i) is currently enrolled in an accredited registered nurse education program; and

(ii) has completed course work that is certified by the education program provider as being equivalent to the course work of an ACEN-accredited practical nursing program, as verified by the nursing education program director or administrator.

(20) "LPN" means licensed practical nurse.

(21) "MAC" means medication aide certified.

(22) "Medication" means any prescription or

nonprescription drug as defined in Subsections 58-17b-102(24), (37) or (61) of the Pharmacy Practice Act.

(23) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

(24) "Non-approved education program" means any nurse prelicensing course of study that does not meet the criteria of Section 58-31b-601, including a foreign nurse education program.

(25) "Nurse" means:

(a) an individual licensed under Title 58, Chapter 31b as:

(i) a licensed practical nurse;

(ii) a registered nurse;

(iii) an advanced practice registered nurse; or

(iv) an advanced practice registered nurse-certified registered nurse anesthetist; or

(b) a certified nurse midwife licensed under Title 58, Chapter 44a.

(26) "Other specified health care professionals," as used in Subsection 58-31b-102(15), means an individual, in addition to a registered nurse or a licensed physician, who is permitted to direct the tasks of a licensed practical nurse, and includes:

(a) an advanced practice registered nurse;

(b) a certified nurse midwife;

(c) a chiropractic physician;

(d) a dentist;

(e) an osteopathic physician;

(f) a physician assistant;

(g) a podiatric physician;

(h) an optometrist;

(i) a naturopathic physician; or

(j) a mental health therapist as defined in Subsection 58-60-102(5).

(27) "Patient" means one or more individuals:

(a) who receive medical and/or nursing care; and

(b) to whom a licensee owes a duty of care.

(28) "Patient surrogate" means an individual who has legal authority to act on behalf of a patient when the patient is unable to act or make decisions unaided, including:

(a) a parent;

(b) a foster parent;

(c) a legal guardian; or

(d) a person legally designated as the patient's attorney-in-fact.

(29) "PN" means an unlicensed practical nurse.

(30) "Psychiatric mental health nursing specialty" means an expertise in psychiatric mental health, whether as a clinical nurse specialist or nurse practitioner licensed as an APRN.

(31) "Practica" means working in the nursing field as a student; not exclusive to patient care activities.

(32) "Practitioner" means a person authorized by law to prescribe treatment, medication, or medical devices.

(33) "RN" means a registered nurse.

(34) "School" means any private or public institution of primary or secondary education, including a charter school, pre-school, kindergarten, or special education program.

(35) "Supervision" is as defined in Subsection R156-1-102a(4).

(36) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 31b is further defined in Section R156-31b-502.

R156-31b-103. Authority -- Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 31b.

R156-31b-104. Organization -- Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-31b-201. Board of Nursing -- Membership.

In accordance with Subsection 58-31b-201(1), the Board membership shall comprise:

(1) one licensed practical nurse;

(2) two advanced practice registered nurses, at least one of whom is an APRN-CRNA;

(3) four RNs;

(4) two additional members licensed either as RNs or APRNs who are actively involved in nursing education; and

(5) two public members.

R156-31b-202. Advisory Peer Education Committee Created - Membership - Duties.

(1) In accordance with Subsection 58-1-203(1)(f), there is created the Advisory Peer Education Committee.

(2) The duties and responsibilities of the Advisory Peer Education Committee are to:

(a) review applications for approval of medication aide training programs;

(b) monitor a nursing education program that is approved for a limited time under Section R156-31b-602 as it progresses toward accreditation; and

(c) advise the Division as to nursing education issues.

(3) The composition of the Advisory Peer Education Committee shall be:

(a) seven RNs or APRNs actively involved in nursing education, including at least one representative from public, private, and proprietary nursing programs; and

(b) any member of the Board who wishes to serve on the committee.

R156-31b-301. License Classifications - Professional Upgrade.

(1) A licensed practical nurse license shall be superseded upon the issuance of a registered nurse license.

(2) An advanced practice registered nurse may hold both an APRN and an RN license in Utah.

(3) Unless the APRN requests that both the APRN and RN licenses remain active, the registered nurse license shall be superseded upon the issuance of an advanced practice registered nurse license.

R156-31b-301a. LPN License -- Education, Examination, and Experience Requirements.

(1) An applicant who has never obtained a license in any state or country shall:

(a) demonstrate that the applicant:

(i) has successfully completed a PN prelicensing education program that meets the requirements of Section 58-31b-601;

(ii) has successfully completed a PN prelicensing education program that is equivalent to an approved program under Section 58-31b-601;

(iii)(A) has completed an RN prelicensing education program that meets the requirements of Section 58-31b-601; and

(B) has taken, but not passed the NCLEX-RN at least one time; or

(v)(A) is enrolled in a registered nurse education program that meets the requirements of Section 58-31b-601; and

(B) has completed coursework that is equivalent to the coursework of an accredited practical nurse program;

(b) pass the NCLEX-PN examination pursuant to

Section R156-31b-301e; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(2) An applicant who holds a current LPN license issued by another country or state shall:

(a) demonstrate that the license issued by the other jurisdiction is active and in good standing as of the date of application;

(b) demonstrate that the PN prelicensing education completed by the applicant:

(i) is equivalent to PN prelicensing education approved in Utah as of the date of the applicant's graduation; and

(ii) if a foreign education program, meets all requirements outlined in Section R156-31b-301d;

(c) pass the NCLEX-PN examination pursuant to Section R156-31b-301e; and

(d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(3) An applicant who holds a current LPN license in an interstate compact state shall apply for a license within 90 days of establishing residency in Utah and complete all requirements pursuant to R156-31b-301a(2).

(4) An applicant who has been licensed previously in Utah, but whose license has expired or lapsed, shall:

(a) if the applicant has not practiced as a nurse for up to five years, document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3);

(b) if the applicant has not practiced as a nurse for more than five years but less than eight years:

(i) pass the NCLEX-PN examination within 60 days following the date of application; or

(ii) successfully complete an approved re-entry program;

(c) if the applicant has not practiced as a nurse for more than eight years but less than 10 years:

(i) successfully complete an approved re-entry program; and

(ii) pass the NCLEX-PN examination within 60 days following the date of application; or

(d) if the applicant has not practiced as a nurse for 10 years or more, comply with this Subsection (1).

(5) An applicant who has been licensed in another state or country, but whose license has expired or lapsed, shall:

(a) comply with this Subsection (2)(b); and

(b) comply with this Subsection (4) as applicable; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

R156-31b-301b. RN License -- Education, Examination, and Experience Requirements.

(1) An applicant who has never obtained a license in any state or country shall:

(a) demonstrate that the applicant has successfully completed an RN prelicensing education program that:

(i) meets the requirements of Section 58-31b-601; or

(ii) is equivalent to an approved program under Section 58-31b-601;

(b) pass the NCLEX-RN examination pursuant to Section R156-31b-301e; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(2) An applicant who holds a current RN license issued by another country or state shall:

(a) demonstrate that the license issued by the other jurisdiction is current, active, and in good standing as of the date of application;

(b)(i) demonstrate that the applicant has graduated from an RN prelicensing education program; and

(ii) if a foreign education program, demonstrate that the program meets all requirements outlined in Section R156-31b-301d;

(c) pass the NCLEX-RN examination pursuant to Section R156-31b-301e; and

(d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(3) An applicant who holds a current RN license in an interstate compact state shall apply for a license within 90 days of establishing residency in Utah and complete all requirements pursuant to R156-31b-301b(2).

(4) An applicant who has been licensed previously in Utah, but whose license has expired or lapsed, shall:

(a) if the applicant has not practiced as a nurse for up to five years, document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3);

(b) if the applicant has not practiced as a nurse for more than five years but less than eight years:

(i) pass the NCLEX-RN examination within 60 days following the date of application; or

(ii) successfully complete an approved re-entry program;

(c) if the applicant has not practiced as a nurse for more than eight years but less than 10 years:

(i) successfully complete an approved re-entry program; and

(ii) pass the NCLEX-RN examination within 60 days following the date of application; or

(d) if the applicant has not practiced as a nurse for 10 years or more, comply with this Subsection (1).

(5) An applicant who has been licensed in another state or country, but whose license has expired or lapsed, shall:

(a) comply with this Subsection (2)(b);

(b) comply with this Subsection (4) as applicable; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

R156-31b-301c. APRN License -- Education, Examination, and Experience Requirements.

(1) An applicant for licensure as an APRN shall:

(a) demonstrate that the applicant holds a current, active RN license in good standing;

(b) demonstrate that the applicant has successfully completed an APRN prelicensing education program that meets the requirements of Subsection 58-31b-601(1) and Subsection 58-31b-302(4)(e);

(c) pass a national certification examination for nurse practitioner, clinical nurse specialist, certified nurse midwife, or registered nurse anesthetist, pursuant to Section R156-31b-301e, and administered by a certification body approved by:

(i) the National Commission for Certifying Agencies; or

(ii) the Accreditation Board for Specialty Nursing Certification;

(d) if the applicant specializes in psychiatric mental health nursing, demonstrate that the requirements outlined in this Subsection (2) are met; and

(e) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(2) Requirements for APRN Specializing in Psychiatric Mental Health Nursing:

(a) In accordance with Subsection 58-31b-302(4)(g), the supervised clinical practice in mental health therapy and psychiatric and mental health nursing shall consist of a minimum of 4,000 hours of psychiatric mental health nursing education and clinical practice, including mental health therapy, as follows.

(i) 1,000 hours shall be credited for completion of clinical experience in an approved education program in psychiatric mental health nursing.

(ii) The remaining 3,000 hours shall:

(A) be completed after passing the applicable national certification examination and within five years of graduation from an accredited master's or doctoral level educational program;

(B) include a minimum of 1,000 hours of mental health therapy practice; and

(C) include at least 2,000 clinical practice hours that are completed under the supervision of:

(I) an APRN specializing in psychiatric mental health nursing; or

(II) a licensed mental health therapist as delegated by the supervising APRN.

(b) An applicant who obtains all or part of the clinical practice hours outside of Utah may receive credit for that experience by demonstrating that the training completed is equivalent in all respects to the training required under this Subsection (2)(a).

(c)(i) An approved supervisor shall verify practice as a licensee engaged in the practice of mental health therapy for not less than 4,000 hours in a period of not less than two years.

(ii) Duties and responsibilities of a supervisor include:

(A) being independent from control by the supervisee such that the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(B) supervising not more than three supervisees unless otherwise approved by the Division in collaboration with the Board; and

(C) submitting appropriate documentation to the Division with respect to all work completed by the supervisee, including the supervisor's evaluation of the supervisee's competence to practice.

(3) An applicant who holds a current APRN license issued by another state or country shall:

(a) demonstrate that the license issued by the other state or country is current, active, and in good standing as of the date of application;

(b) demonstrate that the APRN prelicensing education completed by the applicant:

(i) if completed on or after January 1, 1987:

(A) is equivalent to APRN prelicensing education approved in Utah as of the date of the applicant's graduation; or

(B) constitutes a bachelor degree in nursing; and

(ii) if a foreign education program, meets all requirements outlined in Section R156-31b-301d;

(c) if the applicant specializes in psychiatric mental health nursing, demonstrate that the applicant has successfully engaged in active practice in psychiatric mental health nursing for not less than 4,000 hours in the three-year period immediately preceding the date of application; and

(d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(4) An applicant who has been licensed previously in Utah, but whose license has expired, lapsed, or been on inactive status, shall:

(a) demonstrate current certification in the individual's specialty area; and

(b) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(5) An applicant who has been licensed previously in another state or country, but whose license has expired or lapsed, shall:

(a) comply with this Subsection (3)(b);

(b) demonstrate that the applicant is currently certified in the individual's specialty area; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

R156-31b-301d. Foreign Education Programs.

If an applicant's prelicensing education was completed through a foreign program that does not meet the requirements of Section 58-31b-601, the applicant shall demonstrate:

(1)(a) within the year preceding the date of the application, the applicant successfully completed all three components of the CGFNS Certification Program and the credentials evaluation service professional report; and

(b) within five years preceding the date of the application, the applicant met at least one of the following practice requirements:

(i) completed the nursing education program;

(ii) worked as a nurse;

(iii) completed an approved re-entry program; or

(iv) obtained an advanced (baccalaureate, master's or doctorate) nursing degree from an accredited nurse education program; or

(2)(a) during the five years preceding the date of the application, the applicant practiced as a licensed nurse for 6,000 hours in another state or territory of the United States; and

(b) prior to the date of the application, the applicant achieved a passing score on an English proficiency test satisfying current CGFNS requirements.

R156-31b-301e. Examination Requirements.

(1)(a) An applicant for licensure as an LPN, RN, Certified Nurse Midwife, or APRN shall pass the applicable licensure or certification examination within five years of the applicant's date of graduation from the approved education program, except as provided in Subsection (1)(b).

(b) An individual specializing in psychiatric mental health nursing shall complete the applicable certification examination prior to beginning the 3,000 hours of required psychiatric clinical and mental health therapy practice.

(c) An individual who does not pass the applicable licensure or certification examination pursuant to this Subsection (1)(a) or (b) as applicable shall complete another approved nursing education program before again attempting to pass the licensure or certification examination.

(2) An applicant for certification as an MAC shall pass the NCSBN Medication Aide Certification Examination (MACE) within one year of completing the approved training program.

(3) The examinations required under these rules are national examinations and cannot be challenged before the Division.

R156-31b-301f. Licensing Fees.

An applicant for licensure shall pay the applicable nonrefundable application fee before the application may be considered by the Division or Board.

R156-31b-301g. Criminal Background Checks.

A criminal background check conducted during the application process is considered current and acceptable for that specific application only.

R156-31b-303. LPN, RN, and APRN License Renewal - Professional Downgrade - Continuing Education.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 31b, is established by rule in Section R156-1-308a.

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

(3) Each applicant for renewal shall comply with the following continuing competency requirements:

(a) An LPN or RN shall complete one of the following during the two-year period immediately preceding the date of application for renewal:

(i) licensed practice for not less than 400 hours;

(ii) licensed practice for not less than 200 hours and completion of 15 contact hours of approved continuing education; or

(iii) completion of 30 contact hours of approved continuing education hours.

(b) An APRN shall comply with the following:

(i)(A) be currently certified or recertified in the licensee's specialty area of practice; or

(B) if licensed prior to July 1, 1992, complete 30 hours of approved continuing education and 400 hours of practice; and

(ii) if authorized to prescribe controlled substances, comply with Section R156-37-402 and Section 58-37-6.5.

(c) An MAC shall complete eight contact hours of approved continuing education related to medications or medication administration during the two-year period immediately preceding the application for renewal.

(4) A licensee who wishes to downgrade the license in conjunction with a renewal or reinstatement application shall:

(a) comply with the competency requirements of this Subsection (3)(a);

(b) pay all required fees, including any applicable late fees;

(c) submit a completed renewal or reinstatement form as applicable to the license desired; and

(d) complete and sign a license surrender document as provided by the Division.

(5) A licensee who obtained a license downgrade may apply for license upgrade by:

(i) submitting the appropriate application for licensure complete with all supporting documents as required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure;

(ii) meeting the continuing competency requirements of this Subsection (3); and

(iii) paying the established license fee for a new applicant for licensure.

R156-31b-309. APRN Intern License.

(1) An individual who has completed all requirements outlined in Subsection R156-31b-301c(1) except the certification examination requirement may apply for an APRN intern license.

(2) In accordance with Section 58-31b-306, and unless this Subsection (3) or (4) applies, an intern license expires the earlier of:

(a) 180 days from the date of issuance;

(b) 30 days after the Division receives notice pursuant to this Subsection (4) that the applicant has failed the specialty certification examination; or

(c) upon issuance of an APRN license.

(3) The Division in collaboration with the Board may extend the term of any intern license upon a showing of extraordinary circumstances beyond the control of the applicant.

(4) An individual holding an APRN intern license specializing in psychiatric mental health nursing must work under the supervision of an APRN pursuant to R156-31b-301c.

(5) It is the professional responsibility of an APRN intern:

(a) to inform the Division of examination results within ten calendar days of receipt; and

(b) to cause the examination agency to send the examination results directly to the Division.

R156-31b-402. Administrative Penalties.

In accordance with Sections 58-1-501, 58-31b-501, 58-31b-502, 58-31b-502.5, 58-31b-801, Subsection 58-31b-102(1), and Section R156-31b-502, and unless otherwise ordered by the presiding officer, the following fine schedule shall apply to a nurse or MAC.

(1) Initial and second offenses.

(a) Using a protected title, name, or initials, if the user is not properly licensed under this chapter, in violation of Subsection 58-31b-501(1):

initial offense: $500 - $4,000

second offense: $4,000 - $8,000

(b) Using any name, title, or initials that would cause a reasonable person to believe the user is licensed or certified under this chapter if the user is not properly licensed or certified under this chapter, in violation of Subsection 58-31b-501(2):

initial offense: $500 - $4,000

second offense: $4,000 - $8,000

(c) Conducting a nursing education program in the state for the purpose of qualifying individuals to meet requirements for licensure under this chapter without the program having been approved under Section 58-31b-601 or Subsection R156-31b-602, in violation of Subsection 58-31b-501(3):

initial offense: $2,000 - $7,500

second offense: $7,500 - $9,500

(d) Practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in the practice of nursing, if the person is not licensed to do so or exempted from licensure under Utah Code 58-31b et seq. or restricted from doing so by a suspended, revoked, restricted, temporary, probationary, or inactive license, or in violation of restrictions that have been placed on a license, in violation of Subsection 58-1-501(1)(a):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(e) Impersonating another licensee, or practicing an occupation or profession under a false or assumed name, in violation of Subsection 58-1-501(1)(b):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(f) Knowingly employing a person to practice or engage in or attempt to practice or engage in the practice of nursing if the employee is not licensed to do so, in violation of Subsection 58-1-501(1)(c):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(g) Knowingly permitting the person's authority to engage in the practice of nursing to be used by another person, in violation of Subsection 58-1-501(1)(d):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(h) Obtaining a passing score on a licensure examination, applying for or obtaining a license, or otherwise dealing with the Division or Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission, in violation of Subsection 58-1-501(1)(e):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(i) Issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device to a person located in this state without prescriptive authority conferred by a license, or by an exception to licensure; or with prescriptive authority conferred by an exception or a multistate practice privilege, if the prescription was issued without first obtaining information, in the usual course of professional practice, that

is sufficient to establish a diagnosis, to identify underlying conditions and to identify contraindications to the proposed treatment, in violation of Subsection 58-1-501(1)(f)(i):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(j) Violating or aiding or abetting any other person to violate any statute, rule, or order regulating the practice of nursing, in violation of Subsection 58-1-501(2)(a):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(k) Violating, or aiding or abetting any other person to violate any generally accepted professional or ethical standard applicable to the practice of nursing, in violation of Subsection 58-1-501(2)(b):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(l) Engaging in conduct that results in conviction or a plea of nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the practice of nursing, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the profession, in violation of Subsection 58-1-501(2)(c):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(m) Engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the profession of nursing if the conduct would, in the state of Utah, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401, in violation of Subsection 58-1-501(2)(d):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(n) Engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in practice of the nursing profession, in violation of Subsection 58-1-501(2)(e):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(o) Practicing or attempting to practice the profession of nursing despite being physically or mentally unfit to do so, in violation of Subsection 58-1-501(2)(f):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(p) Practicing or attempting to practice the profession of nursing through gross incompetence, gross negligence, or a pattern of incompetency or negligence, in violation of Subsection 58-1-501(2)(g):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(q) Practicing or attempting to practice the profession of nursing by any form of action or communication which is false, misleading, deceptive, or fraudulent, in violation of Subsection 58-1-501(2)(h):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(r) Practicing or attempting to practice the profession of nursing beyond the individual's scope of competency, abilities, or education, in violation of Subsection 58-1-501(2)(i):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(s) Practicing or attempting to practice the profession of nursing beyond the scope of licensure, in violation of Subsection 58-1-501(2)(j):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(t) Verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice in the profession of nursing or otherwise facilitated by the licensee's license, in violation of Subsection 58-1-501(2)(k):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(u) Acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or under these rules, in violation of Subsection 58-1-502(2)(l):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(v) Issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device without first obtaining information in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to the proposed treatment; or with prescriptive authority conferred by an exception issued under this title, or a multistate practice privilege recognized under this title, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment, in violation of Subsection 58-1-501(2)(m):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(w) Failing to safeguard a patient's right to privacy as to the patient's person, condition, diagnosis, personal effects, or any other matter about which the licensee is privileged to know because of the licensee's or person with a certification's position, in violation of Subsection 58-31b-502(1):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(x) Failing to provide nursing service in a manner that demonstrates respect for the patient's human dignity and unique personal character and needs without regard to the patient's race, religion, ethnic background, socioeconomic status, age, gender, or nature of the patient's health problem, in violation of Subsection 58-31b-502(2):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(y) Engaging in sexual relations with a patient, in violation of Subsection 58-31b-502(3):
initial offense: $4,000 - $8,000
second offense: $8,000 - $10,000
(z) Exploiting or using information about a patient or exploiting the professional relationship by use of knowledge of the patient obtained while practicing the occupation or profession, in violation of Subsection 58-31b-502(4):
initial offense: $2,000 - $5,000
second offense: $5,000 - $10,000
(aa) Unlawfully obtaining, possessing, or using any prescription drug or illicit drug, in violation of Subsection 58-31b-502(5):
initial offense: $1,000 - $5,000
second offense: $5,000 - $10,000
(bb) Unauthorized taking or personal use of nursing supplies from an employer, in violation of Subsection 58-31b-502(6):
initial offense: $1,000 - $5,000
second offense: $5,000 - $10,000
(cc) Unauthorized taking or personal use of a patient's personal property, in violation of Subsection 58-31b-502(7):
initial offense: $1,000 - $5,000

second offense: $5,000 - $10,000

(dd) Knowingly entering into any medical record any false or misleading information or altering a medical record in any way for the purpose of concealing an act, omission, or record of events, medical condition, or any circumstance related to the patient and the medical or nursing care provided, in violation of Subsection 58-31b-502(8):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(ee) Unlawful or inappropriate delegation of nursing care, in violation of Subsection 58-31b-502(9):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(ff) Failing to exercise appropriate supervision of persons providing patient care services under supervision of the licensed nurse, in violation of Subsection 58-31b-502(10):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(gg) Employing or aiding and abetting the employment of unqualified or unlicensed person to practice as a nurse or MAC, in violation of Subsection 58-31b-502(11):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(hh) Failing to file or record any medical report as required by law, impeding or obstructing the filing or recording of such a report, or inducing another to fail to file or record such a report, in violation of Subsection 58-31b-502(12):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(ii) Breaching a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a patient, in violation of Subsection 58-31b-502(13):

initial offense: $1,000 - $5,000

second offense: $5,000 - $10,000

(jj) Failing to pay a penalty imposed by the Division, in violation of Subsection 58-31b-502(14): double the original penalty amount up to $20,000

(kk) Prescribing a schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan, in violation of Subsection 58-31b-502(15):

initial offense: $1,000 - $5,000

second offense: $5,000 - $10,000

(ll) Failing to confine practice within the limits of competency, in violation of Section 58-31b-801:

initial offense: $1,000 - $5,000

second offense: $5,000 - $10,000

(mm) Engaging in any other conduct which constitutes unprofessional or unlawful conduct, in violation of Subsection 58-1-501(1) or (2):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(nn) Engaging in a sexual relationship with a patient surrogate concurrent with the professional relationship, in violation of Subsection R156-31b-502(1)(e):

initial offense: $1,000 - $5,000

second offense: $5,000 - $10,000

(oo) Failing to destroy a license that has expired due to the issuance and receipt of an increased scope of practice license, in violation of Subsection R156-31b-502(1)(a):

initial offense: $500 - $4,000

second offense: $4,000 - $8,000

(pp) Knowingly accepting or retaining a license that has been issued pursuant to a mistake or on the basis of erroneous information, in violation of Subsection R156-31b-502(1)(b):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(qq) Engaging in practice in a disruptive manner, in violation of Subsection R156-31b-502(1)(f):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(rr) Violating the term of an order governing a license, in violation of Subsection 58-1-501(2)(o):

initial offense: $250 - $4,000

second offense: $4,000 - $8,000

(ss) Administering sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department, without first obtaining the required consent from the patient in writing, in violation of Subsection 58-31b-502.5(1):

first offense: $500 - $5,000

second offense: $1,500-$10,000

ongoing offense(s): $2,000 per day but not less than the second offense

(tt) failing to report any adverse event under Section 26-1-40, with respect to the administering of sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department, in violation of Subsection 58-31b-502.5(2):

first offense: $500 - $5,000

second offense: $1,500 - $10,000

ongoing offense(s): $2,000 per day but not less than the second offense

(uu) during a procedure for which sedation or anesthesia will be administered intravenously to a patient in an outpatient setting that is not an emergency department, failing to have access to an advanced cardiac life support crash cart with equipment that is regularly maintained according to guidelines established by the American Heart Association, in violation of Subsection 58-31b-502.5(3):

first offense: $5,000

second offense: $10,000

ongoing offense(s): $2,000 per day but not less than the second offense

(2) Subsequent offenses. Sanctions for an offense subsequent to the second offense, shall be $10,000 or $2,000 per day.

R156-31b-502. Unprofessional Conduct.

(1) "Unprofessional conduct" includes:

(a) failing to destroy a license that has expired due to the issuance and receipt of an increased scope of practice license;

(b) knowingly accepting or retaining a license that has been issued pursuant to a mistake or on the basis of erroneous information;

(c) as to an RN or LPN, issuing a prescription for a prescription drug to a patient except in accordance with the provisions of Section 58-17b-620, or as may be otherwise legally permissible;

(d) failing as the nurse accountable for directing nursing practice of an agency to verify any of the following:

(i) that standards of nursing practice are established and carried out;

(ii) that safe and effective nursing care is provided to patients;

(iii) that guidelines exist for the organizational management and management of human resources needed for safe and effective nursing care to be provided to patients; or

(iv) that the nurses employed by the agency have the knowledge, skills, ability and current competence to carry out the requirements of their jobs;

(e) engaging in sexual contact with a patient surrogate concurrent with the nurse/patient relationship unless the nurse affirmatively shows by clear and convincing evidence that the contact:

(i) did not result in any form of abuse or exploitation of the surrogate or patient; and

(ii) did not adversely alter or affect in any way:
(A) the nurse's professional judgment in treating the patient;
(B) the nature of the nurse's relationship with the surrogate; or
(C) the nature of the nurse's relationship with the patient;
(f) engaging in disruptive behavior in the practice of nursing;
(g) prescribing to oneself any controlled substance drug, in violation of Subsection R156-37-502(1)(a); and
(h) violating any federal or state law relating to controlled substances, including self-administering any controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug, in violation of Section R156-37-502.
(2) In accordance with a prescribing practitioner's order and an IHP, a registered nurse who, in reliance on a school's policies or the delegation rule as provided in Sections R156-31b-701 and R156-31b-701a, delegates or trains an unlicensed assistive person to administer medications under Sections 53A-11-601, R156-31b-701 and R156-31b-701a, shall not be considered to have engaged in unprofessional conduct for inappropriate delegation.

R156-31b-602. Requirements for Limited-time Approval of Non-accredited Nursing Education Programs.

(1)(a) Pursuant to Subsection 58-31b-601(2), a nursing education program may, prior to obtaining an accreditation described in Subsection 58-31b-601(1), qualify for a limited time as an approved education program if the program was granted limited-time approval on or before May 15, 2016 and had demonstrated to the satisfaction of the Board that the program:
(i) established a timeline which allows for the initial accreditation visit to occur before the first students graduate;
(ii) understands the accreditation standards of its selected accrediting body as demonstrated in a written report which includes plans and processes consistent with the accrediting body for:
(A) curricular organization and delivery method;
(B) student learning outcomes;
(C) student support;
(D) program administration and organization;
(E) learning environment and facilities;
(F) clinical learning and placements; and
(G) faculty and nurse administrator qualifications;
(iii) clearly informs students and potential students about its accreditation status and the potential implications for future practice; and
(2) The provider of a program with limited-time approval pursuant to this Subsection (1) and (2) shall, pursuant to this Subsection (3), disclose to each student who enrolls:
(a) that program accreditation is pending;
(b) that any education completed prior to the accrediting body's final determination will satisfy, at least in part, state requirements for prelicensing education; and
(c) that, if the program fails to achieve accreditation on or before December 31, 2020, any student who has not yet graduated will not be made eligible for the NCLEX by the state of Utah.
(3) The disclosure required by this Subsection (2) shall:
(a) be signed by each student who enrolls with the provider; and
(b) at a minimum, state the following: "The nursing program in which you are enrolling has not yet been accredited. The program is being reviewed by the (accrediting body). Any education you complete prior to December 31, 2020 or a final determination by the (accrediting body) will satisfy associated state requirements for licensure. If the (accrediting body) ultimately determines that the program does not qualify for accreditation, you will not be made eligible for the NCLEX by the state of Utah."
(4) If an accredited program receives notice or determines that its accreditation status is in jeopardy, the institution offering the program shall:
(a) immediately notify the Board of its accreditation status;
(b) immediately and verifiably notify all enrolled students in writing of the program's accreditation status, including:
(i) the estimated date on which the accrediting body will make its final determination as to the program's accreditation; and
(ii) the potential impact of a program's accreditation status on the graduate's ability to secure licensure and employment or transfer academic credits to another institution in the future; and
(c) attempt negotiations with other academic institutions to establish a transfer articulation agreement.
(5) If a program with limited-time approval fails to achieve accreditation by December 31, 2020 or if a program loses its accreditation, the institution offering the program shall:
(a) submit a written report to the Board within ten days of receiving formal notification from the accrediting body;
(b) notify all matriculated and pre-enrollment nursing students about the program's accreditation status;
(c) inform all nursing students who will graduate from a non-accredited program that they will not be eligible for initial licensure through Utah; and
(d) submit a written plan to close the program and cease operations, if necessary.

R156-31b-603. Education Providers -- Requirements for Ongoing Communication with the Board.

An education program that has achieved limited-time approval of its program(s) shall provide to the Board:
(1) a Board-approved annual report by December 31 of each calendar year; and
(2) copies of any correspondence between the program provider and the accrediting body within 30 days of receipt or submission of the correspondence.

R156-31b-609. Standards for Out-of-State Programs Providing Clinical Experiences in Utah.

A nursing education program provider located in another state that desires to place nursing students in Utah agencies or institutions for clinical or practica experiences shall, prior to placing a student, demonstrate to the satisfaction of the Division and Board that the program:
(1) is approved by the home state Board of Nursing;
(2) is accredited by an accrediting body for nursing education that is approved by the United States Department of Education;
(3) has faculty who:
(a) are employed by the nursing education program;
(b) meet the requirements to be a faculty member as established by the accrediting body and the home state's Board of Nursing;
(c) are licensed in good standing in Utah or a Compact state if supervising face-to-face clinical or practica experiences; and
(d) are affiliated with an institution of higher education; and
(4) has a plan for selection and supervision of:
(a) faculty or preceptor; and

(b) the clinical activity, including:
(i) the selection of an appropriate clinical location, and
(ii) ensuring that each preceptor is licensed in good standing in Utah or a Compact state;
(5) maintains its accreditation with an accrediting body for nursing education that is approved by the United States Department of Education; and
(a) reports any changes in its accreditation status to the Utah Board of Nursing in a timely manner;
(6) submits an annual report to the Utah Board of Nursing by August 1 of each year; and
(a) includes in the annual report:
(i) an overview of the number of students placed in Utah facilities;
(ii) an attestation that all face-to-face clinical faculty and preceptors used by the program are licensed in good standing in Utah or a Compact state; and
(iii) a verification that it is currently accredited, in good standing, with its accrediting body.

R156-31b-701. Delegation of Nursing Tasks in a Non-school Setting.

In accordance with Subsection 58-31b-102(14)(g), the delegation of nursing tasks is further defined, clarified, or established as follows:
(1)(a) The delegator retains accountability for the appropriate delegation of tasks and for the nursing care of the patient.
(b) The delegator may not delegate to unlicensed assistive personnel, including a physician's medical assistant, any task requiring the specialized knowledge, judgment, or skill of a licensed nurse.
(c) Before determining which, if any, nursing tasks may be delegated, the delegator shall make a focused nursing assessment of the circumstances.
(d) A delegator may not delegate a task that is:
(i) outside the area of the delegator's responsibility;
(ii) outside the delegator's personal knowledge, skills, or ability; or
(iii) beyond the ability or competence of the delegatee to perform:
(A) as personally known by the delegator; and
(B) as evaluated according to generally accepted nursing practice standards of health, safety, and reasonable prudence.
(e) In delegating a nursing task, the delegator shall:
(i) provide instruction and direction necessary to allow the delegatee to safely perform the specific task;
(ii) provide ongoing appropriate supervision and evaluation of the delegatee who is performing the task;
(iii) explain the delegation to ensure that the delegatee understands which patient is to be treated, and according to what time frame;
(iv) instruct the delegatee how to intervene in any foreseeable risks that may be associated with the delegated task;
(v) if the delegated task is to be performed more than once, establish a system for ongoing monitoring of the delegatee; and
(vi)(A) evaluate the following factors to determine the degree of supervision required to ensure safe care:
(I) the stability and condition of the patient;
(II) the training, capability, and willingness of the delegatee to perform the delegated task;
(III) the nature of the task being delegated, including the complexity, irreversibility, predictability of outcome, and potential for harm inherent in the task;
(IV) the proximity and availability to the delegatee of the delegator or other qualified nurse during the time(s) when the task will be performed; and
(V) any immediate risk to the patient if the task is not carried out; and
(B) ensure that the delegator or another qualified nurse is readily available either in person or by telecommunication to:
(I) evaluate the patient's health status;
(II) evaluate the performance of the delegated task;
(III) determine whether goals are being met; and
(IV) determine the appropriateness of continuing delegation of the task.
(2) Nursing tasks that may be delegated shall meet the following criteria as applied to each specific patient situation:
(a) be considered routine care for the specific patient;
(b) pose little potential hazard for the patient;
(c) be generally expected to produce a predictable outcome for the patient;
(d) be administered according to a previously developed plan of care; and
(e) be limited to those tasks that do not inherently involve nursing judgment that cannot be separated from the procedure.
(3) If the nurse, upon review of the patient's condition, the complexity of the task, the ability of the proposed delegatee, and other criteria established in this Subsection, determines that the proposed delegatee cannot safely provide the requisite care, the nurse shall not delegate the task to such proposed delegatee.
(4) A delegatee may not:
(a) further delegate to another person any task delegated to the individual by the delegator; or
(b) expand the scope of the delegated task without the express permission of the delegator.
(5) Tasks that, according to the internal policies or practices of a medical facility, are required or allowed to be performed by an unlicensed person shall not be deemed to have been delegated by a licensee.

R156-31b-701a. Delegation of Tasks in a School Setting.

In addition to the delegation rule found in Section R156-31b-701, the delegation of tasks in a school setting is further defined, clarified, or established as follows:
(1) Before a registered nurse may delegate a task that is required to be performed within a school setting, the registered nurse shall:
(a) develop, in conjunction with the applicable student, parent(s) or parent surrogate(s), educator(s), and healthcare provider(s) an IHP; and
(b) ensure that the IHP is available to school personnel.
(2) Any task being delegated by a registered nurse shall be identified within the patient's current IHP.
(3)(a) A registered nurse shall personally train any unlicensed person who will be delegated the task of administering medications that are routine for the student.
(b) The training required under this Subsection (3)(a) shall be performed at least annually.
(c) A registered nurse may not delegate to an unlicensed person the administration of any medication:
(i) with known, frequent side effects that can be life threatening;
(ii) that requires the student's vital signs or oxygen saturation to be monitored before, during or after administration of the drug;
(iii) that is being administered as a first dose in a school setting:
(A) of a new medication; or
(B) after a dosage change; or
(iv) that requires nursing assessment or judgment prior to or immediately after administration.
(d) In addition to delegating other tasks pursuant to this

rule, a registered nurse may delegate to an unlicensed person who has been properly trained regarding a diabetic student's IHP:

(i) the administration of a scheduled dose of insulin; and

(ii) the administration of glucagon in an emergency situation, as prescribed by the practitioner's order or specified in the IHP.

R156-31b-703a. Standards of Professional Accountability.

The following standards apply equally to the LPN, RN, and APRN licenses. In demonstrating professional accountability, a licensee shall:

(1) practice within the legal boundaries that apply to nursing;

(2) comply with all applicable statutes and rules;

(3) demonstrate honesty and integrity in nursing practice;

(4) base nursing decisions on nursing knowledge and skills, and the needs of patients;

(5) seek clarification of orders when needed;

(6) obtain orientation/training competency when encountering new equipment and technology or unfamiliar care situations;

(7) demonstrate attentiveness in delivering nursing care;

(8) implement patient care, including medication administration, properly and in a timely manner;

(9) document all care provided;

(10) communicate to other health team members relevant and timely patient information, including:

(a) patient status and progress;

(b) patient response or lack of response to therapies;

(c) significant changes in patient condition; and

(d) patient needs;

(11) take preventive measures to protect patient, others, and self;

(12) respect patients' rights, concerns, decisions, and dignity;

(13) promote a safe patient environment;

(14) maintain appropriate professional boundaries;

(15) contribute to the implementation of an integrated health care plan;

(16) respect patient property and the property of others;

(17) protect confidential information unless obligated by law to disclose the information;

(18) accept responsibility for individual nursing actions, competence, decisions, and behavior in the course of nursing practice; and

(19) maintain continued competence through ongoing learning and application of knowledge in each patient's interest.

R156-31b-703b. Scope of Nursing Practice Implementation.

(1) LPN. An LPN shall be expected to:

(a) conduct a focused nursing assessment;

(b) plan for and implement nursing care within limits of competency;

(c) conduct patient surveillance and monitoring;

(d) assist in identifying patient needs;

(e) assist in evaluating nursing care;

(f) participate in nursing management by:

(i) assigning appropriate nursing activities to other LPNs;

(ii) delegating care for stable patients to unlicensed assistive personnel in accordance with these rules and applicable statutes;

(iii) observing nursing measures and providing feedback to nursing managers; and

(iv) observing and communicating outcomes of delegated and assigned tasks; and

(g) serve as faculty in area(s) of competence.

(2) RN. An RN shall be expected to:

(a) interpret patient data, whether obtained through a focused nursing assessment or otherwise, to:

(i) complete a comprehensive nursing assessment; and

(ii) determine whether, and according to what timeframe, another medical professional, a patient's family member, or any other person should be apprised of a patient's nursing needs;

(b) detect faulty or missing patient information;

(c) apply nursing knowledge effectively in the synthesis of the biological, psychological, spiritual, and social aspects of the patient's condition;

(d) utilize broad and complete analyses to plan strategies of nursing care and nursing interventions that are integrated within each patient's overall health care plan or IHP;

(e) demonstrate appropriate decision making, critical thinking, and clinical judgment to make independent nursing decisions and to identify health care needs;

(f) correctly identify changes in each patient's health status;

(g) comprehend clinical implications of patient signs, symptoms, and changes as part of ongoing or emergent situations;

(h) critically evaluate the impact of nursing care, the patient's response to therapy, and the need for alternative interventions;

(i) intervene on behalf of a patient when problems are identified so as to revise a care plan as needed;

(j) appropriately advocate for patients by:

(i) respecting patients' rights, concerns, decisions, and dignity;

(ii) identifying patient needs;

(iii) attending to patient concerns or requests; and

(iv) promoting a safe and therapeutic environment by:

(A) providing appropriate monitoring and surveillance of the care environment;

(B) identifying unsafe care situations; and

(C) correcting problems or referring problems to appropriate management level when needed;

(k) communicate with other health team members regarding patient choices, concerns, and special needs, including:

(i) patient status and progress;

(ii) patient response or lack of response to therapies; and

(iii) significant changes in patient condition;

(l) demonstrate the ability to responsibly organize, manage, and supervise the practice of nursing by:

(i) delegating tasks in accordance with these rules and applicable statutes; and

(ii) matching patient needs with personnel qualifications, available resources, and appropriate supervision;

(m) teach and counsel patient families regarding an applicable health care regimen, including general information about health and medical conditions, specific procedures, wellness, and prevention;

(n) if acting as a chief administrative nurse:

(i) ensure that organizational policies, procedures, and standards of nursing practice are developed, kept current, and implemented to promote safe and effective nursing care;

(ii)(A) assess the knowledge, skills, and abilities of nursing staff and assistive personnel; and

(B) ensure all personnel are assigned to nursing positions appropriate to their determined competence and licensure/certification/registration level; and

(iii) ensure that thorough and accurate documentation of

personnel records, staff development, quality assurance, and other aspects of the nursing organization are maintained;

(o) if employed by a department of health:

(i) implement standing orders and protocols; and

(ii) complete and provide to a patient prescriptions that have been prepared and signed by a physician in accordance with the provisions of Section 58-17b-620;

(p) serve as faculty in area(s) of competence; and

(q) perform any task within the scope of practice of an LPN.

(3) APRN.

(a) An APRN who chooses to change or expand from a primary focus of practice shall, at the request of the Division, document competency within that expanded practice based on education, experience, and certification. The burden to demonstrate competency rests upon the licensee.

(b) An individual licensed as an APRN may practice within the scope of practice of an RN and an LPN in Utah.

(c) An APRN who wishes to practice as an RN in a Compact state must reinstate, qualify for, and obtain an RN Compact license in Utah.

R156-31b-801. Medication Aide Certified -- Formulary and Protocols.

In accordance with Subsection 58-31b-102(12)(b)(i), the formulary and protocols for an MAC to administer routine medications are as follows.

(1) Under the supervision of a licensed nurse, an MAC may:

(a) administer over-the-counter medication;

(b) administer prescription medications:

(i) if expressly instructed to do so by the supervising nurse; and

(ii) via approved routes as listed in Subsection 58-31b-102(17)(b);

(c) turn oxygen on and off at a predetermined, established flow rate;

(d) destroy medications per facility policy;

(e) assist a patient with self administration; and

(f) account for controlled substances with another MAC or nurse physically present.

(2) An MAC may not administer medication via the following routes:

(a) central lines;

(b) colostomy;

(c) intramuscular;

(d) subcutaneous;

(e) intrathecal;

(f) intravenous;

(g) nasogastric;

(h) nonmetered inhaler;

(i) intradermal;

(j) urethral;

(k) epidural;

(l) endotracheal; or

(m) gastronomy or jejunostomy tubes.

(3) An MAC may not administer the following kinds of medications:

(a) barium and other diagnostic contrast;

(b) chemotherapeutic agents except oral maintenance chemotherapy;

(c) medication pumps including client controlled analgesia; and

(d) nitroglycerin paste.

(4) An MAC may not:

(a) administer any medication that requires nursing assessment or judgment prior to administration, through ongoing evaluation, or during follow-up;

(b) receive written or verbal patient orders from a licensed practitioner;

(c) transcribe orders from the medical record;

(d) conduct patient or resident assessments or evaluations;

(e) engage in patient or resident teaching activities regarding medications unless expressly instructed to do so by the supervising nurse;

(f) calculate drug doses, or administer any medication that requires a medication calculation to determine the appropriate dose;

(g) administer the first dose of a new medication or a dosage change, unless expressly instructed to do so by the supervising nurse; or

(h) account for controlled substances, unless assisted by another MAC or a nurse who is physically present.

(5) In accordance with Section R156-31b-701, a nurse may refuse to delegate to an MAC the administration of medications to a specific patient or in a specific situation.

(6)(a) A nurse practicing in a facility that is required to provide nursing services 24 hours per day shall not supervise more than two MACs per shift.

(b) A nurse providing nursing services in a facility that is not required to provide nursing services 24 hours per day may supervise as many as four MACs per shift.

R156-31b-802. Medication Aide Certified -- Approval of Training Programs.

In accordance with Subsection 58-31b-601(3), the minimum standards for an MAC training program to be approved by the Division in collaboration with the Board and the process to obtain approval are established as follows.

(1) All training programs shall be approved by the Division in collaboration with the Board and shall obtain approval prior to the program being implemented.

(2) Training programs may be offered by an educational institution, a health care facility, or a health care association.

(3) The program shall consist of at least:

(a) 60 clock hours of didactic (classroom) training that is consistent with the model curriculum set forth in Section R156-31b-803; and

(b) 40 hours of practical training within a long-term care facility.

(4) The classroom instructor shall:

(a)(i) have a current, active, LPN, RN, or APRN license in good standing or a multistate privilege to practice nursing in Utah; and

(ii) have at least one year of clinical experience; or

(b)(i) be an approved certified nurse aide (CNA) instructor who has completed a "Train the Trainer" program recognized by the Utah Nursing Assistant Registry; and

(ii) have at least one year of clinical experience.

(5)(a) The on-site practical training experience instructor shall meet the following criteria:

(i)(A) have a current, active, LPN, RN or APRN license in good standing or a multistate privilege to practice nursing in Utah; and

(B) have at least one year of clinical experience; or

(ii)(A) be an approved certified nurse aide (CNA) instructor who has completed a "Train the Trainer" program recognized by the Utah Nursing Assistant Registry; and

(B) have at least one year of clinical experience.

(b) The practical training instructor-to-student ratio shall be no greater than:

(i) 1:2 if the instructor is working with individual students to administer medications; or

(ii) 1:6 if the instructor is supervising students who are working one-on-one with medication nurses to administer medications in clinical facilities.

(c) The on-site practical training experience instructor

shall be on site and available at all times if the student is not being directly supervised by a licensed nurse during the practical training experience.

(6) An entity seeking approval to provide an MAC training program shall:

(a) submit to the Division a complete application form prescribed by the Division;

(b) provide evidence of adequate and appropriate trainers and resources to provide the training program, including a well-stocked clinical skills lab or the equivalent;

(c) submit to the Division a copy of the proposed training curriculum and an attestation that the proposed curriculum is consistent with the model curriculum referenced in Section R156-31b-803;

(d) document minimal admission requirements, which shall include:

(i) an earned high school diploma, successful passage of the general educational development (GED) test, or equivalent education as approved by the Board;

(ii) current certification as a nursing aide, in good standing, from the Utah Nursing Assistant Registry;

(iii) at least 2,000 hours of experience completed:

(A) as a certified nurse aide working in a long-term care setting; and

(B) within the two-year period preceding the date of application to the training program: and

(iv) current cardiopulmonary resuscitation (CPR) certification.

R156-31b-803. Medication Aide Certified -- Model Curriculum.

A school that offers a medication aide certification program shall follow the "Medication Assistant-Certified (MA-C) Model Curriculum" adopted by the National Council of State Boards of Nursing's Delegate Assembly on August 9, 2007, which is hereby adopted and incorporated by reference.

KEY: licensing, nurses

December 11, 2017	**58-31b-101**
Notice of Continuation January 8, 2018	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-46b. Division Utah Administrative Procedures Act Rule.
R156-46b-101. Title.

This rule is known as the "Division Utah Administrative Procedures Act Rule."

R156-46b-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Title 63G, Chapter 4, Subsection 58-1-108(1), and Subsection 58-1-106(1)(a). The purposes of this rule include:

(a) classifying Division adjudicative proceedings;

(b) clarifying the identity of presiding officers at Division adjudicative proceedings; and

(c) defining procedures for Division adjudicative proceedings which are consistent with the requirements of Titles 58 and 63G and Rule R151-4.

R156-46b-201. Formal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by a request for agency action are classified as formal adjudicative proceedings:

(a) special appeals board held in accordance with Section 58-1-402;

(b) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as a formal adjudicative proceeding; and

(c) board of appeal held in accordance with Subsection 15A-1-207(3).

(2) The following adjudicative proceedings initiated by a Notice of Agency Action are classified as formal adjudicative proceedings:

(a) disciplinary proceedings, except those classified as informal proceedings under Section R156-46b-202, that result in the following sanctions:

(i) revocation of licensure;

(ii) suspension of licensure;

(iii) restricted licensure;

(iv) probationary licensure;

(v) issuance of a cease and desist order except when imposed through a citation;

(vi) administrative fine except when imposed through a citation; and

(vii) issuance of a public reprimand;

(b) unilateral modification of a disciplinary order; and

(c) termination of diversion agreements.

R156-46b-202. Informal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by other than a notice of agency action are classified as informal adjudicative proceedings:

(a) approval of application for initial licensure, renewal or reinstatement of licensure, or relicensure;

(b) denial of application for initial licensure or relicensure;

(c) denial of application for renewal or reinstatement of licensure;

(d) approval or denial of application for inactive or emeritus licensure status;

(e) board of appeal under Subsection 15A-1-207(3);

(f) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11;

(g) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (g);

(h) approval or denial of request to surrender licensure;

(i) approval or denial of request for entry into diversion program under Section 58-1-404;

(j) matters relating to diversion program;

(k) citation hearings held in accordance with citation authority established under Title 58;

(l) approval or denial of request for modification of disciplinary order;

(m) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as an informal adjudicative proceeding;

(n) approval or denial of request for correction of procedural or clerical mistakes;

(o) approval or denial of request for correction of other than procedural or clerical mistakes;

(p) disciplinary sanctions imposed in a stipulation or memorandum of understanding with an applicant for licensure;

(q) approval or denial of application for a tax credit certificate by a psychiatrist, psychiatric mental health nurse practitioner, or volunteer retired psychiatrist under Section 58-1-111; and

(r) all other requests for agency action permitted by statute or rule governing the Division not specifically classified as formal adjudicative proceedings in Subsection R156-46b-201(1).

(2) The following adjudicative proceedings initiated by a notice of agency action are classified as informal adjudicative proceedings:

(a) nondisciplinary proceeding which results in cancellation of licensure;

(b) disciplinary proceedings against:

(i) a contractor, plumber, electrician, or alarm company licensed under Title 58, Chapter 55;

(ii) a controlled substance licensee under Subsection 58-37-6(4)(g); and

(iii) a contract security company or armored car company for failure to replace a qualifier as required under Section 58-63-306.

(c) disciplinary proceedings initiated by a notice of agency action and order to show cause concerning violations of an order governing a license;

(d) disciplinary proceedings initiated by a notice of agency action in which the allegations of misconduct are limited to one or more of the following:

(i) Subsection 58-1-501(2)(c) or (d); or

(ii) Subsections R156-1-501(1) through (5).

R156-46b-301. Designation.

The presiding officers for Division adjudicative proceedings are as defined at Subsection 63G-4-103(1)(h) and as specifically established by Section 58-1-109 and by Section R156-1-109.

R156-46b-401. In General.

(1) The procedures for formal Division adjudicative proceedings are set forth in Sections 63G-4-204 through 63G-4-208, Rule R151-4, and this rule.

(2) The procedures for informal Division adjudicative proceedings are set forth in Section 63G-4-203, Rule R151-4, and this rule.

R156-46b-402. Response to Notice of Agency Action in an Informal Proceeding.

A written response or answer to the allegations in a notice of agency action or incorporated by reference into a notice of agency action that initiates an informal adjudicative proceeding may, as set forth in a notice of agency action, be required to be filed within 30 days of the mailing date of the notice of agency action or other date specified in the notice of agency action.

R156-46b-403. Evidentiary Hearings in Informal Adjudicative Proceedings.

(1) Evidentiary hearings are not required for informal Division adjudicative proceedings unless required by statute or rule, or permitted by rule and requested by a party within the time prescribed by rule.

(2) Unless otherwise provided, a request for an evidentiary hearing permitted by rule must be submitted in writing no later than 20 days following the issuance of the notice of agency action if the proceeding was initiated by the Division, or together with the request for agency action if the proceeding was not initiated by the Division.

(3) An evidentiary hearing is required for the following informal proceedings:

(a) R156-46b-202(1)(f), board of appeal held in accordance with Subsection 15A-1-207(3); and

(b) R156-46b-202(1)(l), citation hearings held in accordance with Title 58.

(4) An evidentiary hearing is permitted for an informal proceeding pertaining to matters relating to a diversion program in accordance with R156-46b-202(1)(k).

(5) Unless otherwise agreed by the parties, no evidentiary hearing shall be held in an informal adjudicative proceeding unless timely notice of the hearing has been served upon the parties as required by Subsection 63G-4-203(1)(d). Timely notice means service of a Notice of Hearing upon all parties not later than ten days prior to any scheduled evidentiary hearing.

(6) Parties shall be permitted to testify, present evidence, and comment on the issues at an evidentiary hearing in a Division informal adjudicative proceeding.

R156-46b-404. Orders in Informal Adjudicative Proceedings.

(1) Orders issued in Division informal adjudicative proceedings shall comply with Subsection 63G-4-203(1)(i).

(2) Issuance of a license or approval of related requests in response to a request for agency action is sufficient to satisfy the requirements of Subsection 63G-4-203(1)(i).

(3) Issuance of a letter denying a license or related requests is sufficient to satisfy the requirements of Subsection 63G-4-203(1)(i). The letter must explain the reasons for the denial and the rights of the parties to seek agency review, including the time limits for requesting review.

(4) Unless otherwise specified by the director, the fact finder who serves as the presiding officer at an evidentiary hearing convened in Division informal adjudicative proceedings shall issue a final order.

(5) Orders issued in Division informal adjudicative proceedings in which an evidentiary hearing is convened shall comply with the requirements of Subsection 63G-4-208(1).

R156-46b-405. Informal Agency Advice.

(1) The Division may issue an informal guidance letter in response to a request for advice unless the request specifically seeks a declaratory order.

(2) A notice shall appear in the informal guidance letter notifying the subject of the letter that the letter is an informal guidance letter only and is not intended as a formal declaratory order. The notice shall also provide the citation where the requirements which govern declaratory orders are found.

KEY: administrative procedures, government hearings, occupational licensing
March 13, 2017 63G-4-102(6)
Notice of Continuation January 5, 2016 58-1-106(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-55b. Electricians Licensing Act Rule.
R156-55b-101. Title.

This rule is known as the "Electricians Licensing Act Rule".

R156-55b-102. Definitions.

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

(1) "Electrical work" as used in Subsection 58-55-102(14)(a) and in this rule means installation, fabrication or assembly of equipment or systems included in "Premises Wiring" as defined by Title 15A, State Construction and Fire Codes Act. Electrical work includes installation of raceway systems used for any electrical purpose, and installation of field-assembled systems such as ice and snow melting, pipe-tracing, manufactured wiring systems, and the like. Electrical work does not include installation of factory-assembled appliances or machinery that are not part of the premises wiring unless wiring interconnections external to the equipment are required in the field, and does not include cable-type wiring that does not pose a hazard from a shock or fire initiation standpoint as defined by Title 15A, State Construction and Fire Codes Act. Wiring covered by the National Electrical Code that does not pose a hazard as described above includes Class 2 wiring as defined in Article 725, Power-Limited circuits as defined in Article 760 and wiring methods covered by Chapter 8. All other wiring is subject to licensing requirements.

(2) "Immediate supervision" as used in Subsection 58-55-102(26) and this rule means the following:

(a) for industrial and commercial electrical work, the apprentice and the supervising electrician are physically present on the same project or jobsite but are not required to be within sight of one another; and

(b) for residential electrical work, the supervising electrician, when not physically present on the same project or jobsite as the apprentice, is available to provide reasonable direction, oversight, inspection, and evaluation of the work of an apprentice so as to ensure that the end result complies with applicable standards.

(3) "Minor electrical work incidental to a mechanical or service installation" as used in Subsection 58-55-305(1)(n) means the electrical work involved in installation, replacement or repair of appliances or machinery that utilize electrical power. Minor electrical work does not include modification or repair of "Premises Wiring" as defined in the National Electrical Code, and does not include installation of a disconnecting means or outlet. Electrical work is minor and incidental only when wiring is extended no more than ten feet in length from an outlet or disconnect provided specifically for the piece of equipment.

(4) "Residential project" as used in Subsection 58-55-302(3)(j)(ii) pertains to supervision and means electrical work performed in one or two-family dwellings, including townhouses, as determined by Title 15A, State Construction and Fire Codes Act.

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-55b-501.

(6) "Work commonly done by unskilled labor" as used in Subsection 58-55-102(14)(b)(iii) means work such as digging, sweeping, hammering, carrying, drilling holes, or other tasks that do not directly involve the installation of raceways, conductors, cables, wiring devices, overcurrent devices, or distribution equipment. Unlicensed persons may handle wire on large wire pulls involving conduit of two inches or larger or assist in moving heavy electrical equipment when the task is performed in the immediate presence of and supervised by properly licensed master, journeyman, residential master or residential journeyman electricians acting within the scope of their licenses.

R156-55b-103. Authority.

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

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

The organization of this rule and its relationship to Rule R156-1 is described in Section R156-1-107.

R156-55b-302a. Qualifications for Licensure - Education and Experience Requirements.

(1) In accordance with Subsection 58-55-302(3)(i)(i), the approved electrical training program for licensure as a residential journeyman electrician consists of:

(a) a program of electrical study approved by the Utah Board of Regents, Utah System of Technical Colleges Board of Trustees or other out of state program that is deemed substantially equivalent as determined by the Electricians Licensing Board. Programs approved by the Electricians Licensing Board prior to January 1, 2009 remain approved programs; and

(b) at least two years of work experience as a licensed apprentice consistent with Section R156-55b-302b.

(2) In accordance with Subsection 58-55-302(3)(h)(i), the approved four year planned training program for licensure as a journeyman electrician consists of:

(a) a program of electrical study approved by the Utah Board of Regents, Utah System of Technical Colleges Board of Trustees or other out of state program that is deemed substantially equivalent as determined by the Electricians Licensing Board. Programs approved by the Electricians Licensing Board prior to January 1, 2009 remain approved programs; and

(b) at least four years of work experience as a licensed apprentice consistent with Section R156-55b-302b.

(3) A semester of school shall include at least 81 hours of classroom instruction time. A student shall attend a minimum of 72 hours to receive credit for the semester.

(4) A competency exam shall be given to each student at the end of each semester with the exception of the fourth year second semester. A student, to continue to the next semester, shall achieve a score of 75% or higher on the competency exam. A student who scores below 75% may retake the test one time.

(5) The applicant shall pass each class with a minimum score of 75%.

(6) Competency test results shall be provided to the Board at the Board meeting immediately following the semester in a format approved by the Board.

(7) An applicant for a master electrician license, applying pursuant to Subsection 58-55-302(3)(f)(i) shall be a graduate of an electrical program accredited by the Engineering Accreditation Commission/Accreditation Board for Engineering and Technology (EAC/ABET).

(8) An applicant shall provide documentation that all education and experience meets the requirements of this rule.

R156-55b-302b. Qualifications for Licensure - Work Experience - Residential Journeyman and Journeyman Electricians.

(1) In order to satisfy Subsections 58-55-302(3)(h) and (i), an applicant for a license as a residential journeyman electrician or journeyman electrician shall document the

following on-the-job work experience:
(a) Residential Journeyman Electrician:
(i) at least 600 hours in boxes and fittings, conduit, wireways and cableways and associated fittings;
(ii) at least 3000 hours in wire and cable, individual conductors and multi-conductors cables, and non-metallic sheathed cable;
(iii) at least 300 hours in distribution and utilization equipment, transformers, control panels, disconnects, motor starters, lighting fixtures, heaters, appliances, motor and other distribution or utilization equipment; and
(iv) at least 300 hours in specialized work including grounding, wiring of systems for sound, data, communication, alarms, automated systems, generators, batteries and computer equipment.
(b) Journeyman electrician:
(i) at least 4000 hours in raceways, boxes and fittings, conduit, wireways, cableways and other raceways and associated fittings, and non-metallic sheathed cable;
(ii) at least 800 hours in wire and cable, individual conductors and multi-conductor cables;
(iii) at least 400 hours in distribution and utilization equipment including transformers, panel boards, switchboards, control panels, disconnects, motor starters, lighting fixtures, heaters, appliances, motors and other distribution and utilization equipment; and
(iv) at least 400 hours in specialized work including grounding, wiring of systems for sound, data, communication, alarms, automated systems, generators, batteries and computer equipment.
(2) No more than 2000 hours of work experience may be credited for each 12 month period.
(3) No credit will be given for work experience performed illegally.

R156-55b-302c. Qualifications for Licensure - Examination Requirements.
(1) In accordance with Subsection 58-55-302(1)(c)(i), an applicant for licensure under this rule shall pass the appropriate examinations that are approved by the Board, each of which shall consist of a theory part, a code part and a practical part as follows:
(a) Utah Electrical Licensing Examination for Master Electricians;
(b) Utah Electrical Licensing Examination for Master Residential Electricians;
(c) Utah Electrical Licensing Examination for Journeyman Electricians; and
(d) Utah Electrical Licensing Examination for Residential Journeyman Electricians.
(2) Admission to the examinations is permitted after:
(a) the applicant has completed all requirements for licensure set forth in Sections R156-55b-302a and R156-55b-302b; or
(b) the journeyman applicant has completed:
(i) the apprentice education program set forth in Subsection R156-55b-302a; and
(ii) not less than 6,000 hours of the experience required under Subsection R156-55b-302b;
(c) the residential journeyman applicant has completed:
(i) the apprentice education program set forth in Subsection R156-55b-302a; and
(ii) not less than 3,000 hours of the experience required under Subsection R156-55b-302b.
(3) The applicant shall obtain a "pass" grade on the practical part of the examination, a score of at least 75% on the theory part and a score of at least 75% on the code part of the examination.
(4)(a) If an applicant fails one or more parts of the examination, the applicant shall retake any part of the examination failed.
(b) An applicant shall wait at least 25 days between the first two retakes and thereafter shall wait 120 days between retakes.
(5) If an applicant passes any part of the examination but does not pass the entire examination, the passing score on any part of the examination shall be valid for one year from the date the part of the examination was passed. Thereafter, the applicant shall retake any previously passed part of the examination.

R156-55b-303. Renewal Cycle - Procedures.
(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 55 is established by rule in Section R156-1-308a.
(2) Renewal procedures shall be in accordance with Section R156-1-308c.

R156-55b-304. Continuing Education.
(1) Required Hours. Pursuant to Sections 58-55-302.7 and 58-55-303, each licensee shall complete 16 hours of continuing education during each two year license term. A minimum of 12 hours shall be core education. The remaining four hours may be professional education.
(2) "Core continuing education" is defined as education covering the National Electrical Code as adopted or proposed for adoption.
(3) "Professional continuing education" is defined as education covering:
(a) National Fire Protection Association 70E (NFPA 70E), Occupational Safety and Health Administration (OSHA), Mine Safety and Health Administration (MSHA);
(b) electrical motors and motor controls, electrical tool usage; and
(c) supervision skills related to the electrical trade.
(4) Non-acceptable course subject matter includes the following types of courses and other similar courses:
(a) mechanical office and business skills, such as typing, speed reading, memory improvement and report writing;
(b) physical well-being or personal development, such as personal motivation, stress management, time management, or dress for success;
(c) presentations by a supplier or a supplier representative to promote a particular product or line of products; and
(d) meetings held in conjunction with the general business of the licensee or employer.
(5) The Division may:
(a) waive the continuing education requirements for a licensee that is an instructor of an approved apprenticeship program; or
(b) waive or defer the continuing education requirements as provided in Section R156-1-308d.
(6) A continuing education course shall meet the following standards:
(a) Time. Each hour of continuing education course credit shall consist of at least 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes may be used for breaks.
(b) Provider. The course provider shall meet the requirements of this section and shall be one of the following:
(i) a recognized accredited college or university;
(ii) a state or federal agency;
(iii) a professional association or organization involved in the construction trades; or
(iv) a commercial continuing education provider

providing a program related to the electrical trade.

(c) Content. The content of the course shall be relevant to the practice of the electrical trade and consistent with the laws and rules of this state.

(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.

(e) Teaching Methods. The course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.

(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training and experience.

(g) Distance learning. A course may be recognized for continuing education that is provided through internet or home study courses provided that the course verifies registration and participation in the course by means of a passing a test demonstrating that the participant has learned the material presented. Test questions shall be randomized for each participant.

(h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division and shall provide to individuals completing the course a certificate which contains the following information:

(i) the date of the course;

(ii) the name of the course provider;

(iii) the name of the instructor;

(iv) the course title;

(v) the hours of continuing education credit;

(vi) the attendee's name;

(vii) the attendee's license number; and

(viii) the signature of the course provider.

(7) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.

(8) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (11). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.

(9) Licensees who lecture in approved continuing education courses shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.

(10) A course provider shall submit continuing education courses for approval to the continuing education registry and shall submit verification of attendance and completion on behalf of licensees attending and completing the program directly to the continuing education registry in the format required by the continuing education registry.

(11) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses which meet the standards set forth under this section.

(12) Continuing Education Registry.

(a) The Division shall designate an entity to act as the Continuing Education Registry under this rule.

(b) The Continuing Education Registry, in consultation with the Division and the Commission, shall:

(i) through its internet site electronically receive applications from continuing education course providers and shall submit the application for course approval to the Division for review and approval of only those programs which meet the standards set forth under this section;

(ii) publish on its website listings of continuing education programs which have been approved by the Division, and which meet the standards for continuing education credit under this rule;

(iii) maintain accurate records of qualified continuing education approved;

(iv) maintain accurate records of verification of attendance and completion, by individual licensee, which the licensee may review for compliance with this rule; and

(v) make records of approved continuing education programs and attendance and completion available for audit by representatives of the Division.

(c) Fees. The Continuing Education Registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.

R156-55b-305. Licensure by Endorsement.

The Division may issue a license by endorsement in accordance with the provisions of Section 58-1-302.

R156-55b-401. Conduct of Apprentice and Supervising Electrician.

(1) The conduct of licensed apprentice electricians and their licensed supervisors shall be in accordance with Subsection 58-55-302(3)(j), Sections 58-55-501, 58-55-502, and R156-55b-501.

(2) For the purposes of Subsections 58-55-102(31), 58-55-302(3)(j) and 58-55-501(12), one of the following shall apply:

(a) the supervisor and apprentice employees shall be employees of the same electrical contractor;

(b) the electrical contractor may contract with a licensed professional employer organization to employ such persons.

(3) An apprentice in the fourth through sixth year of training may work without supervision for a period not to exceed eight hours in any 24-hour period. In the seventh and succeeding years of training, the nonsupervision provision no longer applies and the apprentice shall be under immediate supervision as set forth in Subsection 58-55-302(3)(j).

R156-55b-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing as a licensee to comply with the supervision requirements established by Subsection 58-55-302(3)(j).

(2) failing as a licensee to carry a copy of a current license at all times when performing electrical work;

(3) failing as an electrical contractor to certify an electrician's hours and breakdown of work experience by category when requested by an electrician who is or has been an employee; and

(4) failing as a licensee to provide proof of completed continuing education within 30 days of the Division's request.

R156-55b-502. Administrative Penalties.

(1) The administrative penalties defined in Section R156-55a-503 of the Utah Construction Trades Licensing Act Rule are hereby adopted as the administrative penalties applicable under this rule.

(2) The administrative penalty for a violation of Subsection 58-1-501(2)(o) under this rule shall be in accordance with Section R156-1-502.

KEY: occupational licensing, licensing, contractors, electricians

March 27, 2017 58-1-106(1)(a)

Notice of Continuation August 8, 2016 **58-1-202(1)(a)**
58-55-308(1)

R156. Commerce, Occupational and Professional Licensing.
R156-68. Utah Osteopathic Medical Practice Act Rule.
R156-68-101. Title.

This rule shall be known as the "Utah Osteopathic Medical Practice Act Rule."

R156-68-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 68, as used in Title 58, Chapters 1 and 68 or this rule:

(1) "AAPS" means American Association of Physician Specialists.

(2) "ABMS" means American Board of Medical Specialties.

(3) "ACCME" means Accreditation Council for Continuing Medical Education.

(4) "Alternate medical practices" as used in Section R156-68-603, means treatment or therapy which is determined in an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to be:

(a) not generally recognized as standard in the practice of medicine;

(b) not shown by current generally accepted medical evidence to present a greater risk to the health, safety or welfare of the patient than does prevailing treatment considered to be the standard in the profession of medicine; and

(c) supported by a body of current generally accepted written documentation demonstrating the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given.

(5) "AMA" means the American Medical Association.

(6) "AOA" means American Osteopathic Association.

(7) "COMLEX" means the Comprehensive Osteopathic Medical Licensing Examination.

(8) "FLEX" means the Federation of State Medical Boards Licensure Examination.

(9) "FMGEMS" means the Foreign Medical Graduate Examination in Medical Science.

(10) "FSMB" means the Federation of State Medical Boards.

(11) "Homeopathic medicine" means a system of medicine employing and limited to substances prepared and prescribed in accordance with the principles of homeopathic pharmacology as described in the Homeopathic Pharmacopoeia of the United States, its compendia, addenda, and supplements, as officially recognized by the federal Food, Drug and Cosmetic Act, Public Law 717.21 U.S. Code Sec. 331 et seq., as well as the state of Utah's food and drug laws and Controlled Substances Act.

(12) "LMCC" means the Licentiate of the Medical Council of Canada.

(13) "NBME" means the National Board of Medical Examiners.

(14) "NBOME" means the National Board of Osteopathic Medical Examiners.

(15) "NPDB" means the National Practitioner Data Bank.

(16) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 68, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-68-502.

(17) "USMLE" means the United States Medical Licensing Examination.

R156-68-103. 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 68.

R156-68-104. 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.

R156-68-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsections 58-68-301(1)(a)(i), submissions by the applicant of information maintained by practitioner data banks shall include the following:

(1) American Osteopathic Association Profile or American Medical Association Profile;

(2) Federation of State Medical Boards Disciplinary Inquiry form; and

(3) National Practitioner Data Bank Report of Action.

R156-68-302b. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-68-302(1)(g), the required licensing examination sequence is the following:

(a) the NBOME parts I, II and III;

(b) the NBOME parts I, II and the NBOME COMPLEX Level III;

(c) the NBOME part I and the NBOME COMLEX Level II and III;

(d) the NBOME COMLEX Level I, II and III;

(e) the FLEX components I and II on which the applicant shall achieve a score of not less than 75 on each component;

(f) the NBME examination parts I, II and III on which the applicant shall achieve a score of not less than 75 on each part;

(g) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step;

(h) the LMCC examination, Parts 1 and 2;

(i) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part III or the USMLE step 3;

(j) the FLEX component 1 and the USMLE step 3; or

(k) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.

(l) A candidate who fails any combination of the USMLE, FLEX, NBME and NBOME three times shall provide a narrative regarding the failure and may be requested to meet with the Board and Division.

(2) In accordance with Subsections 58-68-302(1)(g), (2)(c) and (3)(d), an applicant may be required to take the SPEX examination if the applicant:

(a) has not practiced in the past five years;

(b) has had disciplinary action within the past five years; or

(c) has had a substance use disorder, physical or mental impairment within the past five years which may affect the applicant's ability to safely practice.

(3) In accordance with Subsection (2) above, the passing score on the SPEX examination is 75.

(4) In accordance with Subsection 58-68-302(2)(c), the medical specialty certification shall be current certification in an AOA, ABMS, or AAPS member specialty board.

R156-68-302c. Qualifications for Licensure - Requirements for Admission to the Examinations.

(1) Admission to the NBOME examination shall be in accordance with policies and procedures of the NBOME. The division and the board have no responsibility for or ability to facilitate an individual's admission to the NBOME examination.

(2) Admission to the USMLE steps 1 and 2 shall be in accordance with policies and procedures of the FSMB and the

NBME. The division and the board have no responsibility for or ability to facilitate an individual's admission to steps 1 and 2 of the USMLE.

(3) Requirements for admission to the USMLE step 3 are:

(a) completion of the education requirements as set forth in Subsection 58-68-302(1)(d) and (e);

(b) passing scores on USMLE steps 1 and 2, or the FLEX component I, or the NBME parts I and II;

(c) have passed the first USMLE step taken, either 1 or 2, within seven years; and

(d) have not failed a combination of USMLE step 3, FLEX component II and NBME part III, three times.

R156-68-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 68, is established by rule in Section R156-1-308a.

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

R156-68-304. Qualified Continuing Professional Education.

(1) In accordance with Subsection 58-68-304(1), the qualified continuing professional education requirements shall consist of 40 hours during each two-year licensure cycle as follows:

(a) A minimum of 34 of the required hours shall be in category 1 offerings as established by the AOA or ACCME.

(b) A maximum of 6 hours of continuing education may come from the Division of Occupational and Professional Licensing.

(c) Up to 15% of the required hours may come from providing volunteer health care services within the scope of the licensee's license at a qualified location, in accordance with Section 58-13-3 concerning charity health care. One hour of continuing education credit may be earned for every four documented hours of volunteer services.

(d) Participation in a residency program approved by the AOA or the ACCME shall meet the continuing education requirement in a pro-rata amount equal to any part of the two-year period.

(2) Continuing education under this section shall:

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

(b) be prepared and presented by individuals who are qualified by education, training and experience to provide medical continuing education; and

(c) have a method of verification of attendance and completion which may include a "CME Self Reporting Log".

(3) Credit for continuing education shall be recognized in 50-minute hour blocks of time for education completed in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (2) above.

(4) A licensee must be able to document completion of the continuing professional education upon the request of the Division. Such documentation shall be retained until the next renewal cycle.

R156-68-306. Exemptions From Licensure.

In accordance with Subsection 58-1-307(1), exemptions from licensure as an osteopathic physician include the following:

(1) any physician exempted from licensure, who engages in prescribing, dispensing, or administering a controlled substance outside of a hospital, shall be required to apply for and obtain a Utah Controlled Substance License as a condition precedent to them administering, dispensing or prescribing a controlled substance;

(2) any person engaged in a competent public screening program making measures of physiologic conditions including serum cholesterol, blood sugar and blood pressure, shall be exempt from licensure and shall not be considered to be engaged in the practice of osteopathic medicine conditioned upon compliance with all of the following:

(a) all instruments or devices used in making measures are approved by the Food and Drug Administration of the U.S. Department of Health, to the extent approval is required, and the instruments and devices are used in accordance with those approvals;

(b) the facilities and testing protocol meet any standards or personnel training requirements of the Utah Department of Health;

(c) unlicensed personnel shall not interpret results of measures or tests nor shall they make any recommendation with respect to treatment or the purchase of any product;

(d) licensed personnel shall act within the lawful scope of practice of their license classification;

(e) unlicensed personnel shall conform to the referral and follow-up protocol approved by the Utah Department of Health for each measure or test;

(f) information provided to those persons measured or tested for the purpose of permitting them to interpret their own test results shall be only that approved by the Utah Department of Health.

(3) non-licensed public officials not having emergency medical technician (EMT) certification who are designated by appropriate county officials as first responders may be issued and allowed to carry the Mark I automatic antidote injector kits and may administer the antidote to himself or his designated first response "buddy". Prior to being issued the kits, the certified first responders would successfully complete the Army/FEMA course on the "Use of Auto-Injectors by Civilian Emergency Medical Personnel". The kits would be issued to the responder only by his employing government agency and procured through the Utah Division of Comprehensive Emergency Management. No other individuals, whether licensed or not, shall prescribe or issue these antidote kits; and

(4) In accordance with Section 58-68-305, a medical assistant, while working under the indirect supervision of a licensed osteopathic physician and surgeon, may not additionally engage in:

(a) diagnosing; or

(b) establishing a treatment plan.

R156-68-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) the prescribing for oneself any Schedule II or III controlled substance; however, nothing in this rule shall be interpreted by the division or the board to prevent a licensee from using, possessing, or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;

(2) knowingly, prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(14) unless permitted by law and when it is prescribed, dispensed, or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for

services rendered;

(4) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations, or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them;

(5) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative;

(6) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by osteopathic physicians licensed under the Utah Osteopathic Medical Practice Act;

(7) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon or osteopathic physician who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Osteopathic Board of Radiology or the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and treatment of that patient if the results are interpreted by a physician qualified under this subsection and a timely written report is prepared by the interpreting physician in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 68, without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as an osteopathic physician;

(11) failing of a licensee under Title 58, Chapter 68, without just cause to comply with the terms of any written agreement in which the licensee's education or training as an osteopathic physician is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the department of health which services are not in accordance with the provisions of Section 58-17a-620;

(13) engaging in alternative medical practice except as provided in Section R156-68-603;

(14) violation of any provision of the American Medical Association's (AMA) "Code of Medical Ethics", 2012-2013 edition, which is hereby incorporated by reference; and

(15) failing to timely submit an annual written report to the division indicating that the osteopathic physician has reviewed at least annually the dispensing practices of those authorized by the osteopathic physician to dispense an opiate antagonist, pursuant to Section R156-68-604.

R156-68-503. Administrative Penalties.

(1) In accordance with Subsection 58-68-503, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

(a) buying, selling, aiding or abetting or fraudulently obtaining, any medical diploma, license, certificate, or registration in violation of Subsection 58-68-501(1):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(b) substantially interfering with a licensee's lawful and competent practice of medicine in violation of Subsections 58-68-501(1)(c)(i) or (ii):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(c) entering into a contract that limits the licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients in violation of Subsection 58-68-501(1)(d):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(d) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule, or making a material misrepresentation regarding the qualifications for licensure in violation of Section 58-68-502:

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(e) administering sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department, without first obtaining the required consent from the patient in writing, in violation of Subsection 58-68-502.5(1):

First Offense: $500-$5,000

Second Offense: $1,500 - $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense.

(f) failing to report any adverse event under Section 26-1-40, with respect to the administering of sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department, in violation of Subsection 58-68-502.5(2):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense.

(g) during a procedure for which sedation or anesthesia will be administered intravenously to a patient in an outpatient setting that is not an emergency department, failing to have access to an advanced cardiac life support crash cart with equipment that is regularly maintained according to guidelines established by the American Heart Association, in violation of Subsection 58-68-502.5(3):

First Offense: $5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the

second offense

(h) prescribing for oneself any Schedule II or III controlled substance in violation of Subsection R156-68-502(1):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(i) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(1)(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate in violation of Subsection R156-68-502(2):

First Offense:$5,000-$10,000

Second Offense:$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(j) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered in violation of Subsection R156-68-502(3):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(k) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them in violation of Subsection R156-68-502(4):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(l) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative in violation of Subsection R156-68-502(5):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(m) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Utah Osteopathic Medical Practice Act in violation of Subsection R156-68-502(6):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(n) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed osteopathic physician and surgeon who is equally qualified to provide that care in violation of Subsection R156-68-502(7):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(o) billing a global fee for a procedure without providing the requisite care in violation of Subsection R156-68-502(8):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(p) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology in violation of Subsection R156-68-502(9):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(q) failing of a licensee without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor in violation of Subsection R156-68-502(10):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(r) failing of a licensee without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure in violation of Subsection R156-68-502(11):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(s) failing to keep the division informed of a current address and telephone number in violation of Subsection 58-1-501(2)(a) and Section 58-1-301.7:

First Offense: $100-$500

Second Offense: $500-$3,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(t) engaging in alternate medical practice except as provided in Section R156-68-603 in violation of Subsection R156-68-502(13):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(u) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2008-2009 edition, in violation of Subsection R156-68-502(14):

First Offense: $100-$5,000

Second Offense: $500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(v) failing to maintain medical records according to applicable laws, regulations, rules and code of ethics in violation of Section R156-68-602:

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(w) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage

in any occupation or profession requiring licensure under this title in violation of Subsection 58-1-501(1):
First Offense: $5,000-$10,000
Second Offense: $10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(x) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title in violation of Subsection 58-1-501(2)(a):
First Offense: $500-$5,000
Second Offense: $1,500-10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(y) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title in violation of Subsection 58-1-501(2)(b):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(z) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession in violation of Subsection 58-1-501(2)(c):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(aa) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401 in violation of Subsection 58-1-501(2)(d):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(bb) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in the occupation or profession in violation of Subsection 58-1-501(2)(e):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(cc) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so in violation of Subsection 58-1-501(2)(f):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(dd) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence in violation of Subsection 58-1-501(2)(g):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(ee) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent in violation of Subsection 58-1-501(2)(h):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(ff) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education in violation of Subsection 58-1-501(2)(i):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(gg) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license in violation of Subsection 58-1-501(2)(j):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(hh) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license in violation of Subsection 58-1-501(2)(k):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(ii) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule in violation of Subsection 58-1-501(2)(l):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(jj) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device in violation of Subsection 58-1-501(2)(m):
First Offense: $5,000-$10,000
Second Offense: $10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(kk) violating a provision of Section 58-1-501.5 in violation of Subsection 58-1-501(2)(n):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(ll) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct in violation of Subsection R156-1-501(1):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the

second offense

(mm) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company in violation of Subsection R156-1-501(2):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(nn) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd" in the commercial use of the name of the limited partnership in violation of Subsection R156-1-501(3):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(oo) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation in violation of Subsection R156-1-501(4):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(pp) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing in violation of Subsection R156-1-501(5):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(qq) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", May 2004, established by the Federation of State Medical Boards in violation of Subsection R156-1-501(6):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(rr) prescribing or administering to oneself any Schedule II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug in violation of Subsection R156-37-502(1)(a):

First Offense: $5000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ss) prescribing or administering a controlled substance for a condition he/she is not licensed or competent to treat in violation of Subsection R156-37-502(1)(b):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(tt) violating any federal or state law relating to controlled substances in violation of Subsection R156-37-502(2):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(uu) failing to deliver to the Division all controlled substance license certificates issued by the Division to the Division upon an action which revokes, suspends or limits the license in violation of Subsection R156-37-502(3):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(vv) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances in violation of Subsection R156-37-502(4):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ww) being unable to account for shortages of controlled substances any controlled substance inventory for which the licensee has responsibility in violation of Subsection R156-37-502(5):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(xx) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law in violation of Subsection R156-37-502(6):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(yy) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records in violation of Subsection R156-37-502(7):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(zz) violating any other provision of Section 58-37-8 "Prohibited Acts" not listed herein:

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

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

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

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-68-602. Medical Records.

In accordance with Subsection 58-68-803(1), medical records shall be maintained to be consistent with the

following:

(1) all applicable laws, regulations, and rules; and

(2) the AMA "Code of Medical Ethics", 2012-2013 edition, which is hereby incorporated by reference.

R156-68-603. Alternate Medical Practice.

(1) A licensed osteopathic physician may engage in alternate medical practices as defined in Subsection R156-68-102(4) and shall not be considered to be engaged in unprofessional conduct on the basis that it is not in accordance with generally accepted professional or ethical standards as unprofessional conduct defined in Subsection 58-1-501(2)(b), if the licensed osteopathic physician:

(a) possesses current generally accepted written documentation, which in the opinion of the board, demonstrates the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given;

(b) possesses the education, training, and experience to competently and safely administer the alternate medical treatment or therapy;

(c) has advised the patient with respect to the alternate medical treatment or therapy, in writing, including:

(i) that the treatment or therapy is not in accordance with generally recognized standards of the profession;

(ii) that on the basis of current generally accepted medical evidence, the physician and surgeon finds that the treatment or therapy presents no greater threat to the health, safety, or welfare of the patient than prevailing generally recognized standard medical practice; and

(iii) that the prevailing generally recognized standard medical treatment or therapy for the patient's condition has been offered to be provided, or that the physician and surgeon will refer the patient to another physician and surgeon who can provide the standard medical treatment or therapy; and

(d) has obtained from the patient a voluntary informed consent consistent with generally recognized current medical and legal standards for informed consent in the practice of medicine, including:

(i) evidence of advice to the patient in accordance with Subsection (c); and

(ii) whether the patient elects to receive generally recognized standard treatment or therapy combined with alternate medical treatment or therapy, or elects to receive alternate medical treatment or therapy only.

(2) Alternate medical practice includes the practice of homeopathic medicine.

R156-68-604. Required Reporting of Annual Review by Osteopathic Physicians of Dispensing Practices of Those Authorized to Dispense an Opiate Antagonist.

(1) In accordance with Subsection 26-55-105(2)(c), an osteopathic physician who issues a standing prescription drug order authorizing the dispensing of an opiate antagonist shall annually submit a written report to the division indicating that he has reviewed at least annually the dispensing practices of those authorized by the osteopathic physician to dispense the opiate antagonist.

(2) The report described above shall be submitted no later than January 31 of each calendar year and shall continue as long as the standing order remains in effect. Null reporting is not required.

(3) An osteopathic physician shall be considered to have satisfactorily reviewed the dispensing practices of those authorized by the osteopathic physician to dispense the opiate antagonist by reviewing the report of the licensee dispensing the opiate antagonist specified in Subsection R156-17b-625(1).

KEY: osteopaths, licensing, osteopathic physician

December 11, 2017	**58-1-106(1)(a)**
Notice of Continuation January 8, 2018	**58-1-202(1)(a)**
	58-68-101

R156. Commerce, Occupational and Professional Licensing.
R156-72. Acupuncture Licensing Act Rule.
R156-72-101. Title.

This rule is known as the "Acupuncture Licensing Act Rule".

R156-72-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 72, as used in this rule:

(1)(a) "Administration", as used in Subsection 58-72-102(4)(b)(ii), means the direct application of an herb, homeopathic, or supplement to the body of a patient by:

(i) ingestion;

(ii) topical application;

(iii) inhalation; or

(iv) acupoint injection therapy (AIT).

(b) Administration does not include:

(i) venous injections;

(ii) immunizations;

(iii) legend drugs; or

(iv) controlled substances.

(2) "Controlled substance" means a drug or substance defined in Subsection 58-37-2(1)(f).

(3) "Legend drug" means a prescription drug as defined in Subsections 58-17b-102(32) and (64).

(4) "Herbs" and "homeopathics", as used in Subsection 58-72-102(4)(b)(ii), may include:

(a) vitamins;

(b) minerals;

(c) amino acids;

(d) proteins; and

(e) enzymes.

(5) "Insertion of acupuncture needles" means a procedure of acupuncture and oriental medicine which includes myofascial trigger point therapy, intramuscular therapy, proprioceptive stimulation, Ahshi points, and dry needling techniques.

(6) "NCCAOM" means the National Commission for the Certification of Acupuncture and Oriental Medicine (formerly known as the National Commission for the Certification of Acupuncturists (NCCA).

(7) "Modern research" means practicing according to acupuncture and oriental medicine training as recognized through NCCAOM.

(8) "Provision", as used in Subsection 58-72-102(4)(b)(ii), includes procurement of the substances listed in Subsection 58-72-102(4)(b)(ii).

R156-72-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 72.

R156-72-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-72-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Subsection 58-72-302(5), the examination requirement for licensure is a passing score as determined by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) on all examinations for certification by NCCAOM in acupuncture or oriental medicine.

R156-72-302b. Qualifications for Licensure - Animal Acupuncture.

In accordance with Subsections 58-28-307(12)(d) and 58-72-102(4)(a)(iii), a licensed acupuncturist practicing animal acupuncture must complete 100 hours of animal acupuncture training and education. The training and education shall include:

(1) completing 50 hours of on the job training under the supervision of a licensed veterinarian;

(2) completing animal anatomy training; and

(3) completing the remaining hours in animal specific continuing education.

R156-72-302c. Informed Consent.

In accordance with Subsection 58-72-302(6), in order for patients to give informed consent to treatment, a licensed acupuncturist shall have a patient chart for each patient which shall include:

(1) a written review of symptoms; and

(2) a statement, signed by that patient, that consent is given to provide acupuncture treatment.

R156-72-302d. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to maintain office, instruments, equipment, appliances, and supplies in a safe and sanitary condition;

(2) failing as a licensee to maintain the professional development activity requirements, as required by the NCCAOM;

(3) failing to abide by and meet standards of the "Code of Ethics" set by NCCAOM, adopted on October 14, 2008, which are hereby incorporated by reference;

(4) failing to maintain medical records for a ten-year period;

(5) failing to obtain education and training recognized by NCCAOM if performing acupoint therapy injections; and

(6) administering venous injections, immunizations, legend drugs and controlled substances.

R156-72-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 72 is established by rule in Section R156-1-308a.

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

(3) In accordance with Section 58-72-303, a licensee must complete 30 continuing education units (CEU) within the two-year renewal period.

KEY: acupuncture, licensing

January 23, 2018	**58-72-101**
Notice of Continuation September 8, 2016	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-78. Vocational Rehabilitation Counselors Licensing Act Rule.
R156-78-101. Title.

This rule is known as the "Vocational Rehabilitation Counselors Licensing Act Rule".

R156-78-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 78, as used in Title 58, Chapters 1 and 78 or in this rule:

(1) "Disability related work experience", as used in Subsection 58-78-302(1)(e), means the practice of providing vocational rehabilitation services as defined in Subsection 58-78-102(3).

(2) "In-service" means a continuing education course that meets the requirements in Subsection R156-78-304(4) and is hosted or sponsored by an employer and not by a professional association, society or organization related to the profession.

(3) "LVRC" means a licensed vocational rehabilitation counselor.

(4) "Related field", as used in Subsection 58-78-302(1)(d), includes any of the following:

(a) psychology;

(b) clinical psychology;

(c) counseling psychology;

(d) professional guidance and counseling;

(e) social work;

(f) educational counseling;

(g) educational psychology with rehabilitation counseling emphasis;

(h) special education with rehabilitation counseling emphasis; and

(i) any other field deemed substantially related to the practice of rehabilitation counseling by the Board and Division.

(5) "Supervision", as used in Subsections 58-78-302(1)(e) and 58-78-304(1) means general supervision in that the supervising licensee:

(a) establishes a professional relationship with the supervisee which ensures that the work being performed is consistent with the scope and standards of the profession;

(b) is available for consultation with the person being supervised by personal face-to-face contact, or direct voice contact by telephone, radio, or some other means, whether or not the supervising licensee is located on the same premises as the person being supervised;

(c) provides necessary consultation within a reasonable period of time; and

(d) maintains routine personal contact with the person being supervised.

(6) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 78, is further defined in accordance with Subsection 58-1-203(1)(e) in Section R156-78-502.

(7) "Vocational assessment", as used in Subsection 58-78-102(3)(c), includes the performance of forensic evaluations.

R156-78-103. 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 78.

R156-78-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Section R156-1 is as described in Section R156-1-107.

R156-78-302b. Experience Requirement.

(1) An applicant for licensure verifying completion of the experience requirement established in Subsection 58-78-302(1)(e) with experience that was not completed under the supervision of an LVRC must apply for licensure before January 1, 2011 for the applicant's experience to count toward completion of the experience requirement. Applicants for licensure who apply on or after January 1, 2011 must verify completion of experience under the supervision of an LVRC.

(2) A maximum of 2,000 hours of supervised experience during any one year period may be credited toward the 4,000 hour supervised experience requirement.

R156-78-302d. Qualifications for Licensure - Examination Requirements.

In accordance with Subsection 58-78-302(1)(f), the examination requirements for licensure as an LVRC include passing the Certified Rehabilitation Counselor Examination administered by the Commission on Rehabilitation Counselor Certification.

R156-78-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 78 is established by rule in Section R156-1-308a.

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

R156-78-304. Continuing Education.

(1) In accordance with Subsection 58-78-303(3), there is established a continuing education requirement for all individuals licensed under Title 58, Chapter 78 as an LVRC.

(2) During the two-year license renewal period commencing April 1 of each odd-numbered year, an LVRC shall be required to complete not less than 40 hours of continuing education directly related to the licensee's professional practice of which a minimum of four hours must be completed in ethics/law.

(3) The required number of hours of continuing education for an individual who first becomes licensed during the two-year period shall be decreased in a pro-rata amount equal to any part of that two-year period preceding the date on which that individual first became licensed.

(4) Continuing education under this Section shall:

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

(b) be prepared and presented by individuals who are qualified by education, training and experience to provide continuing education relevant to the practice of vocational rehabilitation counseling; and

(c) have a method of verification of attendance and completion.

(5) Credit for continuing education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, conferences or training sessions which meet the criteria listed in Subsection (4) above, and which are approved by, conducted by, or under the sponsorship of:

(i) universities and colleges; or

(ii) professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of vocational rehabilitation counselors;

(b) a maximum of 20 hours per two-year period may be recognized for:

(i) teaching courses under Subsection (5)(a); or

(ii) supervision of an individual completing the experience requirement for licensure as an LVRC;

(c) a maximum of 12 hours per two-year period may be recognized for in-service directly related to practice as an LVRC; and

(d) a maximum of 24 hours of continuing education per two-year period may be recognized for internet or distance-learning courses that include an examination and issuance of a completion certificate.

(6) A licensee shall be responsible for maintaining competent records of completed continuing education for a period of four years.

(7) A licensee requesting a waiver of the continuing education requirement must comply with requirements as established by rule in Section R156-1-308d.

(8) If a licensee completes more than the required number of hours of continuing education during a two-year renewal cycle specified in Subsection (2), up to ten hours of the excess over the required number may be carried over to the next two-year renewal cycle. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted.

R156-78-502. Unprofessional Conduct.

(1) "Unprofessional conduct" includes:

(a) violating any provision of the Code of Professional Ethics for Rehabilitation Counselors, published by the Commission on Rehabilitation Counselor Certification, effective January 1, 2017, which is hereby adopted and incorporated by reference;

(b) failing to report in writing to the Division unlawful or unprofessional conduct as defined in Section 58-78-501, 58-78-502 and this Section, by a person licensed under Title 58, Chapter 78 within ten days after learning of the conduct, if the conduct:

(i)(A) results in disciplinary action taken by the licensee's employer or a professional association; or

(B) results in a significant adverse impact on the public's health, safety or welfare; and

(ii) was not known by the licensee to have already been reported to the Division; and

(c) failing to provide general supervision as defined in Subsection R156-78-102(4).

KEY: licensing, vocational rehabilitation counselor

January 2, 2018	**58-78-101**
Notice of Continuation August 14, 2014	**58-1-106(1)(a)**
	58-1-202(1)(a)

R277. Education, Administration.
R277-469. Instructional Materials Commission Operating Procedures.
R277-469-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitutional 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) Section 53A-14-101, which directs the Board to appoint an Instructional Materials Commission and directs the Commission to evaluate instructional materials for recommendation by the Board; and

(d) Section 53A-14-107, which directs the Board to make rules that establish the qualifications of the independent parties who may evaluate and map the alignment of the primary instructional materials and requirements for the detailed summary of the evaluation.

(2) The purpose of this rule is to:

(a) provide definitions, operating procedures and criteria for recommending instructional materials for use in Utah public schools;

(b) provide for mapping and alignment of primary instructional materials to the Core consistent with Utah law; and

(c) provide rules for purchase and distribution of instructional materials within the state.

R277-469-2. Definitions.

(1) "Commission" means the Instructional Materials Commission established in accordance with Section 53A-14-101.

(2) "Core" means the core standards adopted by the Board in R277-700.

(3) "Curriculum alignment" means the assurance that the material taught in a course or grade level matches the standards, and assessments set by the state for specific courses or grade levels.

(4) "Depository" means a business dedicated to storing and distributing resources or materials in sufficient quantities to insure rapid and efficient delivery to LEAs.

(5)(a) "Instructional materials" means systematically arranged content in text, digital, Braille and large print, or audio format which may be used within the state curriculum framework for courses of study by students in public schools.

(b) "Instructional materials" include:

(i) textbooks;

(ii) workbooks;

(iii) computer software;

(iv) online or internet courses;

(v) CDs or DVDs; and

(vi) multiple forms of communication media.

(c) "Instructional materials" may be used by students or teachers or both as principal sources of study to cover any portion of a course.

(d) "Instructional materials":

(i) are designed for student use;

(ii) may be accompanied by or contain teaching guides and study helps;

(iii) shall include all textbooks, workbooks, student materials, supplements, and online and digital materials necessary for a student to fully participate in coursework; and

(iv) shall be high quality, research-based materials for supporting student learning.

(6) "Independent party" means an entity that is not part of or related to:

(a) the Board;

(b) Board staff;

(c) an employee or governing board member of an LEA;

(d) the creator or publisher of instructional materials under review; or

(e) anyone with a financial interest, however minimal, in instructional materials under review.

(7) "Instructional Materials Commission" or "Commission" means the commission appointed by the Board in accordance with Section 53A-14-101.

(8) "Integrated instructional program" means any combination of instructional materials for students, including:

(a) textbooks;

(b) workbooks;

(c) software;

(d) videos;

(e) electronic devices; or

(f) similar resources.

(9) "Instructional materials provider" means a publisher or author and self-publisher who sells or provides instructional materials for use in Utah public schools.

(10) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(11) "Mapping" means creating a visual representation listing topics in instructional materials in correlation to the standards of the Utah core.

(12) "National Instructional Materials Access Center" or "NIMAC" means the same as that term is defined in Subsection R277-800-2(14).

(13) "National Instructional Materials Accessibility Standard" or "NIMAS" means the same as that term is defined in Subsection R277-800-2(15).

(14) "Not sampled" means instructional materials that were included in a publisher bid for evaluation by the Instructional Materials Commission, but which were not sampled to the Superintendent or the Commission.

(15) "Primary instructional material" means a comprehensive basal or Core textbook or integrated instructional program for which a publisher seeks a recommendation for Core subjects designated in Sections R277-700-4 through R277-700-6.

(16) "Recommended instructional materials" or "RIMs" means the recommended instructional materials searchable database provided as a free service by the Board for the posting of evaluations and alignments to the Core of instructional materials submitted by publishers for review by the Commission and approval of the Board.

(17) "Recommended limited" means instructional materials that are in limited alignment with the Core requirements or are narrow or restricted in their scope and sequence.

(18) "Recommended primary" means instructional materials that:

(a) are in alignment with content, philosophy, and instructional strategies of the Core;

(b) have been mapped and aligned to the Core, consistent with Section 53A-14-107;

(c) are appropriate for use by students as principal sources of study; and

(d) support Core requirements.

(19) "Recommended student resource" means instructional materials aligned to the Core that are developmentally appropriate, but not intended to be the primary instructional resource, which may provided valuable content information for students.

(20) "Recommended teacher resource" means instructional materials that are appropriate as resource materials for use by teachers.

(21) "Reviewed, but not recommended" means instructional materials that an LEA is strongly cautioned

against using because the materials:
(a) do not align with the Core;
(b) are inaccurate in content;
(c) include misleading connotations;
(d) contain undesirable presentation; or
(e) are in conflict with existing law or rule.
(22) "Utah State Instructional Materials Access Center" or "USIMAC" means the same as that term is defined in Subsection R277-800-2(21).

R277-469-3. Use of State Funds for Instructional Materials.
(1) An LEA may use state funds for any primary supplemental or supportive instructional materials that support Core requirements.
(2) An LEA may select and approve instructional materials consistent with:
(a) the standards of this R277-469;
(b) established local board procedures and timelines;
(c) Subsection 53A-13-101(1)(c)(iii); and
(d) Subsection 53A-14-102(4).
(3) A school or school district that uses any funding source to purchase materials that have not been recommended or selected consistent with state law, may have funds withheld to the extent of the actual costs of those materials pursuant to Subsection 53A-1-401(8)(a)(ii).
(3)(a) An LEA may use free instructional materials that are used as primary instructional materials or that are part of primary integrated instructional programs subject to the same independent party evaluation and Core mapping as basal or Core material.
(b) If an LEA receives free materials as part of a supplemental program, the LEA may use the materials as student instructional materials only consistent with the law and this R277-469.
(4) An LEA shall include a requirement in all publisher contracts for instructional materials that the publisher shall:
(a) prepare and provide electronic files of all instructional materials in the NIMAS format to NIMAC on or before delivery of print instructional materials; or
(b) provide instructional materials that are produced in, or may be rendered in, specialized formats.
(5)(a) An LEA shall provide timely notice to all publishers with whom the LEA contracts for instructional materials that all materials shall be provided consistent with Subsection (4).
(b) An LEA's notice shall include a copy of this R277-469.

R277-469-4. Instructional Materials Commission Members Terms of Service.
(1) The Board shall appoint members of the Instructional Materials Commission in accordance with Section 53A-14-101.
(2)(a) A member appointed in accordance with Subsection (1) shall serve four year terms, staggered to ensure continuity in the efficient operation of the Commission.
(b) A member may apply for reappointment to one additional term.
(3) The Commission may establish subcommittees as needed.

R277-469-5. Commission Review of Materials.
(1) The Instructional Materials Commission shall primarily focus on reviewing materials used in subjects aligned with Core requirements to include reading, language arts, mathematics through geometry, science, in grades 4 through 12, and effectiveness of written expression, and other Core subject areas as assigned by the Board.
(2) The Commission shall determine subject areas and timelines for review based on school district and charter school needs and requests, using forms and procedures provided by the Superintendent.
(3) The Commission shall meet to review materials at least semi-annually.
(4) Following its evaluation of a submitted item, the Commission shall recommend that the Board classify materials in one of the following categories:
(a) Recommended primary;
(b) Recommended limited;
(c) Recommended teacher resource;
(d) Recommended student resource;
(e) Reviewed, but not recommended; or
(f) Not sampled.

R277-469-6. Criteria for Recommendation of Instructional Materials Following Mid-Party Evaluation of Core Curriculum.
(1) The Instructional Materials Commission and the Board, in reviewing whether to recommend instructional materials, may consider whether the instructional materials:
(a) are consistent with Core requirements;
(b) are mapped and aligned to the Core and state adopted assessments if planned for use as primary materials;
(c) are high quality, research-based, and proven to be effective in supporting student learning;
(d) provide an objective and balanced viewpoint on issues;
(e) include enrichment and extension possibilities;
(f) are appropriate to varying levels of learning;
(g) are accurate and factual;
(h) are arranged chronologically or systematically, or both;
(i) reflect the pluralistic character and culture of the American people and provide accurate representation of diverse ethnic groups;
(j) are free from sexual, ethnic, age, gender or disability bias and stereotyping; and
(k) are of acceptable technical quality.
(2) A publisher, when submitting new primary material to be evaluated by the Superintendent, shall submit an electronic version of that material in NIMAS file format to NIMAC for use in conversion into Braille, large print, and other formats for students with print disabilities.
(3) The Superintendent may require an LEA to provide a report of instructional materials purchased by the LEA or a school in the previous five years.
(4) The Superintendent may initiate a formal or informal audit of instructional materials purchased to determine purchase or use of instructional materials consistent with the law or this rule.

R277-469-7. Agreements and Procedures for LEAs.
(1) A local board shall establish a policy for selection and purchase of instructional materials.
(2) As part of any materials adoption process or procurement contract for the purpose of purchasing instructional materials, an LEA shall provide instructional materials to all students, including blind students and other students with disabilities, in a timely manner.
(a) A publisher may provide materials in electronic files to NIMAC to make materials available to eligible students.
(b) An LEA shall include NIMAS contract language in all contracts with publishers for Core materials.
(c) An LEA may purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats for eligible students.
(3) An LEA shall require a detailed Core curriculum

alignment prior to the purchase of primary instructional materials.

R277-469-8. Qualifications for Core Curriculum Alignment Independent Parties.

(1) A primary instructional materials provider shall contract with an independent party in accordance with Subsection 53A-14-107(1)(a).

(2) An independent party may only employ or contract with a reviewer who has a degree or an endorsement specific to the subject area of the primary instructional materials.

(3) A publisher shall provide proof of an independent party's credentials to the Superintendent upon request.

R277-469-9. Detailed Summary Requirements.

(1) An independent party shall submit a summary required under Subsection 53A-14-107(1)(b) in a searchable, software database format designated by the Superintendent.

(2) A summary required under Subsection 53A-14-107(1)(b) shall:

(a) include detailed alignment information that includes, at a minimum:

(i) the title of the material;

(ii) the ISBN number;

(iii) the publisher's name;

(iv) the name and grade of the Core document used to align the material;

(v) the overall percentage of coverage of the Core;

(vi) the overall percentage of coverage in ancillary resources of the material to the Core;

(vii) the percentage of coverage of the Core in the material for each standard, objective and indicator in the Core with corresponding page numbers;

(viii) percentage of coverage of the Core not covered in the material but covered in the ancillary resources for each standard;and

(ix) objective and indicator in the Core with corresponding page numbers or URLs; and

(b) provide the detailed alignment information listed in Subsection (a)(iv) for the student text for all editions of the text that are used in Utah public schools;

(c) provide the detailed alignment information listed in Subsection (a)(iv) for a teacher edition of text, if a teacher edition is used in Utah public schools; and

(d) provide an assurance, including a personal signature, that the work was completed personally and as required by the licensed and endorsed reviewer.

R277-469-10. Agreements and Procedures for Publishers.

(1) A publisher desiring to sell primary instructional materials to Utah school districts shall comply with the requirements of Section 53A-14-107 and this R277-469.

(2)(a) A publisher seeking to sell recommended materials to Utah schools or school districts shall have 10 books and tangible adopted materials or such other amount as required by a depository based on anticipated need on deposit within the state at an instructional materials depository in the business of selling instructional materials to schools or school districts in Utah.

(b) A publisher shall submit verification of compliance with Subsection (2)(a) to the Superintendent through the publisher's contracted depository prior to the Superintendent posting a review of the materials on RIMs.

(3) A publisher may make a depository agreement with one or more depository.

(4) Notwithstanding the provisions of Subsection (2), a publisher may sell instructional materials to schools or school districts in Utah directly or through means other than a designated depository.

(5) A publisher need not store digital and online resources within the state, but shall guarantee timely resource availability of a placed order and shall provide digital and online resource orders without shipping charges.

(6) If a revised edition of recommended materials retains the original title and authorship, the publisher may request its substitution for the edition currently recommended providing that:

(a) the original contract price and contract date do not change and the original contract price applies for the substituted materials;

(b) the revised edition is compatible with the earlier edition, permitting use of either or both in the same classroom;

(c) a sample copy of the revised edition is provided to the Superintendent for examination purposes; and

(d) the publisher submits a revised electronic edition in NIMAS file format to the NIMAC if the Superintendent approves the substitution request.

(7) The Commission shall make the final determination about the substitution of a new edition for a previously recommended edition with assistance from the Superintendent.

(8) A publisher's contract price for materials recommended by the Commission and the Board shall apply for five years from the contract date.

R277-469-11. Request for Reconsideration of Recommendation.

(1) The Superintendent shall provide a school district, school or publisher with the evaluations and recommendations resulting from the initial review of the Commission.

(2) A school district, school or publisher may, within 30 days of the Commission's initial recommendation, request to have materials reviewed again during the Commission's next review cycle.

(3)(a) During the period of the reconsideration request, the Superintendent shall classify materials only tentatively.

(b) The Superintendent shall not post tentatively classified materials to RIMs until recommended through the official Commission process.

(4) A school district, school or publisher may be asked to send a second set of sample materials to the Superintendent as part of a reconsideration request.

(5) Any written information provided by a school district, school or publisher shall be available to the advisory committees during the second review.

(6) After the second review by the subject area advisory committee, the Commission shall vote on the advisory committee's recommendation at the next scheduled meeting.

(7) If the Commission votes to change the recommendation, the Superintendent shall notify the Board of the action at the next scheduled Board meeting.

(8) The Superintendent shall send a school district, school or publisher written notification of the final recommendation and new evaluation.

(9) If the Commission and Board approve materials following a request for reconsideration, the Superintendent shall post the evaluation to RIMs.

KEY: instructional materials

January 9, 2018	**Art X, Sec 3**
Notice of Continuation November 6, 2017	**53A-14-101**
	53A-14-107
	53A-1-401

R277. Education, Administration.
R277-490. Beverley Taylor Sorenson Elementary Arts Learning Program (BTSALP).
R277-490-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53A-17a-162, which directs the Board to establish a grant program for LEAs to hire qualified arts professionals to encourage student participation in the arts in Utah public schools and embrace student learning in Core subject areas.

(2) The purpose of this rule is:

(a) to implement the BTSALP model in public schools through LEAs and consortia that submit grant applications to hire arts specialists who are paid on the licensed teacher salary schedule;

(b) to distribute funds to LEAs to purchase supplies and equipment as provided for in Subsections 53A-17a-162(4) and (6);

(c) to fund activities at endowed universities to provide pre-service training, professional development, research, and leadership for arts educators and arts education in Utah public schools; and

(d) to appropriately monitor, evaluate, and report programs and program results.

R277-490-2. Definitions.

(1) "Arts equipment and supplies" includes musical instruments, recording and play-back devices, cameras, projectors, computers to be used in the program, CDs, DVDs, teacher reference books, and art-making supplies.

(2) "Arts Program coordinator" or "coordinator" means an individual, employed full-time, who is responsible to:

(a) coordinate arts programs for an LEA or consortium;

(b) inform arts teachers;

(c) organize arts professional development including organizing arts local learning communities;

(d) oversee, guide, and organize the gathering of assessment data;

(e) represent the LEA or consortium arts program; and

(f) provide general leadership for arts education throughout the LEA or consortium.

(3) "Beverley Taylor Sorenson Elementary Arts Learning Program model," "BTSALP model," or "Program" means a program in grades K-6 with the following components:

(a) a qualified arts specialist to work collaboratively with the regular classroom teacher to deliver quality, sequential, and developmental arts instruction in alignment with the state Fine Arts Core Curriculum;

(b) regular collaboration between the classroom teacher and arts specialist in planning arts integrated instruction; and

(c) other activities that may be proposed by an LEA on a grant application and approved by the Board.

(4) "Endowed university" means an institution of higher education in the state as defined in Subsection 53A-17a-162(1)(b).

(5) "Highly qualified school arts program specialist" or "arts specialist" means:

(a) an educator with:

(i) a current educator license; and

(ii) a Level 2 or K-12 specialist endorsement in the art form;

(b) an elementary classroom teacher with a current educator license who is currently enrolled in a Level 2 specialist endorsement program in the art form;

(c) a professional artist employed by a public school and accepted into the Board Alternative Routes to License (ARL) program under Rule R277-503 to complete a K-12 endorsement in the art form, which includes the Praxis exam in the case of art, music, or theatre; or

(d) an individual who qualifies for an educator license under Board rule that qualifies the individual for the position provided that:

(i) an LEA provides an affidavit verifying that a reasonable search was conducted for an individual who would qualify for an educator license through other means; and

(ii) the LEA reopens the position and conducts a new search every two years.

(e) In addition to required licensure and endorsements, prospective teachers should provide evidence of facilitating elementary Core learning in at least one art form.

(6) "Matching funds" means funds that equal 20% of the total costs for salary plus benefits incurred by an LEA or consortium to fund the LEA or consortium's arts specialist.

R277-490-3. Arts Specialist Grant Program - LEA Consortium.

(1) LEAs may form a consortium to employ arts specialists appropriate for the number of students served.

(2) An LEA or a consortium of LEAs may submit a grant request consistent with time lines provided in this rule.

(3) An LEA or a consortium shall develop its proposal consistent with the BTSALP model outlined under R277-490-2(3).

(4) A consortium grant request shall explain the necessity or greater efficiency and benefit of an arts specialist serving several elementary schools within a consortium of LEAs.

(5) A consortium grant shall explain a schedule for each specialist to serve the group of schools within several of the LEAs similarly to an arts specialist in a single school.

(6) A consortium grant request shall provide information for a consortium arts specialist's schedule that minimizes the arts specialist's travel and allows the arts specialist to be well integrated into several schools.

(7) An LEA's grant application shall include the collaborative development of the application with the LEA's partner endowed university and School Community Councils if matching funds come from School LAND Trust Funds.

R277-490-4. Arts Specialist Grant Program Timelines.

(1) An LEA or a consortium shall complete a program grant application annually.

(2) The Board shall grant funding priority to renewal applications.

(3) An LEA or consortium shall submit a completed application requesting funding to the Superintendent by May 1 annually.

(4) The Board shall designate an LEA or a consortium for funding no later than June 1 annually.

R277-490-5. Distribution of Funds for Arts Specialist.

(1) A program LEA or consortium shall submit complete information of salaries, including benefits, of all program specialists employed by the LEA or consortium no later than September 30 annually.

(2) If a program LEA or consortium provides matching funds, the Superintendent shall distribute funds to program grant recipients annually equal to 80% of the salaries plus benefits for approved hires in the program, consistent with Subsections 53A-17a-162(5) and(6).

(3)(a) An individual program specialist grant amount

may not exceed $70,000 in FY 2016.

(b) The upper limit on the grant amount shall adjust each year at the same rate as the increase in the WPU.

(4) A grant recipient shall provide matching funds for each specialist funded through the program.

R277-490-6. Distribution of Funds for Arts Specialist Supplies.

(1) The Board shall distribute funds for arts specialist supplies to an LEA or consortium as available.

(2) A grant recipient shall distribute funds to participating schools as provided in the approved LEA or consortium grant and consistent with LEA procurement policies.

(3) A grant recipient shall require arts specialists to provide adequate documentation of arts supplies purchased consistent with the grant recipient's plan, this rule, and the law.

(4) Summary information about effective supplies and equipment shall be provided in the school or consortium evaluation of the program.

R277-490-7. LEA or Consortium Employment of Arts Coordinators.

(1)(a) An LEA or consortium may apply for funds to employ arts coordinators in the LEA or consortium.

(b) These are intended as small stipends for educators who are already employed in rural districts to help support arts education and the implementation of BTSALP.

(2) An applicant shall explain:

(a) how an arts coordinator will be used, consistent with the BTSALP model;

(b) what requirements an arts coordinator must meet; and

(c) what training will be provided, and by whom.

(3) The Superintendent shall notify an LEA that receives a grant award no later than June 1 annually.

R277-490-8. Endowed University Participation in the BTSALP.

(1) The Superintendent may consult with endowed chairs and integrated arts advocates regarding program development and guidelines.

(2) An endowed university may apply for grant funds to fulfill the purposes of this program, which include:

(a) delivery of high quality professional development to participating LEAs;

(b) the design and completion of research related to the program;

(c) providing the public with elementary arts education resources; and

(d) other program related activities as may be included in a grant application and approved by the Board.

(3) An endowed university grant application shall include documentation of collaborative development of a plan for delivery of high quality professional development to participating LEAs.

(4) The Superintendent shall determine the LEAs assigned to each endowed university.

(5) The Board may award no more than 10% of the total legislative appropriation for grants to endowed universities.

(6) The Superintendent shall monitor the activities of the grantees to ensure compliance with grant rules, fulfillment of grant application commitments, and appropriate fiscal procedures.

(7) An endowed university shall cooperate with the Superintendent in the monitoring of its grant.

(8) An endowed university that receives grant funds shall consult, as requested by the Superintendent, in the development and presentation of an annual written program report as required in statute.

R277-490-9. LEAs Cooperation with the Superintendent for BTSALP.

(1) A BTSALP staff member may visit a school receiving a grant to observe implementation of the grant.

(2) A BTSALP school shall cooperate with the Superintendent to allow visits of members of the Board, legislators, and other invested partners to promote elementary arts integration.

(3) An LEA shall accurately report the number of students impacted by the program grant and report on the delivery systems to those students as requested by the Superintendent.

(4)(a) An LEA found to be out of compliance with the terms of the grant will be notified within 30 days of the discovery of non-compliance.

(b) An LEA found to be in non-compliance will be given 30 days to correct the issues.

(c) If non-compliance is not resolved within that time frame, an LEA is subject to losing the grant funds for the school or schools found to be non-compliant.

KEY: arts programs, endowed universities, grants, public schools

August 11, 2016 **Art X Sec 3**
Notice of Continuation January 12, 2018 **53A-1-401**
53A-17a-162

R277. Education, Administration.
R277-491. School Community Councils.
R277-491-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) provide procedures and clarifying information to a school community council to assist the council in fulfilling school community council responsibilities consistent with Sections 53A-1a-108 and 53A-1a-108.1;

(b) provide direction to a local school board, school, and school district in establishing and maintaining a school community council;

(c) provide a framework and support for improved academic achievement of students that is locally driven from within an individual school;

(d) encourage increased participation of a parent, school employee, and others to support the mission of a school community council;

(e) increase public awareness of:

(i) school trust lands;

(ii) the permanent State School Fund; and

(iii) educational excellence; and

(f) enforce compliance with the laws governing a school community council.

R277-491-2. Definitions.

(1) "Local school board" means the locally elected school board designated in Section 53A-3-101.

(2)(a) "Principal" means an administrator licensed as a principal in the state and employed in that capacity at a school.

(b) "Principal" includes a specific designee of the principal.

(3) "School community" means the geographic area a school district designates as the attendance area, with reasonable inclusion of a parent of a student who attends the school but lives outside the attendance area.

(4) "Student" means a child in a public school, grades kindergarten through 12, counted on the audited October 1 fall enrollment report.

R277-491-3. School Community Council Member Election Provisions.

(1) In addition to the election notice requirements of Subsection 53A-1a-108(5)(c), the principal shall provide notice of:

(a) the location where a ballot may be cast; and

(b) the means by which a ballot may be cast, whether in person, by mail, or by electronic transfer.

(2)(a) A school community council may establish a procedure that allows a parent to mail a ballot to the school in the event the distance between a parent and the voting location would otherwise discourage parental participation.

(b) A mailed or hand-delivered ballot shall meet the same timeline as a ballot voted in person.

(3)(a) A school, school district, or local school board may allow a parent to vote by electronic ballot.

(b) If allowed, the school or school district shall clearly explain on its website the opportunity to vote by electronic means.

(4) In the event of a change in statute or rule affecting the composition of a school community council, a council member who is elected or appointed prior to the change may complete the term for which the member was elected.

(5)(a) A public school that is a secure facility, juvenile detention facility, hospital program school, or other small or special school may receive School LAND Trust Program funds without having a school community council if the school demonstrates and documents a good faith effort to:

(i) recruit members;

(ii) have meetings;

(iii) publicize the opportunity to serve on the council; and

(iv) publish election results to the school community.

(b) The local school board shall make the determination whether to grant the exemption.

R277-491-4. School Community Council Principal Responsibilities.

(1) Following an election, the principal shall enter and electronically sign on the School LAND Trust Program website a Principal's Assurance Form affirming:

(a) the school community council's election;

(b) that vacancies were filled by election if necessary; and

(c) that the school community council's bylaws or procedures comply with Section 53A-1a-108, Rule R277-477, and this rule.

(2) In addition to the requirements of Subsection 53A-1a-108.1(6), each year the principal shall post the following information on the school's website on or before October 20:

(a) an invitation to a parent to serve on the school community council that includes an explanation of how a parent can directly influence the expenditure of the School LAND Trust Program funds;

(b) the dollar amount the school receives each year from the School LAND Trust Program;

(c) a copy of or link to the current School Improvement Plan as required in Section 53A-1a-108.5; and

(d) if the School LAND Trust Plan and School Improvement Plan have been consolidated into one, a statement that the local board has consolidated the two plans into one.

R277-491-5. School Community Council Chair Responsibilities.

(1) After the school community council election, the school community council shall annually elect at the council's first meeting a chair and vice chair in accordance with Subsection 53A-1a-108(5)(j).

(2) The school community council chair shall:

(a) post the information required by Subsection 53A-1a-108.1(5);

(b) set the agenda for every meeting;

(c) conduct every meeting;

(d) keep written minutes of every meeting, consistent with Subsection 53A-1a-108.1(9);

(e) inform council members about resources available on the School LAND Trust Program website; and

(f) welcome and encourage public participation in school community council meetings.

(3) The chair may delegate the responsibilities established in this section as appropriate at the chair's discretion.

R277-491-6. School Community Council Business.

(1)(a) The school community council shall adopt rules of order and procedure to govern a council meeting in accordance with Subsection 53A-1a-108.1(10).

(b) The rules of order and procedure shall outline the process for:

(i) selecting a chair and vice chair;

(ii) removing from office a member who moves away or fails to attend meetings regularly; and

(iii) a member to declare a conflict of interest if required by the local school board's policy.

(2) The school community council shall:

(a) report on a plan, program, or expenditure at least annually to the local school board; and

(b) encourage participation on the school community council by members of the school community and recruit a potential candidate to run for an open position on the council.

(3)(a) The principal shall provide an annual report to the school community council that summarizes current practices used by the school district and school to facilitate the school community council's responsibilities under Subsection 53A-1a-108(3)(a).

(b) The report described in Subsection (3)(a) shall include:

(i) information concerning internet filtering protocols for school and district devices that access the internet;

(ii) local instructional practices, monitoring, and reporting procedures; and

(iii) internet safety training required by Section 53A-1a-108.

(c) A school community council's School LAND Trust Program plan may not conflict with the school district's approved LEA plan related to a digital teaching and learning grant awarded to the school district under Title 53A, chapter 1, Part 14.

(4) A school community council may advise and inform the local school board and other members of the school community regarding the uses of School LAND Trust Program funds.

R277-491-7. Inapplicable to Charter Schools.

This rule does not apply to a charter school.

R277-491-8. Failure to Comply with Rule.

(1) If a local school board, school district, school, or school community council fails to comply with the provisions of this rule, the School Children's Trust Director appointed under Section 53A-16-101.6 may report the failure to the Audit Committee of the Board.

(2)(a) The Audit Committee shall allow the local school board, school district, school, or school community council to present information to the Audit Committee.

(b) The Audit Committee of the Board may recommend to the Board a reduction or elimination of School LAND Trust funds for a school district or school if the Audit Committee finds that the local school board, school district, school, or school community council has not complied with statute or rule.

(3) Before the Board takes action on the Audit Committee's recommendation, the Board shall allow the local school board, school district, school, or school community council to present information to the Board.

KEY: school community councils

January 9, 2018	**Art X Sec 3**
Notice of Continuation August 13, 2015	**53A-1-401**
	53A-1a-108
	53A-1a-108.1

R277. Education, Administration.
R277-515. Utah Educator Professional Standards.
R277-515-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests the general control and supervision of the public schools in the Board;

(b) Subsection 53A-1-402(1)(a), which directs the Board to make rules regarding the certification of educators;

(c) Title 53A, Chapter 6, Educator Licensing and Professional Practices Act, which provides all laws related to educator licensing and professional practices; and

(d) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) establish statewide standards for public school educators that provide notice to educators and prospective educators and notice and protection to public school students and parents;

(b) recognize that licensed public school educators are professionals and, as such, should share common professional standards, expectations, and role model responsibilities; and

(c) distinguish behavior for which educators shall receive license discipline from behavior that all Utah educators should aspire to and for which license discipline shall be initiated only in egregious circumstances or following a pattern of offenses.

R277-515-2. Definitions.

(1)(a) "Boundary violation" means crossing verbal, physical, emotional, and social lines that an educator must maintain in order to ensure structure, security, and predictability in an educational environment.

(b) A "boundary violation" may include the following, depending on the circumstances:

(i) isolated, one-on-one interactions with students out of the line of sight of others;

(ii) meeting with students in rooms with covered or blocked windows;

(iii) telling risqué jokes to, or in the presence of a student;

(iv) employing favoritism to a student;

(v) giving gifts to individual students;

(vi) educator initiated frontal hugging or other uninvited touching;

(vii) photographing individual students for a non-educational purpose or use;

(viii) engaging in inappropriate or unprofessional contact outside of educational program activities;

(ix) exchanging personal email or phone numbers with a student for a non-educational purpose or use;

(x) interacting privately with a student through social media, computer, or handheld devices; and

(xi) discussing an educator's personal life or personal issues with a student.

(c) "Boundary violations" does not include:

(i) offering praise, encouragement, or acknowledgment;

(ii) offering rewards available to all who achieve;

(iii) asking permission to touch for necessary purposes;

(iv) giving pats on the back or a shoulder;

(v) giving side hugs;

(vi) giving handshakes or high fives;

(vii) offering warmth and kindness;

(viii) utilizing public social media alerts to groups of students and parents; or

(ix) contact permitted by an IEP or 504 plan.

(2)(a) "Conviction" means the final disposition of a judicial action for a criminal offense, except in cases of a dismissal on the merits.

(b) "Conviction" includes:

(i) a finding of guilty by a judge or jury;

(ii) a guilty or no contest plea; and

(iii) a plea in abeyance.

(3) "Core Standard" means a statement:

(a) of what a student enrolled in a public school is expected to know and be able to do at a specific grade level or following completion of an identified course; and

(b) established by the Board in Rule R277-700 as required by Section 53A-1-402.

(4) "Diversion agreement" means an agreement between a prosecutor and defendant entered into prior to a conviction delaying prosecution of a criminal charge for a specified period of time and contingent upon the defendant satisfying certain conditions.

(5)(a) "Educator" or "professional educator" means a person who currently holds a Utah educator license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training to obtain a license.

(b) "Professional educator" does not include a paraprofessional, a volunteer, or an unlicensed teacher in a classroom.

(6) "Illegal drug" means a substance included in:

(a) Schedules I, II, III, IV, or V established in Section 58-37-4;

(b) Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II, Pub. L. No. 91-513; or

(c) any controlled substance analog.

(7) Grooming" means befriending and establishing an emotional connection with a child or a child's family to lower the child's inhibitions for emotional, physical, or sexual abuse.

(8) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.

(9) "License applicant" means a person who is applying for:

(a) an initial license; or

(b) renewal of a license.

(10) "Licensing discipline" means a sanction, including an admonition, a letter of warning, a written reprimand, suspension of license, and revocation of license, or other appropriate disciplinary measure, for violation of a professional educator standard.

(11) "Misdemeanor offense," for purposes of this rule, does not include Class C or lower violations of Title 41, Utah Motor Vehicle Code

(12) "Plea in abeyance" means a plea of guilty or no contest that is not entered as a judgment or conviction but is held by a court in abeyance for a specified period of time.

(13) "Pornographic or indecent material" shall have the same meaning as defined in Subsection 76-10-1235(1)(a).

(14) "School-related activity" means any event, activity, or program:

(a) occurring at the school before, during, or after school hours; or

(b) that a student attends at a remote location as a representative of the school or with the school's authorization, or both.

(15) "Stalking" means the act of intentionally or knowingly engaging in a course of conduct directed at a specific person as defined in Section 76-5-106.5.

(16)(a) "Under the influence of alcohol or an illegal drug" means that a person:

(i) is under the influence of alcohol, an illegal drug, or the combined influence of alcohol and drugs to a degree that renders the person incapable of effectively working in a public school;

(ii) has sufficient alcohol in the person's body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .08 grams or greater at the time of the test; or

(iii) has a blood or breath alcohol concentration of .08 grams or greater during work hours at a public school.

(b) An educator is presumed to be "under the influence of alcohol or an illegal drug" if the educator refuses a lawful request, made with reasonable suspicion by the educator's LEA, to submit to a drug or alcohol test.

(17) "Utah Professional Practices Advisory Commission" or "UPPAC" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as established by Section 53A-6-301.

(18) "Weapon" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury.

R277-515-3. Educator as a Role Model of Civic and Societal Responsibility.

(1) The professional educator is responsible for compliance with federal, state, and local laws.

(2) The professional educator shall familiarize himself or herself with professional ethics and is responsible for compliance with applicable professional standards.

(3) Failing to strictly adhere to Subsection (4) shall result in licensing discipline in accordance with Rule R277-215.

(4) The professional educator, upon receiving a Utah educator license:

(a) may not be convicted of any felony or misdemeanor offense that adversely affects the individual's ability to perform an assigned duty and carry out the responsibilities of the profession, including role model responsibility;

(b) may not be convicted of or commit any act of violence or abuse, including physical, sexual, or emotional abuse of any person;

(c) may not commit any act of cruelty to a child or any criminal offense involving a child;

(d) may not be convicted of a stalking crime;

(e) may not possess or distribute an illegal drug or be convicted of any crime related to an illegal drug, including a prescription drug not specifically prescribed for the individual;

(f) may not engage in conduct of a sexual nature described in Section 53A-6-405;

(g) may not be convicted of or subject to a diversion agreement for a sex-related or drug-related offense;

(h) may not provide to a student or allow a student under the educator's supervision or control to consume an alcoholic beverage or unauthorized drug;

(i) may not attend school or a school-related activity in an assigned employment-related capacity while possessing, using, or under the influence of alcohol or an illegal drug;

(j) may not intentionally exceed the prescribed dosage of a prescription medication while at school or a school-related activity;

(k) shall cooperate in providing all relevant information and evidence to the proper authority in the course of an investigation by a law enforcement agency or by the Division of Child and Family Services regarding potential criminal activity, except that an educator may decline to give evidence against himself or herself in an investigation if the evidence may tend to incriminate the educator as that term is defined by the Fifth Amendment of the U.S. Constitution;

(l) shall report suspected child abuse or neglect to law enforcement or the Division of Child and Family Services pursuant to Sections 53A-6-502 and 62A-4a-409 and comply with rules and LEA policy regarding the reporting of suspected child abuse;

(m) shall strictly adhere to state laws regarding the possession of a firearm while on school property or at a school-sponsored activity and enforce an LEA policy related to student access to or possession of a weapon;

(n) may not solicit, encourage, or consummate an inappropriate relationship, whether written, verbal, or physical, with a student or minor;

(o) may not engage in grooming of a student or minor;

(p) may not:

(i) participate in sexual, physical, or emotional harassment towards any public school-age student or colleague; or

(ii) knowingly allow harassment toward a student or colleague;

(q) may not make inappropriate contact in any communication, including written, verbal, or electronic, with a minor, student, or colleague, regardless of age or location;

(r) may not interfere or discourage a student's or colleague's legitimate exercise of political and civil rights, acting consistent with law and LEA policy;

(s) shall provide accurate and complete information in a required evaluation of himself or herself, another educator, or student, as directed, consistent with the law;

(t) shall be forthcoming with accurate and complete information to an appropriate authority regarding known educator misconduct that could adversely impact performance of a professional responsibility, including a role model responsibility, by himself or herself, or another;

(u) shall provide accurate and complete information required for licensure, transfer, or employment purposes;

(v) shall provide accurate and complete information regarding qualifications, degrees, academic or professional awards or honors, and related employment history when applying for employment or licensure;

(w) shall notify the Superintendent at the time of application for licensure of past license disciplinary action or license discipline from another jurisdiction;

(x) shall notify the Superintendent honestly and completely of past criminal convictions at the time of the license application and renewal of licenses;

(y) shall provide complete and accurate information during an official inquiry or investigation by LEA, state, or law enforcement personnel; and

(z) shall report an arrest, citation, charge, or conviction to the educator's LEA in accordance with Section R277-516-3.

(5) An LEA shall report violations described in Subsection (4) to UPPAC.

(6)(a) Failure to adhere to this Subsection (6) may result in licensing discipline in accordance with Rule R277-215.

(b) A penalty shall be imposed, most readily, if an educator has received a previous documented warning from the educator's employer.

(c) An educator may not:

(i) exclude a student from participating in any program or deny or grant any benefit to any student on the basis of race, color, creed, sex, national origin, marital status, political or religious belief, physical or mental condition, family, social, or cultural background, or sexual orientation; and

(ii) may not engage in conduct that would encourage a student to develop a prejudice on the grounds described in Subsection (6)(c)(i) or any other, consistent with the law.

(d) An educator shall maintain confidentiality concerning a student unless revealing confidential information to an authorized person serves the best interest of the student and serves a lawful purpose, consistent with:

(i) Title 53A, Chapter 13, Part 3, Utah Family

Educational Rights and Privacy Act; and

(ii) the Federal Family Educational Rights and Privacy Acts, 20 U.S.C. Sec. 1232g and 34 CFR Part 99.

(e) Consistent with Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, Section 53A-1-402.5, and rule, a professional educator:

(i) may not accept a bonus or incentive from a vendor or potential vendor or a gift from a parent of a student, or a student where there may be the appearance of a conflict of interest or impropriety;

(ii) may not accept or give a gift to a student that would suggest or further an inappropriate relationship;

(iii) may not accept or give a gift to a colleague that is inappropriate or furthers the appearance of impropriety;

(iv) may accept a donation from a student, parent, or business donating specifically and strictly to benefit a student;

(v) may accept, but not solicit, a nominal appropriate personal gift for a birthday, holiday, or teacher appreciation occasion, consistent with LEA policy and Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;

(vi) may not use the educator's position or influence to:

(A) solicit a colleague, student, or parent of a student to purchase equipment, supplies, or services from the educator or participate in an activity that financially benefits the educator unless approved in writing by the LEA; or

(B) promote an athletic camp, summer league, travel opportunity, or other outside instructional opportunity from which the educator receives personal remuneration and that involve students in the educator's school system, unless approved in writing consistent with LEA policy and rule; and

(vii) may not use school property, a facility, or equipment for personal enrichment, commercial gain, or for personal uses without express supervisor permission.

R277-515-4. Educator Responsibility for Maintaining a Safe Learning Environment and Educational Standards.

(1) A professional educator maintains a positive and safe learning environment for a student and works toward meeting an educational standard required by law.

(2)(a) Failure to strictly adhere to this Subsection (2) shall result in licensing discipline in accordance with Rule R277-215.

(b) The professional educator, upon receiving a Utah educator license:

(i) shall take prompt and appropriate action to prevent harassment or discriminatory conduct toward a student or school employee that may result in a hostile, intimidating, abusive, offensive, or oppressive learning environment;

(ii) shall resolve a disciplinary problem according to law, LEA policy, and local building procedures and strictly protect student confidentiality and understand laws relating to student information and records;

(iii) shall supervise a student appropriately at school and a school-related activity, home or away, consistent with LEA policy and building procedures and the age of the students;

(iv) shall take action to protect a student from any known condition detrimental to that student's physical health, mental health, safety, or learning;

(v)(A) shall demonstrate honesty and integrity by strictly adhering to all state and LEA instructions and protocols in managing and administering a standardized test to a student consistent with Section 53A-1-608 and Rule R277-404;

(B) shall cooperate in good faith with a required student assessment;

(C) shall submit and include all required student information and assessments, as required by statute and rule; and

(D) shall attend training and cooperate with assessment training and assessment directives at all levels;

(vi) may not use or attempt to use an LEA computer or information system in violation of the LEA's acceptable use policy for an employee or access information that may be detrimental to young people or inconsistent with the educator's role model responsibility;

(vii) may not knowingly possess, while at school or any school-related activity, any pornographic or indecent material in any form;

(viii) may not knowingly use school equipment to view, create, distribute, or store pornographic or indecent material in any form; and

(ix) may not knowingly use, view, create, distribute, or store pornographic or indecent material involving children.

(3) An LEA shall report violations of Subsection (2) to UPPAC.

(4)(a) Failure to adhere to this Subsection (4) may result in licensing discipline in accordance with Rule R277-215.

(b) A penalty shall be imposed, most readily, if an educator has received a previous documented warning from the educator's employer.

(c) A professional educator:

(i) shall demonstrate respect for a diverse perspective, idea, and opinion and encourage contributions from a broad spectrum of school and community sources, including a community whose heritage language is not English;

(ii) shall use appropriate language, eschewing profane, foul, offensive, or derogatory comments or language;

(iii) shall maintain a positive and safe learning environment for a student;

(iv) shall make appropriate use of technology by:

(A) involving students in social media responsibly, transparently, and primarily for purposes of teaching and learning per school and district policy;

(B) maintaining separate professional and personal virtual profiles;

(C) respecting student privacy on social media; and

(D) taking appropriate and reasonable measures to maintain confidentiality of student information and education records stored or transmitted through the use of electronic or computer technology;

(v) shall work toward meeting an educational standard required by law;

(vi) shall teach the objectives contained in a Core Standard;

(vii) may not distort or alter subject matter from a Core Standard in a manner inconsistent with the law;

(viii) shall use instructional time effectively consistent with LEA policy; and

(ix) shall encourage a student's best effort in an assessment.

R277-515-5. Professional Educator Responsibility for Compliance with LEA Policy.

(1)(a) Failure to strictly adhere to this Subsection (1) shall result in licensing discipline in accordance with Rule R277-215.

(b) A professional educator:

(i) understands, respects, and does not violate appropriate boundaries:

(A) established by ethical rules and school policy and directive in teaching, supervising, and interacting with a student or colleague; and

(B) described in Subsection R277-515-2(1); and

(ii) shall conduct financial business with integrity by honestly accounting for all funds committed to the educator's charge, as school responsibilities require, consistent with LEA policy.

(2) An LEA shall report violations of Subsection (1) to UPPAC.

(3)(a) Failure to adhere to this Subsection (3) may result in licensing discipline in accordance with Rule R277-215.

(b) A penalty shall be imposed most readily, if an educator has received a previous documented warning from the educator's employer.

(c) The professional educator:

(i) understands and follows a rule and LEA policy;

(ii) understands and follows a school or administrative policy, procedure, or documented directive specific to a rule or policy;

(iii) resolves a grievance with a student, colleague, school community member, and parent professionally, with civility, and in accordance with LEA policy; and

(iv) follows LEA policy for collecting money from a student, accounting for all money collected, and not commingling any school funds with personal funds.

R277-515-6. Professional Educator Conduct.

(1) A professional educator exhibits integrity and honesty in relationships with an LEA administrator or personnel.

(2)(a) Failure to adhere to this Subsection (2) may result in licensing discipline in accordance with Rule R277-215.

(b) A penalty shall be imposed most readily, if an educator has received a previous documented warning from the educator's employer.

(c) The professional educator:

(i) shall communicate professionally and with civility with a colleague, school and community specialist, administrator, and other personnel;

(ii) shall maintain a professional and appropriate relationship and demeanor with a student, colleague, school community member, and parent;

(iii) may not promote a personal opinion, personal issue, or political position as part of the instructional process in a manner inconsistent with law;

(iv) shall express a personal opinion professionally and responsibly in the community served by the school;

(v) shall comply with an LEA policy, supervisory directive, and generally-accepted professional standard regarding appropriate dress and grooming at school and at a school-related event;

(vi) shall work diligently to improve the educator's own professional understanding, judgment, and expertise;

(vii) shall honor all contracts for a professional service;

(viii) shall perform all services required or directed by the educator's contract with the LEA with professionalism consistent with LEA policy and rule; and

(ix) shall recruit another educator for employment in another position only within a LEA timeline and guideline.

R277-515-7. Violations of Professional Ethics.

(1) This rule establishes standards of ethical decorum and behavior for licensed educators in the state.

(2) Beginning in the 2018-19 school year, to obtain a license or renew a license issued by the Board, a license applicant shall review this rule and execute a form as part of the licensure or renewal process verifying that the educator:

(a) has read R277-515 and R277-516; and

(b) understands that the educator's conduct is governed by R277-515 and R277-516.

(3) An LEA shall:

(a) annually train educators employed by the LEA on the Utah Educator Professional Standards described in Rules R277-515 and R277-516; and

(b) provide written assurance of the training described in Subsection (3)(a) in accordance with R277-108.

(4) Provisions of this rule do not prevent, circumvent, replace, nor mirror criminal or potential charges that may be issued against a professional educator.

(5) The Board and Superintendent shall adhere to the provisions of this rule in licensing and disciplining a licensed Utah educator.

(6) Reporting and employment provisions related to professional ethics are provided in:

(a) Section 53A-15-1507;

(b) Section 53A-6-501;

(c) Section 53A-11-403; and

(d) Section R277-516-7.

KEY: educators, professional, standards

December 1, 2017	**Art X Sec 3**
Notice of Continuation November 6, 2017	**53A-1-402(1)(a)**
	53A-6
	53A-1-401

R277. Education, Administration.
R277-519. Educator Professional Learning Procedures and USBE Credit.
R277-519-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53A-1-402(1)(a), which allows the Board to make rules regarding the qualifications of personnel providing direct student services and the certification of educators; and

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to establish definitions and standards for awarding USBE credit for professional learning.

R277-519-2. Definitions.

"Professional learning" has the same meaning as provided in Subsection 53A-3-701(1).

R277-519-3. Professional Learning Requirements for Course Submission.

(1) The Superintendent shall approve proposals for USBE professional learning.

(2) A professional learning proposal described in Subsection (1) shall include:

(a) a description of how the proposal provides fidelity to the professional learning standards as provided in Section 53A-3-701;

(b) a descriptive outline of the professional learning;

(c) a schedule of meeting dates and times; and

(d) professional qualifications of each instructor.

(3) An LEA or other organization approved by the Superintendent shall request approval for USBE professional learning credit through the online professional learning system connected to the online Board certification system.

(4) An LEA or other organization approved by the Superintendent shall make a request under Subsection (3) at least one week prior to the beginning of the scheduled professional learning.

R277-519-4. USBE Professional Learning Credit.

(1) The Superintendent shall award USBE credit upon completion of professional learning as follows:

(a) one-half credit for seven to thirteen contact hours plus a two hour assigned learning task or reflection;

(b) one credit for fourteen to twenty contact hours plus a four hour assigned learning task or reflection;

(2) Total credit for a professional learning course may not exceed 3 credits.

KEY: teacher certification, professional competency
January 9, 2018 Art X Sec 3
Notice of Continuation February 14, 2017 53A-1-402(1)(a)
53A-1-401

R277. Education, Administration.
R277-530. Utah Effective Educator Standards.
R277-530-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsections 53A-1-402(1)(a)(i) and (ii), which require the Board to establish rules and minimum standards for the qualification and certification of educators and for required school administrative and supervisory services.

(2) The purpose of this rule is to establish:

(a) statewide effective teaching standards for Utah public education teachers;

(b) statewide educational leadership standards for Utah public education administrators; and

(c) statewide educational school counselor standards for Utah public education school counselors.

R277-530-2. Definitions.

(1) "Educator" means an individual licensed by the Board under Section 53A-6-103.

(2) "School administrator" means an educator serving in a position that requires a Utah Educator License with an Educator Leadership license area of concentration and who supervises Level 2 educators.

(3) "The Utah Effective Educator Standards" means:

(a) the Effective Teaching Standards described in R277-530-5;

(b) the Educational Leadership Standards described in R277-530-6; and

(c) the Educational School Counselor Standards described in R277-530-7.

R277-530-3. Board Expectations for Effective Teaching, Educational Leadership, and Educational School Counselor Standards.

(1) The Board hereby establishes the Effective Educator Standards as the foundation of educator development, which includes:

(a) alignment of teacher and school administrator preparation programs;

(b) expectations for licensure; and

(c) the screening, hiring, induction, and mentoring of beginning teachers, school administrators, and other licensed educators.

(2) The Board uses the Effective Educator Standards to direct and ensure the implementation of Utah's Core Standards.

(3) The Board relies on the Effective Educator Standards as the basis for an evaluation system and tiered-licensing system.

(4) The Board's model educator assessment system, for use by LEAs, is based on the Effective Educator Standards.

(5) The Board provides resources, including professional learning, which assist LEAs in integrating the Effective Educator Standards into educator practices.

R277-530-4. LEA Responsibilities for Effective Educator Standards.

(1) An LEA shall develop policies to support educators, school administrators, and school counselors in implementation of the Effective Educator Standards.

(2) An LEA shall develop professional learning experiences and professional learning plans for relicensure using the Effective Educator Standards to assess educator progress toward implementation of the standards.

(3) An LEA shall adopt formative and summative educator assessment systems based on the Effective Educator Standards to facilitate educator growth toward expert practice.

(4) An LEA shall use the Effective Educator Standards as a basis for the development of a collaborative professional culture to facilitate student learning.

(5) An LEA shall implement induction and mentoring activities for beginning teachers and school administrators that support implementation of the Effective Educator Standards.

R277-530-5. Effective Teaching Standards.

(1) The Effective Teaching Standards focus on the high-leverage concepts of:

(a) personalized learning for diverse learners;

(b) a strong focus on application of knowledge and skills;

(c) improved assessment literacy;

(d) a collaborative professional culture; and

(e) leadership roles for teachers.

(2) Utah educators shall demonstrate the following skills and work functions designated in the following ten standards:

(a) Learner Development - An educator understands cognitive, linguistic, social, emotional, and physical areas of student development;

(b) Learning Differences - An educator understands individual learner differences and cultural and linguistic diversity;

(c) Learning Environments - An educator works with learners to create environments that support individual and collaborative learning, encouraging positive social interaction, active engagement in learning, and self motivation;

(d) Content Knowledge - An educator understands the central concepts, tools of inquiry, and structures of the discipline;

(e) Assessment - An educator uses multiple methods of assessment to engage learners in their own growth, monitor learner progress, guide planning and instruction, and determine whether the outcomes described in content standards have been met;

(f) Instructional Planning - An educator plans instruction to support students in meeting rigorous learning goals by drawing upon knowledge of content areas, core curriculum standards, instructional best practices, and the community context;

(g) Instructional Strategies - An educator uses various instructional strategies to ensure that all learners develop a deep understanding of content areas and their connections, and build skills to apply and extend knowledge in meaningful ways;

(h) Reflection and Continuous Growth - An educator is a reflective practitioner who uses evidence to continually evaluate and adapt practice to meet the needs of each learner;

(i) Leadership and Collaboration - An educator is a leader who engages collaboratively with learners, families, colleagues, and community members to build a shared vision and supportive professional culture focused on student growth and success; and

(j) Professional and Ethical Behavior - An educator demonstrates the highest standards of legal, moral, and ethical conduct as required in the Utah Educator Professional Standards described in Rule R277-515.

R277-530-6. Educational Leadership Standards.

(1)(a) The Board expects that school administrators shall meet the standards of effective teaching and have the

knowledge and skills to guide and supervise the work of educators, lead the school learning community, and manage the school's learning environment in order to provide effective, high quality instruction to all of Utah's students.

(b) The Educational Leadership Standards focus on:

(i) visionary leadership;

(ii) advocacy for high levels of student learning;

(iii) leading professional learning communities; and

(iv) the facilitation of school and community collaboration.

(2) In addition to meeting the standards of an effective teacher, school administrators shall demonstrate the following traits, skills, and work functions designated in the following six standards:

(a) Visionary Leadership - A school administrator promotes the success of every student by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is largely shared and supported by stakeholders;

(b) Teaching and Learning - A school administrator promotes the success of every student by advocating, nurturing and sustaining a school focused on teaching and learning conducive to student, faculty, and staff growth;

(c) Management for Learning - A school administrator promotes the success of every student by ensuring management of the organization, operation, and resources for a safe, efficient, and effective learning environment;

(d) Community Collaboration - A school administrator promotes the success of every student by collaborating with faculty, staff, parents, and community members, responding to diverse community interests and needs and mobilizing community resources;

(e) Ethical Leadership - A school administrator promotes the success of every student by acting with, and ensuring a system of, integrity, fairness, equity, and ethical behavior; and

(f) Systems Leadership - A school administrator promotes the success of every student by understanding, responding to, and influencing the interrelated systems of political, social, economic, legal, policy, and cultural contexts affecting education.

R277-530-7. Educational School Counselor Standards.

In addition to meeting the Effective Teaching Standards described in Section R277-530-5 and the Educational Leadership Standards described in Section R277-530-6, an educational school counselor shall demonstrate the following traits, skills, and work functions designated in the following seven standards:

(1) Collaboration, Leadership and Advocacy - An educational school counselor is a leader who engages collaboratively with learners, families, colleagues, and community members to build a shared vision and supportive professional culture focused on student growth and success;

(2) Collaborative Classroom Instruction - An educational school counselor delivers a developmental and sequential guidance curriculum prioritized according to the results of the school needs assessment;

(3) The Plan for College and Career Readiness Process - An educational school counselor implements the individual planning component by guiding individuals and groups of students and their parents or guardians through the development of educational and career plans;

(4) Systemic Approach to Dropout Prevention with Social and Emotional Supports - An educational school counselor provides responsive services through the effective use of individual and small-group counseling, consultation and referral skills and implements programs for student support in dropout prevention;

(5) Data-Driven Accountability and Program Evaluation - An educational school counselor collects and analyzes data to guide program direction and emphasis;

(6) Systemic School Counseling Program Management - An educational school counselor is involved in management activities that establish, maintain and enhance the total school counseling program; and

(7) Professional and Ethical Behavior - An educational school counselor demonstrates the highest standard of legal, moral and ethical conduct, as required in the Utah Educator Professional Standards described in R277-515.

KEY: educators, effectiveness, leadership, standards
October 11, 2016 Art X Sec 3
Notice of Continuation August 15, 2016 53A-1-402(1)(a)(i) and (ii)
53A-1-401

R277. Education, Administration.
R277-621. District of Residence.
R277-621-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53A--2-201, which directs the Board to establish rules for determination of a student's district of residency in accordance with the statute.

(2) The purpose of this rule is to establish the procedure for reviewing a student's request for an alternative district of residency in accordance with Subsections 53A-2-201(2)(b)(iii) and 53A-2-201(2)(b)(iv).

R277-621-2. Definitions.

(1) "Alternative district" or "alternative district of residency" means a district, which may provide educational services, where a student resides:

(a) with a responsible adult, other than a custodial parent or legal guardian; or

(b) in a health care facility or human services program facility.

(2) "Health care facility" means the same as that term is defined in Section 26-21-2.

(3) "Human services program" means the same as that term is defined in Section 62A-2-101.

(4) "Review official" means a district employee designated by the district's superintendent to make an initial determination on a request for an alternative district of residence in accordance with this rule.

R277-621-3. Determination of Alternative District of Residency.

(1) A student's custodial parent or legal guardian may request a determination that the student's district of residency is a district other than where the student's custodial parent or legal guardian resides by filing a written request with an alternative district.

(a) The Superintendent shall provide a model form for use by a district to accept requests under this rule.

(b) A student request shall outline why the student should receive resident services from an alternative district in accordance with the criteria provided in:

(i) Subsection 53A-2-201(2)(b)(iii); or

(ii) Subsection 53A-2-201(2)(b)(iv).

(2) If an alternative district receives a request under Subsection (1), a district review official shall review the request and make a recommendation to the alternative district's local school board or designee on whether the student should be treated as a resident of the alternative district within ten business days.

(3) The student's custodial parent or legal guardian's district of residence is responsible for the student's education services pending a decision by the local school board or designee of an alternative district in accordance with this R277-621-3.

(4) If the local school board or designee of an alternative district approves a request under Subsection (1), the alternative district shall assume responsibility for providing educational services for the student and enroll the student immediately.

(5) The decision of the alternative district's local school board or designee shall be in writing and set forth the reasons for approving or denying the request in accordance with the statutory criteria.

(6)(a) If the alternative district denies a student request, the student may appeal the decision within ten business days to the Superintendent.

(b) The Superintendent shall rule on a request under Subsection (6)(a) within ten business days.

(7) If a request for an alternative district of residence is approved for a student qualifying for services under the IDEA, the alternative district shall conduct an IEP meeting with representation from the alternative district and the former district of residence under Subsection 53A-2-201(2)(a).

R277-621-4. Students at Human Services Program Facilities.

(1) A student approved for an alternative district of residency while attending a private human services program facility shall be entitled to the educational services of the alternative district at the alternative district's educational facilities designated by the alternative district.

(2) An alternative district of residency is not required to provide educational services on site at a private human services program facility, unless the IEP team of the alternative district determines that on site services are required to meet the needs of a student under federal law.

(3) The alternative district is not responsible for a student's required transportation between a health care facility or human services program facility and the school district's facility.

(4) The alternative district's local school board or designee may periodically reevaluate the non-resident student's eligibility for education services by the alternative district as described in Subsections 53A-2-201(2)(b)(iii) or (iv).

KEY: students, alternative district of residency
January 9, 2018 **Art X Sec 3**
53A-1-401
53A-2-201

R277. Education, Administration.
R277-920. School Improvement - Implementation of the School Turnaround and Leadership Development Act.
R277-920-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Title 53A, Chapter 1, Part 12, School Turnaround and Leadership Development Act, which requires the Board to make rules to establish:

(i) an appeal process for the denial of a school turnaround plan;

(ii) provisions regarding funding distributed to a low performing school;

(iii) criteria for granting an extension to a low performing school;

(iv) criteria for exiting a school that has demonstrated sufficient improvement;

(v) criteria for approving a teacher recruitment and retention plan;

(vi) implications for a low performing school; and

(vii) eligibility criteria, application procedures, selection criteria, and procedures for awarding incentive pay for the School Leadership Development Program.

(2) The purpose of this rule is to:

(a) enact provisions governing school improvement efforts; and

(b) implement and administer the School Turnaround and Leadership Development Act.

R277-920-2. Definitions.

(1) "Appeal committee" means the committee established by Section R277-920-5.

(2) "Committee" means a school turnaround committee established in accordance with Subsection 53A-1-1204(1) or 53A-1-1205(4).

(3) "Eligible school" means the same as that term is defined in Section 53A-1-1208.

(4) "Low performing school" means a school that is for two consecutive school years in the lowest performing:

(a) 3% of the high schools statewide according to the percentage of possible points earned under the school accountability system; or

(b) 3% of the elementary, middle, and junior high schools statewide according to the percentage of possible points earned under the school accountability system.

(5) "High performing charter school" means the same as that term is defined in Section 53A-1-1207.

(6) "Local education board" means a local school board or charter school governing board.

(7) "School improvement grant" means a Title I grant under the Elementary and Secondary Education Act, 20 U.S.C. Sec. 6303(g).

(8) "Schools in critical needs status" means a school that has been identified under Subsection R277-920-3(1).

(9) "School leader" means the same as that term is defined in Section 53A-1-1209.

(10) "Title I school" means a school that receives funds under the Elementary and Secondary Education Act of 1965, Title I, 20 U.S.C. Sec. 6301 et seq.

R277-920-3. Superintendent's Identification of Schools for Critical Needs Status -- Readiness Review.

(1) Subject to Subsection (2), on or before September 30, the Superintendent shall identify schools for critical needs status if the school is a:

(a) low performing school;

(b) high school with a four-year adjusted cohort graduation rate of less than or equal to 67% for two consecutive school years;

(c) Title I school with chronically underperforming student groups as described in Section R277-920-11; or

(d) Title I school that:

(i) has not been identified under Subsection (1)(a), (b), or (c); and

(ii) performed in the lowest 5% of Title I schools over the past three years on average according to the percentage of points earned under the school accountability system.

(2) The Superintendent shall make the identification under:

(a) Subsection (1)(b) beginning with the 2018-2019 school accountability results and every two years thereafter;

(b) Subsection (1)(c) beginning with the 2022-2023 school accountability results and every three years thereafter; and

(c) Subsection (1)(d) beginning with the 2021-2022 school accountability results and every three years thereafter.

(3)(a) Except as provided in Subsection (3)(b), schools in critical needs status are required to comply with the provisions of Title 53A, Chapter 1, Part 12, School Turnaround and Leadership Development Act.

(b) Schools that are identified under Subsections (1)(b), (1)(c), and (1)(d) are exempt from the requirement to contract with an independent school turnaround expert described in Section 53A-1-1206.

R277-920-4. School Turnaround Plan Submission and Approval Process.

(1) In addition to the requirements described in Subsection 53A-1-1204(5), a plan shall include at least the following:

(a) if the school in critical needs status is a district school, a request to the local school board and district superintendent for:

(i) additional resources;

(ii) personnel; or

(iii) exemptions from district policy that may be contributing to the low performance of the district school; and

(b) a plan for management of school personnel, including:

(i) recruitment of an educator or school leader; and

(ii) professional development for an educator or school leader.

(2) A local education board shall include in the plan a strategy for sustaining school improvement efforts after a school exits critical needs status.

(3)(a) A local education board may approve or deny a plan in whole or in part, if the part of the plan the board denies is severable from the part of the plan the board approves.

(b) A local education board shall give a reason for a denial of each part of a plan.

(4) On or before January 15, a local education board of a low performing school shall submit a proposal described in Subsection 53A-1-1204(1) or Subsection 53A-1-1205(4) to the Superintendent for approval.

(5) A local education board shall submit a plan in accordance with Subsection 53A-1-1204(7) or Subsection 53A-1-1205(9) to the Board.

(6) In accordance with Subsection 53A-1-1206(3), the Board may review and approve or deny a plan in whole or in part, if the part of the plan the Board denies is severable from the part of the plan the Board approves.

R277-920-5. Funding.

(1) The Superintendent shall annually designate an amount of funds available for distribution under this section, taking into consideration:

(a) variability in the number of schools that are identified on an annual basis;

(b) encumbered funds; and

(c) other program obligations.

(2) Subject to availability of funds, on or before January 30 of the school year in which a low performing school is identified, the Superintendent shall distribute at least $240,000 per low performing school to each local education board of a low performing school.

(3) Subject to availability of funds, in addition to the amount distributed under Subsection (2), the Superintendent shall distribute an amount equal to $30,000 for each of the following criteria that a school meets:

(a) the school is located in a county with a county seat that is over 100 miles away from Salt Lake City;

(b) the school is located within San Juan County; or

(c) the school:

(i)(A) has over 75 full time equivalent educators; and

(B) includes grade 12; or

(ii)(A) has over 37 full time equivalent educators; and

(B) does not include grade 12.

(4) The Superintendent shall distribute any funds available for distribution under Subsection (1) after the allocation of funds described in Subsections (2) and (3) to local education boards of low performing schools on a prioritized basis taking need for the funds, as demonstrated by the needs assessment conducted in accordance with Section 53A-1-1203, into account.

(5)(a) The local education board shall use the funding distributed under this section to contract with an independent school turnaround expert, including travel costs, in accordance with Sections 53A-1-1204 and 53A-1-1205.

(b) A local education board shall use funding available after the allocation of funds under Subsection (5)(a) only for interventions identified in a school turnaround plan.

(6) The Superintendent may review uses of funds and contracts with independent school turnaround experts.

R277-920-6. Teacher Recruitment and Retention.

(1) As used in this section, "matching funds" means funds that are not allocated to a school under Section R277-920-5.

(2) In accordance with Section 53A-1-1208.1, a local education board of a low performing school may seek and receive matching funds from the state to implement strategies for teacher recruitment and retention identified in a plan described in Subsection (3).

(3) To qualify for matching funds under this section, on or before January 15, a local education board of a low performing school shall submit a plan to the Superintendent that:

(a) includes a strategy for teacher recruitment and retention for the school in critical needs status;

(b)(i) except as provided in Subsection (3)(b)(ii), is responsive to the needs assessment conducted in accordance with Section 53A-1-1203; or

(ii) if the school was identified as a low performing school based on 2014-2015 school accountability results, includes a root cause analysis of the school's teacher recruitment and retention challenges, including:

(A) a clear definition of the problem to be solved;

(B) hypotheses for the causes of the problem;

(C) strategies to address the root causes of the problem;

(D) current data on teacher retention rates; and

(E) current recruitment and retention strategies;

(c) includes the amount of matching funds the local education board is requesting from the state;

(d) includes assurances that the local education board will allocate matching funds; and

(e) may include a stipend for educators who work non-contract hours to develop or implement strategies identified in a school improvement plan.

(4) The Superintendent shall:

(a) approve a plan that meets the criteria described in Subsection (3); and

(b) on or before March 1, distribute matching funds to a local education agency that has submitted an approved plan in an amount not to exceed:

(i) $1000 per teacher for schools identified based on 2014-2015 school accountability results; or

(ii) $1500 per teacher for schools identified based on 2016-17 school accountability results and each year thereafter.

R277-920-7. Appeal Process for Denial of a School Turnaround Plan.

(1) As used in this section "plan" means a school turnaround plan described in Subsection 53A-1-1204(5).

(2) A committee or local education board may appeal the denial of a plan, in whole or in part, by following the procedures and requirements of this section.

(3) An appeal authorized by this rule:

(a) is an informal adjudicative proceeding under Section 63G-4-203; and

(b) shall be resolved by the date specified in Subsection 53A-1-1206(6)(b).

(4)(a) A principal, on behalf of a committee, may request that the local education board reconsider the denial of a plan:

(i) by electronically filing the request:

(A) with the chair of the local education board; and

(B) on a form provided on the Board website; and

(ii) within 5 calendar days of the denial.

(b) The reconsideration request may include a modification to the plan if the committee approves the modification.

(c) The local education board shall respond to the request within 10 calendar days by:

(i) refusing to reconsider its action;

(ii) approving a plan, in whole or in part; or

(iii) denying a plan modification.

(d) The principal may appeal the denial of a plan under this Subsection (3):

(i) by electronically filing an appeal with the Superintendent on a form provided on the Board website; and

(ii) within 5 calendar days of the denial.

(e) An appeal filed under this subsection shall be resolved in accordance with Subsections (5) and (6).

(5) A district superintendent, on behalf of a local school board, or a charter school governing board chair, on behalf of a charter school governing board, may appeal the Board's denial of a plan:

(a) by electronically filing an appeal with the Superintendent on a form provided on the Board website; and

(b) within 5 calendar days of the denial.

(6)(a) At least three members of a Board committee, appointed by the Board as the appeal committee, shall review the written appeal.

(b) The appeal committee may ask the principal, district superintendent, local school board chair, or charter school governing board chair to:

(i) provide additional written information; or

(ii) appear personally and provide information.

(c) The appeal committee shall make a written

recommendation within 5 business days of receipt of the appeal request to the Board to accept, modify, or reject the plan and give a reason for the recommendation.

(7) The Board may accept or reject the appeal committee's recommendation and the Board's decision is the final administrative action.

R277-920-8. Exit Criteria for a School in Critical Needs Status -- Extensions -- More Rigorous Interventions.

(1)(a) Except as provided in Subsection (1)(b), to exit critical needs status, a school shall demonstrate that the school no longer meets the criteria for which the school was identified:

(i) for the second and third years, consecutively, after which the school was identified for critical needs status; or

(ii) for two consecutive years by the end of the extension period described in Subsection (3).

(b) A school that was identified based on 2014-15 school accountability results is required to improve performance by at least one letter grade, as determined by comparing the school's letter grade for the 2014-15 school year to the school's letter grade for the 2017-18 school year.

(2) In determining whether a school has met the criteria described in Subsection (1), the Superintendent shall apply the indicators, weightings, and threshold scores described in the version of Title 53A, Chapter 1, Part 11, School Accountability System that was in place at the time the school was identified.

(3) If a school does not meet the exit criteria described in Subsection (1)(a), the school may qualify for an extension to continue current school improvement efforts for up to two years if the school:

(a)(i) has cut the difference by 50% between:

(A) the percentage of points earned in the school year in which the school was identified; and

(B) the percentage of points necessary to meet the exit criteria described in Subsection (1)(a); or

(ii) has met the exit criteria described in Subsection (1)(a) for only one year; and

(b) electronically files an extension request with the Superintendent within 15 days of the release of school accountability results, that provides rationale justifying an extension.

(4)(a) The Superintendent shall conduct an in-depth analysis of the alignment of the school's curriculum to the Utah core standards:

(i) in each school that qualifies for an extension under Subsection (3); and

(ii) that is individualized to each teacher.

(b) The Superintendent may require a local education board or school to:

(i) take actions to remedy issues identified in the analysis described in Subsection (4)(a); or

(ii) revise the school turnaround plan.

(5) If a school identified for critical needs status does not meet the exit criteria described in Subsection (1) or qualify for an extension as described in Subsection (3) the following groups shall make a recommendation to the Board on what action the Board should take:

(a) a state review panel, described in Subsection (7);

(b) if the school is a district school, the local school board, with input from the community as described in Subsection (8); and

(c) if the school is a charter school, the charter school authorizer with input from the community as described in Subsection (8).

(6) The groups described in Subsection (5) shall make a recommendation within 90 days of the release of school accountability results on whether the Board should:

(a) require personnel changes, including replacement of school leaders or teachers;

(b) if the school is a district school:

(i) require involuntary transfers of school leaders or teachers;

(ii) require the local school board to change school boundaries;

(iii) temporarily appoint a public or non-profit entity other than the local school board to manage and operate the school; or

(iv) permanently transfer control of a school to a public or non-profit entity other than the local education board;

(c) if the school is a charter school:

(i) require that the charter school governing board be replaced; or

(ii) require that the charter school authorizer close the school; or

(c) if the school is a charter school, require that the charter school authorizer:

(i) replace some or all members of the charter school governing board;

(ii) transfer operation and control of the charter school to:

(A) a high performing charter school; or

(B) the school district in which the charter school is located; or

(iii) close the school; or

(d) take other action.

(7)(a) The Superintendent shall appoint members of the state review panel subject to Subsection (7)(b).

(b) The state review panel shall include at least three members who each have demonstrated expertise in two or more of the following fields:

(i) leadership at the school district or school level;

(ii) standards-based elementary or secondary curriculum instruction and assessment;

(iii) instructional data management and analysis;

(iv) educational program evaluation;

(v) educational program management;

(vi) teacher leadership;

(vii) change management;

(viii) organizational management; or

(ix) school budgeting and finance.

(c) The state review panel shall critically evaluate at least:

(i) whether the local education agency has the capacity to implement the changes necessary to improve school performance;

(ii) whether the school leadership is adequate to implement change to improve school performance;

(iii) whether the school has sufficient authority to implement change;

(iv) whether the plan is being implemented with fidelity;

(v) whether the state and local education board provided sufficient resources to the school to support school improvement efforts, including whether the local school board prioritized school district funding and resources to the school in accordance with Section 53A-1-1204;

(vi) the likelihood that performance can be improved within the current management structure and staffing; and

(vii) the necessity that the school remain in operation to serve students.

(8) A local school board and charter school authorizer shall develop recommendations under this section in collaboration with:

(a) parents of students currently attending the school;

(b) teachers, principals, and other school leaders at the school;

(c) stakeholders representing the interests of students

with disabilities, English learners, and other vulnerable student populations; and

(d) other community members and community partners.

R277-920-9. School Leadership Development Program.

(1) A school leader may apply to participate in the School Leadership Development Program if the school leader:

(a) is assigned to a school in critical needs status; or

(b) is nominated by the school leader's district superintendent or charter school governing board to participate.

(2) A school leader who meets the requirements of Subsection (1) may apply to participate in the School Leadership Development Program by electronically submitting an application to the Superintendent on a form provided on the Board website by the date specified on the Board website.

(3)(a) The Superintendent shall select a school leader to participate in the School Leadership Development Program based on the following selection criteria:

(i) First priority shall be given to a school leader who is assigned to a low performing school;

(ii) second priority is given to a school leader who is assigned to a school in critical needs status that is not a low performing school; and

(iii) third priority is given to a school leader who is nominated by the school leader's district superintendent or charter school governing board.

(b) Notwithstanding Subsection (3)(a), the Superintendent may give priority to a school leader who has not received prior leadership training before selecting a school leader who has received prior leadership training.

(4)(a) In accordance with Subsection 53A-1-1209(4), the Superintendent shall award incentive pay to a school leader within 30 days after the school leader:

(i) completes the School Leadership Development Program; and

(ii) submits a written agreement to the Superintendent to work as described in Subsection 53A-1-1209(4).

(b) The Superintendent shall evenly divide the appropriation among the school leaders who meet the requirements of this Subsection (4).

(5) The Superintendent may award incentive pay to a school leader described in Subsection (5) for up to five years.

R277-920-10. School Recognition and Reward Program.

(1) The Superintendent shall distribute school recognition and reward program money to the principal of an eligible school:

(a) in accordance with Section 53A-1-1208; and

(b) within 30 days of the Board's official release of school grades for the year the eligible school is eligible for an award of money.

(2) The Superintendent shall notify the principal of an eligible school within 15 days of the Board's official release of school grades:

(a) that the eligible school is eligible for an award of money pursuant to Section 53A-1-1208; and

(b) of the amount of the award that the eligible school will receive.

(3) In accordance with Section 53A-1-1208, the principal shall distribute the money received under Subsection (1):

(a) to each educator assigned to the school for all of the years the school was identified as a low performing school; and

(b) in a pro-rated manner to each educator assigned to the school for less time than the school was identified as a low performing school.

R277-920-11. Superintendent's Identification of Schools for Targeted Needs Status.

(1) As used in this section, "student groups" means a group of 10 or more students:

(a) who are economically disadvantaged;

(b) with disabilities;

(c) who are English learners;

(d) who are African American;

(e) who are American Indian;

(f) who are Asian;

(g) who are Hispanic;

(h) who are Multiple races;

(i) who are Pacific Islander; or

(j) who are White.

(2)(a) Subject to Subsection (2)(b), the Superintendent shall identify for targeted needs status any school with one or more student groups who:

(i) for two consecutive years, is assigned a percentage of points in the state's accountability system that is equal to or below the percentage of points associated with the lowest rating in the state's accountability system; and

(ii) is not currently identified for critical needs status under Section R277-920-3.

(b) The Superintendent shall make the identification under Subsection (2)(a) beginning with the 2018-2019 school accountability results and every year thereafter.

(3) A school identified under Subsection (2) shall develop and implement a plan to improve performance of the student group that was the subject of the identification under Subsection (2), in accordance with the Elementary and Secondary Education Act of 1965, 20 U.S.C. Sec. 6301 et seq.

(4) To exit targeted needs status, a school shall demonstrate that the school no longer meets the criteria for which the school was identified for two consecutive years within four school years after the month in which the school was identified.

(5) The Superintendent shall identify a school that does not meet the exit criteria described in Subsection (4) as a school with chronically underperforming student groups as described in Section R277-920-3.

KEY: principals, school improvements, school leaders

January 9, 2018 **Art X, Sec 3**
53A-1-401
53A-1-12

R307. Environmental Quality, Air Quality.
R307-505. Oil and Gas Industry: Registration Requirements.
R307-505-1. Purpose.

R307-505 establishes requirements for sources in the oil and gas industry to register with the Division.

R307-505-2. Applicability.

(1) R307-505 applies to new and existing operations at a source with Standard Industrial Classification codes in the major group 13, which includes but is not limited to industries involved in oil and natural gas exploration, production, and transmission operations; well production facilities; natural gas compressor stations; natural gas processing plants and commercial oil and gas disposal wells, and evaporation ponds.

(a) A source that is subject to an approval order in accordance with R307-401-8 is exempt from R307-505.

R307-505-3. Registration Requirements.

(1) An owner or operator of a source identified in R307-505-2 that begins operations on or after January 1, 2018, shall register with the director 30 days prior to commencing operation.

(2) An owner or operator of a source identified in R307-505-2 that is in operation before January 1, 2018, shall register with the director by July 1, 2018.

(3) An owner or operator shall update the registration information within 30 days of any of the following:

(a) changes to company name,

(b) removal or addition of control devices, or

(c) termination of operations.

(4) Registration shall be completed online in a format provided by the Division and shall include the following general information: company name, mailing address, source location, source manager or point of contact, process description, capacity and quantity of emitting equipment on-site, fuel type of combustion related equipment (i.e. diesel, natural gas, propane, or field gas), emissions control devices installed, emissions and certification that the facility is in compliance with R307-506 through R307-510.

KEY: air pollution, oil, gas
January 26, 2018 19-2-104(1)(a)

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-301. Solid Waste Authority, Definitions, and General Requirements.
R315-301-1. Authority and Purpose.

The Solid Waste Permitting and Management Rules are promulgated under the authority of the Solid and Hazardous Waste Act, Chapter 6 of Title 19, to protect human health, to prevent land, air and water pollution, and to conserve the state's natural, economic and energy resources by setting minimum performance standards for the proper management of solid wastes originating from residences, commercial, agricultural, and other sources.

R315-301-2. Definitions.

Terms used in Rules R315-301 through R315-320 are defined in Sections 19-1-103, 19-6-102, and 19-6-803. In addition, for the purpose of Rules R315-301 through 320, the following definitions apply.

(1) "Active area" means that portion of a facility where solid waste recycling, reuse, treatment, storage, or disposal operations are being conducted.

(2) "Airport" means a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(3) "Aquifer" means a geological formation, group of formations, or portion of a formation that contains sufficiently saturated permeable material to yield useable quantities of ground water to wells or springs.

(4) "Areas susceptible to mass movement" means those areas of influence, characterized as having an active or substantial possibility of mass movement, where the movement of earth material at, beneath, or adjacent to the landfill unit, because of natural or human-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock falls.

(5) "Asbestos waste " means friable asbestos, which is any material containing more than 1% asbestos as determined using the method specified in Appendix A, 40 CFR Part 763.1, 2001 ed., which is adopted and incorporated by reference, that when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

(6) "Background concentration" means the concentration of a contaminant in ground water upgradient or a lateral hydraulically equivalent point from a facility, practice, or activity, and which has not been affected by that facility, practice, or activity.

(7) "Class I Landfill" means a non-commercial landfill or a landfill that meets the definition found in Subsection 19-6-102(3)(a)(iii) and is permitted by the Director

(a) to receive for disposal:

(i) municipal solid waste;

(ii) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; or

(iii) in conjunction with municipal solid waste or other nonhazardous solid waste, waste from a very small quantity generator of hazardous waste, as defined by Section R315-260-10; and

(b) does not meet the standards of Subsection R315-303-3(3)(e)(v).

(8) "Class II Landfill" means a non-commercial landfill or a landfill that is permitted by the Director

(a) to receive for disposal:

(i) municipal solid waste;

(ii) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; or

(iii) in conjunction with municipal solid waste or other nonhazardous solid waste, waste from a very small quantity generator of hazardous waste, as defined by Section R315-260-10.

(b) meets the standards of Subsection R315-303-3(3)(e)(v).

(9) "Class III Landfill" means a non-commercial landfill that is permitted by the Director to receive for disposal only industrial solid waste.

(10) "Class IV Landfill" means a non-commercial landfill that is permitted by the Director to receive for disposal only:

(a) construction/demolition waste;

(b) yard waste;

(c) inert waste;

(d) dead animals, as approved by the Director and upon meeting the requirements of Section R315-315-6;

(e) waste tires and materials derived from waste tires, upon meeting the requirements of Section 19-6-804 and Section R315-320-3; and

(f) petroleum-contaminated soils, upon meeting the requirements of Subsection R315-315-8(3).

(11) "Class V Landfill" means a commercial nonhazardous solid waste disposal facility, as defined by Subsection 19-6-102(3), that is permitted by the Director to receive for disposal:

(a) municipal solid waste;

(b) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; and

(c) in conjunction with municipal solid waste or other nonhazardous solid waste, waste from a very small quantity generator of hazardous waste, as defined by Section R315-260-10.

(12) "Class VI Landfill" means a commercial nonhazardous solid waste landfill that is permitted by the Director to receive for disposal only:

(a) construction/demolition waste, excluding waste from a very small quantity generator of hazardous waste, as defined by Section R315-260-10;

(b) yard waste;

(c) inert waste;

(d) dead animals, as approved by the Director and upon meeting the requirements of Section R315-315-6;

(e) waste tires and materials derived from waste tires, upon meeting the requirements of Section 19-6-804 and Subsection R315-320-3(1) or (2); and

(f) petroleum-contaminated soils, upon meeting the requirements of Subsection R315-315-8(3).

(g) A Class VI Landfill may not receive for disposal:

(i) hazardous waste;

(ii) construction/demolition waste containing PCBs, except as allowed by Section R315-315-7;

(iii) garbage;

(iv) municipal solid waste; or

(v) industrial solid waste.

(h) The wastes received at a Class VI Landfill may be further limited by a solid waste permit.

(i) A Class VI Landfill may not change to a Class V Landfill except by meeting all requirements for a Class V Landfill including obtaining a new Class V Landfill permit and completing the requirements specified in Subsection R315-310-3(2).

(13) "Closed facility" means any facility that no longer receives solid waste and has completed an approved closure plan, and any landfill on which an approved final cover has been installed.

(14) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding household waste and industrial wastes.

(15) "Composite liner" means a liner system consisting of two components: the upper component consisting of a synthetic flexible membrane liner, and the lower component consisting of a layer of compacted soil. The composite liner must have the synthetic flexible membrane liner installed in direct and uniform contact with the compacted soil component and be constructed of specified materials and compaction to meet specified permeabilities.

(16) "Composting" means a method of solid waste management whereby the organic component of the waste stream is biologically decomposed under controlled aerobic conditions, at a temperature of 140 degrees Fahrenheit (60 degrees Celsius), or higher, for at least some part of each day of a consecutive seven day period, to a state in which the end product or compost can be handled, stored, or applied to the land without adversely affecting human health or the environment.

(17) "Construction/demolition waste" means solid waste from building materials, packaging, and rubble resulting from construction, remodeling, repair, abatement, rehabilitation, renovation, and demolition operations on pavements, houses, commercial buildings, and other structures, including waste from a very small quantity generator of hazardous waste, as defined by Section R315-260-10, that may be generated by these operations.

(a) Such waste may include:

(i) concrete, bricks, and other masonry materials;

(ii) soil and rock;

(iii) waste asphalt;

(iv) rebar contained in concrete; and

(v) untreated wood, and tree stumps.

(b) Construction/demolition waste does not include:

(i) friable asbestos;

(ii) treated wood; or

(iii) contaminated soils or tanks resulting from remediation or clean-up at any release or spill.

(18) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water or soil that is a result of human activity.

(19) "Displaced" or "displacement" means the relative movement of any two sides of a fault measured in any direction.

(20) "Drop box facility" means a facility used for the placement of a large detachable container or drop box for the collection of solid waste for transport to a solid waste disposal facility. The facility includes the area adjacent to the containers for necessary entrance, exit, unloading, and turn-around areas. Drop box facilities normally serve the general public with uncompacted loads and receive waste from off site. Drop box facilities do not include residential or commercial waste containers on the site of waste generation.

(21) "Energy recovery" means the recovery of energy in a useable form from incineration, burning, or any other means of using the heat of combustion of solid waste that involves high temperature (above 1200 degrees Fahrenheit) processing.

(22) "Existing facility" means any facility that has:

(a) a current valid solid waste permit or other valid approval issued under Rules R315-301 through 320 by the Director; and

(b) received final approval to accept waste as required by Subsection R315-301-5(1).

(23) "Expansion of a solid waste disposal facility" means any lateral expansion beyond the property boundaries outlined in the permit application for the current permit under which the facility is operating.

(24) "Facility" means all contiguous land, structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal operational units, e.g., one or more incinerators, landfills, container storage areas, or combinations of these.

(25) "Floodplain" means the land that has been or may be hereafter covered by flood water which has a 1% chance of occurring any given year. The flood is also referred to as the base flood or 100-year flood.

(26) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure or as determined by EPA test method 9095 (Paint Filter Liquids Test) as provided in EPA Report SW-846 "Test Methods for Evaluating Solid Waste" as revised December (1996) which is adopted and incorporated by reference.

(27) "Garbage" means discarded animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food, and of such a character and proportion as to be capable of attracting or providing food for vectors. Garbage does not include sewage and sewage sludge.

(28) "Ground water" means subsurface water that is in the zone of saturation including perched ground water.

(29) "Ground water quality standard" means a standard for maximum allowable contamination in ground water as set by Section R315-308-4.

(30) "Hazardous waste" means hazardous waste as defined by Subsection 19-6-102(9) and Section R315-261-3.

(31) "Holocene fault" means a fracture or zone of fractures along which rocks on one side of the fracture have been displaced with respect to those on the other side, which has occurred in the most recent epoch of the Quaternary period extending from the end of the Pleistocene, approximately 11,000 years ago, to the present.

(32) "Household size" means a container for a material or product that is normally and reasonably associated with households or household activities. The containers are of a size and design to hold materials or products generally for immediate use and not for storage, five gallons or less in size.

(33) "Household waste" means any solid waste, including garbage, trash, and sanitary waste in septic tanks, derived from households including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

(34) "Incineration" means a controlled thermal process by which solid wastes are physically or chemically altered to gas, liquid, or solid residues that are also regulated solid wastes. Incineration includes the thermal destruction of solid waste for energy recovery. Incineration does not include smelting operations where metals are reprocessed or the refining, processing, or burning of used oil for energy recovery as described in Rule R315-15.

(35) "Industrial solid waste" means any solid waste generated at a manufacturing or other industrial facility that is not a hazardous waste or that is a hazardous waste from a very small quantity generator of hazardous waste, as defined by Section R315-260-10, generated by an industrial facility. Industrial solid waste includes waste from the following industries or resulting from the following manufacturing processes and associated activities: electric power generation; fertilizer or agricultural chemical industries; food and related products or by-products industries; inorganic chemical industries; iron and steel manufacturing; leather and leather product industries; nonferrous metals manufacturing or foundry industries; organic chemical industries; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic product industries; stone, glass, clay, and concrete product industries; textile manufacturing; transportation equipment manufacturing; and water treatment industries. This term does not include mining waste; oil and gas waste; or other waste excluded by Subsection 19-6-

102(18)(b).

(36) "Industrial solid waste facility" means a facility that receives only industrial solid waste from on-site or off-site sources for disposal.

(37) "Inert waste" means noncombustible, nonhazardous solid wastes that retain their physical and chemical structure under expected conditions of disposal, including wastes that exhibit resistance to biological or chemical change.

(38) "Landfill" means a disposal facility where solid waste is or has been placed in or on the land and that is not a landtreatment facility or surface impoundment.

(39) "Land treatment, landfarming, or landspreading facility" means a facility or unit within a facility where solid waste is applied onto or incorporated into the soil surface for the purpose of biodegradation.

(40) "Lateral expansion of the solid waste disposal area" means:

(a) any horizontal expansion of the waste boundaries of an existing landfill cell, module, or unit;

(b) the construction of a new cell, module, or unit within the boundaries outlined in the permit application of the current permit under which the facility is operating; or

(c) any horizontal expansion not consistent with past normal operating practices.

(41) "Lateral hydraulically equivalent point" means a point located hydraulically equal to a facility and in the same ground water with similar geochemistry such that the ground water, at that point, has not been affected by the facility.

(42) "Leachate" means a liquid that has passed through or emerged from solid waste and that may contain soluble, suspended, miscible, or immiscible materials removed from such waste.

(43) "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include human-made materials, such as fill, concrete and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

(44) "Lower explosive limit" means the lowest percentage by volume of a mixture of explosive gases that will propagate a flame in air at 25 degrees Celsius (77 degrees Fahrenheit) and atmospheric pressure.

(45) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on site specific seismic risk assessment.

(46) "Municipal solid waste landfill" means a permitted nonhazardous solid waste landfill that may receive municipal solid waste for disposal.

(47) "Municipal solid waste" means household waste, nonhazardous commercial solid waste, and non-hazardous sludge.

(48) "New facility" means any facility that:

(a) has applied for a permit or other valid approval issued under Rules R315-301 through 320 by the Director;

(b) did not have a permit or other valid approval issued under Rules R315-301 through 320 at the time of the application; and

(c) has not received final approval to accept waste as required by Subsection R315-301-5(1).

(49) "Off site" means any site which is not on site.

(50) "On site" means the same or geographically contiguous property that may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along the right-of-way. Property separated by a private right-of-way, which the site owner or operator controls, and to which the public does not have access, is also considered on-site property.

(51) "Operator" means the person, as defined by Subsection 19-1-103(4), responsible for the overall operation of a facility.

(52) "Owner" means the person, as defined by Subsection 19-1-103(4), who has an ownership interest in a facility or part of a facility.

(53) "PCB" or "PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of materials which contain such substances.

(54) "Permeability" means the ease with which a porous material allows water and the solutes contained therein to flow through it. This is usually expressed in units of centimeters per second (cm/sec) and termed hydraulic conductivity. Soils and synthetic liners with a permeability for water of 1×10^{-7} cm/sec or less may be considered impermeable.

(55) "Permit" means the plan approval as required by Subsection 19-6-108(3)(a), or equivalent control document issued by the Director to implement the requirements of the Utah Solid and Hazardous Waste Act.

(56) "Pile" means any noncontainerized accumulation of solid waste that is used for treatment or storage.

(57) "Poor foundation conditions" means those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of a landfill unit.

(58) "Putrescible waste" means solid waste which contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to be capable of attracting or providing food for vectors including birds and mammals.

(59) "Qualified ground water scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certification, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground water monitoring, contaminant fate and transport, and corrective action.

(60) "Recycling" means extracting valuable materials from the waste stream and transforming or remanufacturing them into usable materials that have a demonstrated or potential market.

(a) Recycling does not include processes that generate such volumes of material that no market exists for the material.

(b) Any part of the waste stream entering a recycling facility and subsequently returning to a waste stream or being otherwise disposed has the same regulatory designation as the original waste.

(c) Recycling includes the substitution of nonhazardous solid waste fuels for conventional fuels (such as coal, natural gas, and petroleum products) for the purpose of generating the heat necessary to manufacture a product.

(61) "Recyclable materials" means those solid wastes that can be recovered from or otherwise diverted from the waste stream for the purpose of recycling, such as metals, paper, glass, and plastics.

(62) "Run-off" means any rainwater, leachate, or other liquid that has contacted solid waste and drains over land from any part of a facility.

(63) "Run-on" means any rainwater, leachate, or other

liquid that drains over land onto the active area of a facility.

(64) "Scavenging" means the unauthorized removal of solid waste from a facility.

(65) "Seismic impact zone" means an area with a 10% or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in 250 years.

(66) "Septage" means a semisolid consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from septic tank systems.

(67) "Sharps" means any discarded or contaminated article or instrument from a health facility that may cause puncture or cuts. Such waste may include needles, syringes, blades, needles with attached tubing, pipettes, pasteurs, broken glass, and blood vials.

(68) "Sludge" means any solid, semisolid, or liquid waste, including grit and screenings generated from a:

(a) municipal, commercial, or industrial waste water treatment plant;

(b) water supply treatment plant;

(c) car wash facility;

(d) air pollution control facility; or

(e) any other such waste having similar characteristics.

(69) "Solid waste disposal facility" means a landfill, incinerator, or land treatment area.

(70) "Solid waste incinerator facility" means a facility at which solid waste is received from on-site or off-site sources and is subjected to the incineration process. An incinerator facility that incinerates solid waste for any reason, including energy recovery, volume reduction, or to render it non-infectious, is a solid waste incinerator facility and is subject to Rules R315-301 through 320.

(71) "Special waste" means discarded solid waste that may require special handling or other solid waste that may pose a threat to public safety, human health, or the environment.

(a) Special waste may include:

(i) ash;

(ii) automobile bodies;

(iii) furniture and appliances;

(iv) infectious waste;

(v) waste tires;

(vi) dead animals;

(vii) asbestos;

(viii) waste exempt from the hazardous waste regulations under Section R315-261-4;

(ix) very small quantity generator hazardous waste as defined by Section R315-260-10;

(x) waste containing PCBs;

(xi) petroleum contaminated soils;

(xii) waste asphalt; and

(xiii) sludge.

(b) Special waste must be handled and disposed according to the requirements of Rule R315-315.

(72) "State" means the State of Utah.

(73) "Structural components" means liners, leachate collection systems, final covers, run-on or run-off systems, and any other component used in the construction and operation of a landfill that is necessary for the protection of human health and the environment.

(74) "Surface impoundment or impoundment" means a facility or part of a facility which is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials, although it may be lined with synthetic materials, which is designed to hold an accumulation of liquid waste or waste containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(75) "Transfer station" means a permanent, fixed, supplemental collection and transportation facility that is staffed by a minimum of one employee of the owner or operator during hours of operation and is used by persons and route collection vehicles to deposit collected solid waste from off-site into a transfer vehicle for transport to a solid waste handling or disposal facility.

(76) "Transport vehicle" means a vehicle capable of hauling solid waste such as a truck, packer, or trailer that may be used by refuse haulers to transport solid waste from the point of generation to a transfer station or a disposal facility.

(77) "Treated wood" means any wood item that has been treated with the following or compounds containing the following:

(a) creosote or related compounds;

(b) Arsenic;

(c) Chromium; or

(d) Copper.

(78) "Twenty-five year storm" means a 24-hour storm of such intensity that it has a 4% probability of being equaled or exceeded any given year. The storm could result in what is referred to as a 25-year flood.

(79) "Unit" or "Solid Waste Management Unit" means a distinct operational storage, treatment, or disposal area at a solid waste management facility that contains all features to render it capable of performing its intended function and of being closed as a separate entity.

(80) "Unit boundary" means a vertical surface located at the hydraulically downgradient limit of a landfill unit or other solid waste disposal facility unit which is required to monitor ground water. This vertical surface extends down into the ground water.

(81) "Unstable area" means a location that is susceptible to natural or human induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a facility. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(82) "Vadose zone" means the zone of aeration including soil and capillary water. The zone is bound above by the land surface and below by the water table.

(83) "Vector" means a living animal including insect or other arthropod which is capable of transmitting an infectious disease from one organism to another.

(84) "Washout" means the carrying away of solid waste by waters of a base or 100-year flood.

(85) "Waste tire storage facility" or "waste tire pile" means any site where more than 1,000 waste tires or 1,000 passenger tire equivalents are stored on the ground.

(a) A waste tire storage facility includes:

(i) whole waste tires used as a fence;

(ii) whole waste tires used as a windbreak; and

(iii) waste tire generators where more than 1,000 waste tires are held.

(b) A waste tire storage facility does not include:

(i) a site where waste tires are stored exclusively in buildings or in trailers;

(ii) if whole waste tires are stored for five or fewer days, the site of a registered tire recycler or a processor for a registered tire recycler;

(iii) a permitted solid waste disposal facility that stores whole tires in piles for not longer than one year;

(iv) a staging area where tires are temporarily placed on the ground, not stored, to accommodate activities such as sorting, assembling, or loading or unloading of trucks; or

(v) a site where waste tires or material derived from waste tires are stored for five or fewer days and are used for

ballast to maintain covers on agricultural materials or to maintain covers at a construction site or are to be recycled or applied to a beneficial use.

(c) Tires attached to a vehicle are not considered waste tires until they are removed from the vehicle.

(86) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(87) "Yard waste" means vegetative matter resulting from landscaping, land maintenance, and land clearing operations including grass clippings, prunings, and other discarded material generated from yards, gardens, parks, and similar types of facilities. Yard waste does not include garbage, paper, plastic, processed wood, sludge, septage, or manure.

R315-301-3. Owner Responsibilities for Solid Waste.

The owner, operator or occupant of any premises or business establishment shall be responsible for the management and disposal of all solid waste generated or accumulated by the owner, operator, or occupant of the property in compliance with the Utah Solid Waste Permitting and Management Rules and the Utah Solid and Hazardous Waste Act.

R315-301-4. Prohibition of Illegal Disposal or Incineration of Solid Waste.

(1) No person shall incinerate, burn, or otherwise dispose of any solid waste in any place except at a facility which is in compliance with the requirements of Rules R315-301 through 320 and other applicable rules.

(2) When any solid waste is disposed in a manner not in compliance with the requirements of Rules R315-301 through 320, or other applicable rules, the property owner of the disposal site or the person responsible for the illegal disposal or both:

(a) shall remove the solid waste from the illegal disposal site to a permitted solid waste disposal facility and, if necessary, shall remediate the site; or

(b) shall apply for a permit form the Director and shall meet all of the following;

(i) submit the required permit application in the time frame specified by the Director and respond promptly to all requests for information from the Director related to the permit application;

(ii) shall immediately meet all of the operational monitoring and waste handling criteria of Rules R315-301 through 320; and

(iii) shall follow the requirements of Rule R315-301-4(2)(a) if a permit is not granted.

(3) Any person disposing of solid waste in a manner not in compliance with the requirements of Rules R315-301 through 320, or other applicable rules, may be subject to enforcement action in addition to meeting the requirements of Rule R315-301-4(2).

(4) When deposition or disposal of the following materials does not cause a hazard to human health or the environment or cause a public nuisance, the requirements of Rules R315-301 through 320 do not apply to:

(a) inert waste used as fill material;

(b) the disposal of mine tailings and overburden;

(c) the disposal of vegetative material generated as a result of land clearing; or

(d) the disposal of vegetative agricultural waste.

R315-301-5. Permit Required.

(1) No solid waste disposal facility shall be established, operated, maintained, or expanded until the owner or operator of such facility has obtained a permit from the Director and has received a letter of approval from the Director to accept waste.

(2) The owner or operator of a solid waste disposal facility shall operate the facility in accordance with the conditions of the permit and otherwise follow the permit.

(3) In areas where no public or duly licensed disposal service is available, the on-site disposal, by burial, of on-site generated nonhazardous solid waste from a single family farm or a single family ranch does not require a permit.

R315-301-6. Protection of Human Health and the Environment.

(1) The management of solid waste shall not present a threat to human health or the environment.

(2) Any contamination of the ground water, surface water, air, or soil that results from the management of solid waste which presents a threat to human health or the environment shall be remediated through appropriate corrective action.

KEY: solid waste management, solid waste disposal

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19-6-109

40 CFR 258

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-302. Solid Waste Facility Location Standards, General Facility Requirements, and Closure Requirements.
R315-302-1. Location Standards for Disposal Facilities.

(1) Applicability.

(a) These standards apply to each new solid waste disposal facility and any existing solid waste disposal facility seeking facility expansion, including:

(i) Class I, II, and V Landfills;

(ii) Class III Landfills as specified in Rule R315-304;

(iii) Class IV and VI Landfills as specified in Rule R315-305;

(iv) piles that are to be closed as landfills; and

(v) Incinerators as specified in Rule R315-306.

(b) These standards, except for Subsection R315-302-1(2)(f) or unless otherwise noted, do not apply to:

(i) an existing facility;

(ii) a transfer station or a drop box facility;

(iii) a pile used for storage;

(iv) composting or utilization of sludge or other solid waste on land; or

(v) hazardous waste disposal sites regulated by Rules R315-260 through 266, 268, 270, 273 and Rule R315-101.

(2) Location Standards. Each applicable solid waste facility shall be subject to the following location standards.

(a) Land Use Compatibility. No new facility shall be located within:

(i) one thousand feet of a:

(A) national, state, county, or city park, monument, or recreation area;

(B) designated wilderness or wilderness study area;

(C) wild and scenic river area; or

(D) stream, lake, or reservoir;

(ii) ecologically and scientifically significant natural areas, including wildlife management areas and habitat for threatened or endangered species as designated pursuant to the Endangered Species Act of 1982;

(iii) one-fourth mile of:

(A) existing permanent dwellings, residential areas, and other incompatible structures such as schools or churches unless otherwise allowed by local zoning or ordinance; and

(B) historic structures or properties listed or eligible to be listed in the State or National Register of Historic Places;

(iv) ten thousand feet of any airport runway end used by turbojet aircraft or within 5,000 feet of any airport runway end used by only piston-type aircraft unless the owner or operator demonstrates that the facility design and operation will not increase the likelihood of bird/aircraft collisions. Every new and existing disposal facility is subject to this requirement. If a new landfill or a lateral expansion of an existing landfill is located within six miles of an airport runway end, the owner or operator must notify the affected airport and the Federal Aviation Administration; or

(v) areas with respect to archeological sites that would violate Section 9-8-404.

(b) Geology.

(i) No new facility or lateral expansion of an existing facility shall be located in a subsidence area, a dam failure flood area, above an underground mine, above a salt dome, above a salt bed, or on or adjacent to geologic features which could compromise the structural integrity of the facility.

(ii) Holocene Fault Areas. A new facility or a lateral expansions of an existing facility shall not be located within 200 feet of a Holocene fault unless the owner or operator demonstrates to the Director that an alternative setback distance of less than 200 feet will prevent damage to the structural integrity of the unit and will be protective of human health and the environment.

(iii) Seismic Impact Zones. A new facility or a lateral expansion of an existing facility shall not be located in seismic impact zones unless the owner or operator demonstrates to the satisfaction of the Director that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

(iv) Unstable Areas. The owner or operator of an existing facility, a lateral expansion of an existing facility, or a new facility located in an unstable area must demonstrate to the satisfaction of the Director that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components of the facility will not be disrupted. The owner or operator must consider the following factors when determining whether an area is unstable:

(A) on-site or local soil conditions that may result in significant differential settling;

(B) on-site or local geologic or geomorphologic features; and

(C) on-site or local human-made features or events, both surface and subsurface.

(c) Surface Water.

(i) No new facility or lateral expansion of an existing facility shall be located on any public land that is being used by a public water system for water shed control for municipal drinking water purposes.

(ii) Floodplains. No new or existing facility shall be located in a floodplain unless the owner or operator demonstrates to the Director that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in a washout of solid waste so as to pose a hazard to human health or the environment.

(d) Wetlands. No new facility or lateral expansion of an existing facility shall be located in wetlands unless the owner or operator demonstrates to the Director that:

(i) where applicable under section 404 of the Clean Water Act or applicable State wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;

(ii) the unit will not violate any applicable state water quality standard or section 307 of the Clean Water Act;

(iii) the unit will not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of a critical habitat protected under the Endangered Species Act of 1973;

(iv) the unit will not cause or contribute to significant degradation of wetlands. The owner or operator must demonstrate the integrity of the unit and its ability to protect ecological resources by addressing the following factors:

(A) erosion, stability, and migration potential of native wetland soils, muds, and deposits used to support the unit;

(B) erosion, stability, and migration potential of dredged and fill materials used to support the unit;

(C) the volume and chemical nature of the waste managed in the unit;

(D) impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(E) the potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(F) any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;

(v) to the extent required under section 404 of the Clean Water Act or applicable state wetlands laws, steps have been

taken to attempt to achieve no net loss of wetlands, as defined by acreage and function, by first avoiding impacts to wetlands to the maximum extent practicable as required by Subsection R315-302-1(2)(d)(i), then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(vi) sufficient information is available to make a reasonable determination with respect to these demonstrations.

(e) Ground Water.

(i) No new facility or lateral expansion of an existing facility shall be located at a site:

(A) where the bottom of the lowest liner is less than five feet above the historical high level of ground water; or

(B) for a landfill that is not required to install a liner, the lowest level of waste must be at least ten feet above the historical high level of ground water.

(C) If the aquifer beneath a landfill contains ground water which has a Total Dissolved Solids (TDS) of 10,000 mg/l or greater and the landfill is constructed with a composite liner, the bottom of the lowest liner may be less than five feet above the historical high level of the ground water.

(ii) No new facility shall be located over a sole source aquifer as designated in 40 CFR 149.

(iii) No new facility shall be located over groundwater classed as IB under Section R317-6-3.3.

(iv) Unless all units of the proposed facility are constructed with a composite liner or other equivalent design approved by the Director:

(A) a new facility located above any aquifer containing ground water which has a TDS content below 1,000 mg/l which does not exceed applicable ground water quality standards for any contaminant is permitted only where the depth to ground water is greater than 100 feet; or

(B) a new facility located above any aquifer containing ground water which has a TDS content between 1,000 and 3,000 mg/l and does not exceed applicable ground water quality standards for any contaminant is permitted only where the depth to ground water is 50 feet or greater.

(C) The applicant for the proposed facility will make the demonstration of ground water quality necessary to determine the appropriate aquifer classification.

(v) No new facility shall be located in designated drinking water source protection areas or, if no source protection area is designated, within a distance to existing drinking water wells or springs for public water supplies of 250 days ground water travel time. This requirement does not include on-site operation wells. The applicant for the proposed facility will make the demonstration, acceptable to the Director, of hydraulic conductivity and other information necessary to determine the 250 days ground water travel distance.

(vi) Ground Water Alternative.

(A) Subject to the ground water performance standard stated in Subsection R315-303-2(1), if a solid waste disposal facility is to be located over an area where the ground water has a TDS of 10,000 mg/l or greater, or where there is an extreme depth to ground water, or where there is a natural impermeable barrier above the ground water, or where there is no ground water, the Director may approve, on a site specific basis, an alternative ground water monitoring system at the facility or may wave the ground water monitoring requirement. If ground water monitoring is waved the owner or operator shall make the demonstration stated in Subsection R315-308-1(3).

(B) A facility that has a ground water monitoring alternative approved under Subsection R315-302-1(2)(e)(vi) is subject to the ground water quality standards specified in Subsection R315-303-2(1) and the approved alternative shall be revoked by the Director if the operation of the facility impacts ground water.

(f) Historic preservation survey requirement.

(i) Each new facility or expansion of an existing facility shall:

(A) have a notice of concurrence issued by the state historic preservation officer as provided for in Subsection 9-8-404(3)(a)(i); or

(B) show that the state historic preservation officer did not respond within 30 days to the submittal, to the officer, of an evaluation; or

(C) have received a joint analysis conducted as required by Subsection 9-8-404(2).

(ii) Each existing facility shall, for all areas of the site that have not been disturbed:

(A) have a notice of concurrence issued by the state historic preservation officer as provided for in Subsection 9-8-404(3)(a)(i); or

(B) show that the state historic preservation officer did not respond within 30 days to the submittal, to the officer, of an evaluation; or

(C) have received a joint analysis conducted as required by Subsection 9-8-404(2).

(3) Exemptions. Exemptions from the location standards with respect to airports, floodplains, wetlands, fault areas, seismic impact zones, and unstable areas cannot be granted. Exemptions from other location standards of Section R315-302-1 may be granted by the Director on a site specific basis if it is determined that the exemption will cause no adverse impacts to human health or the environment.

(a) No exemption may be granted without application to the Director.

(b) If an exemption is granted, a facility may be required to have a more stringent design, construction, monitoring program, or operational practice to protect human health or the environment.

(c) All applications for exemptions shall meet the conditions of Section R315-311-3 pertaining to public notice and comment period.

R315-302-2. General Facility Requirements.

(1) Applicability.

(a) Each new and existing solid waste facility for which a permit is required by Section R315-310-1, shall meet the applicable requirements of Section R315-302-2 or portions of Section R315-302-2 as required by Rules R315-304, R315-305, R315-306, R315-307, R315-312, R315-313, or R315-314.

(b) Any facility which stores waste in piles that is subject to the requirements of Rule R315-314 shall meet the applicable requirements of Section R315-302-2.

(c) Any recycling facility or composting facility subject to the standards of Rule R315-312 shall submit a plan of operation, to the Director, that demonstrates compliance with the applicable standards of Section R315-302-2 and Rule R315-312.

(i) The submitted plan of operation shall be reviewed to determine compliance with the applicable standards of Section R315-302-2 and Rule R315-312.

(ii) Prior to the acceptance of waste or recyclable material or beginning operations at the facility, the owner or operator of a recycling or composting facility must receive notice from the Director that the plan of operation meets the applicable standards of Section R315-302-2 and Rule R315-312.

(d) Any transfer station subject to the standards of Rule R315-313 shall submit a plan of operation to the Director that demonstrates compliance with the applicable standards of Section R315-302-2 and Rule R315-313.

(i) The submitted plan of operation shall be reviewed to determine compliance with the applicable standards of Section R315-302-2 and Rule R315-313.

(ii) Prior to the acceptance of waste or beginning operations at the facility, the owner or operator of a transfer station facility must receive notice from the Director that the plan of operation meets the applicable standards of Section R315-302-2 and Rule R315-313.

(e) The requirements of Section R315-302-2 apply to industrial solid waste facilities as specified in Rule R315-304.

(f) A solid waste incinerator facility that meets the quantity limitation of Subsection R315-306-3(1)(b) shall meet the reporting requirements of Subsection R315-302-2(4).

(2) Plan of Operation. Each owner or operator shall develop, keep on file, and abide by a plan of operation approved by the Director. The plan shall describe the facility's operation and shall convey to site operating personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the Director or his authorized representative. The facility must be operated in accordance with the plan. Each plan of operation shall include:

(a) an intended schedule of construction. Facility permits will be reviewed by the Director no later than 18 months after the permit is issued and periodically thereafter, to determine if the schedule of construction is reasonably being followed. Failure to comply with the schedule of construction may result in revocation of the permit;

(b) a description of on-site solid waste handling procedures during the active life of the facility;

(c) a schedule for conducting inspections and monitoring for the facility;

(d) contingency plans in the event of a fire or explosion;

(e) corrective action programs to be initiated if ground water is contaminated;

(f) contingency plans for other releases, e.g. release of explosive gases or failure of run-off containment system;

(g) a plan to control fugitive dust generated from roads, construction, general operations, and covering the waste;

(h) a plan to control wind-blown litter that includes equipment and methods to contain litter, including a schedule and methods to collect scattered litter in a timely manner;

(i) a description of maintenance of installed equipment including leachate and gas collection systems, and ground water monitoring systems;

(j) procedures for excluding the receipt of prohibited hazardous waste or prohibited waste containing PCBs;

(k) procedures for controlling disease vectors;

(l) a plan for an alternative waste handling or disposal system during periods when the solid waste facility is not able to dispose of solid waste, including procedures to be followed in case of equipment breakdown;

(m) closure and post-closure care plans;

(n) cost estimates and financial assurance as required by Subsection R315-309-2(3);

(o) a landfill operations training plan for site operators; and

(p) other information pertaining to the plan of operation as required by the Director.

(3) Recordkeeping. Each owner or operator shall maintain and keep, on-site or at a location approved by the Director, the following permanent records:

(a) a daily operating record, to be completed at the end of each day of operation, that shall contain:

(i) the weights, in tons, or volumes, in cubic yards, of solid waste received each day, number of vehicles entering, and if available, the type of wastes received each day;

(ii) deviations from the approved plan of operation;

(iii) training and notification procedures;

(iv) results of ground water and gas monitoring that may be required; and

(v) an inspection log or summary; and

(b) other records to include:

(i) documentation of any demonstration made with respect to any location standard or exemption;

(ii) any design documentation for the placement or recirculation of leachate or gas condensate into the landfill as allowed by Subsection R315-303-3(2)(b);

(iii) closure and post-closure care plans as required by Subsections R315-302-3(4) and (7);

(iv) cost estimates and financial assurance documentation as required by Subsection R315-309-2(3);

(v) any information demonstrating compliance with Class II Landfill requirements if applicable; and

(vi) other information pertaining to operation, maintenance, monitoring, or inspections as may be required by the Director.

(4) Reporting.

(a) Each owner or operator of any facility, including a facility performing post-closure care, shall prepare an annual report and place the report in the facility's operating record. The owner or operator of the facility shall submit a copy of the annual report to the Director by March 1 of each year for the most recent calendar year or fiscal year of facility operation.

(b) The annual report shall cover facility activities during the previous year and must include, at a minimum, the following information:

(i) name and address of the facility;

(ii) calendar year covered by the report;

(iii) annual quantity, in tons, of solid waste received;

(iv) the annual update of the required financial assurances mechanism pursuant to Subsection R315-309-2(2);

(v) results of ground water monitoring and gas monitoring; and

(vi) training programs or procedures completed.

(c) Since the amount of waste received must be reported in tons, the following conversion factors shall be used for waste received that is not weighted on scales.

(i) Municipal solid waste:

(A) Uncompacted - 0.15 tons per cubic yard; and

(B) Compacted (delivered in a compaction vehicle) - 0.30 tons per cubic yard.

(ii) Construction/demolition waste - 0.50 tons per cubic yard.

(iii) Municipal incinerator ash - 0.75 tons per cubic yard.

(iv) Other ash - 1.10 tons per cubic yard.

(v) Waste delivered by a resident in a pickup truck or a single axle trailer - 0.25 tons per vehicle.

(vi) Industrial waste - a reasonable conversion factor, based on site specific data, developed by the owner or operator of the facility.

(d) If an owner or operator of a municipal landfill or a construction/demolition landfill has documented conversion factors that are based on facility specific data, these conversion factors may be used to report the amounts of waste when approved by the Director.

(5) Inspections.

(a) The owner or operator shall inspect the facility to prevent malfunctions and deterioration, operator errors, and discharges which may cause or lead to the release of wastes to the environment or to a threat to human health. The owner or

operator must conduct these inspections with sufficient frequency, no less than quarterly, to identify problems in time to correct them before they harm human health or the environment. The owner or operator shall keep an inspection log or summary including at least the date and time of inspection, the printed name and handwritten signature of the inspector, a notation of observations made, and the date and nature of any repairs or corrective action. The log or summary must be kept at the facility or other convenient location if permanent office facilities are not on-site, for at least three years from the date of inspection. Inspection records shall be available to the Director or his authorized representative upon request.

(b) The Director or any duly authorized officer, employee, or representative of the Director may, at any reasonable time and upon presentation of appropriate credentials, enter any solid waste facility and inspect the property, records, monitoring systems, activities and practices, or solid waste being handled for the purpose of ascertaining compliance with Rules R315-301 through 320 and the approved plan of operation for the facility.

(i) The inspector may conduct monitoring or testing, or collect samples for testing, to verify the accuracy of information submitted by the owner or operator or to ensure that the owner or operator is in compliance. The owner or operator may request split samples and analysis parameters on any samples collected by the inspector.

(ii) The inspector may use photographic equipment, video camera, electronic recording device, or any other reasonable means to record information during any inspection.

(iii) The results of any inspection shall be furnished promptly to the owner or operator of the facility.

(6) Recording with the County Recorder.

Not later than 60 days after certification of closure, the owner or operator of a solid waste disposal facility shall:

(a) submit plats and a statement of fact concerning the location of any disposal site to the county recorder to be recorded as part of the record of title; and

(b) submit proof of record of title filing to the Director.

R315-302-3. General Closure and Post Closure Requirements.

(1) Applicability.

(a) The owner or operator of any solid waste disposal facility that requires a permit shall meet the applicable standards of Section R315-302-3 and shall provide financial assurance for closure and post-closure care costs that meets the requirements of Rule R315-309.

(b) The requirements of Subsections (2), (3), and (4) of this section apply to any solid waste management facility as defined by Subsection 19-6-502(12). The requirements of Subsections (5), (6), and (7) of this section apply to:

(i) Class I, II, IV, V, and VI Landfills;

(ii) Class III Landfills as specified in Rule R315-304: and

(iii) any landtreatment disposal facility.

(2) Closure Performance Standard. Each owner or operator shall close its facility or unit in a manner that:

(a) minimizes the need for further maintenance;

(b) minimizes or eliminates threats to human health and the environment from post-closure escape of solid waste constituents, leachate, landfill gases, contaminated run-off or waste decomposition products to the ground, ground water, surface water, or the atmosphere; and

(c) prepares the facility or unit for the post-closure period.

(3) Closure Plan and Amendment.

(a) Closure may include covering, grading, seeding, landscaping, contouring, and screening. For a transfer station or a drop box facility, closure includes waste removal and decontamination of the site, including soil analysis, ground water analysis, or other procedures as required by the Director.

(b) Each owner or operator shall develop, keep on file and abide by a plan of closure required by Subsection R315-302-2(2)(m) which, when approved by the Director, will become part of the permit.

(c) The closure plan shall project time intervals at which sequential partial closure, if applicable, is to be implemented and identify closure cost estimates and projected fund withdrawal intervals for the associated closure costs from the approved financial assurance instrument required by Rule R315-309.

(d) The closure plan may be amended if conditions and circumstances justify such amendment. If it is determined that amendment of a facility closure plan is required, the Director may direct facility closure activities, in part or whole, to cease until the closure plan amendment has been reviewed and approved by the Director.

(e) Each owner and operator shall close the facility or unit in accordance with the approved closure plan and all approved amendments.

(4) Closure Procedures.

(a) Each owner and operator shall notify the Director of the intent to implement the closure plan in whole or part, 60 days prior to the projected final receipt of waste at the unit or facility unless otherwise specified in the approved closure plan.

(b) The owner or operator shall commence implementation of the closure plan, in part or whole, within 30 days after receipt of the final volume of waste, or for landfills, when the final elevation is attained in part or all of the facility cell or unit as identified in the approved facility closure plan unless otherwise specified in the approved closure plan. Closure activities shall be completed within 180 days from their starting time. Extensions of the closure period may be granted by the Director if justification for the extension is documented by the owner or operator.

(c) When an owner or operator completes closure of a solid waste management unit or facility closure is completed, he shall, within 90 days or as required by the Director, submit to the Director:

(i) facility or unit closure plans, except for Class IIIb, IVb, and VI Landfills, signed by a professional engineer registered in the state of Utah, and modified as necessary to represent as-built changes to final closure construction as approved in the closure plan; and

(ii) certification by the owner or operator, and, except for Class IIIb, IVb, and VI Landfills, a professional engineer registered in the state of Utah, that the site or unit has been closed in accordance with the approved closure plan.

(5) Post-Closure Performance Standard. Each owner or operator shall provide post-closure activities for continued facility maintenance and monitoring of gases, land, and water for 30 years or as long as the Director determines is necessary for the facility or unit to become stabilized and to protect human health and the environment.

(6) Post-Closure Plan and Amendment.

(a) For any disposal facility, except an energy recovery or incinerator facility, post-closure care may include:

(i) ground water and surface water monitoring;

(ii) leachate collection and treatment;

(iii) gas monitoring;

(iv) maintenance of the facility, the facility structures that remain after closure, and monitoring systems for their intended use as required by the approved permit;

(v) a description of the planned use of the property; and

(vi) any other activity required by the Director to protect human health and the environment for a period of 30 years or a period established by the Director.

(b) Each owner or operator shall develop, keep on file, and abide by a post-closure plan as required by Subsection R315-302-2(2)(m) and as approved by the Director as part of the permit. The post-closure plan shall address facility or unit maintenance and monitoring activities until the site becomes stabilized (i.e., little or no settlement, gas production or leachate generation) and monitoring and maintenance activities can be safely discontinued.

(c) The post-closure plan shall project time intervals at which post-closure activities are to be implemented and identify post-closure cost estimates and projected fund withdrawal intervals from the selected financial assurance instrument, where applicable, for the associated post-closure costs.

(d) The post-closure plan may be amended if conditions and circumstances justify such amendment. If it is determined that amendment of a facility or unit post-closure plan is required, the Director may direct facility post-closure activities, in part or whole, to cease until the post-closure plan amendment has been reviewed and approved.

(7) Post-Closure Procedures.

(a) Each owner or operator shall commence post-closure activities after closure activities have been completed. The Director may direct that post-closure activities cease until the owner or operator receives a notice from the Director to proceed with post-closure activities.

(b) When post-closure activities are complete, as determined by the Director, the owner or operator shall submit a certification to the Director, signed by the owner or operator, and, except for Class IIIb, IVb, and VI Landfills, a professional engineer registered in the state of Utah stating why post-closure activities are no longer necessary (i.e., little or no settlement, gas production, or leachate generation).

(c) If the Director finds that post-closure monitoring has established that the facility or unit is stabilized (i.e., little or no settlement, gas production, or leachate generation) the Director may authorize the owner or operator to discontinue any portion or all of the post-closure maintenance and monitoring activities.

KEY: solid waste management, waste disposal, solid waste permit

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R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-303. Landfilling Standards.
R315-303-1. Applicability.

The standards of Rule R315-303 apply to:

(1) Class I, II, and V Landfills;

(2) Class III Landfills as specified in Rule R315-304; and

(3) Class IV, and VI Landfills as specified in Rule R315-305.

R315-303-2. Standards for Performance.

(1) Ground Water. An owner or operator of a disposal facility shall not contaminate the ground water underlying the facility beyond the ground water quality standard set in Section R315-308-4 or, for constituents not set in Section R315-308-4, as established by the Director based on health risk standards.

(2) Air Quality and Explosive Gas Emissions.

(a) An owner or operator of a disposal facility shall not allow concentrations of explosive gases generated by the facility to exceed:

(i) twenty-five percent of the lower explosive limit for explosive gases in facility structures, excluding gas control or recovery system components; and

(ii) the lower explosive limit for explosive gases at the property boundary or beyond.

(b) An owner or operator of a disposal facility shall not cause a violation of any ambient air quality standard at the property boundary or emission standard from any emission of landfill gases, combustion or any other emission associated with the facility.

(3) Surface Waters. An owner or operator of a disposal facility:

(a) shall not cause a violation of any Utah Pollution Discharge Elimination System permit or standard from discharges of surface run-off, leachate or any liquid associated with the facility; and

(b) shall be in compliance under the Clean Water Act for any discharge as well as in compliance with any area-wide or state-wide plan under Section 208 or 319 of the Clean Water Act.

R315-303-3. Standards for Design.

(1) Minimizing Liquids. An owner or operator of a landfill shall minimize liquids admitted to active areas by:

(a) covering according to Subsection R315-303-4(4);

(b) prohibiting the disposal of containerized liquids larger than household size, noncontainerized liquids, sludge containing free liquids, or any waste containing free liquids in containers larger than household size;

(c) designing the landfill to prevent run-on of all surface waters resulting from a maximum flow of a 25-year storm into the active area of the landfill; and

(d) designing the landfill to collect and treat the run-off of surface waters and other liquids resulting from a 25-year storm from the active area of the landfill.

(e) If the owner or operator of a landfill has received a storm water permit as issued by the Utah Division of Water Quality and is meeting the requirements of the permit, the landfill may be exempt, upon approval of the Director, from the run-on and run-off control requirements of Subsections R315-303-3(1)(c) and (d).

(2) Leachate Collection Systems.

(a) An owner or operator of a landfill required to install liners shall:

(i) install a leachate collection system sized according to water balance calculations or using other accepted engineering methods, either of which shall be approved by the Director;

(ii) install a leachate collection system so as to prevent no more than one foot depth of leachate developing at any point in the bottom of the landfill unit; and

(iii) install a leachate treatment system or a pretreatment system, if necessary, in the case of discharge to a municipal water treatment plant.

(b) The returning of leachate to the landfill or the recirculation of leachate in the landfill may be done only in landfills that have a composite liner system or an approved equivalent liner system.

(3) Liner Designs. An owner or operator of a landfill shall use liners of one of the following designs:

(a) Standard Design. The design shall have a composite liner system consisting of two liners and the associated liner protection layers and a drainage system for leachate collection:

(i) an upper liner made of synthetic material with a thickness of a least 60 mils; and

(ii) a lower liner of at least two feet thickness of recompacted clay or other soil material with a permeability of no more than 1×10^{-7} cm/sec having the bottom liner sloped no less than 2% and the side liners sloped no more than 33%, except where construction and operational integrity can be demonstrated at steeper slopes, with the synthetic liner installed in direct and uniform contact with the compacted soil component; or

(b) Equivalent Design.

(i) The Director may approve an alternative liner design, on a site specific basis, if it can be documented that, under the conditions of location and hydrogeology, the equivalent design will minimize the migration of solid waste constituents or leachate into the ground or surface water at least as effectively as the liner design required in Subsection R315-303-3(3)(a).

(ii) When approving an equivalent liner design, the Director shall consider the following factors:

(A) the hydrogeologic characteristics of the facility and surrounding land;

(B) the climatic factors of the area; and

(C) the volume and physical and chemical characteristics of the leachate; or

(c) Alternative Design.

(i) The owner or operator may use, as approved by the Director, an alternative design.

(ii) The owner or operator must demonstrate that the ground water quality protection standard of Subsection R315-303-2(1) can be met. The demonstration must be approved by the Director, and must be based upon:

(A) the hydrogeologic characteristics of the facility and the surrounding land;

(B) the climatic factors of the area;

(C) the volume and physical and chemical characteristics of the leachate;

(D) predictions of contaminate fate and transport in the subsurface that maximize contaminant migration and consider impacts on human health and the environment; and

(E) predictions of leachate flow from the base of the waste to the uppermost aquifer; or

(d) Stringent Design. When conditions of location, hydrogeology, or waste stream justify, the Director may require that the liner of a landfill be constructed to meet standards more stringent than the liner designs of Subsection R315-303-3(3)(a).

(e) Small Landfill Design.

(i) The small landfill design applies only to a Class II Landfill.

(ii) Each new Class II Landfill and any existing Class II Landfill seeking facility expansion shall meet the location

standards of Section R315-302-1.

(iii) Each new and existing Class II Landfill shall meet the performance standards of Section R315-303-2.

(iv) A Class II Landfill, which meets the requirements of Subsection R315-303-3(3)(e)(v), is exempt from the liner, leachate collection system, and ground water monitoring requirements of Rule R315-303.

(v) A Class II Landfill will be approved only if:

(A) there is no evidence of existing ground water contamination;

(B) the landfill serves a community that has no practicable waste management alternative as determined by the Director;

(C) the landfill is located in an area which receives less than 25 inches of annual precipitation;

(D) the landfill receives, on a yearly average, no more than 20 tons of waste per day, or if a tonnage cannot be determined, serves a population of no more than 8,900; and

(E) the landfill meets all the requirements in Rules R315-301 through 320 applicable to Class II landfills.

(vi) A Class II Landfill may lose the exemptions of the small landfill design if at any time the landfill receives more than 20 tons of solid waste per day, based on an annual average, or has caused ground water contamination.

(4) Closure. At closure, an owner or operator of a Class I, II, IIIa, IVa, and V Landfill shall use one of the following designs for the final cover.

(a) Standard Design. The standard design of the final cover shall consist of two layers:

(i) a layer to minimize infiltration, consisting of at least 18 inches of compacted soil, or equivalent, with a permeability of 1×10^{-5} cm/sec or less, or equivalent, shall be placed upon the final lifts;

(A) in no case shall the cover of the final lifts be more permeable than the bottom liner system or natural subsoils present in the unit; and

(B) the grade of surface slopes shall not be less than 2%, nor the grade of side slopes more than 33%, except where construction integrity and the integrity of erosion control can be demonstrated at steeper slopes; and

(ii) a layer to minimize erosion, consisting of:

(A) at least 6 inches of soil capable of sustaining vegetative growth placed over the compacted soil cover and seeded with grass, other shallow rooted vegetation or other native vegetation; or

(B) other suitable material, approved by the Director.

(b) Requirements for any Earthen Final Cover at a Landfill.

(i) Markers or other benchmarks shall be installed in any final earthen cover to indicate the thickness of the final cover. These markers shall be observed during each quarterly inspection and the earthen cover shall be raised to the appropriate thickness as necessary.

(ii) Erosion channels deeper than 10% of the total cover thickness shall be repaired as soon as possible following their discovery.

(c) Alternative Final Cover Design. The Director may approve an alternative final cover design, on a site specific basis, if it can be documented that:

(i) the alternative final cover achieves an equivalent reduction in infiltration as achieved by the standard design in Subsection R315-303-3(4)(a)(i); and

(ii) the alternative final cover provides equivalent protection from wind and water erosion as achieved by the standard design in Subsection R315-303-3(4)(a)(ii).

(d) The expected performance of an alternative final cover design shall be documented by the use of an appropriate mathematical model.

(i) The input for the modeling shall include the climatic conditions at the specific landfill site and the soil types that will make up the final cover.

(ii) The model shall:

(A) be run to show the expected performance of the final cover at normal precipitation for a period of time until stability has been reached; and

(B) shall be run to show the expected performance of the final cover during the five wettest years on record at the site or the nearest weather station.

(e) The Director shall use the following criteria as part of the basis for determining if an alternative final cover will be approved:

(i) If the landfill has a liner design that does not use a synthetic material such as HDPE, the model will compare the infiltration through the standard cover as required in Subsection R315-303-3(4)(a) and shall show that the alternative cover performs as well as the standard cover; or

(ii) If the landfill has a liner composed in part of a synthetic material such as HDPE, the model must show an infiltration rate of no greater that 3 millimeters of water per year during any year of the model run.

(f) If a landfill has been constructed using an approved alternative landfill design, the Director may require, on a site-specific basis, the landfill closure design to be more stringent than the standard design specified in Subsection R315-303-3(4)(a) to protect human health or the environment.

(g) In no case shall any modification be made to the final cover, as placed and approved at closure by the Director, unless that modification:

(i) is a necessary repair of the approved final cover;

(ii) maintains or improves the effectiveness of the final cover; and

(iii) is approved by the Director.

(5) Gas Control.

(a) An owner or operator shall design each landfill so that explosive gases are monitored quarterly.

(b) If the concentration of these gases ever exceed the standard set in Subsection R315-303-2(2)(a), the owner or operator must:

(i) immediately take all necessary steps to ensure protection of human health and, within 24 hours or the next business day, notify the Director;

(ii) within seven days of detection, place in the operating record the explosive gas levels detected and a description of the steps taken to protect human health; and

(iii) within 60 days of detection, implement a remediation plan, that has been approved by the Director, for the explosive gas release, place a copy of the plan in the operating record, and notify the Director that the plan has been implemented.

(c) Collection and handling of explosive gases shall not be required if it can be shown that the explosive gases will not support combustion.

(d) The Director may, on a site specific basis, waive the requirement of monitoring explosive gases at a Class II Landfill. The wavier may be granted after:

(i) considering the characteristics of the landfill and the waste stream accepted;

(ii) taking into account climatic and hydrogeologic conditions of the site; and

(iii) completing a public comment period as specified by Section R315-311-3.

(iv) The Director may revoke any waiver from the requirement of monitoring explosive gases if the lack of monitoring explosive gases at the landfill presents a threat to human health or the environment.

(v) The requirement to monitor explosive gases inside buildings at a landfill may not be waived.

(e) A landfill that accepts no municipal waste, or other

waste with potential to generate methane during decomposition, is exempt from the gas monitoring requirement of Subsection R315-303-3(5)(a).

(6) Design Drawings.

(a) Design drawings and as built drawings of any engineered structure, including landfill liners, leachate collection systems, run-on/run-off control systems, final covers, ground water monitoring systems, and gas collection systems, shall be signed and sealed by a professional engineer registered in the State of Utah.

(b) As built drawings shall be submitted to the Director on or before 90 days following the completion of the engineered structure at the landfill.

(7) Other Requirements. An owner or operator shall design each landfill to provide for:

(a) fencing at the property or unit boundary or the use of other artificial or natural barriers to impede entry by the public and large animals. A lockable gate shall be required at the entry to the landfill;

(b) monitoring ground water according to Rule R315-308 using a design approved by the Director. The Director may also require monitoring of:

(i) surface waters, including run-off;

(ii) leachate; and

(iii) subsurface landfill gas movement and ambient air;

(c) weighing or estimating the tonnage of all incoming waste and recording the tonnage in the facility's operation record;

(d) erecting a sign at the facility entrance that identifies at least the name of the facility, the hours during which the facility is open for public use, unacceptable materials, and an emergency telephone number. Other pertinent information may also be included;

(e) adequate fire protection to control any fires that may occur at the facility. This may be accomplished by on-site equipment or by arrangement made with the nearest fire department;

(f) preventing potential harborage in buildings, facilities, and active areas of rat and other vectors, such as insects, birds, and burrowing animals;

(g) minimizing the size of the unloading area and working face as much as possible, consistent with good traffic patterns and safe operation;

(h) approach and exit roads of all-weather construction, with traffic separation and traffic control on-site and at the site entrance; and

(i) communication, such as telephone or radio, between employees working at the landfill and management offices on-site and off-site to handle emergencies.

R315-303-4. Standards for Maintenance and Operation.

(1) Plan of Operation. An owner or operator of a landfill shall maintain and operate the facility to conform to the approved plan of operation.

(2) Operating Details. An owner or operator of a landfill shall operate the facility to:

(a) control fugitive dust generated from roads, construction, general operations, and covering the waste;

(b) allow no open burning;

(c) collect scattered litter as necessary to avoid a fire hazard or an aesthetic nuisance;

(d) prohibit scavenging;

(e) conduct reclamation of facility property in an orderly sanitary manner and in a way that does not interfere with the disposal site operation;

(f) ensure that landfill personnel, trained in landfill operations, are on site when the site is open to the public;

(i) at least one person on site for landfills that receive, on an average annual basis, less than 15,000 tons per year; and

(ii) at least two persons on site, with one person at the active face, for each landfill that receives, on an average annual basis, more than 15,000 tons per year.

(g) control insects, rodents, and other vectors; and

(h) ensure that reserve operational equipment will be available to maintain and meet these standards.

(3) Boundary Posts. An owner or operator of a landfill shall clearly mark the active area boundaries authorized in the permit by placing permanent posts or by using an equivalent method clearly visible for inspection purposes.

(4) Daily and Intermediate Cover.

(a) An owner or operator of a landfill shall, at the close of each day of operation, completely cover the waste with at least six inches of soil or an alternative daily cover as allowed in Subsections R315-303-4(4)(b) through (e).

(b) The following are approved for use as alternative daily covers:

(i) non-hazardous contaminated soil; and

(ii) subject to the conditions contained in Subsection R315-303-4(4)(c):

(A) tarps;

(B) plastic sheets, when designed for landfill cover use;

(C) foam products, when designed for landfill cover use;

(D) products created from cement kiln dust, when designed for landfill cover use;

(E) incinerator ash;

(F) non-hazardous auto shredder residue not otherwise regulated by 40 CFR Part 761;

(G) chipped waste tires; and

(H) spray-on materials, when designed for landfill cover use.

(c) The use of an approved alternative daily cover is subject to the following conditions:

(i) the alternative daily cover may not present a threat to human health or the environment; and

(ii) the alternative daily cover may be used only on a schedule as established by the facility owner or operator and recorded in the facility operating record.

(iii) The facility owner or operator shall establish the schedule for use of the approved alternative cover based on the alternative cover's performance in controlling vectors, fires, odors, blowing, and scavenging. The schedule shall the following requirements:

(A) any schedule established by the facility owner or operator must provide for the placing of six inches of soil cover at least once per week;

(B) no approved alternative daily cover may be used on the day preceding a day the landfill will be closed;

(C) No alternative daily cover may be used on an area of the landfill that will not be covered with waste or an intermediate cover, as required in Subsection R315-303-4(4)(g), within two days; and

(D) The Director may require the use of six inches of soil cover upon finding that use of an alternative cover is not controlling vectors, fires, odors, blowing liter or scavenging.

(iv) The landfill operating record must clearly document the days when an alternative cover was used and the days when soil cover was used.

(v) The Director may revoke the use of any alternative daily cover at any landfill facility if any condition of Subsection R315-303-4(4)(c) is not met or if the alternative daily cover is determined to present a threat to human health or the environment.

(d) Materials not listed in Subsection R315-303-4(4)(b) may be used as alternative daily cover on an infrequent basis when the material meets the requirements of Subsection R315-303-4-(4)(c) and the use is documented in the facility operating record.

(e) Materials not listed in Subsection R315-303-4(4)(b) which a facility owner or operator wants to use on an ongoing basis must be approved by the Director. Director approval is based on the material meeting the requirements of Subsection R315-303-4(4)(c).

(f) The Director may, on a site specific basis, waive the requirement for daily cover of the waste at a landfill that accepts no municipal waste if the owner or operator demonstrates that an alternative schedule for covering the waste does not present a threat to human health or the environment. The demonstration from the owner or operator of the landfill must include at least the following:

(i) certification that the landfill accepts no municipal waste;

(ii) a detailed list of the waste types accepted by the landfill;

(iii) the alternative schedule on which the waste will be covered; and

(iv) any other operational practices that may reduce the threat to human health or the environment if an alternative schedule for covering the waste is followed.

(v) In granting any wavier from the daily cover requirement, the Director may place conditions on the owner or operator of the landfill as to the frequency of covering, depth of the cover, or type of material used as cover that will minimize the threat to human health or the environment.

(vi) The Director may revoke any waiver from the daily cover requirement if any condition is not met or if the alternative schedule for covering the waste presents a threat to human health or the environment.

(g) If an area of the working face of a landfill that accepts municipal waste will not receive waste for a period longer than 30 days, the owner or operator shall cover the area with a minimum of 12 inches of soil as an intermediate cover or an alternative intermediate cover as approved by the Director.

(i) No alternative intermediate cover will be approved by the Director without application from the owner or operator.

(ii) Approval for an alternative intermediate cover may be granted after:

(A) considering the design of the landfill, waste stream accepted, and waste handling practices; and

(B) taking into account climatic, hydrogeologic, and soil conditions of the site.

(iii) In granting approval for an alternative intermediate cover, the Director may place conditions on the owner or operator of the landfill as to the depth or type of material used and maintenance of the integrity of the cover that will minimize the threat to human health or the environment.

(iv) The Director may revoke the approval of an alternative intermediate cover if any condition is not met or if the use of the alternative intermediate cover is determined to present a threat to human health or the environment.

(5) Monitoring Systems. An owner or operator of a landfill shall maintain the monitoring systems required in Subsection R315-303-3(7)(b).

(6) Recycling Required.

(a) An owner or operator of a landfill at which the general public delivers household solid waste shall provide containers in which the general public may place recyclable materials for which a market exists. The containers shall be placed at a location convenient to the public and shall be accessible to the public during normal hours of facility operation.

(b) An owner or operator may demonstrate alternative means to providing an opportunity for the general public to recycle household solid waste.

(7) Disposal of Hazardous Waste and Waste Containing PCBs.

(a) An owner or operator of a solid waste disposal facility shall not knowingly dispose, treat, store, or otherwise handle hazardous waste or waste containing PCBs except under the following conditions:

(i) hazardous waste:

(A) the waste meets the conditions specified in Subsections R315-261-4; or

(B) the waste meets the conditions specified in R315-261-5; or

(ii) waste containing PCB's:

(A) the facility meets the requirements specified in Subsection R315-315-7(3)(a); or

(B) the waste meets the requirements specified in Subsections R315-315-7(2) or (3)(b).

(b) An owner or operator of a solid waste disposal facility shall include and implement, as part of the plan of operation, a plan that will inspect loads or take other steps, as approved by the Director, that will prevent the disposal of prohibited hazardous waste and prohibited waste containing PCBs, including:

(i) inspection frequency and inspection of loads suspected of containing prohibited hazardous waste or prohibited waste containing PCBs;

(ii) inspection in a designated area or at a designated point in the disposal process;

(iii) a training program for the facility employees in identification of prohibited hazardous waste and prohibited waste containing PCBs; and

(iv) maintaining written records of all inspections, signed by the inspector.

(c) If the receipt of prohibited hazardous waste or prohibited waste containing PCBs is discovered, the owner or operator of the facility shall:

(i) notify the Director, the hauler, and the generator within 24 hours;

(ii) restrict the inspection area from public access and from facility personnel; and

(iii) assure proper cleanup, transport, and disposal of the waste.

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R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-304. Industrial Solid Waste Landfill Requirements.
R315-304-1. Applicability.

(1) The requirements of Rule R315-304 apply to each Class III Landfill as specified.

(2) The requirements of Rule R315-304 do not apply to the following materials managed at an industrial facility:

(a) fly ash waste, bottom ash waste, slag waste, or flue gas emission control dust generated primarily from the combustion of coal or other fossil fuels;

(b) wastes from the extraction, beneficiation, and processing of ores and minerals;

(c) electric arc furnace slag, open hearth furnace slag, and other slags generated during carbon steel production; and

(d) cement kiln dust.

R315-304-2. Industrial Landfill Standards for Performance.

Each Class III Landfill shall meet the landfill standards for performance as specified in Section R315-303-2.

R315-304-3. Definitions.

Terms used in Rule R315-304 are defined in Section R315-301-2. In addition, for the purpose of Rule R315-304, the following definitions apply.

(1) "Class IIIa Landfill" means a landfill as defined by Subsection R315-301-2(9) that may accept:

(a) any nonhazardous industrial waste;

(b) waste that is exempt from hazardous waste regulations under Section R315-2-4; or

(c) very small quantity generator hazardous waste as defined by Section R315-260-10.

(2) "Class IIIb Landfill" means a landfill as defined by Subsection R315-301-2(9) that may accept any nonhazardous industrial solid waste except:

(a) waste that is exempt from hazardous waste regulations under Section R315-2-4, excluding Subsections R315-2-4(b)(3), (4), (5), (7), and (14), unless approved by the Director; or

(b) very small quantity generator hazardous waste as defined by Section R315-260-10.

R315-304-4. Industrial Landfill Location Standards.

(1) Class IIIa Landfills.

(a) A new Class IIIa Landfill shall meet the location standards of Subsection R315-302-1(2).

(b) A new Class IIIa Landfill that is proposed on the site of generation of the industrial solid waste or a lateral expansion of an existing Class IIIa Landfill, shall meet the location standards of Subsections R315-302-1(2)(b), (c), (d), and (e) with respect to geology, surface water, wetlands, and ground water.

(c) An existing Class IIIa Landfill shall not be subject to the location standards of Subsection R315-302-1(2).

(d) An exemption from any location standard of Subsection R315-302-1(2), except the standards for floodplains and wetlands, may be granted by the Director on a site specific basis if it is determined that the exemption will cause no adverse impacts to human health or the environment.

(i) No exemption may be granted without application to the Director.

(ii) If an exemption is granted, the landfill may be required to have more stringent design, construction, monitoring program, or operational practice to protect human health or the environment.

(2) Class IIIb Landfills.

(a) A new Class IIIb landfill or a lateral expansion of an existing Class IIIb Landfill shall be subject to the following location standards:

(i) the standards with respect to floodplains as specified in Subsection R315-302-1(2)(c)(ii);

(ii) the standards with respect to wetlands as specified in Subsection R315-302-1(2)(d);

(iii) the standards with respect to ground water as specified in Subsection R315-302-1(2)(e)(i)(B); and

(iv) the requirements of Subsection R315-302-1(2)(f).

(b) For a lateral expansion of an existing Class IIIb Landfill, an exemption from any location standard of Subsection R315-304-4(2)(a) may be granted by the Director on a site specific basis if it is determined that the exemption will cause no adverse impacts to human health or the environment.

(i) No exemption may be granted without application to the Director.

(ii) If an exemption is granted, the landfill may be required to have more stringent design, construction, monitoring, or operation than the minimum described in Rule R315-304 to protect human health or the environment.

(c) An existing Class IIIb Landfill shall not be subject to the location standards of Subsection R315-304-4(2)(a).

R315-304-5. Industrial Landfill Requirements.

(1) Each Class III Landfill shall meet the following applicable requirements, as determined by the Director:

(a) the plan of operation requirements of Subsections R315-302-2(2)(a), (b), (c), (d), (g), (i), (j), (k), (l), (m), (n), and (o);

(b) the recordkeeping requirements of Subsections R315-302-2(3)(a), (b)(i), (iii), (iv), and (vi);

(c) the reporting requirements of Subsection R315-302-2(4); and

(d) the inspection requirements of Subsection R315-302-2(5).

(2) Each Class III Landfill shall meet the applicable general requirements for closure and post-closure care of Subsections R315-302-2(6); R315-302-3(2); (3); (4)(a), and (b); (5); (6)(a)(iv) through (vi), (6)(b), and (c); and (7)(a) as determined by the Director.

(a) Each Class IIIa Landfill shall meet the closure requirements of Subsection R315-303-3(4).

(b) Each Class IIIb Landfill shall meet the closure requirements of Subsection R315-305-5(5)(b).

(c) If a Class III Landfill is already subject to the closure and post-closure requirements of another Federal or state agency which are as stringent as specified in Subsections R315-304-5(2)(a) or (b), the landfill may be exempt, upon approval of the Director, from the closure requirements of Subsections R315-304-5(2)(a) or (b).

(3) Standards for Design.

(a) The owner or operator of a Class III Landfill shall design the landfill to minimize the acceptance of liquids and control storm water run-on/run-off as specified in Subsections R315-303-3(1)(b), (c), and (d).

(b) The owner or operator of a Class III Landfill shall design the landfill to meet the requirements of Subsections R315-303-3(7)(a), (c), (e), (f), (g), (h), and (i) as determined by the Director.

(4) Ground Water Monitoring.

(a) The owner or operator of a Class IIIa Landfill shall monitor the ground water beneath the landfill as specified in Rule R315-308.

(b) Subject to the performance standard of Subsection R315-303-2(1), if the owner or operator of a Class IIIa Landfill is monitoring the ground water beneath the landfill and otherwise meeting the requirements of a discharge permit as issued by the Utah Division of Water Quality, the landfill may be exempt, upon approval of the Director, from the

ground water monitoring requirements of Rule R315-308.

(c) A Class IIIb Landfill is exempt from the ground water monitoring requirements of Rule R315-308.

(5) Standards for Operation.

(a) Each Class IIIa Landfill shall meet the standards of Section R315-303-4 except:

(i) for the requirements of Subsections R315-303-4(2)(f) and R315-303-4(6); and

(ii) may be exempt from the daily cover requirements of Subsection R315-303-4(4) upon the demonstration that an alternate schedule for the covering of waste at the landfill will not present a threat to human health or the environment.

(b) Each Class IIIb Landfill shall meet the requirements for operation in Subsections R315-305-4(7) and R315-305-5(2) through (4) as determined by the Director.

(6) Financial Assurance.

(a) The owner or operator of each Class III Landfill shall establish financial assurance as required by Rule R315-309.

(b) If the owner or operator of a Class III Landfill has financial assurance, in effect and active, that covers the costs of closure and post-closure care of the landfill as required by another Federal or state agency which is as stringent as the requirements of Rule R315-309, the landfill may be exempt, upon approval of the Director, from the financial assurance requirements of Rule R315-309.

(7) Permit Requirements.

Each Class III Landfill shall apply for and obtain a permit to operate by meeting the applicable requirements of Rule R315-310.

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R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-305. Class IV and VI Landfill Requirements.
R315-305-1. Applicability.

(1) These standards apply to each facility that landfills only:

(a) construction/demolition waste, inert waste, yard waste, dead animals;

(b) upon meeting the requirements of Section 19-6-804 and Subsections R315-320-3(1) or (2), waste tires and material derived from waste tires; or

(c) upon meeting the requirements of R315-315-8(3), petroleum contaminated soils.

(2) Inert waste used as road building material and fill material are excluded from the requirements of Rule R315-305.

R315-305-2. Class IV and VI Landfill Standards for Performance.

Each Class IV and VI Landfill shall meet the landfill standards for performance as specified in Section R315-303-2.

R315-305-3. Definitions.

Terms used in Rule R315-305 are defined in Section R315-301-2. In addition, for the purpose of Rule R315-305, the following definitions apply.

(1) "Class IVa Landfill" means a Class IV Landfill that receives, based on an annual average, over 20 tons of waste per day and may receive, as a component of construction/demolition waste, waste from a very small quantity generator of hazardous waste, as defined by Section R315-260-10.

(2) "Class IVb Landfill" means a Class IV Landfill that receives, based on an annual average, 20 tons, or less, of waste per day or demonstrates that no waste from a very small quantity generator of hazardous waste, as defined by Section R315-260-10 is accepted.

R315-305-4. General Requirements.

(1) Location Standards.

(a) A new Class IVa Landfill shall meet the location standards of Subsection R315-302-1(2).

(b) A new Class IVb or VI Landfill or the expansion of an existing Class IVb or VI Landfill shall be subject to the following location standards:

(i) the standards with respect to floodplains as specified in Subsection R315-302-1(2)(c)(ii);

(ii) the standards with respect to wetlands as specified in Subsection R315-302-1(2)(d);

(iii) the standards with respect to ground water as specified in Subsection R315-302-1(2)(e)(i)(B);

(iv) the standards with respect to geology as specified in Subsections R315-302-1(2)(b)(i) and (iv);

(v) if the permit application for a new Class IVb, or VI Landfill requests approval to accept dead animals for disposal, the application shall document that the landfill also meets the land use compatibility requirements of Subsections R315-302-1(2)(a)(i), (ii), (iv), and (v); and

(vi) The requirements of Subsection R315-302-1(2)(f).

(c) Exemptions from the location standards of Subsection R315-305-4(1)(b)(i), (ii), (iii), (iv), and (v) may be granted by the Director for a new Class IVb or VI Landfill, on a site specific bases, if it is determined that the exemption will cause no adverse impact to human health or the environment.

(i) No exemption may be granted without application to the Director.

(ii) If an exemption is granted, the landfill may be required to meet more stringent design, construction, monitoring, or operation requirements than the minimum described in Rule R315-305 to protect human health or the environment.

(d) An existing Class IVa, IVb, or VI Landfill:

(i) shall not be subject to the location standards of Subsections R315-305-4(1)(a) or R315-305-4(1)(b)(i), (ii), (iii), or (iv); but

(ii) if the current permit of an existing Class IVa, IVb, or VI Landfill does not allow the acceptance of dead animals and the owner or operator requests approval to accept dead animals for disposal, the request to the Director shall document that the landfill also meets the land use compatibility requirements of Subsections R315-302-1(2)(a)(i), (ii), (iv), and (v).

(2) An owner or operator of a Class IV or VI Landfill shall obtain a permit, as set forth in Rule R315-310.

(3) An owner or operator of a Class IV or VI Landfill shall design and operate the landfill to:

(a) prevent the run-on of all surface waters resulting from a maximum flow of a 25-year storm into the active area of the landfill; and

(b) collect and treat, if necessary, the run-off of surface waters and other liquids resulting from a 25-year storm from the active area of the landfill.

(4) An owner or operator of a Class IVa Landfill shall monitor the ground water beneath the landfill as specified in Rule R315-308.

(5) An owner or operator of a Class IV or VI Landfill shall erect a sign at the facility entrance as specified in Subsection R315-303-3(7)(d).

(6) An owner or operator of a Class IV or VI Landfill shall maintain the applicable records as specified in Subsection R315-302-2(3).

(7) An owner or operator of a Class IV or VI Landfill shall meet the requirements of Subsection R315-302-2(6) and make the required recording with the county recorder.

R315-305-5. Requirements for Operation.

(1) The owner or operator of a Class IV or VI Landfill shall not accept any other form of waste except the wastes specified in Subsection R315-305-1(1).

(2) The owner or operator of a Class IV or VI Landfill shall prevent the disposal of unauthorized waste by ensuring that at least one person is on site during hours of operation and shall prevent unauthorized disposal during off-hours by controlling entry, i.e., lockable gate or barrier, when the facility is not open.

(3) The owner or operator of a Class IV or VI Landfill shall:

(a) minimize the size of the working face as required by Subsection R315-303-3(7)(g);

(b) employ measures to prevent emission of fugitive dusts, when weather conditions or climate indicate that transport of dust off-site is liable to create a nuisance;

(c) meet the requirements of Subsection R315-303-3(1)(a) and (b) to minimize liquids admitted to the landfill;

(d) collect scattered litter as necessary to avoid a fire hazard or an aesthetic nuisance; and

(e) prohibit scavenging.

(4) The owner or operator of a Class IV or VI Landfill shall cover timbers, wood, and other combustible waste with a minimum of six inches of soil, or equivalent, as needed to avoid a fire hazard.

(5) The owner or operator of a Class IV or VI Landfill shall meet the applicable general requirements of closure and post-closure care of Section R315-302-3 as determined by the Director.

(a) The owner or operator of a Class IVa Landfill shall

meet the specific closure requirements of Subsection R315-303-3(4).

(b) The owner or operator of a Class IVb or VI Landfill shall close the facility by:

(i) leveling the waste to the extent practicable;

(ii) covering the waste with a minimum of two feet of soil, including six inches of topsoil;

(iii) contouring the cover as specified in Subsection R315-303-3(4)(a)(i)(B); and

(iv) seeding the cover with grass, other shallow rooted vegetation, or other native vegetation or covering in another manner approved by the Director to minimize erosion.

(v) The Director may approve an alternative final cover design for a Class IVb or VI Landfill if it is documented that the alternative final cover provides equivalent protection from infiltration and erosion as the cover specified in Subsection R315-305-5(5)(b).

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R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-306. Incinerator Standards.
R315-306-1. Applicability.

(1) These standards apply to any incinerator facility as specified in Subsections R315-306-2(1) and R315-306-3(1).

(2) These standards do not apply to:

(a) an incineration facility which is required to obtain a state or federal hazardous waste plan approval;

(b) a facility burning only untreated woodwaste;

(c) the flaring of gases recovered at a landfill; or

(d) a facility that incinerates or cremates exclusively human or animal remains.

R315-306-2. Requirements for Large Incinerators.

(1) These standards apply to any incinerator facility designed to incinerate more than ten tons of solid waste per day.

(2) A new incinerator facility shall be subject to the location standards of Section R315-302-1 with the exception of the following Subsections: R315-302-1(2)(a)(iv) and (v), R315-302-1(2)(e), and R315-302-1(3).

(3) Each owner or operator of an incinerator facility shall comply with Section R315-302-2. The submitted plan of operation shall also address alternative storage, or disposal plans for all breakdowns that would result in overfilling the storage facility.

(4) The submitted plan of operation shall also contain a written waste identification plan which shall include identification of the specific waste streams to be handled by the facility, generator waste analysis requirements and procedures, waste verification procedures at the facility, generator certification of wastes shipped as being non-hazardous, and record keeping procedures, including a detailed operating record.

(5) Each incinerator facility shall be surrounded by a fence, trees, shrubbery, or natural features so as to control access and be screened from the view of immediately adjacent neighbors, unless the tipping floor is fully enclosed by a building. Each site shall also have an adequate buffer zone of at least 50 feet from the operating area to the nearest property line in areas zoned residential to minimize noise and dust nuisances.

(6) Solid waste shall be stored temporarily in storage compartments, containers or areas specifically designed to store wastes. Storage of wastes other than in specifically designed compartments, containers or areas is prohibited. Equipment and space shall be provided in the storage and charging areas, and elsewhere as needed, to allow periodic cleaning as may be required to maintain the plant in a sanitary and clean condition.

(7) A composite sample of the ash and residues from each incinerator facility shall be taken according to a sampling plan approved by the Director.

(a) The sample shall be analyzed by the U.S. EPA Test Method 1311 as provided in 40 CFR Part 261, Appendix II, 2000 ed., Toxic Characteristics Leaching Procedure (TCLP) to determine if it is hazardous.

(b) If the ash and residues are found to be nonhazardous, they shall be disposed at a permitted landfill or recycled.

(c) If the ash and residues are found to be hazardous, they shall be disposed in a permitted hazardous waste disposal site.

(8) Each incinerator must be located, designed, constructed and operated in a manner to comply with appropriate state and local air pollution control authority emission and operating requirements.

(9) An incinerator must collect and treat all run-off from the active areas of the site that may result from a 25-year storm event, and divert all run-on for the maximum flow of a 25-year storm around the site.

(10) All-weather roads shall be provided from the public highways or roads, to and within the disposal site and shall be designed and maintained to prevent traffic congestion hazards, dust, and noise pollution.

(11) Access to the incinerator site shall be controlled by means of a complete perimeter fence or other features and gates which shall be locked when an attendant is not at the gate to prevent unauthorized entry of persons or livestock to the facility.

(12) The plan of operation shall include a training program for new employees and annual review training for all employees to ensure safe handling of waste and proper operation of the equipment.

(13) Each owner or operator shall post signs at the facility which indicate the name, hours of operation, necessary safety precautions, types of wastes that are prohibited, and any other pertinent information.

(14) Each owner or operator of an incinerator facility shall be required to provide recycling facilities in a manner equivalent to those specified for landfills in Subsection R315-303-4(6).

(15) Each owner or operator of an incinerator facility shall implement a plan to inspect loads or take other steps, as approved by the Director, to prevent the disposal of prohibited hazardous waste or prohibited waste containing PCB's in a manner equivalent to those specified for landfills in Subsection R315-303-4(7).

(16) Each owner or operator shall close its incinerator by removing all ash, solid waste, and other residues to a permitted facility.

(17) Each owner or operator of an incinerator facility shall provide financial assurance to cover the costs for closure of the facility that meets the requirements of Rule R315-309.

R315-306-3. Requirements for Small Incinerators.

(1) Applicability.

(a) These requirements apply to any incinerator designed to incinerate ten tons, or less, of solid waste per day and incinerator facilities that incinerate solid waste only from on-site sources.

(b) If an incinerator processes 250 pounds, or less, of solid waste per week, the requirements of Section R315-306-3 do not apply and a permit from the Director is not required but the facility may be regulated by other local, state, or federal requirements.

(2) Requirements.

(a) Each owner and operator of an incinerator facility shall submit a plan of operation to the Director that meets the requirements of Section R315-302-2.

(b) The submitted plan of operation shall also address:

(i) alternative storage, or disposal plans for all breakdowns that would result in overfilling the storage areas;

(ii) identification of the specific waste streams to be handled by the facility;

(iii) generator waste analysis requirements and procedures;

(iv) waste verification procedures at the facility;

(v) generator certification of wastes shipped as being nonhazardous; and

(vi) recordkeeping procedures, including a detailed operating record.

(c) Solid waste shall be stored temporarily only in storage compartments, containers, or areas specifically designed to store wastes.

(i) Storage of wastes other than in specifically designed compartments, containers or areas is prohibited.

(ii) Equipment and space shall be provided in the storage and charging areas, and elsewhere as needed, to allow periodic cleaning as necessary to maintain the plant in a sanitary and clean condition.

(d) Incinerator ash and residues from any incinerator shall be sampled, analyzed, and disposed as specified in Subsection R315-306-2(7).

(e) The owner or operator of the incinerator shall prevent the disposal of prohibited hazardous waste or prohibited waste containing PCB's as specified in Subsection R315-306-2(15).

(f) The incinerator must be designed, constructed and operated in a manner to comply with appropriate state and local air pollution control authority emission and operating requirements.

(g) The plan of operation shall include a training program for new employees and annual review training for all applicable employees to ensure safe handling of waste and proper operation of the equipment.

(h) The owner or operator of the incinerator shall close the facility by removing all solid waste, ash, and other residues to a permitted solid waste disposal facility.

(i) The owner or operator of the incinerator facility shall provide financial assurance to cover the costs for closure of the facility that meets the requirements of Rule R315-309.

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R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-307. Landtreatment Disposal Standards.
R315-307-1. Applicability.

(1) These standards apply to any facility that engages in the landtreatment, landfarming, or landspreading disposal of solid waste.

(2) These standards do not apply to:

(a) a facility that uses sewage sludge, woodwaste or other primarily organic sludge in recycling operations as specified in Section R315-312-4;

(b) agricultural solid wastes resulting from the operation of a farm, including farm animal manure and agricultural residues;

(c) inert waste[or demolition waste; or

(d) industrial solid waste facilities.

(3) The landtreatment of domestic sewage sludge and septage is exempt from the requirements of Rule R315-307 but is regulated under the applicable requirements of Rule R317-8 and 40 CFR 503 by the Utah Division of Water Quality.

(4) The owner or operator of a landtreatment disposal facility shall meet the standards for performance specified in Subsection R315-303-2.

(5) The owner or operator of a landtreatment disposal facility shall meet the location standards of Section R315-302-1.

R315-307-2. Standards for Design.

(1) The owner or operator of a landtreatment disposal facility shall design the facility to provide interim waste storage areas that meet the requirements for piles, as specified in Rule R315-314.

(2) The facility shall have systems to collect and treat all run-off from a 25 year storm, and divert all run-on for the maximum flow of a 25 year storm around the active area.

(3) The facility shall be designed to avoid standing water anywhere on the active area.

(4) The facility shall be designed to avoid slopes and other features that will lead to soil and waste erosion, unless contour plowing or other measures are taken to avoid erosion.

(5) The owner or operator shall monitor ground water according to Rule R315-308.

(6) The owner or operator shall control access to the facility by fencing or other means and erect a sign as specified in Subsection R315-303-3(6)(d).

R315-307-3. Standards for Maintenance and Operation.

The owner or operator of a landtreatment disposal facility shall maintain and operate the facility to:

(1) avoid the disposal of garbage or infectious waste;

(2) avoid applying wastes at rates greater than ten times agronomic rates using the proposed cover crop, or depths greater than would allow for disking the soil by tracked vehicles;

(3) provide disking of soils during the growing season and after each application of waste to maintain aerobic soil conditions, minimize odors and lessen run-off;

(4) avoid applying waste to any active area having standing water;

(5) conform to the approved plan of operation and all other applicable requirements of Section R315-302-2;

(6) provide for a written contract between landowners, waste generators, waste haulers, and waste operators requiring compliance with rules as a condition of the contract; and

(7) avoid food-chain crops during the active life of the facility and until demonstrated to be safe, after closure, according to the closure and post-closure plans filed with the plan of operation. Specific approval in writing from the Director is required for any landspreading disposal facility that is used to raise food-chain crops after closure.

R315-307-4. Standards for Closure.

(1) The owner or operator of a landtreatment disposal facility shall:

(a) close in a manner to comply with Section R315-302-3; and

(b) meet the financial assurance requirements of Rule R315-309.

(3) Upon closure of a landtreatment disposal facility, the owner or operator shall record with the county recorder as part of the record of title the fact that the property has been used as a landtreatment disposal facility pursuant to Subsection R315-302-2(6).

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R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-308. Ground Water Monitoring Requirements.
R315-308-1. Applicability.

(1) Each existing landfill, pile, or land treatment disposal facility that is required to perform ground water monitoring shall comply with the ground water monitoring requirements according to the compliance schedule as established by the Director during the permitting or the permit renewal process.

(2) Prior to the acceptance of waste, each new landfill, pile, or land treatment disposal facility that is required to perform ground water monitoring shall have:

(a) a site specific ground water monitoring plan approved by the Director; and

(b) the ground water monitoring system complete and operational.

(3) Ground water monitoring requirements may be waived by the Director if the owner or operator of a solid waste disposal facility can demonstrate that there is no potential for migration of hazardous constituents from the facility to the ground water during the active life of the facility and the post-closure care period. This demonstration must be certified by a qualified ground-water scientist and approved by the Director, and must be based upon:

(a) site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport; and

(b) contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and the environment.

(4) Once a ground water monitoring system and program has been established at a disposal facility, ground water monitoring shall continue to be conducted throughout the active life, closure, and post-closure care periods as specified by the Director.

(5) A facility that has a ground water monitoring alternative approved under Subsection R315-302-1(2)(e)(vi) is subject to the standards specified in Subsection R315-303-2(1) and the approved alternative shall be revoked by the Director if the operation of the facility impacts groundwater.

R315-308-2. Ground Water Monitoring Requirements.

(1) Each facility owner or operator that is required to conduct ground water monitoring shall formulate a ground water monitoring plan that addresses the requirements of Section R315-308-2.

(2) The ground water monitoring system must consist of at least one background or upgradient well and two downgradient wells, installed at appropriate locations and depths to yield ground water samples from the uppermost aquifer and all hydraulically connected aquifers below the facility, cell, or unit. The downgradient wells shall be designated as the point of compliance and must be installed at the closest practicable distance hydraulically down gradient from the unit boundary not to exceed 150 meters (500 feet) and must also be on the property of the owner or operator:

(a) the upgradient well must represent the quality of background water that has not been affected by leakage from the active area; and

(b) the downgradient wells must represent the quality of ground water passing the point of compliance. Additional wells may be required by the Director in complicated hydrogeological settings or to define the extent of contamination detected.

(3) All monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must allow collection of representative ground water samples. Wells must be constructed in such a manner as to prevent contamination of the samples, the sampled strata, and between aquifers and water-bearing strata. All monitoring wells and all other devices and equipment used in the monitoring program must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(4) The ground water monitoring program must include at a minimum, procedures and techniques for:

(a) well construction and completion;

(b) decontamination of drilling and sampling equipment;

(c) sample collection;

(d) sample preservation and shipment;

(e) analytical procedures and quality assurance;

(f) chain of custody control or sample tracking, as approved by the Director; and

(g) procedures to ensure employee health and safety during well installation and monitoring.

(5) Each facility shall utilize a laboratory, that is certified by the state for the test methods used, to complete tests, using methods with appropriate detection levels, on samples for the following:

(a) during the first year of facility operation after wells are installed or an alternative schedule as approved by the Director, a minimum of eight independent samples from the upgradient and four independent samples from each downgradient well for all parameters listed in Section R315-308-4 to establish background concentrations;

(b) after background levels have been established, a minimum of one sample, semiannually, from each well, background and downgradient, for all parameters listed in Section R315-308-4 as a detection monitoring program;

(i) In the detection monitoring program, the owner or operator must determine ground water quality at each monitoring well on a semiannual basis during the life of an active area, including the closure period, and the post-closure care period.

(ii) The owner or operator must express the ground water quality at each monitoring well in a form appropriate for the determination of statistically significant changes;

(c) field-measured pH, water temperature, and water conductivity must accompany each sample collected;

(d) analysis for the heavy metals and the organic constituents from Section R315-308-4 shall be completed on unfiltered samples; and

(e) the Director may specify additional or fewer constituents depending upon the nature of the ground water or the waste on a site specific basis considering:

(i) the types, quantities, and concentrations of constituents in wastes managed at the landfill;

(ii) the mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the landfill;

(iii) the detectability of indicator parameters, waste constituents, and reaction products in the ground water; and

(iv) the background concentration or values and coefficients of variation of monitoring parameters or constituents in the ground water.

(f) The following information shall be placed in the facility's operating record and a copy submitted to the Director as the ground water monitoring results to be included in the annual report required by Subsection R315-302-2(4):

(i) a report on the procedures, including the quality control/quality assurance, followed during the collection of the ground water samples;

(ii) the results of the field measured parameters required by Subsections R315-308-2(5)(c) and R315-308-2(7);

(iii) a report of the chain of custody and quality

control/quality assurance procedures of the laboratory;

(iv) the results of the laboratory analysis of the constituents specified in Section R315-308-4 or an alternative list of constituents approved by the Director:

(A) the results of the laboratory analysis shall list the constituents by name and CAS number; and

(B) a list of the detection limits and the test methods used; and

(v) the statistical analysis of the results of the ground water monitoring as required by Subsection R315-308-2(8).

(vi) The results of the ground water monitoring may be submitted in electronic format.

(6) After background constituent levels have been established, a ground water quality protection standard shall be set by the Director which shall become part of the ground water monitoring plan. The ground water quality protection standard will be set as follows.

(a) For constituents with background levels below the standards listed in Section R315-308-4 or as listed in Section R315-308-5, which presents the ground water protection standards that are available for the constituents listed as Appendix II in 40 CFR 258, the ground water quality standards of Sections R315-308-4 and R315-308-5 shall be the ground water quality protection standard.

(b) If a constituent is detected and a background level is established but the ground water quality standard for the constituent is not included in Section R315-308-4 or Section R315-308-5 the ground water quality protection standard for that constituent shall be set according to health risk standards.

(c) If a constituent is detected and a background level is established and the established background level is higher than the value listed in Section R315-308-4, R315-308-5 or the level established according to Subsection R315-308-2(6)(b), the ground water quality protection standard shall be the background concentration.

(7) The ground water monitoring program must include a determination of the ground water surface elevation each time ground water is sampled.

(8) The owner or operator shall use a statistical method for determining whether a significant change has occurred as compared to background. The Director will approve such a method as part of the ground water monitoring plan. Possible statistical methods include:

(a) a parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent;

(b) an analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent;

(c) a tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit;

(d) a control chart approach that gives control limits for each constituent; or

(e) another statistical test method approved by the Director.

(9) For both detection monitoring, as described in Subsection R315-308-2(5), and assessment monitoring, as described in Subsection R315-308-2(12), the Director may specify additional or fewer sampling and analysis events, no less than annually, depending upon the nature of the ground water or the waste on a site-specific basis considering:

(a) lithology of the aquifer and unsaturated zone;

(b) hydraulic conductivity of the aquifer and unsaturated zone;

(c) ground water flow rates;

(d) minimum distance between upgradient edge of the landfill unit and downgradient monitoring well screen (minimum distance of travel); and

(e) resource value of the aquifer.

(10) The owner or operator must determine and report the ground water flow rate and direction in the upper most aquifer each time the ground water is sampled.

(11) If the owner or operator determines that there is a statistically significant increase over background in any parameter or constituent at any monitoring well at the compliance point, the owner or operator must:

(a) within 14 days of the completion of the statistical analysis of the sample results and within 30 days of the receipt of the sample results, enter the information in the operating record and notify the Director of this finding in writing. The notification must indicate what parameters or constituents have shown statistically significant changes; and

(b) immediately resample the ground water in all monitoring wells, both background and downgradient, or in a subset of wells specified by the Director, and determine:

(i) the concentration of all constituents listed in Section R315-308-4, including additional constituents that may have been identified in the approved ground water monitoring plan;

(ii) if there is a statistically significant increase over background of any parameter or constituent in any monitoring well at the compliance point; and

(iii) notify the Director in writing within seven days of the completion of the statistical analysis of the sample results.

(c) The owner or operator may demonstrate that a source other than the solid waste disposal facility caused the contamination or that the statistically significant change resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist and approved by the Director and entered in the operating record. If a successful demonstration is made and documented, the owner or operator may continue monitoring as specified in Subsection R315-308-2(5)(b).

(12) If, after 90 days, a successful demonstration as stipulated in Subsection R315-308-2(11)(c) is not made, the owner or operator must initiate the assessment monitoring program required as follows:

(a) within 14 days of the determination that a successful demonstration is not made, take one sample from each downgradient well and analyze for all constituents listed as Appendix II in 40 CFR Part 258, 2001 ed., which is adopted and incorporated by reference.

(b) for any constituent detected from Appendix II, 40 CFR Part 258, in the downgradient wells a minimum of four independent samples from the upgradient and four independent samples from each downgradient well must be collected, analyzed, and statistically evaluated to establish background concentration levels for the constituents; and

(c) within 14 days of the completion of the statistical analysis of the sample results and within 30 days of the receipt of the sample results, place a notice in the operation record and notify the Director in writing identifying the Appendix II, 40 CFR Part 258, constituents and their concentrations that have been detected as well as background levels. The Director shall establish a ground water quality protection standard pursuant to Subsection R315-308-2(6) for any Appendix II, 40 CFR Part 258, constituent detected in the

downgradient wells.

(d) The owner or operator shall thereafter resample:

(i) at a minimum, all downgradient wells on a quarterly basis for all constituents in Section R315-308-4, or the alternative list that may have been approved as part of the permit, and for those constituents detected from Appendix II, 40 CFR Part 258;

(ii) the downgradient wells on an annual basis for all constituents in Appendix II, 40 CFR Part 258; and

(iii) statistically analyze the results of all ground water monitoring samples.

(e) The Director may specify additional or fewer constituents depending upon the nature of the ground water or the waste on a site specific basis considering:

(i) the types, quantities, and concentrations of constituents in wastes managed at the landfill;

(ii) the mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the landfill;

(iii) the detectability of indicator parameters, waste constituents, and reaction products in the ground water; and

(iv) the background concentration or values and coefficients of variation of monitoring parameters or constituents in the ground water.

(f) If after two consecutive sampling events, the concentrations of all constituents being analyzed in Subsection R315-308-2(12)(d)(i) are shown to be at or below established background values, the owner or operator must notify the Director of this finding and may, upon the approval of the Director, return to the monitoring schedule and constituents as specified in Subsection R315-308-2(5)(b).

(13) If one or more constituents from Section R315-308-4 or the approved alternative list, or from those detected from Appendix II, 40 CFR Part 258, are detected at statistically significant levels above the ground water quality protection standard as established pursuant to Subsection R315-308-2(6) in any sampling event, the owner or operator must:

(a) within 14 days of the receipt of this finding, place a notice in the operating record identifying the constituents and concentrations that have exceeded the ground water quality standard. Within the same time period, the owner or operator must also notify the Director and all appropriate local governmental and local health officials that the ground water quality standard has been exceeded;

(b) characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(c) install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well and analyze the sample for the constituents in Section R315-308-4 or the approved alternative list and the detected constituents from Appendix II, 40 CFR Part 258; and

(d) notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site as indicated by sampling of wells in accordance with Subsections R315-308-2(13)(b) and (13)(c).

(e) The owner or operator may demonstrate that a source other than the solid waste disposal facility caused the contamination or that the statistically significant change resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist and approved by the Director and entered in the operating record. If a successful demonstration is made, documented and approved, the owner or operator may continue monitoring as specified in Subsection R315-308-2(12)(d) or Subsection R315-308-2(12)(e) when applicable.

R315-308-3. Corrective Action Program.

(1) If, within 90 days, a successful demonstration as stated in Subsection R315-308-2(13)(e) is not made, the owner or operator must:

(a) continue to monitor as required in Subsection R315-308-2(12)(d).

(b) take any interim measures as required by the Director or as necessary to ensure the protection of human health and the environment; and

(c) assess possible corrective action measures for the current conditions and circumstances of the disposal facility, addressing at least the following:

(i) the performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control exposure to any residual contamination;

(ii) time required to begin and complete the remedy;

(iii) the costs of remedy implementation;

(iv) public health or environmental requirements that may substantially affect implementation of the remedy; and

(v) prior to the selection of a remedy, discuss the results of the corrective measures assessment in a public meeting with interested and affected parties.

(d) Based on the results of the corrective measures assessment conducted and the comments received in the public meeting, the owner or operator must select a remedy which shall be submitted to the Director.

(i) The corrective action remedy must:

(A) be protective of human health and the environment;

(B) use permanent solutions that are within the capability of best available technology;

(C) attain the established ground water quality standard;

(D) control the sources of release so as to reduce or eliminate, to the maximum extent practicable, further releases of contaminants into the environment that may pose a threat to human health or the environment; and

(E) be approved by the Director.

(ii) Within 14 days after the selection of the remedy the owner or operator must:

(A) amend the corrective action program required by Subsection R315-302-2(2)(e) if necessary and send a report to the Director for approval describing the selected remedy and amendments, along with a schedule of implementation and estimated time of completion; and

(B) put in place the financial assurance mechanism as required by Rule R315-309 for corrective action and notify the Director of the financial assurance mechanism and its effective date.

(2) Upon approval of the selected corrective action remedy, the Director will notify the owner or operator of such approval and will require that the corrective action plan proceed according to the approved schedule.

(a) The Director may also require facility closure if the ground water quality standard is exceeded and, in addition, may revoke any permit and require reapplication.

(b) The Director or the owner or operator may determine, based on information developed after implementation of the corrective action plan, that compliance with the requirements of Subsection R315-308-3(1)(d)(i) of this section are not being achieved through the remedy selected. In such a case, the owner or operator must implement other methods or techniques, upon approval by the Director, that could practicably achieve compliance with the requirements.

(c) Upon completion of the remedy, the owner or operator shall notify the Director. The notification shall contain certification signed by the owner or operator and a

qualified ground-water scientist that the concentration of contaminant constituents have been reduced to levels below the specified limits of the ground water quality standard for a period of three years or an alternative length of time specified by the Director. Upon approval of the Director the owner or operator shall:

(i) terminate corrective action measures;

(ii) continue detection monitoring as required in Subsection R315-308-2(5)(b); and

(iii) be released from the requirements of financial assurance for corrective action.

R315-308-4. Constituents for Detection Monitoring.

The table lists the constituents for detection monitoring as specified by Subsection R315-308-2(5), the CAS number for the constituents, and the ground water quality standard for the constituents for any facility that is required to monitor ground water under Rule R315-308.

TABLE

Constituents for Detection Monitoring

	CAS	Ground Water Protection Standard (mg/l)
Inorganic Constituents		
Ammonia (as N)	7664-41-7	
Carbonate/Bicarbonate		
Calcium		
Chemical Oxygen Demand (COD)		
Chloride		
Iron	7439-89-6	
Magnesium		
Manganese	7439-96-5	
Nitrate (as N		
pH		
Potassium		
Sodium		
Sulfate		
Total Dissolved Solids (TDS)		
Total Organic Carbon (TOC)		
Heavy Metals		
Antimony	7440-36-0	0.006
Arsenic	7440-38-2	0.01
Barium	7440-39-3	2
Beryllium	7440-41-7	0.004
Cadmium	7440-43-9	0.005
Chromium		0.1
Cobalt	7440-48-4	2
Copper	7440-50-8	1.3
Lead		0.015
Mercury	7439-97-6	0.002
Nickel	7440-02-0	0.1
Selenium	7782-49-2	0.05
Silver	7440-22-4	0.1
Thallium		0.002
Vanadium	7440-62-2	0.3
Zinc	7440-66-6	5
Organic Constituents		
Acetone	67-64-1	4
Acrylonitrile	107-13-1	0.1
Benzene	71-43-2	0.005
Bromochloromethane	74-97-5	0.01
Bromodichloromethane[1]	75-27-4	0.1
Bromoform[1]	75-25-2	0.1
Carbon disulfide	75-15-0	4
Carbon tetrachloride	56-23-5	0.005
Chlorobenzene	108-90-7	0.1
Chloroethane	75-00-3	15
Chloroform[1]	67-66-3	0.1
Dibromochloromethane[1]	124-48-1	0.1
1,2-Dibromo-3-chloropropane	96-12-8	0.0002
1,2-Dibromoethane	106-93-4	0.00005
1,2-Dichlorobenzene (ortho)	95-50-1	0.6
1,4-Dichlorobenzene (para)	106-46-7	0.075
trans-1,4-Dichloro-2-butene	110-57-6	
1,1-Dichloroethane	75-34-3	4
1,2-Dichloroethane	107-06-2	0.005
1,1-Dichloroethylene	75-35-4	0.007
cis-1,2-Dichloroethylene	156-59-2	0.07
trans-1,2-Dichloroethylene	156-60-5	0.1
1,2-Dichloropropane	78-87-5	0.005
cis-1,3-Dichloropropene	10061-01-5	0.002
trans-1,3-Dichloropropene	10061-02-6	0.002
Ethylbenzene	100-41-4	0.7
2-Hexanone	591-78-6	1.5
Methyl bromide	74-83-9	0.01
Methyl chloride	74-87-3	0.003
Methylene bromide	74-95-3	0.4
Methylene chloride	75-09-2	0.005
Methyl ethyl ketone	78-93-3	0.17
Methyl iodide	74-88-4	
4-Methyl-2-pentanone	108-10-1	3
Styrene	100-42-5	0.1
1,1,1,2-Tetrachloroethane	630-20-6	0.07
1,1,2,2-Tetrachloroethane	79-34-5	0.005
Tetrachloroethylene	127-18-4	0.005
Toluene	108-88-3	1
1,1,1-Trichloroethane	71-55-6	0.2
1,1,2-Trichloroethane	79-00-5	0.005
Trichloroethylene	79-01-6	0.005
Trichlorofluoromethane	75-69-4	10
1,2,3-Trichloropropane	96-18-4	0.04
Vinyl acetate	108-05-4	37
Vinyl Chloride	75-01-4	0.002
Xylenes	1330-20-7	10

[1]The ground water protection standard of 0.1 mg/l is for the total of Bromodichloromethane, Bromoform, Chloroform, and Dibromochloromethane.

R315-308-5. Solid Waste Ground Water Quality Protection Standards for 40 CFR 258 Appendix II Constituents.

The table lists the CAS number for each constituent and the ground water quality protection standards which are currently available for the 40 CFR 258 Appendix II constituents required for assessment monitoring of ground water at a solid waste facility as specified by Subsection R315-308-2(12).

TABLE

Appendix II Protection Standards

Appendix II Constituent	CAS	Ground Water Protection Standard (mg/l)
2,4-D	94-75-7	0.07
2,4,5-T	93-76-5	0.37
2,4,5-TP	93-72-1	0.05
Anthracene	120-12-7	10
Benzo(a)pyrene	50-32-8	0.0002
bis(2-Ethylhexy)phthalate	117-81-7	0.006
Chlordane	57-74-9	0.002
Cyanide	57-12-5	0.2
Dinoseb	88-85-7	0.007
Endrin	72-20-8	0.002
Heptachlor	76-44-8	0.0004
Heptachlor epoxide	1024-57-3	0.0002
Hexachlorobenzene	118-74-1	0.001
Hexachlorocyclopentadiene	77-47-4	0.05
Lindane	58-89-9	0.0002
Methoxychlor	72-43-5	0.04
Pentachlorophenol	87-86-5	0.001
Polychlorinated biphenyls(PCBs)	1336-36-3	0.0005
Tin	7440-31-5	21.9
Toxaphene	8001-35-2	0.003
1,2,4-Trichlorobenzene	120-82-1	0.07

KEY: solid waste management, waste disposal
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R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-309. Financial Assurance.
R315-309-1. Applicability.

(1) The owner or operator of any solid waste disposal facility requiring a permit shall establish financial assurance sufficient to assure adequate closure, post-closure care, and corrective action, if required, of the facility by compliance with one or more financial assurance mechanisms acceptable to and approved by the Director.

(2) Financial assurance is not required for a solid waste disposal facility that is owned or operated by the State of Utah or the Federal government.

(3) Existing Facilities.

(a) An existing facility shall have the financial assurance mechanism in place and effective according to the compliance schedule as established for the facility by the Director.

(b) In the case of corrective action, the financial assurance mechanism shall be in place and effective no later than 120 days after the corrective action remedy has been selected.

(4) A new facility or an existing facility seeking lateral expansion shall have the financial assurance mechanism in place and effective before the initial receipt of waste at the facility or the lateral expansion.

R315-309-2. General Requirements.

(1) A financial assurance plan, including the assurance mechanism proposed for use, shall be submitted:

(a) for new facilities, upon initial permit application; and

(b) for existing facilities, to meet the effective dates specified in Subsection R315-309-1(3).

(2) The financial assurance shall be updated each year as part of the annual report required by Subsection R315-302-2(4) to adjust for inflation or facility modification that would affect closure or post-closure care costs. The annual update of the financial assurance shall be reviewed and must be approved by the Director prior to implementation.

(3) Financial assurance cost estimates shall be based on a third party preforming closure or post-closure care.

(a) The closure cost estimate shall be based on the most expensive cost to close the largest area of the disposal facility ever requiring a final cover at any time during the active life in accordance with the closure plan and at a minimum must contain the following elements if applicable:

(i) the cost of obtaining, moving, and placing the cover material;

(ii) the cost of final grading of the cover material;

(iii) the cost of moving and placing topsoil on the final cover;

(iv) the cost of fertilizing, seeding, and mulching or other approved method; and

(v) the cost of removing any stored items or materials, buildings, equipment, or other items or materials not needed at the closed facility.

(b) The post-closure care cost estimate shall be based on the most expensive cost of completing the post-closure care reasonably expected during the post-closure care period and must contain the following elements:

(i) ground water monitoring, if required, including number of monitor wells, parameters to be monitored, frequency of sampling, and cost per sampling;

(ii) leachate monitoring and treatment if necessary;

(iii) gas monitoring and control if required; and

(iv) cover stabilization which will include an estimate of the area and cost for expected annual work to repair residual settlement, control erosion, or reseed.

(4) Any facility for which financial assurance is required for post-closure care must have a financial assurance mechanism, which will cover the costs of post-closure care, in effect and active until the Director determines that the post-closure care is complete.

(5) Financial assurance for corrective action shall be required only in cases of known releases of contaminants from a facility and shall be a current cost estimate for corrective action based on the most expensive cost of a third party performing the corrective action that may be required.

R315-309-3. General Requirements for Financial Assurance Mechanisms.

(1) Any financial assurance mechanism in place for a solid waste facility:

(a) must be legally valid, binding, and enforceable under Utah and Federal law;

(b) must ensure that funds will be available in a timely fashion when needed; and

(c) any financial assurance mechanism that guarantees payment rather than performance, but does not allow the Director to approve partial payments to a third party, shall establish a standby trust at the time the financial assurance mechanism is established.

(i) In the case of a financial assurance mechanism for which the establishment of a standby trust is required, the standby trust fund shall meet the requirements of Subsections R315-309-4(1), (2), and (4).

(ii) Payments from the financial assurance mechanism shall be deposited directly into the standby trust fund and payments from the standby trust fund must be approved by the Director and the trustee.

(2) The owner or operator of a solid waste facility that is required to provide financial assurance:

(a) shall submit the required documentation of the financial assurance mechanism to the Director;

(b) prior to the financial assurance mechanism becoming effective and active for a solid waste facility, the mechanism must be approved by the Director; and

(c) Financial assurance mechanism documents submitted to the Director shall be signed originals or signed duplicate originals.

(3) The owner or operator of a solid waste facility may establish financial assurance by any mechanism that meets the requirements of Subsection R315-309-1(1) as approved by the Director.

(4) The owner or operator of a solid waste facility may establish financial assurance by a combination of mechanisms that together meet the requirements of Subsection R315-309-1(1) as approved by the Director. Except for the conditions specified in Subsection R315-309-8(6)(c), financial assurance mechanisms guaranteeing performance, rather than payment, may not be combined with other instruments.

R315-309-4. Trust Fund.

(1) The owner or operator of a solid waste facility may establish a trust fund and appoint a trustee as a financial assurance mechanism. The trust fund and trustee must be with an entity that has the authority to establish trust funds and act as a trustee and whose operations are regulated and examined by a Federal or state agency.

(2) The owner or operator shall submit a signed original of the trust agreement to the Director for approval and shall place a signed original of the trust agreement in the operating record of the solid waste disposal facility.

(3) Payments into the trust fund must be made annually by the owner or operator according to the following schedule:

(a) for a trust fund for closure and post-closure care, annual payments that will ensure the availability of sufficient funds within the permit term or the remaining life of the

facility, whichever is shorter for the cost estimates required in Subsection R315-309-2(3). The initial payment into the trust fund must be made, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste and for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); or

(b) for a trust fund for corrective action, annual payments that will ensure the availability of sufficient funds within one-half of the estimated length in years of the corrective action program for the cost estimate required by Subsection R315-309-2(5). Payments shall be determined as follows:

(i) The first payment shall be at least equal to one-half of the current cost estimate for the corrective action divided by one-half the estimated length of the corrective action program. The initial payment into the trust fund shall be made in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(ii) The amount of subsequent payments must be determined by the following formula: Next Payment = (RB-CV)/Y where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total cost that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) The owner or operator, or other person authorized to conduct closure, post-closure, or corrective action may request reimbursement from the trustee for closure, post-closure, or corrective action costs.

(a) Prior to the release of funds by the trustee, the request for reimbursement must be approved by the Director. The Director shall act upon the reimbursement request within 30 days of receiving the request.

(b) After receiving approval from the Director, the request for reimbursement may be granted by the trustee only if sufficient funds are remaining to cover the remaining costs and if justification and documentation of the costs is placed in the operating record.

(c) The owner or operator shall notify the Director that documentation for the reimbursement has been placed in the operating record and that the reimbursement has been received.

R315-309-5. Surety Bond Guaranteeing Payment or Performance.

(1) The owner or operator of a solid waste facility may provide a surety bond for a financial assurance mechanism. The bond must be effective, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste or, for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3).

(2) The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury and the owner or operator must notify the Director that a copy of the bond has been placed in the operating record.

(3) The penal sum of the bond must be in an amount at least equal to the closure, post-closure, or corrective action cost estimates of Subsection R315-309-2(3) or Subsection R315-309-2(5), whichever is applicable.

(4) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(a) In the case of a payment bond, the surety shall pay the costs of closure and post-closure care if the owner or operator fails to complete closure and post-closure care activities.

(b) In the case of a performance bond, the surety shall perform closure and post-closure care on behalf of the owner or operator if the owner or operator fails to complete closure and post-closure care activities.

(5) The surety bond guaranteeing payment or performance shall contain provisions preventing cancellation except under the following conditions:

(a) if the surety sends notice of cancellation by certified mail to the owner or operator and the Director 120 days in advance of the cancellation date; or

(b) if an alternative financial assurance mechanism has been obtained by the owner or operator.

R315-309-6. Insurance.

(1) The owner or operator of a solid waste facility may provide insurance as a financial assurance mechanism. The insurance must be effective, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste or, for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3).

(2) At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and the owner or operator must notify the Director that a copy of the insurance policy has been placed in the operating record.

(3) The insurance policy must guarantee that funds will be available to close the facility or unit and provide post-closure care or provide corrective action, if applicable. The policy must also guarantee that the insurer will be responsible for paying out funds, as directed in writing by the Director, to the owner or operator or other person authorized to conduct closure, post-closure, or corrective action, if applicable, up to an amount equal to the face amount of the policy.

(4) The insurance policy must be issued for a face amount at least equal to the closure, post-closure, or corrective action cost estimates required by Subsection R315-309-2(3) or Subsection R315-309-2(5), whichever is applicable.

(5) An owner or operator, or other authorized person may receive reimbursements for closure, post-closure, or corrective action, if applicable, if the remaining value of the policy is sufficient to cover the remaining costs of the work required and if justification and documentation of the cost is placed in the operating record. The owner or operator must notify the Director that the documentation and justification for the reimbursement has been placed in the operating record and that the reimbursement has been received.

(6) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator.

(7) The insurance policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and the Director 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator must obtain alternate financial assurance.

(8) The insurer shall certify through the use of an insurance endorsement specified by the Director that the policy issued provides insurance covering closure costs, post-closure costs, or corrective action costs.

R315-309-7. Letter of Credit.

(1) The owner or operator of a solid waste facility may provide a letter of credit as a financial assurance mechanism. The letter of credit must be irrevocable and issued for a period of at least one year in the amount at least equal to the current cost estimate as required by Subsection R315-309-2(3) for closure and post-closure care or the cost estimate as

required by Subsection R315-309-2(5) for corrective action, if necessary.

(2) The institution issuing the letter of credit must be an entity which has the authority to issue a letter of credit and whose operations are regulated and examined by a Federal or state agency.

(3) The letter of credit must be effective for closure and post-closure care:

(a) for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste;

(b) for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); and

(c) for corrective action, in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(4) The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has elected not to extend the letter of credit by sending notice by certified mail to the owner or operator and the Director 120 days in advance of the expiration.

(5) If the letter of credit is not extended by the issuing institution, the owner or operator shall obtain alternate financial assurance which will become effective on or before the expiration date.

R315-309-8. Local Government Financial Test.

(1) The terms used in Section R315-309-8 are defined as follows.

(a) "Total revenues" means the revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue form funds managed by local government on behalf of a specific third party.

(b) "Total expenditures" means all expenditures excluding capital outlays and debt repayments.

(c) "Cash plus marketable securities" means all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

(d) "Debt service" means the amount of principal and interest due on a loan in a given time period, typically the current year.

(2) A local government owner or operator of a solid waste facility may demonstrate financial assurance up to the current cost estimate as required by Subsection R315-309-2(3) for closure and post-closure care and the cost estimate as required by Subsection R315-309-2(5) for corrective action, if required, or up to the amount specified in Subsection R315-309-8(6), which ever is less, by meeting the following requirements.

(a) If the local government has outstanding, rated general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or other guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's or AAA, AA, A, or BBB, as issued by Standard and Poor's on such general obligation bonds.

(b) If the local government has no outstanding general obligation bonds, the local government shall satisfy each of the following financial ratios based on the local government's most recent audited annual financial statement:

(i) a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

(ii) a ratio of annual debt service to total expenditures less than or equal to 0.20.

(c) The local government must prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant.

(d) The local government must place a reference to the closure and post-closure care costs assured through the financial test into the next comprehensive annual financial report and in every subsequent comprehensive annual financial report during the time in which closure and post-closure care costs are assured through the financial test. A reference to corrective action costs must be placed in the comprehensive annual financial report not later than 120 days after the corrective action remedy has been selected. The reference to the closure and post-closure care costs shall contain:

(i) the nature and source of the closure and post-closure care requirements;

(ii) the reported liability at the balance sheet date;

(iii) the estimated total closure and post-closure care costs remaining to be recognized;

(iv) the percentage of landfill capacity used to date; and

(v) the estimated landfill life in years.

(3) A local government is not eligible to assure closure, post-closure care, or corrective action costs at its solid waste disposal facility through the financial test if it:

(a) is currently in default on any outstanding general obligation bonds, or

(b) has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; or

(c) has operated at a deficit equal to 5%, or more, of the total annual revenue in each of the past two fiscal years; or

(d) receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant, or appropriate state agency auditing its financial statement. The Director may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Director deems the qualification insufficient to warrant disallowance of use of the test.

(4) The local government owner or operator must submit the following items to the Director for approval and place a copy of these items in the operating record of the facility:

(a) a letter signed by the local government's chief financial officer that:

(i) lists all current cost estimates covered by a financial test; and

(ii) provides evidence and certifies that the local government meets the requirements of Subsections R315-309-8(2) and R315-309-8(6);

(b) the local government's independently audited year-end financial statements for the latest fiscal year including the unqualified opinion of the auditor, who must be an independent certified public accountant;

(c) a report to the local government from the local government's independent certified public accountant stating the procedures performed and the findings relative to:

(i) the requirements of Subsections R315-309-8(2)(c) and R315-309-8(3)(c) and (d); and

(ii) the financial ratios required by Subsection R315-309-8(2)(b), if applicable; and

(d) a copy of the comprehensive annual financial report used to comply with Subsection R315-309-8(2)(d).

(e) The items required by Subsection R315-309-8(4) are to be submitted to the Director and copies placed in the facility's operating record as follows:

(i) in the case of closure and post-closure care, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste;

(ii) in the case of closure and post-closure care, for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); and

(iii) in the case of corrective action, in accordance with

the schedule specified in Subsection R315-309-1(3)(b).

(5) A local government must satisfy the requirements of the financial test at the close of each fiscal year.

(a) The items required in Subsection R315-309-8(4) shall be submitted as part of the facility's annual report required by Subsection R315-302-2(4).

(b) If the local government no longer meets the requirements of the local government financial test it shall, within 210 days following the close of the local government's fiscal year:

(i) obtain alternative financial assurance that meets the requirements of R315-309-1(1); and

(ii) submit documentation of the alternative financial assurance to the Director and place copies of the documentation in the facility's operating record.

(c) The Director, based on a reasonable belief that the local government may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the Director finds that the local government no longer meets the requirements of the local government financial test, the local government shall be required to provide alternative financial assurance on a schedule established by the Director.

(6) The portion of the closure, post-closure, and corrective action costs for which a local government owner or operator may assume under the local government financial test is determined as follows:

(a) If the local government does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43% of the local government's total annual revenue.

(b) If the local government assures any other environmental obligation through a financial test, it must add those costs to the closure, post-closure, and corrective action costs it seeks to assure by local government financial test. The total that may be assured must not exceed 43% of the local government's total annual revenue.

(c) The local government shall obtain an alternate financial assurance mechanism for those costs that exceed 43% of the local government's total annual revenue.

(7) Local Government Guarantee.

(a) An owner or operator of a solid waste facility may demonstrate financial assurance for closure, post-closure, and corrective action by obtaining a written guarantee provided by a local government. The local government providing the guarantee shall meet the requirements of the local government financial test in Section R315-309-8 and shall comply with the terms of the written guarantee as specified in Subsections R315-309-8(7)(b) and (c).

(b) The guarantee must be effective for closure and post-closure care:

(i) for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste;

(ii) for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); and

(iii) for corrective action, in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(c) The guarantee shall provide that if the owner or operator fails to perform closure, post-closure care, or corrective action of a facility covered by the guarantee, the guarantor will:

(i) perform, or pay a third party to perform, closure, post-closure, or corrective action as required; or

(ii) establish a fully funded trust fund as specified in Section R315-309-4 in the name of the owner or operator.

(d) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Director. Cancellation may not occur until 120 days after the date the notice is received by the Director.

(e) If the guarantee is canceled, the owner or operator shall, within 90 days following the receipt of the cancellation notice:

(i) obtain alternate financial assurance that meets the requirements of Subsection R315-309-1(1);

(ii) submit documentation of the alternate financial assurance to the Director; and

(iii) place copies of the documentation of the alternate financial assurance in the facility's operating record.

(iv) If the owner or operator fails to provide alternate financial assurance within the 90 day period, the guarantor must provide the alternate financial assurance within 120 days following the guarantor's notice of cancellation, submit documentation of the alternate financial assurance to the Director for review and approval, and place copies of the documentation in the facility's operating record.

R315-309-9. Corporate Financial Test.

(1) The terms used specifically in Section R315-309-9 are defined as follows.

(a) "Assets" means all existing and probable future economic benefits obtained or controlled by a particular entity.

(b) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(c) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(d) "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c) (2001) which is adopted and incorporated by reference.

(e) "Independently audited" means an audit performed by and independent certified public accountant in accordance with generally accepted auditing standards.

(f) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(g) "Net working capital" means current assets minus current liabilities.

(h) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(i) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(2) A corporate owner or operator of a solid waste facility may demonstrate financial assurance up to the current cost estimate as required by Subsection R315-309-2(3) for closure and post-closure care and the cost estimate required by Subsection R315-309-2(5) for corrective action, if required, by meeting the following requirements.

(a) The owner or operator must satisfy one of the following three conditions:

(i) a current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; or

(ii) a ratio of less than 1.5 comparing total liabilities to net worth: or

(iii) a ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities.

(b) The tangible net worth of the owner or operator must

be greater than:

(i) the sum of the current closure, post-closure care, and corrective action cost estimates and any other environmental obligation, including guarantees, covered by a financial test plus $10 million except as provided in Subsection R315-309-9(2)(b)(ii);

(ii) $10 million in net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the current closure, post-closure care, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the Director.

(c) The owner or operator must have assets located in the United States amounting to at least the sum of current closure, post-closure care, corrective action cost estimates and any other environmental obligations covered by a financial test.

(3) The owner or operator must place the following items into the facility's operating record and submit a copy of these items to the Director for approval:

(a) a letter signed by the owner's or operator's chief financial officer that:

(i) lists all current cost estimates for closure, post-closure care, corrective action, and any other environmental obligations covered by a financial test; and

(ii) provides evidence demonstrating that the firm meets the conditions of Subsection R315-309-9(2)(a)(i), or (a)(ii), or (a)(iii) and Subsections R315-309-9(2)(b) and (c); and

(b) a copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year.

(i) To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant.

(ii) The Director may evaluate qualified opinions on a case-by-case basis and allow use of the financial test where the Director deems the matters which form the basis for the qualification are insufficient to warrant disallowance of the test.

(c) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies Subsection R315-309-9(2)(a)(i) or (ii) that are different from data in the audited financial statements or data filed with the Securities and Exchange Commission, then a special report from the owner's or operator's independent certified public accountant is required. The special report shall:

(i) be based upon an agreed upon procedures engagement in accordance with professional auditing standards;

(ii) describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements;

(iii) describe the findings of that comparison; and

(iv) explain the reasons for any differences.

(d) If the chief financial officer's letter provides a demonstration that the firm has assured environmental obligations as provided in Subsection R315-309-9(2)(b)(ii), then the letter shall include a report from the independent certified public accountant that:

(i) verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements;

(ii) explains how these obligations have been measured and reported; and

(iii) certifies that the tangible net worth of the firm is at least $10 million plus the amount of all guarantees provided.

(e) The items required by Subsection R315-309-9(3) are to be submitted to the Director and copies placed in the facility's operating record as follows:

(i) in the case of closure and post-closure care, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste;

(ii) in the case of closure and post-closure care, for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); and

(iii) in the case of corrective action, in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(4) A firm must satisfy the requirements of the financial test at the close of each fiscal year by submitting the items required in Subsection R315-309-9(3) as part of the facility's annual report required by Subsection R315-302-2(4).

(5) If the firm no longer meets the requirements of the corporate financial test it shall, within 120 days following the close of the firm's fiscal year:

(a) obtain alternative financial assurance that meets the requirements of R315-309-1(1); and

(b) submit documentation of the alternative financial assurance to the Director and place copies of the documentation in the facility's operating record.

(c) The Director, based on a reasonable belief that the firm may no longer meet the requirements of the corporate financial test, may require additional reports of financial condition from the firm at any time. If the Director finds that the firm no longer meets the requirements of the corporate financial test, firm shall be required to provide alternative financial assurance on a schedule established by the Director.

(6) Corporate Guarantee.

(a) A corporate owner or operator of a solid waste facility may demonstrate financial assurance for closure, post-closure care, and corrective action by obtaining a written guarantee provided by a corporation.

(i) The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a substantial business relationship with the owner or operator.

(ii) The firm shall meet the requirements of the corporate financial test in Section R315-309-9 and shall comply with the terms of the written guarantee as specified in Subsections R315-309-3(6)(b) and (c).

(A) A certified copy of the guarantee along with copies of the letter from the guarantor's chief financial officer and accountant's opinions must be submitted to the Director and placed in the facility's operating record.

(B) If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee.

(C) If the guarantor is a firm with a substantial business relationship with the owner or operator, the letter from the chief financial officer must describe this substantial business relationship and the value received in consideration of the guarantee.

(b) The guarantee must be effective for closure and post-closure care:

(i) for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste;

(ii) for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); and

(iii) for corrective action, in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(c) The guarantee shall provide that if the owner or operator fails to perform closure, post-closure care, or corrective action of a facility covered by the guarantee, the guarantor will:

(i) perform, or pay a third party to perform, closure, post-closure, or corrective action as required; or

(ii) establish a fully funded trust fund as specified in Section R315-309-4 in the name of the owner or operator.

(d) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Director. Cancellation may not occur until 120 days after the date the notice is received by the Director.

(e) If the guarantee is canceled, the owner or operator shall, within 90 days following the receipt of the cancellation notice:

(i) obtain alternate financial assurance that meets the requirements of Subsection R315-309-1(1);

(ii) submit documentation of the alternate financial assurance to the Director; and

(iii) place copies of the documentation of the alternate financial assurance in the facility's operating record.

(iv) If the owner or operator fails to provide alternate financial assurance within the 90 day period, the guarantor must provide the alternate financial assurance within 120 days following the guarantor's notice of cancellation, submit documentation of the alternate financial assurance to the Director for review and approval, and place copies of the documentation in the facility's operating record.

(f) If a corporate guarantor no longer meets the requirements of the corporate financial test as specified in Section R315-309-9:

(i) the owner or operator must, within 90 days, obtain alternate financial assurance; and

(ii) submit documentation of the alternate financial assurance to the Director and place copies of this documentation in the facility's operating record.

(iii) If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within the next 30 days.

R315-309-10. Discounting.

(1) The Director may allow discounting of closure, post-closure care, or corrective action costs up to the rate of return for essentially risk free investments, net inflation.

(2) Discounting may be allowed under the following conditions:

(a) the Director determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a professional engineer registered in the state of Utah so stating;

(b) the Director finds the facility in compliance with all applicable Utah Solid Waste Permitting and Management Rules and in compliance with all conditions of the facility's permit issued under the rules;

(c) the Director determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of the facility life; and

(d) discounted cost estimates must be adjusted annually to reflect inflation and years of remaining facility life.

R315-309-11. Termination of Financial Assurance.

The owner or operator of a solid waste facility may terminate or cancel an active financial assurance mechanism under the following conditions:

(1) if the owner or operator establishes alternate financial assurance as approved by the Director; or

(2) if the owner or operator is released from the financial assurance requirements by the Director after meeting the conditions and requirements of Subsections R315-302-3(7)(b) and (c) or Subsection R315-308-3(2)(c), whichever is applicable.

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R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-310. Permit Requirements for Solid Waste Facilities.
R315-310-1. Applicability.

(1) The following solid waste facilities require a permit:

(a) New and existing Class I, II, III, IV, V, VI, and coal combustion residual (CCR) Landfills and coal combustion residual surface impoundments;

(b) Class I, II, III, IV, V, and VI Landfills that have closed but have not met the requirements of Subsection R315-302-3(7);

(c) incinerator facilities that are regulated by Rule R315-306;

(d) land treatment disposal facilities that are regulated by Rule R315-307; and

(d) waste tire storage facilities.

(2) Permits are not required for corrective actions at solid waste facilities performed by the state or in conjunction with the United States Environmental Protection Agency or in conjunction with actions to implement the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), or corrective actions taken by others to comply with a state or federal cleanup order.

(3) The requirements of Sections R315-310-2 through 12 apply to each existing and new solid waste facility as indicated.

(a) The Director may incorporate a compliance schedule for each existing facility to ensure that the owner or operator, or both, of each existing facility meet the requirements of Rule R315-310.

(b) The owner or operator, or both, where the owner and operator are not the same person, of each new facility or expansion at an existing solid waste facility, for which a permit is required, shall:

(i) apply for a permit according to the requirements of Rule R315-310;

(ii) not begin the construction or the expansion of the solid waste facility until a permit has been granted; and

(iii) not accept waste at the solid waste facility prior to receiving the approval required by Subsection R315-301-5(1).

(4) A landfill may not change from its current class, or subclass, to any other class, or subclass, of landfill except by meeting all requirements for the desired class, or subclass, to include obtaining a new permit from the Director for the desired class, or subclass, of landfill.

(5) Any facility that is in operation at the time that a permit is required for the facility by Subsection R315-310-1(a) and has submitted a permit application within six months of the date the facility became subject to the permit requirements of Subsection R315-310-1(a) may continue to operate during the permit review period but must meet all applicable requirements of rules R315-301 through 320 unless an alternative requirement has been approved by the Director.

R315-310-2. Procedures for Permits.

(1) Prospective applicants may request the Director to schedule a pre-application conference to discuss the proposed solid waste facility and application contents before the application is filed.

(2) Any owner or operator who intends to operate a facility subject to the permit requirements must apply for a permit with the Director. Two copies of the application, signed by the owner or operator and received by the Director are required before permit review can begin.

(3) Applications for a permit must be completed in the format prescribed by the Director.

(4) An application for a permit, all reports required by a permit, and other information requested by the Director shall be signed as follows:

(a) for a corporation: by a principal executive officer of at least the level of vice-president;

(b) for a partnership or sole proprietorship: by a general partner or the proprietor;

(c) for a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official; or

(d) by a duly authorized representative of the person above, as appropriate.

(i) A person is a duly authorized representative only if the authorization is made in writing, to the Director, by a person described in Subsections R315-310-2(4)(a), (b), or (c), as appropriate.

(ii) The authorization may specify either a named individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of facility manager, director, superintendent, or other position of equivalent responsibility.

(iii) If an authorization is no longer accurate and needs to be changed because a different individual or position has responsibility for the overall operation of the facility, a new authorization that meets the requirements of Subsections R315-310-2(4)(d)(i) and (ii) shall be submitted to the Director prior to or together with any report, information, or application to be signed by the authorized representative.

(5) Filing Fee and Permit Review Fee.

(a) A filing fee, as required by the Annual Appropriations Act, shall accompany the filing of an application for a permit. The review of the application will not begin until the filing fee is received.

(b) A review fee, as established by the Annual Appropriations Act, shall be charged at an hourly rate for the review of an application. The review fee shall be billed quarterly and shall be due and payable quarterly.

(6) All contents and materials submitted as a permit application shall become part of the approved permit and shall be part of the operating record of the solid waste disposal facility.

(7) The owner or operator, or both, of a facility shall apply for renewal of the facility's permit every ten years.

R315-310-3. General Contents of a Permit Application for a New Facility or a Facility Seeking Expansion.

(1) Each permit application for a new facility or a facility seeking expansion shall contain the following:

(a) the name and address of the applicant, property owner, and responsible party for the site operation;

(b) a general description of the facility accompanied by facility plans and drawings and, except for Class IIIb, IVb, and Class VI Landfills and waste tire storage facilities, unless required by the Director, the facility plans and drawings shall be signed and sealed by a professional engineer registered in the State of Utah;

(c) a legal description and proof of ownership, lease agreement, or other mechanism approved by the Director of the proposed site, latitude and longitude map coordinates of the facility's front gate, and maps of the proposed facility site including land use and zoning of the surrounding area;

(d) the types of waste to be handled at the facility and area served by the facility;

(e) the plan of operation required by Subsection R315-302-2(2);

(f) the form used to record weights or volumes of wastes received required by Subsection R315-302-2(3)(a)(i);

(g) an inspection schedule and inspection log required by Subsection R315-302-2(5)(a);

(h) the closure and post-closure plans required by

Section R315-302-3;

(i) documentation to show that any waste water treatment facility, such as a run-off or a leachate treatment system, is being reviewed or has been reviewed by the Division of Water Quality;

(j) a proposed financial assurance plan that meets the requirements of Rule R315-309; and

(k) A historical and archeological identification efforts, which may include an archaeological survey conducted by a person holding a valid license to conduct surveys issued under R694-1.

(2) Public Participation Requirements.

(a) Each permit application shall provide:

(i) the name and address of all owners of property within 1,000 feet of the proposed solid waste facility; and

(ii) documentation that a notice of intent to apply for a permit for a solid waste facility has been sent to all property owners identified in Subsection R315-310-3(3)(a)(i).

(iii) the Director with the name of the local government with jurisdiction over the site and the mailing address of that local government office.

(b) The Director shall send a letter to each person identified in Subsection R315-310-3(3)(a)(i) and (iii) requesting that they reply, in writing, if they desire their name to be placed on an interested party list to receive further public information concerning the proposed facility.

(3) Special Requirements for a Commercial Solid Waste Disposal Facility.

(a) The permit application for a commercial nonhazardous solid waste disposal facility shall contain the information required by Subsections 19-6-108(9) and (10).

(b) Subsequent to the issuance of a solid waste permit by the Director, a commercial nonhazardous solid waste disposal facility shall meet the requirements of Subsection 19-6-108(3)(c) and provide documentation to the Director that the solid waste disposal facility is approved by the local government, the Legislature, and the governor.

(c) Construction of the solid waste disposal facility may not begin until the requirements of Subsections R315-310-3(2)(b) are met and approval to begin construction has been granted by the Director.

(d) Commercial solid waste disposal facilities solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government are not subject to Subsections R315-310-3(2)(a), (b), and (c).

R315-310-4. Contents of a Permit Application for a New or Expanded Class I, II, III, IV, V, and VI Landfill Facility as Specified.

(1) Each application for a new or expanded landfill shall contain the information required by Section R315-310-3.

(2) Each application shall also contain:

(a) the following maps shall be included in a permit application for a Class I, II, III, IV, V, and VI Landfill:

(i) topographic map of the landfill unit drawn to a scale of 200 feet to the inch containing five foot contour intervals where the relief exceeds 20 feet and two foot contour intervals where the relief is less than 20 feet, showing the boundaries of the landfill unit, ground water monitoring wells, landfill gas monitoring points, and borrow and fill areas; and

(ii) the most recent full size U.S. Geological Survey topographic map, 7-1/2 minute series, if printed, or other recent topographic survey of equivalent detail of the area, showing the waste facility boundary, the property boundary, surface drainage channels, existing utilities, and structures within one-fourth mile of the facility site, and the direction of the prevailing winds.

(b) a permit application for a Class I, II, IIIa, IVa, and V Landfill shall contain a geohydrological assessment of the facility that addresses:

(i) local and regional geology and hydrology, including faults, unstable slopes and subsidence areas on site;

(ii) evaluation of bedrock and soil types and properties, including permeability rates;

(iii) depths to ground water or aquifers;

(iv) direction and flow rate of ground water;

(v) quantity, location, and construction of any private and public wells on the site and within 2,000 feet of the facility boundary;

(vi) tabulation of all water rights for ground water and surface water on the site and within 2,000 feet of the facility boundary;

(vii) identification and description of all surface waters on the site and within one mile of the facility boundary;

(viii) background ground and surface water quality assessment and identification of impacts of the existing facility upon ground and surface waters from landfill leachate discharges;

(ix) calculation of a site water balance; and

(x) conceptual design of a ground water and surface water monitoring system, including proposed installation methods for these devices and where applicable, a vadose zone monitoring plan;

(c) a permit application for a Class I, II, IIIa, IVa, and V Landfill shall contain an engineering report, plans, specifications, and calculations that address:

(i) how the facility will meet the location standards pursuant to Section R315-302-1 including documentation of any demonstration made with respect to any location standard;

(ii) the basis for calculating the facility's life;

(iii) cell design to include liner design, cover design, fill methods, elevation of final cover and bottom liner, and equipment requirements and availability;

(iv) identification of borrow sources for daily and final cover, and for soil liners;

(v) interim and final leachate collection, treatment, and disposal;

(vi) ground water monitoring plan that meets the requirements of Rule R315-308;

(vii) landfill gas monitoring and control that meets the requirements of Subsection R315-303-3(5);

(viii) design and location of run-on and run-off control systems;

(ix) closure and post-closure design, construction, maintenance, and land use; and

(x) quality control and quality assurance for the construction of any engineered structure or feature, excluding buildings at landfills, at the solid waste disposal facility and for any applicable activity such as ground water monitoring.

(d) a permit application for a Class I, II, III, IV, V, and VI Landfill shall contain a closure plan to address:

(i) closure schedule;

(ii) capacity of the solid waste disposal facility in volume and tonnage;

(iii) final inspection by regulatory agencies; and

(iv) identification of closure costs including cost calculations and the funding mechanism.

(e) a permit application for a Class I, II, III, IV, V, and VI Landfill shall contain a post-closure plan to address, as appropriate for the specific landfill:

(i) site monitoring of:

(A) landfill gas on a quarterly basis until the conditions of either Subsection R315-302-3(7)(b) or Subsection R315-302-3(7)(c) are met;

(B) ground water on a semiannual basis, or other schedule as determined by the Director, until the conditions

of either Subsection R315-302-3(7)(b) or Subsection R315-302-3(7)(c) are met; and

(C) surface water, if required, on the schedule specified by the Director and until the Director determines that the monitoring of surface water may be discontinued;

(ii) inspections of the landfill by the owner or operator:

(A) for landfills that are required to monitor landfill gas, and Class II Landfills, on a quarterly basis; and

(B) for other landfills that are not required to monitor landfill gas, on a semiannual basis;

(iii) maintenance activities to maintain cover and run-on and run-off systems;

(iv) identification of post-closure costs including cost calculations and the funding mechanism;

(v) changes to record of title as specified by Subsection R315-302-2(6); and

(vi) list the name, address, and telephone number of the person or office to contact about the facility during the post-closure period.

R315-310-5. Contents of a Permit Application for a New or Expanding Class III, IV, or VI Landfill.

(1) Each application for a permit for a new Class III, IV, or VI landfill or for a permit to expand an existing Class III, IV, or VI Landfill shall contain the information required in Section R315-310-3.

(2) Each application shall also contain an engineering report, plans, specifications, and calculations that address:

(a) the information and maps required by Subsections R315-310-4(2)(a)(i) and (ii);

(b) the design and location of the run-on and run-off control systems;

(c) the information required by Subsections R315-310-4(2)(d) and (e);

(d) the area to be served by the facility; and

(e) how the facility will meet the requirements of Rule R315-304, for a Class III Landfill, or Rule R315-305, for a Class IV or VI Landfill.

(3) Each application for a Class IIIa or Class IVa Landfill permit shall also contain the applicable information required in Subsections R315-310-4(2)(b)and (c).

R315-310-6. Contents of a Permit Application for a New or Expanding Landtreatment Disposal Facility.

(1) Each application for a landtreatment disposal facility permit shall contain the information required in Section R315-310-3.

(2) Each application for a permit shall also contain:

(a) a geohydrological assessment of the facility site that addresses all of the factors of Subsection R315-310-4(2)(b);

(b) engineering report, plans, specifications, and calculations that address:

(i) how the proposed facility will meet the location standards pursuant to Section R315-302-1;

(ii) how the proposed facility will meet the standards of Rule R315-307;

(iii) the basis for calculating the facility's life;

(iv) waste analyses and methods to periodically sample and analyze solid waste;

(v) design of interim waste storage facilities;

(vi) design of run-on and run-off control systems;

(vii) a contour map of the active area showing contours to the nearest foot;

(viii) a ground water and surface water monitoring program; and

(ix) access barriers such as fences, gate, and warning signs.

(c) a plan of operation that in addition to the requirements of Section R315-302-2 addresses:

(i) operation and maintenance of run-on and run-off control systems;

(ii) methods of taking ground water samples and for maintaining ground water monitoring systems; and

(iii) methods of applying wastes to meet the requirements of Section R315-307-3.

(d) closure plan to address:

(i) closure schedule;

(ii) capacity of site in volume and tonnage; and

(iii) final inspection by regulatory agencies.

(e) post-closure plan to address:

(i) estimated time period for post-closure activities;

(ii) site monitoring of ground water;

(iii) changes in record of title;

(iv) maintenance activities to maintain cover and run-off system;

(v) plans for food-chain crops, if any, being grown on the active areas, after closure; and

(vi) identification of final closure costs including cost calculations and the funding mechanism.

R315-310-7. Contents of a Permit Application for a New or Expanding Incinerator Facility.

(1) Each application for a new or expanding incinerator facility permit shall contain the information required in Section R315-310-3.

(2) Each application for a permit shall also contain:

(a) engineering report, plans, specifications, and calculations that address:

(i) the design of the storage and handling facilities on-site for incoming waste as well as fly ash, bottom ash, and any other wastes produced by air or water pollution controls; and

(ii) the design of the incinerator or thermal treater, including charging or feeding systems, combustion air systems, combustion or reaction chambers, including heat recovery systems, ash handling systems, and air pollution and water pollution control systems. Instrumentation and monitoring systems design shall also be included.

(b) an operational plan that, in addition to the requirements of Section R315-302-2, addresses:

(i) cleaning of storage areas as required by Subsection R315-306-2(5);

(ii) alternative storage plans for breakdowns as required in Subsection R315-306-2(3);

(iii) inspections to insure compliance with state and local air pollution laws and to comply with Subsection R315-302-2(5)(a). The inspection log or summary must be submitted with the application;

(iv) how and where the fly ash, bottom ash, and other solid waste will be disposed; and

(v) a program for excluding the receipt of hazardous waste equivalent to requirements specified in Subsection R315-303-4(7).

(c) documentation to show that air pollution and water pollution control systems are being reviewed or have been reviewed by the Division of Air Quality and the Division of Water Quality.

(d) a closure plan to address:

(i) closure schedule;

(ii) closure costs and a financial assurance mechanism to cover the closure costs;

(iii) methods of closure and methods of removing wastes, equipment, and location of final disposal; and

(iv) final inspection by regulator agencies.

R315-310-8. Contents of a Permit Application for a New or Expanding Waste Tire Storage Facility.

Each application for a waste tire storage facility permit shall contain the information required in Subsections R315-

310-3(1)(a), (b), (c), (f), (g), (h), (k), R315-310-3(2) and Subsection R315-314-3(3).

R315-310-9. Contents of an Application for a Permit Renewal.

The owner or operator, or both, where the owner and operator are not the same person, of each existing facility who intend to have the facility continue to operate, shall apply for a renewal of the permit by submitting the applicable information and application specified in Sections R315-310-3, -4, -5, -6, -7, or -8, as appropriate. Applicable information, that was submitted to the Director as part of a previous permit application, may be copied and included in the permit renewal application so that all required information is contained in one document. The information submitted shall reflect the current operation, monitoring, closure, post-closure, and all other aspects of the facility as currently established at the time of the renewal application submittle.

R315-310-10. Contents of an Application for a Permit for a Facility in Post-Closure Care.

The application for a Post-Closure Care permit shall contain the applicable information required in Section R315-310-3 and documentation as to how the facility will meet the requirements of Section R315-302-3(5) and (6).

R315-310-11. Permit Transfer.

(1) A permit may not be transferred without approval from the Director, nor shall a permit be transferred from one property to another.

(2) The new owner or operator shall submit to the Director:

(a) A revised permit application no later than 60 days prior to the scheduled change and

(b) A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees.

(3) The new permittee shall:

(a) assume permit requirements and all financial responsibility;

(b) provide adequate documentation that the permittee has or shall have ownership or control of the facility for which the transfer of permit has been requested;

(c) demonstrate adequate knowledge and ability to operate the facility in accordance with the permit conditions; and

(d) demonstrate adequate financial assurance as required in the permit and R315-309 for the operation of the facility.

(4) When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of Rule R315-309 until the new owner or operator has demonstrated that it is complying with the requirements of that rule.

(5) An application for permit transfer may be denied if the Director finds that the applicant has:

(a) knowingly misrepresented a material fact in the application;

(b) refused or failed to disclose any information requested by the Director;

(c) exhibited a history of willful disregard of any state or federal environmental law; or

(d) had any permit revoked or permanently suspended for cause under any state or federal environmental law.

R315-310-12. Contents of a Permit Application for a New or Expanding Coal Combustion Residual Landfill and Coal Combustion Residual Surface Impoundment.

Each application for a coal combustion residual landfill and coal combustion residual surface impoundment permit shall contain the information required in Subsections R315-310-3(1)(a) and (k), and Section R315-319.

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R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-311. Permit Approval For Solid Waste Disposal, Waste Tire Storage, Energy Recovery, And Incinerator Facilities.
R315-311-1. General Requirements.

(1) Upon submittal of the complete information required by Rule R315-310, as determined by the Director, a draft permit or permit denial will be prepared and the owner or operator of the new or existing facility will be notified in writing by the Director.

(a) After meeting the requirements of the public comment period and public hearing as stipulated in Section R315-311-3, the owner or operator may be issued a permit which will include appropriate conditions and limitations on operation and types of waste to be accepted at the facility.

(b) Construction shall not begin prior to the receipt of the permit.

(c) An application that has been initiated by an owner or operator but for which the Director has not received a response to questions about the application for more than one year shall be canceled.

(2) Solid waste disposal facility plan approval and permit issuance will depend upon:

(a) the adequacy of the facility in meeting the location standards in Section R315-302-1;

(b) the hydrology and geology of the area; and

(c) the adequacy of the plan of operation, facility design, and monitoring programs in meeting the requirements of the applicable rules.

(3) A permit can be granted for up to ten years by the Director, except as allowed in Subsection R315-311-1(5).

(4) The owner or operator, or both, when the owner and the operator are not the same person, of each solid waste facility shall:

(a) apply for a permit renewal, as required by Section R315-310-10, 180 days prior to the expiration date of the current permit if the permit holder intends to continue operations after the current permit expires; and

(b) for facilities for which financial assurance is required by R315-309-1, submit, for review and approval by the Director on a schedule of no less than every five years, a complete update of the financial assurance required in Rule R315-309 which shall contain:

(i) a calculation of the current costs of closure as required by Subsection R315-309-2(3); and

(ii) a calculation that is not based on a closure cost which has been obtained by applying an inflation factor to past cost estimates.

(5) A permit for a facility in post-closure care:

(i) may be issued for the life of the post-closure care period; and

(ii) the holder of the post-closure care permit shall comply with Subsection R315-311-1(4)(b).

R315-311-2. Permit Modification, Renewal, or Termination.

(1) A permit may be considered for modification, renewal, or termination at the request of any interested person, including the permittee, or upon the Director's initiative as a result of new information or changes in statutes or rules. Requests for modification, reissuance, or termination shall be submitted in writing to the Director and shall contain facts or reasons supporting the request. Requests for permit modification, renewal, or termination shall become effective only upon approval by the Director.

(a) Minor modifications of a permit or plan of operation shall not be subject to the 30 day public comment period as required by Section R315-311-3. A permit modification shall be considered minor if:

(i) typographical errors are corrected;

(ii) the name, address, or phone number of persons or agencies identified in the permit are changed;

(iii) administrative or informational changes are made;

(iv) procedures for maintaining the operating record are changed or the location where the operating record is kept is changed;

(v) changes are made to provide for more frequent monitoring, reporting, sampling, or maintenance;

(vi) a compliance date extension request is made for a new date not to exceed 120 days after the date specified in the approved permit;

(vii) changes are made in the expiration date of the permit to allow an earlier permit termination;

(viii) changes are made in the closure schedule for a unit, in the final closure schedule for the facility, or the closure period is extended;

(ix) the Director determines, in the case of a permit transfer application, that no change in the permit other than the change in the name of the owner or operator is necessary;

(x) equipment is upgraded or replaced with functionally equivalent components;

(xi) changes are made in sampling or analysis methods, procedures, or schedules;

(xii) changes are made in the construction or ground water monitoring quality control/quality assurance plans which will better certify that the specifications for construction, closure, sampling, or analysis will be met;

(xiii) changes are made in the facility plan of operation which conform to guidance or rules approved by the Board or provide more efficient waste handling or more effective waste screening;

(xiv) an existing monitoring well is replaced with a new well without changing the location;

(xv) changes are made in the design or depth of a monitoring well that provides more effective monitoring;

(xvi) changes are made in the statistical method used to statistically analyze the ground water quality data; or

(xvii) Changes are made in any permit condition that are more restrictive or provide more protection to health or the environment.

(b) The Director may subject any minor modification request to the 30-day public comment period if justified by conditions and circumstances.

(c) A permit modification that does not meet the requirements of Subsection R315-311-2(1)(a) for a minor modification shall be a major modification.

(d) If the Director determines that major modifications to a permit or plan of operation are justified, a new operational plan incorporating the approved modifications shall be prepared. The modifications shall be subject to the public comment period as specified in Section R315-311-3.

(2) An application for permit renewal shall consist of the information required by Section R315-310-9. Upon receipt of the application, the Director will review the application and will notify the applicant as to what information or change of operational practice is required of the applicant, if any, to receive a permit renewal. The current permit shall remain in effect until issuance or denial of a new permit. Each permit renewal shall be subject to the public comment requirements of Section R315-311-3.

(3) The Director shall notify, in writing, the owner or operator of any facility of intent to terminate a permit. A permit may be terminated for:

(a) noncompliance with any condition of the permit;

(b) noncompliance with any applicable rule;

(c) failure in the application or during the approval or renewal process to disclose fully all relevant facts;

(d) misrepresentation by the owner or operator of any relevant facts at any time; or

(e) a determination that the solid waste activity or facility endangers human health or the environment.

(4) The owner or operator of a facility may appeal any action

associated with modification, renewal, or termination in accordance with Section R315-317-3, Title 63G Chapter 4, and Rule R305-7.

R315-311-3. Public Comment Period.

(1) The draft permit, permit renewal, or major modification of a permit, for each solid waste facility that requires a permit, shall be subject to a 30-day public comment period.

(2) A public hearing may be held if a request for public hearing is submitted to the Director in writing:

(a) by a local government, a state agency, ten interested persons, or an interested association having not fewer than ten members; and

(b) the request is received by the Director not more than 15 days after the publication of the public notice.

(3) After due consideration of all comments received, final determination on draft permits or major modification of permits will be made available by public notice.

KEY: solid waste management, waste disposal
April 25, 2013 19-6-104
Notice of Continuation January 12, 2018 19-6-105
19-6-108

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-312. Recycling and Composting Facility Standards.
R315-312-1. Applicability.

(1) The standards of Rule R315-312 apply to any facility engaged in recycling or utilization of solid waste on the land including:

(a) composting;

(b) utilization of organic sludge, other than domestic sewage sludge and septage, and untreated woodwaste on land for beneficial use; and

(c) accumulation of wastes in piles for recycling or utilization.

(2) These standards do not apply to:

(a) animal feeding operations, including dairies, that compost exclusively manure and vegetative material and meet the composting standards of a Comprehensive Nutrient Management Plan;

(b) other composting operations in which waste from on-site is composted and the finished compost is used on-site; or

(c) hazardous waste.

(3) These standards do not apply to any facility that recycles or utilizes solid wastes solely in containers, tanks, vessels, or in any enclosed building, including buy-back recycling centers.

(4) The composting of domestic sewage sludge, on the site of its generation, is exempt from the requirements of Rule R315-312 but is regulated under the applicable requirements of Rule R317-8 and 40 CFR 503 by the Utah Division of Water Quality.

R315-312-2. Recycling and Composting Requirements.

(1) Any recycling or composting facility shall meet the requirements of Section R315-302-2, and shall submit a general plan of operation and such other information as requested by the Director prior to the commencement of any recycling operation.

(2) Each applicable recycling or composting facility shall submit a certification that the facility has, during the past year, operated according to the submitted plan of operation to the Director by March 1 of each year.

(3) Any facility storing materials in outdoor piles for the purpose of recycling shall be considered to be disposing of solid waste if:

(a) at least 50% of the material on hand at the beginning of a year at the facility has not been shown to have been recycled by the end of that year and any material has been on-site more than two years unless a longer period is approved by the Director; or

(b) ground water or surface water, air, or land contamination has occurred or is likely to occur under current conditions of storage.

(c) Upon a determination by the Director or his authorized representative that the limits of Subsection R315-312-2(3)(a) or (b) have been exceeded, the Director may require a permit application and issuance of a permit as a solid waste disposal facility.

(4) Any recycling or composting facility may be required to provide financial assurance for clean-up and closure of the site as determined by the Director.

(5) Tires stored in piles for the purpose of recycling at a tire recycling facility shall be subject to the requirements of Section R315-314-3.

R315-312-3. Composting Requirements.

(1) No new composting facility shall be located in the following areas:

(a) wetlands, watercourses, or floodplains; or

(b) within 500 feet of any permanent residence, school, hospital, institution, office building, restaurant, or church.

(2) Each new compost facility shall meet the requirements of Subsection R315-302-1(2)(f)

(3) Each owner or operator of a composting facility, in addition to the operational plan required in Subsection R315-312-2(1), shall develop, keep on file, and abide by a plan that addresses:

(a) detailed plans and specifications for the entire composting facility including manufacturer's performance data for equipment;

(b) methods of measuring, grinding or shredding, mixing, and proportioning input materials;

(c) a description and location of temperature and other types of monitoring equipment and the frequency of monitoring;

(d) a description of any additive material, including its origin, quantity, quality, and frequency of use;

(e) special precautions or procedures for operation during wind, heavy rain, snow, and freezing conditions;

(f) estimated composting time duration, which is the time period from initiation of the composting process to completion;

(g) for windrow systems, the windrow construction, including width, length, and height;

(h) the method of aeration, including turning frequency or mechanical aeration equipment and aeration capacity; and

(i) a description of the ultimate use for the finished compost, the method for removal from the site, and a plan for the disposal of the finished compost that can not be used in the expected manner due to poor quality or change in market conditions.

(4) Composting Facility Operation Requirements.

(a) Operational records must be maintained during the life of the facility and during the post-closure care period, which include, at a minimum, temperature data and quantity and types of material processed.

(b) All waste materials collected for the purpose of processing must be processed within two years or as provided in the plan of operation.

(c) All materials not destined for processing must be properly disposed.

(d) Turning frequency of the compost must be sufficient to maintain aerobic conditions and to produce a compost product in the desired time frame.

(e) During the composting process, the compost must:

(i) maintain a temperature between 104 and 149 degrees Fahrenheit (40 and 65 degrees Celsius) for a period of not less than five days; and

(ii) reach a temperature of not less than 131 degrees F (55 degrees C) for a consecutive period of not less than four hours during the five day period.

(f) The following wastes may not be accepted for composting:

(i) asbestos waste;

(ii) Hazardous waste;

(iii) waste containing PCBs; or

(iv) treated wood.

(g) Any composting facility utilizing municipal solid waste, municipal sewage treatment sludge, water treatment sludge, or septage shall require the generator to characterize the material and certify that any material used is nonhazardous, contains no PCB's, and contains no treated wood.

(h) If the composting operation will be utilizing domestic sewage sludge, septage, or municipal solid waste:

(i) compost piles or windrows shall be placed upon a surface such as sealed concrete, asphalt, clay, or an artificial liner underlying the pile or windrow, to prevent

contamination of subsurface soil, ground water, or both and to allow collection of run-off and leachate. The liner shall be of sufficient thickness and strength to withstand stresses imposed by compost handling vehicles and the compost itself;

(ii) run-off systems shall be designed, installed and maintained to control and collect the run-off from a 25-year storm event;

(iii) the collected leachate shall be treated in a manner approved by the Director; and

(iv) run-on prevention systems shall be designed, constructed, and maintained to divert the maximum flow from a 25-year storm event.

(i) If the Director determines that a composting operation, which composts materials other than domestic sewage sludge, septage, or municipal solid waste, is likely to produce a leachate that in combination with the hydrologic, geologic, and climatic factors of the site will present a threat to human health or the environment, the Director may require the owner or operator of the composting facility to meet the requirements specified in Subsection R315-312-3(4)(h).

(j) The finished compost must contain no sharp inorganic objects and must be sufficiently stable that it can be stored or applied to land without creating a nuisance, environmental threat, or a hazard to health.

(5) Composting Facility Closure and Post-closure Requirements.

(a) Within 30 days of closure, a composting facility shall:

(i) remove all piles, windrows, and any other compost material on the composting facility's property;

(ii) remove or revegetate compacted compost material that may be left on the land;

(iii) drain ponds or leachate collection system if any, back-fill, and assure removed contents are properly disposed;

(iv) cover if necessary; and

(v) record with the county recorder as part of the record of title, a plat and statement of fact that the property has been used as a composting facility.

(b) The post-closure care and monitoring shall be for five years and shall consist of:

(i) the maintenance of any monitoring equipment and sampling and testing schedules as required by the Director; and

(ii) inspection and maintenance of any cover material.

R315-312-4. Requirements for Use on Land of Sewage Sludge, Woodwaste, and Other Organic Sludge.

(1) Any facility using domestic sewage sludge or septage on land is exempt from the requirements of Section R315-312-4 when the facility has a permit or other approval under the applicable requirements of Rule R317-8 and 40 CFR 503 issued by the Utah Division of Water Quality.

(2) Any facility using organic sludge, other than domestic sewage sludge or septage, or untreated woodwaste on land shall comply with the recycling standards of Section R315-312-2.

(3) Only agricultural or silvicultural sites where organic sludge or untreated woodwaste is demonstrated to have soil conditioning or fertilizer value shall be acceptable for use under this subsection, provided that the sludge or woodwaste is applied as a soil conditioner or fertilizer in accordance with accepted agricultural and silvicultural practice.

(4) A facility using organic sludge or untreated woodwaste on the land in a manner not consistent with the requirements of Section R315-312-4 must meet the standards of Rule R315-307.

KEY: solid waste management, waste disposal
April 25, 2013 19-6-105

Notice of Continuation January 12, 2018 19-6-108

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-313. Transfer Stations and Drop Box Facilities.
R315-313-1. Applicability.

Any transfer station or drop box facility receiving solid waste from off-site shall meet the requirements of Rule R315-313.

R315-313-2. Transfer Station Standards.

(1) Each transfer station shall meet the requirements of Subsection R315-302-1(2)(f).

(2) Each transfer station shall meet the requirements of Section R315-302-2 and shall submit a plan of operation and such other information as requested by the Director for approval prior to construction and operation.

(3) Each transfer station shall submit, to the Director, by March 1 of each year, a report that meets the applicable requirements of Subsection R315-302-2(4) and a certification that the facility has, during the past year, operated according to the submitted plan of operation.

(4) Each transfer station shall be designed, constructed, and operated to:

(a) be surrounded by a fence, trees, shrubbery, or natural features so as to control access and to screen the station from the view of immediately adjacent neighbors, unless the tipping floor is fully enclosed by a building;

(b) be sturdy and constructed of easily cleanable materials;

(c) be free of potential rat harborage, and provide effective means to control rodents, insects, birds, and other vermin;

(d) be adequately screened to prevent blowing of litter and to provide effective means to control litter;

(e) provide protection of the tipping floor from wind, rain, or snow;

(f) have an adequate buffer zone around the active area to minimize noise and dust nuisances, and a buffer zone of 50 feet from the active area to the nearest property line in areas zoned residential;

(g) provide pollution control measures to protect surface and ground waters by the construction of:

(i) a run-off collection and treatment system, if required, must be designed and operated to collect and treat a 25-year storm and equipment cleaning and washdown water; and

(ii) a run-on prevention system to divert a 25-year storm event;

(h) provide all-weather access in all vehicular areas;

(i) provide pollution control measures to protect air quality including a prohibition against all burning and the development of odor and dust control plans to be made part of the plan of operation;

(j) prohibit scavenging;

(k) provide attendants on-site during hours of operation;

(l) have a sign that identifies the facility and shows at least the name of the site, hours during which the site is open for public use, materials not accepted at the facility, and other necessary information posted at the site entrance;

(m) prevent the acceptance of prohibited waste by meeting the requirements of Subsection R315-303-4(7);

(n) have communication capabilities, if available in the facility area, to immediately summon fire, police, or emergency service personnel in the event of an emergency; and

(o) remove all wastes at final closure from the facility to another permitted facility.

R315-313-3. Drop Box Facility Standards.

(1) Each drop box facility shall be constructed of durable watertight materials with a lid or screen on top that prevents both the loss of materials during transport and access by rats and other vermin.

(2) Each drop box facility shall be located in an easily identifiable place accessible by all-weather roads.

(3) Each drop box facility shall be designed and serviced as often as necessary to ensure adequate storage capacity at all times. Storage of solid waste outside the drop boxes is prohibited.

(4) Each drop box facility shall have a sign at the entrance that complies with Subsection R315-313-2(2)(l).

(5) The owner or operator of each drop box facility shall remove all remaining wastes at final closure, to a permitted facility and remove the drop box.

KEY: solid waste management
April 25, 2013 19-6-104
Notice of Continuation January 12, 2018 19-6-105
19-6-108

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-314. Facility Standards for Piles Used for Storage and Treatment.
R315-314-1. Applicability.

(1) The requirements of Rule R315-314 apply to the following:

(a) a pile of solid waste containing garbage that has been in place for more than seven days;

(b) a pile of solid waste which does not contain garbage that has been in place for more than 90 days;

(c) a pile of material derived from waste tires where more than 1,000 passenger tire equivalents are stored at one site; and

(d) a pile of whole waste tires where more than 1,000 tires are stored at one site.

(2) The requirements of Rule R315-314 do not apply to the following:

(a) solid waste stored or treated in piles prior to recycling including compost piles and wood waste;

(b) solid waste stored in fully enclosed buildings, provided that no liquids or sludge containing free liquids are added to the waste;

(c) a pile of inert waste, as defined by Subsection R315-301-2(36); and

(d) a pile of whole waste tires located at a permitted waste disposal facility that is stored for not longer than one year.

(3) A site where crumb rubber, an ultimate product derived from waste tires, or waste tires that have been reduced to materials for beneficial use are stored for not longer than one year may receive a waiver of the requirements of Rule R315-314 from the Director on a site specific basis.

(a) No waiver of the requirements of Rule R315-314 will be granted by the Director without application from the owner or operator of the storage site.

(b) In granting a waiver of the requirements of Rule R315-314, the Director may place conditions on the owner or operator of the storage site as to the sizes of piles, distance between piles, or other operational practices that will minimize fire danger or a risk to human health or the environment.

(c) The Director may revoke a waiver of the Requirements of Rule R315-314 if the Director finds that:

(i) any condition of the waiver is not met; or

(ii) the operation of the storage site presents a fire danger or a threat to human health or the environment.

R315-314-2. General Requirements.

(1) Each owner and operator shall:

(a) comply with the applicable requirements of Section R315-302-2; and

(b) remove all solid waste from the pile at closure to another permitted facility.

(2) Requirements for Solid Waste Likely to Produce Leachate.

(a) Waste piles shall be placed upon a surface such as sealed concrete, asphalt, clay, or an artificial liner underlying the pile to prevent subsurface soil and potential ground water contamination and to allow collection of run-off and leachate. The liner shall be designed of sufficient thickness and strength to withstand stresses imposed by pile handling vehicles and the pile itself.

(b) A run-off collection and treatment system shall be designed, installed and maintained to collect and treat a 25-year storm event.

(c) Waste piles having a capacity of greater than 10,000 cubic yards shall have either:

(i) a ground water monitoring system that complies with Rule R315-308; or

(ii) a leachate detection, collection and treatment system.

(iii) For purposes of this subsection, capacity refers to the total capacity of all leachate-generating piles at one facility, e.g., two, 5,000 cubic yard piles will subject the facility to the requirements of this subsection.

(d) A run-on prevention system shall be designed and maintained to divert the maximum flow from a 25-year storm event.

(e) The Director may require that the entire base or liner shall be inspected for wear and integrity and repaired or replaced by removing stored wastes or otherwise providing inspection access to the base or liner; the request shall be in writing and cite the reasons including valid ground water monitoring or leachate detection data leading to request such an inspection, repair or replacement.

(3) The length of time that solid waste may be stored in piles shall not exceed 1 year unless the Director determines that the solid waste may be stored in piles for a longer time period without becoming a threat to human health or the environment.

(4) The Director or an authorized representative may enter and inspect a site where waste is stored in piles as specified in Subsection R315-302-2(5)(b).

R315-314-3. Requirements for a Waste Tire Storage Facility.

(1) The definitions of Section R315-320-2 are applicable to the requirements for a waste tire storage facility.

(2) No waste tire storage facility may be established, maintained, or expanded until the owner or operator of the waste tire storage facility has obtained a permit from the Director. The owner or operator of the waste tire storage facility shall operate the facility in accordance with the conditions of the permit and otherwise follow the permit.

(3) The owner or operator of a waste tire storage facility shall:

(a) submit the following for approval by the Director:

(i) the information required in Subsections R315-310-8;

(ii) a plan of operation as required by Subsection R315-302-2(2);

(iii) a plot plan of the storage site showing:

(A) the arrangement and size of the tire piles on the site;

(B) the width of the fire lanes and the type and location of the fire control equipment; and

(C) the location of any on-site buildings and the type of fencing to surround the site;

(iv) a financial assurance plan including the date that the financial assurance mechanism becomes effective; and

(v) a vector control plan;

(b) accumulate tires only in designated areas;

(c) control access to the storage site by fencing;

(d) limit individual tire piles to a maximum of 5,000 square feet of continuous area in size at the base of the pile;

(e) limit the individual tire piles to 50,000 cubic feet in volume or 10 feet in height;

(f) insure that piles be at least 10 feet from any property line or any building and not exceed 6 feet in height when within 20 feet of any property line or building;

(g) provide for a 40 foot fire lane between tire piles that contains no flammable or combustible material or vegetation;

(h) effect a vector control program, if necessary, to minimize mosquito breeding and the harborage of other vectors such as rats or other animals;

(i) provide on-site fire control equipment that is maintained in good working order;

(j) display an emergency procedures plan and inspection approval by the local fire department and require all

employees to be familiar with the plan;

(k) establish financial assurance for clean-up and closure of the site:

(i) in the amount of $150 per ton of tires stored at the site; and

(ii) in the form of a trust fund, letter of credit, or other mechanism as approved by the Director;

(l) maintain a record of the number of:

(i) tires received at the site;

(ii) tires shipped from the site

(iii) piles of tires at the site; and

(iv) tires in each pile; and

(m) meet the applicable reporting requirements of Subsection R315-302-2(4).

(4) Whole Tires Stored in a Tire Fence.

(a) Whole Tires stored in a tire fence are exempt from Subsections R315-314-3(3)(e), (f), and (g) but must:

(i) obtain a permit from the Director as required by Subsection R315-314-3(2);

(ii) receive approval for establishing, maintaining, or expanding the tire fence from the local government and the local fire department and submit documentation of these approvals to the Director; and

(iii) maintain the fence no more than one tire wide and eight feet high.

(b) An owner of a tire fence may receive a waiver from the requirements of Subsection R315-314-3(4)(a)(i) if the Director receives written notice from the owner of the tire fence on or before November 15, 1999 that documents and certifies that:

(i) the tire fence was in existence prior to October 15, 1999; and

(ii) no tires have been added to the fence after October 14, 1999.

(5) Each tire recycler, as defined by Subsection 19-6-803(19), that stores tires in piles prior to recycling shall comply with the following requirements:

(a) if the tire recycler documents that the waste tires are stored for five or fewer days, the tire recycler shall:

(i) meet the requirements of Subsections R315-314-3(3)(b) through (g); or

(ii) obtain a waiver from the requirements of Subsections R315-314-3(3)(b) through (g) from the local fire department; or

(b) if the tire recycler does not document that the waste tires are stored for five or fewer days, the tire recycler shall be considered a waste tire storage facility and shall:

(i) meet the requirements of Subsections R315-314-3(2) and (3); and

(ii) the amount of financial assurance required by Subsection R315-314-3(3)(l) shall be $150 per ton of tires held as the average inventory during the preceding year of operation.

KEY: solid waste management, waste disposal

April 25, 2013	**19-6-104**
Notice of Continuation January 12, 2018	**19-6-105**
	19-6-108

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-315. Special Waste Requirements.
R315-315-1. General Requirements.

(1) If special wastes are accepted at the facility, proper provisions shall be made for handling and disposal. These provisions may include, where required and approved by the Director, a separate area for disposal of the wastes, designated by appropriate signs.

(2) Sections R315-315-2 through 9 are applicable to all solid waste facilities regulated by Rules R315-301 through 320.

R315-315-2. Asbestos Waste.

(1) Regulated asbestos-containing material to be disposed of shall be handled, transported, and disposed in a manner that will not permit the release of asbestos fibers into the air and must otherwise comply with Code of Federal Regulations, Title 40, Part 61, Section 154.

(2) No transporter or disposal facility shall accept regulated asbestos-containing material unless the waste has been adequately wetted and containerized.

(a) Regulated asbestos-containing material is adequately wetted when its moisture content prevents fiber release.

(b) Regulated asbestos-containing material is properly containerized when it is placed in double plastic bags of 6-mil or thicker, sealed in such a way to be leak-proof and air-tight, and the amount of void space or air in the bags is minimized. Regulated asbestos-containing material slurries must be packaged in leak-proof and air-tight rigid containers if such slurries are too heavy for the plastic bag containers. Upon submittal of a request, including documentation demonstrating safety, the Director may authorize other proper methods of containment which may include double bagging, plastic-lined cardboard containers, plastic-lined metal containers, or the use of vacuum trucks for the transport of slurry.

(c) All containers holding regulated asbestos-containing material shall be labeled with the name of the waste generator, the location where the waste was generated, and tagged with a warning label indicating that the containers hold regulated asbestos-containing material.

(3) The following standards apply to the disposal of Regulated Asbestos-Containing Material;

(a) upon entering the disposal site, the transporter of the regulated asbestos-containing material shall notify the landfill operator that the load contains regulated asbestos-containing material by presenting the waste shipment record. The landfill operator will verify quantities received, sign off on the waste shipment record, and send a copy of the waste shipment record to the generator within 30 days;

(b) upon receipt of the regulated asbestos-containing material, the landfill operator shall inspect the loads to verify that the regulated asbestos-containing material is properly contained in leak-proof containers and labeled appropriately. The operator shall notify the local health department and the Director if the operator believes that the regulated asbestos-containing material is in a condition that may cause fiber release during disposal. If the wastes are not properly containerized, and the landfill operator accepts the load, the operator shall thoroughly soak the regulated asbestos-containing material with a water spray prior to unloading, rinse out the truck, and immediately cover the regulated asbestos-containing material with material which prevents fiber release prior to compacting the regulated asbestos-containing material in the landfill.

(c) During deposition and covering of the regulated asbestos-containing material, the operator:

(i) may prepare a separate trench or separate area of the landfill to receive only regulated asbestos-containing material, or may dispose of the regulated asbestos-containing material at the working face of the landfill;

(ii) shall place the regulated asbestos-containing material containers into the trench, separate area, or at the bottom of the landfill working face with sufficient care to avoid breaking the containers;

(iii) within 18 hours or at the end of the operating day, shall completely cover the containerized regulated asbestos-containing material with sufficient care to avoid breaking the containers with a minimum of six inches of material containing no regulated asbestos-containing material. If the regulated asbestos-containing material is improperly containerized, it must be completely covered immediately with six inches of material containing no regulated asbestos-containing material; and

(iv) shall not compact regulated asbestos-containing material until completely covered with a minimum of six inches of material containing no regulated asbestos-containing material.

(d) The operator shall provide barriers adequate to control public access. At a minimum, the operator shall:

(i) limit access to the regulated asbestos-containing material management site to no more than two entrances by gates that can be locked when left unattended and by fencing adequate to restrict access by the general public; and

(ii) place warning signs at the entrances and at intervals no greater than 330 feet along the perimeter of the sections where regulated asbestos-containing material is deposited that comply with the requirements of 40 CFR 61.154(b); and

(e) close the separate trenches, if constructed, according to the requirements of Subsection R315-303-3(4) with the required signs in place.

R315-315-3. Ash.

(1) Ash Management.

(a) Ash may be recycled.

(b) If ash is disposed, the preferred method is in a permitted ash monofill, but ash may be disposed in a permitted Class I, II, III, or V landfill.

(2) Ash shall be transported in a manner to prevent leakage or the release of fugitive dust.

(3) Ash shall be handled and disposed at the landfill in a manner to prevent fugitive dust emissions.

R315-315-4. Bulky Waste.

Bulky waste such as automobile bodies, furniture, and appliances shall be crushed and then pushed onto the working face near the bottom of the cell, but not in an area that will compromise the integrity of the liner system, or into a separate disposal area.

R315-315-5. Sludge Requirements.

(1) Sludges, if they contain no free liquids, may be placed in the landfill working face and covered with other solid waste or other suitable cover material.

(2) Disposal of any type of sludge in a landfill must meet the requirements of Subsection R315-303-3(1).

R315-315-6. Dead Animals.

(1) Dead animals shall be managed and disposed in a manner that minimizes odors and the attraction, harborage, or propagation of insects, rodents, birds, or other animals.

(2) Dead animals may be disposed at the active working face of a permitted landfill or in a separate trench, at a permitted facility, specifically prepared to receive dead animals.

(a) If dead animals are disposed at the active working face of a permitted landfill, the carcasses shall be immediately

covered with a minimum of two feet of soil other material.

(b) If dead animals are disposed in a separate trench, at a permitted facility, the carcasses shall be completely covered with a minimum of six inches of earth at the end of the working day the carcasses are received.

R315-315-7. PCB Containing Waste.

(1) Any facility that disposes of nonhazardous waste, hazardous waste, or radioactive waste containing PCBs is regulated by Rules R315-301 through 320.

(2) The following wastes containing PCBs may be disposed in a permitted Class I, II, III, IV, V, or VI Landfill; permitted incinerator; permitted energy recovery facility; or a facility permitted by rule under Rule R315-318:

(a) waste, as specified by 40 CFR 761.61, containing PCBs at concentrations less than 50 ppm;

(b) PCB household waste as defined by 40 CFR 761.3 ; and

(c) small quantities, 10 or fewer, of intact, non-leaking, small PCB capacitors, including capacitors from fluorescent lights x-ray machines, and other machines and test equipment.

(3) Waste containing PCBs at concentrations of 50 ppm or higher are prohibited from disposal in a landfill, incinerator, or energy recovery facility that is regulated by Rules R315-301 through 320, except:

(a) the following facilities may receive waste containing PCBs at concentrations of 50 ppm or higher for treatment or disposal:

(i) a facility permitted prior to July 15, 1993 under 40 CFR 761.70, .75 or .77; or

(ii) a facility permitted after July 15, 1993 under 40 CFR 761.70, .71, .72, .75, or .77 and approved by the Director under Rules R315-301 through 320; or

(b) a Class I or V landfill that has a liner and ground water monitoring or an incinerator that meets the requirements of Subsection R315-315-7(a)(i) or (ii) and when approved by the Director, may dispose of the following PCB wastes:

(i) PCB bulk products regulated by 40 CFR 761.62(b);

(ii) drained PCB contaminated equipment as defined by 40 CFR 761.3;

(iii) drained PCB articles, including drained PCB transformers, as defined by 40 CFR 761.3;

(iv) non-liquid cleaning materials remediation wastes containing PCB's regulated by 40 CFR 761.61(a)(5)(v)(A);

(v) PCB containing manufactured products regulated by 40 CFR 761.62(b)(1)(i) and (ii); or

(vi) non-liquid PCB containing waste, initially generated as a non-liquid waste, generated as a result of research and development regulated by 40 CFR 761.64(b)(2).

(c) If a unit of a permitted landfill is approved to receive PCB containing wastes under Subsection R315-315-7(3)(b), the owner or operator of the landfill:

(i) shall modify the approved Ground Water Monitoring Plan to include the testing of the ground water samples for PCB containing constituents at appropriate detection levels; and

(ii) shall test the leachate generated at the unit of the landfill for PCB's.

R315-315-8. Petroleum Contaminated Soils.

(1) Terms used in Section R315-315-8 are defined in Section R315-301-2. For the purpose of Section R315-315-8 and in addition to the definitions in Section R315-301-2, the following definition applies: "Petroleum contaminated soils" means soils that have been contaminated with either diesel or gasoline or both.

(2) Petroleum contaminated soils that are not a hazardous waste may be accepted for disposal at a:

(a) Class I Landfill;

(b) Class II Landfill;

(c) Class III Landfill; or

(d) Class V Landfill.

(3) Petroleum contaminated soils containing the following constituents at or below the following levels and are otherwise not a hazardous waste, may be accepted for disposal at a Class IV or VI Landfill:

(a) Benzene, 0.03 mg/kg;

(b) Ethylbenzene, 13 mg/kg;

(c) Toluene, 12 mg/kg; and

(d) Xylenes, 200 mg/kg.

R315-315-9. Waste Asphalt.

(1) The preferred management of waste asphalt is recycling. Recycling of waste asphalt occurs when it is used:

(a) as a feedstock in the manufacture of new hot or cold mix asphalt;

(b) as underlayment in road construction;

(c) as subgrade in road construction when the asphalt is above the historical high level of ground water;

(d) under parking lots when the asphalt is above the historical high level of ground water; or

(e) as road shoulder when the use meets engineering requirements.

(2) If waste asphalt is disposed, it shall be disposed in a permitted landfill.

KEY: solid waste management, waste disposal
April 25, 2013 19-6-105
Notice of Continuation January 12, 2018

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-316. Infectious Waste Requirements.
R315-316-1. Applicability.

(1) The standards of Rule R315-316 apply to:

(a) any health facility that generates more than 200 pounds, per month, of infectious waste;

(b) any transporter that collects and transports more than 200 pounds of infectious waste in any one load; and

(c) a facility storing more than 200 pounds of infections waste, or a facility treating or disposing of infectious waste.

(2) The standards of Rule R315-316 do not apply to

(a) any health facility that generates 200 pounds, or less, of infectious waste per month;

(b) any transporter that:

(i) collects and transports 200 pounds or less of infectious waste from all generators in any one load; or

(ii) collects infectious waste only from facilities that generate 200 pounds or less of infectious waste per week; and

(c) infectious waste generated by a household.

R315-316-2. General Operational Requirements.

(1) Every owner and operator of a health facility or a transporter of infectious waste, regulated by Rule R315-316, that generates, transports, stores, treats, or disposes of infectious waste must prepare and maintain on file a management plan for the waste that identifies the:

(a) type and estimated quantity of waste generated or handled;

(b) segregation, packaging, and labeling procedures;

(c) collection, storage, and transportation procedures;

(d) treatment or disposal methods that will be used; and

(e) the person responsible for the management of the infectious waste.

(2) Infectious waste consisting of recognizable human anatomical remains including human fetal remains shall be disposed by incineration or interment in a location appropriate for human remains.

(3) For the purposes of Rule R315-316 "sharps" means any object that may be contaminated with a pathogen and that is capable of cutting or penetrating skin or a packaging material.

R315-316-3. Storage and Containment Requirements.

(1) Infectious waste shall be contained in a manner and location which affords protection from animal intrusion, does not provide a breeding place or a food source for insects or rodents, and minimizes exposure to the public.

(2) Unless all waste is considered infectious and labeled as such, infectious waste shall be segregated by separate containment from other waste during storage.

(3) Except for sharps, infectious waste shall be contained in plastic bags or inside rigid containers. The bags shall be securely tied and the containers shall be securely sealed to prevent leakage or expulsion of solid or liquid wastes during storage or handling.

(4) Sharps shall be contained for storage, transportation, treatment, and disposal in leak-proof, rigid, puncture-resistant containers which are taped closed or tightly lidded to preclude loss of contents.

(5) All infectious waste containers should be red or orange and shall be clearly identified with the international biohazard sign and one of the following labels: "INFECTIOUS WASTE", "BIOMEDICAL WASTE", or "BIOHAZARD".

(6) If other waste is placed in the same container as infectious waste, then the generator must package, label, and mark the container and its entire contents as infectious waste.

(7) A rigid infectious waste container may be reused for infectious or non-infectious waste if it is thoroughly washed and decontaminated each time it is emptied or if the surfaces of the container have been completely protected from contamination by disposable, unpunctured, or undamaged liners, bags, or other devices that are removed with the infectious waste, the surface of the liner has not been damaged or punctured.

(8) Storage and containment areas shall: protect infectious waste from the elements; be ventilated to the outside atmosphere; be accessible only to authorized persons; and be marked with prominent warning signs on, or adjacent to, the exterior doors or gates. The warning signs shall contain the international biohazard sign and shall state: "CAUTION -- INFECTIOUS WASTE STORAGE AREA -- UNAUTHORIZED PERSONS KEEP OUT" and must be easily read during daylight from a distance of 25 feet.

(9) If infectious waste is stored longer than seven days, the infectious waste shall be stored at or below a temperature of 40 degrees Fahrenheit (5 degrees Celsius).

(10) Under no conditions may infectious waste be stored for longer than 60 days.

(11) Compactors, grinders, or similar devices shall not be used to reduce the volume of infectious waste unless the device is contained sufficiently to prevent contamination of the surrounding area.

R315-316-4. Infectious Waste Transportation Requirements.

(1) Infectious waste shall not be transported in the same vehicle with other waste unless the infectious waste is contained in a separate, fully enclosed leak-proof container within the vehicle or unless all of the waste is to be treated as infectious waste in accordance with Rule R315-316.

(2) Persons manually loading or unloading containers of infectious waste onto or from transport vehicles shall:

(a) be trained in the proper use of protective equipment;

(b) have available and easily accessible at all times puncture resistant gloves and shoes, shatterproof glasses, and coveralls; and

(c) shall have face shields and respirators available.

(d) Protective gear that becomes soiled with infectious waste shall be decontaminated or disposed as infectious waste.

(3) Surfaces of transport vehicles that have contacted spilled or leaked infectious waste shall be decontaminated by procedures approved by the Director.

(4) Vehicles transporting infectious waste shall meet all warning requirements of the Department of Transportation related to infectious, biohazardous or biomedical waste.

(5) Each truck, trailer, or semitrailer, or container used for transporting infectious waste shall be designed and constructed, and its contents limited, so that under conditions normally incident to transportation, there shall be no releases of infectious waste to the environment.

(6) Any truck, trailer, semitrailer, or container used for transporting infectious waste shall be free from leaks, and all discharge openings shall be securely closed during transportation.

(7) No person shall transport infectious waste into the state for treatment, storage, or disposal unless the waste is packaged, contained, labeled and transported in the manner required by this section.

(8) All transporter vehicles shall carry a spill containment and cleanup kit and the transport workers shall be trained in spill containment and cleanup procedures.

R315-316-5. Infectious Waste Treatment and Disposal Requirements.

(1) Infectious waste shall be treated or disposed as soon

as possible and shall be treated or disposed at a facility with a permit or other form of approval allowing the facility to treat or dispose infectious waste.

(2)(a) All material that has been rendered non-infectious through an approved treatment method may be handled as non-infectious solid waste, provided it is not otherwise a hazardous waste or a radioactive waste excluded from disposal in a solid waste facility by Rules R315-301 through 320.

(b) Except for incineration and steam sterilization, no treatment method may be used to render materials non-infectious without receiving prior approval from the Director.

(3) Infectious waste may be incinerated in an incinerator provided the incinerator is permitted or approved under Rules R315-301 through 320.

(4) Infectious waste may be sterilized by heating in a steam sterilizer to render the waste non-infectious.

(a) The operator shall have available, and shall certify in writing that he understands, written operating procedures for each steam sterilizer, including time, temperature, pressure, type of waste, type of container, closure of container, pattern of loading, water content, and maximum load quantity.

(b) Infectious waste shall be subjected to sufficient temperature, pressure and time to inactivate Bacillus stearothermophilus spores in the center of the waste load at a 6 Log_{10} reduction or greater.

(c) Unless a steam sterilizer is equipped to continuously monitor and record temperature and pressure during the entire length of each sterilization cycle, each package of infectious waste to be sterilized shall have a temperature-sensitive tape or equivalent test material, such as chemical indicators, attached that will indicate if the sterilization temperature and pressure have been reached. Waste shall not be considered sterilized if the tape or equivalent indicator fails to indicate that a temperature of at least 250 degrees Fahrenheit (121 degrees Celsius) was reached and a pressure of at least 15 psi was maintained during the process.

(d) Each sterilization unit shall be evaluated for effectiveness with spores of B. stearothermophilus at least once each 40 hours of operation or each week, whichever is less frequent.

(e) A written log for each load shall be maintained for each sterilization unit which shall contain at a minimum:

(i) the time of day and the date of each load and the operator's name;

(ii) the amount and type of infectious waste placed in the sterilizer; and

(iii) the temperature, pressure, and duration of treatment.

(5)(a) Alternative treatment methods may be approved on a site-specific basis when the Director finds the proposed alternative treatment method renders the material non-infectious.

(b) The determination shall be based on the results of laboratory tests, submitted by the person proposing the use of the treatment method, meeting the following requirements:

(i) the laboratory tests shall be conducted:

(A) by qualified laboratory personnel;

(B) using recognized microbial techniques;

(C) on samples that have been inoculated with the test organisms, then subjected to the proposed treatment method and processed in an identical way to the treatment process being proposed for approval; and

(ii) the results of the tests must document that the proposed treatment method inactivates:

(A) vegetative bacteria - Staphylococcus aureus (ATCC 6538) or Pseudomonas aeruginosa (ATCC 15442) at a 6 Log_{10} reduction or greater (a 99.9999% reduction or greater of the organism population);

(B) fungi - Candida albicans (ATCC 18804), Penicillium chrysogenum (ATCC 24791), or Aspergillus niger at a 6 Log_{10} reduction or greater;

(C) viruses - Polio 2, Polio 3, or MS-2 Bacteriophage (ATCC15597-B1) at a 6 Log_{10} reduction or greater;

(D) parasites - Cryptosporidium spp. oocysts or Giardia spp. cysts at a 6 Log_{10} reduction or greater;

(E) mycobacteria - Mycobacterium terrae or Mycobacterium phlei at a 6 Log_{10} reduction or greater; and

(B) Bacterial spores - Bacillus stearothermophilus spores (ATCC 7953) or Bacillus subtilis spores (ATCC 19659) at a 4 Log_{10} reduction or greater (a 99.99% reduction or greater of the organism population).

(iii) The Director shall review the submitted materials and reply in writing within 30 days of the receipt of the treatment studies.

(6) Infectious waste may be discharged to a sewage treatment system that provides secondary treatment of waste but only if the waste is liquid or semi-solid and if approved by the operator of the sewage treatment system.

(7) Infectious waste may be disposed in a permitted Class I, II, or V Landfill. Upon entering the landfill, the transporter of infectious waste shall notify the landfill operator that the load contains infectious waste. The landfill operator shall abide by the following procedures in the disposition and covering of infectious waste:

(a) place the infectious waste containers in the working face with sufficient care to avoid breaking them;

(b) completely cover the infectious waste immediately with a minimum of 12 inches of earth or waste material containing no infectious waste; and

(c) not compact the infectious waste until completely covered with 12 inches of earth or waste material containing no infectious waste.

KEY: solid waste management, waste disposal
April 25, 2013 19-6-105
Notice of Continuation January 12, 2018

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-317. Other Processes, Variances, Violations, and Petition for Rule Change.
R315-317-1. Other Processes, Methods, and Equipment.

Processes, methods, and equipment other than those specifically addressed in Rules R315-301 through 320 will be considered on an individual basis by the Director upon submission of evidence of adequacy to meet the minimum standards of performance to protect human health and the environment as required in Section R315-303-2.

R315-317-2. Variances.

(1) Variances will be granted in accordance with Section R315-260-19.

R315-317-3. Violations, Orders, and Hearings.

(1) Whenever the Director or his duly appointed representative determines that any person is in violation of any applicable approved solid waste operation plan or permit or the requirements of Rules R315-301 through 320, the Director may cause written notice of violation to be served upon the alleged violators. The notice shall specify the provisions of the plan, permit, or rules alleged to have been violated and the facts alleged to constitute the violation. The Director may issue an order that necessary corrective action be taken within a reasonable time or may request the attorney general or the county attorney in the county in which the violation takes place to bring a civil action for injunctive relief and enforcement of the permit requirements or the requirements of Rules R315-301 through 320.

(2) Any order issued pursuant to Subsection R315-317-3(1) shall become final unless, within 30 days after the order is issued, the person to whom the order is addressed challenges the order as provided in 19-1-301 and the Utah Administrative Procedures Act, Title 63G, Chapter 4 and shall be governed by UAC R305-7.

R315-317-4. Petition for Rule Change.

(1) The requirements of Section R315-317-4 shall apply to a petition for:

(a) making a new rule;

(b) amending, repealing, or repealing and reenacting and existing rule;

(c) amending a proposed rule;

(d) allowing a proposed rule or change in proposed rule to lapse; or

(e) any combination of the above.

(2) Petition Procedure and Form.

(a) The petition shall be addressed and delivered to the Director.

(b) The petition shall follow the requirements of Sections R15-2-3 through 5.

KEY: solid waste management, waste disposal
April 25, 2013 **19-6-105**
Notice of Continuation January 12, 2018 **19-6-108**
19-6-109
19-6-111
19-6-112

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-318. Permit by Rule.
R315-318-1. General Requirements.

(1) Any facility that disposes of solid waste, including an incinerator, may be permitted by rule upon application to the Director if the Director determines the facility is regulated by Federal or state agencies which have regulations or rules as stringent as, or more stringent than, Rules R315-301 through R315-320.

(2) No permit by rule may be granted to a facility that began receiving waste after July 15, 1993 without application to the Director.

(3) Any facility permitted by rule is not required to obtain a permit as required by Subsection R315-301-5(1) and Subsection R315-310-1(1) but may be required to follow operational practices, as determined by the Director, to minimize risk to human health or the environment.

(4) In no case may a facility operating under a permit by rule approved by the Director conduct disposal operations that are in violation of the Utah Solid and Hazardous Waste Act or Rules R315-301 through R315-320.

R315-318-2. Facilities Permitted by Rule.

(1) The following facilities that began receiving waste prior to July 15, 1993 are permitted by rule:

(a) solid waste disposal and incineration facilities which are required to operate under the conditions of a state or Federal hazardous waste permit or plan approval;

(b) disposal operations or activities which are required to operate under the conditions of a Utah Division of Oil, Gas, and Mining permit or plan approval;

(c) non-commercial underground injection facilities regulated by the Utah Division of Water Quality; and

(d) disposal operations or activities which accept only radioactive waste and are required to operate under the conditions of a Division permit or plan approval.

(2) An underground storage tank, as defined by 40 CFR 280.12 and Subsection R311-200-1(43), that by meeting the requirements specified in 40 CFR 280.71(b) and Section R311-204-3, is closed in place, may be permitted by rule after meeting the following conditions:

(a) the owner of the underground storage tank shall notify the Director of the in place closure; and

(b) the owner of the underground storage tank shall provide documentation to the Director that the requirements of Subsection R315-302-2(6) have been met.

KEY: solid waste management, waste disposal
April 25, 2013 **19-6-104**
Notice of Continuation January 12, 2018 **19-6-105**
19-6-108

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-320. Waste Tire Transporter and Recycler Requirements.
R315-320-1. Authority, Purpose, and Inspection.

(1) The waste tire transporter and recycler requirements are promulgated under the authority of the Waste Tire Recycling Act, Title 19, Chapter 6, and the Solid and Hazardous Waste Act Title 19, Chapter 6, to protect human health; to prevent land, air and water pollution; to conserve the state's natural, economic, and energy resources; and to promote recycling of waste tires.

(2) Except for Subsections R315-320-4(7) and R315-320-5(7), which apply to the application fees for the registration of a waste tire transporter and a waste tire recycler throughout the state, Rule R315-320 does not supersede any ordinance or regulation adopted by the governing body of a political subdivision or local health department if the ordinance or regulation is at least as stringent as Rule R315-320, nor does Rule R315-320 relieve a tire transporter or recycler from the requirement to meet all applicable local ordinances or regulations.

(3) The Director or an authorized representative may enter and inspect the site of a waste tire transporter or a waste tire recycler as specified in Subsection R315-302-2(5)(b).

R315-320-2. Definitions.

Terms used in Rule R315-320 are defined in Sections R315-301-2 and 19-6-803. In addition, for the purpose of Rule R315-320, the following definitions apply:

(1) "Demonstrated market" or "market" means the legal transfer of ownership of material derived from waste tires between a willing seller and a willing buyer meeting the following conditions:

(a) total control of the material derived from waste tires is transferred from the seller to the buyer;

(b) the transfer of ownership and control is an "arms length transaction" between a seller and a buyer who have no other business relationship or responsibility to each other;

(c) the transaction is done under contract which is documented and verified by orders, invoices, and payments; and

(d) the transaction is at a price dictated by current economic conditions.

(e) the possibility or potential of sale does not constitute a demonstrated market.

(2) "Waste tire generator" means a person, an individual, or an entity that may cause waste tires to enter the waste stream. A waste tire generator may include:

(a) a tire dealer, a car dealer, a trucking company, an owner or operator of an auto salvage yard, or other person, individual, or entity that removes or replaces tires on a vehicle; or

(b) a tire dealer, a car dealer, a trucking company, an owner or operator of an auto salvage yard, a waste tire transporter, a waste tire recycler, a waste tire processor, a waste tire storage facility, or a disposal facility that receives waste tires from a person, an individual, or an entity.

R315-320-3. Landfilling of Waste Tires and Material Derived from Waste Tires.

(1) Disposal of waste tires or material derived from waste tires is prohibited except as allowed by Subsection R315-320-3(2) or (3).

(2) Landfilling of Whole Tires. A landfill may not receive whole waste tires for disposal except as follows:

(a) waste tires delivered to a landfill no more than four whole tires at one time by an individual, including a waste tire transporter; or

(b) waste tires from devices moved exclusively by human power; or

(c) waste tires with a rim diameter greater than 24.5 inches.

(3) Landfilling of Material Derived from Waste Tires.

(a) A landfill, which has a permit issued by the Director, may receive material derived from waste tires for disposal.

(b) Except for the beneficial use of material derived from waste tires at a landfill, material derived from waste tires shall be disposed in a separate landfill cell that is designed and constructed, as approved by the Director, to keep the material in a clean and accessible condition so that it can reasonably be retrieved from the cell for future recycling.

(4) Reimbursement for Landfilling Shredded Tires.

(a) The owner or operator of a permitted landfill may apply for reimbursement for landfilling shredded tires as specified in Subsection R315-320-6(1).

(b) To receive the reimbursement, the owner or operator of the landfill must meet the following conditions:

(i) the waste tires shall be shredded;

(ii) the shredded tires shall be stored in a segregated cell or other landfill facility that ensures the shredded tires are in a clean and accessible condition so that they can be reasonably retrieved and recycled at a future time; and

(iii) the design and operation of the landfill cell or other landfill facility has been reviewed and approved by the Director prior to the acceptance of shredded tires.

(5) Violation of Subsection R315-320-3(1), (2), or (3) is subject to enforcement proceedings and a civil penalty as specified in Subsection 19-6-804(4).

R315-320-4. Waste Tire Transporter Requirements.

(1) Each waste tire transporter who transports waste tires within the state of Utah must apply for, receive and maintain a current waste tire transporter registration certificate from the Director.

(2) Each applicant for registration as a waste tire transporter shall complete a waste tire transporter application form provided by the Director and provide the following information:

(a) business name;

(b) address to include:

(i) mailing address; and

(ii) site address if different from mailing address;

(c) telephone number;

(d) list of vehicles used including the following:

(i) description of vehicle;

(ii) license number of vehicle;

(iii) vehicle identification number; and

(iv) name of registered owner;

(e) name of business owner;

(f) name of business operator;

(g) list of sites to which waste tires are to be transported;

(h) liability insurance information as follows:

(i) name of company issuing policy;

(ii) amount of liability insurance coverage; and

(iii) term of policy.

(i) meet the requirements of R315-320-4(3)(b) and (c).

(3) A waste tire transporter shall:

(a) demonstrate financial responsibility for bodily injury and property damage, including bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising form transporting waste tires. The waste tire transporter shall have and maintain liability coverage for sudden or nonsudden accidental occurrences in the amount of $300,000;

(b) for the initial application for a waste tire transporter registration or for any subsequent application for registration

at a site not previously registered, demonstrate to the Director that all local government requirements for a waste tire transporter have been met, including obtaining all necessary permits or approvals where required; and

(c) demonstrate to the Director that the waste tires transported by the transporter are taken to a registered waste tire recycler or that the waste tires are placed in a permitted waste tire storage facility that is in full compliance with the requirements of Rule R315-314. Filling of a complete report as required in Subsection R315-320-4(9) shall constitute compliance with this requirement.

(4) A waste tire transporter shall notify the Director of:

(a) any change in liability insurance coverage within 5 working days of the change; and

(b) any other change in the information provided in Subsection R315-320-4(2) within 20 days of the change.

(5) A registration certificate will be issued to an applicant following the:

(a) completion of the application required by Subsection R315-320-4(2);

(b) presentation of proof of liability coverage as required by Subsection R315-320-4(3); and

(c) payment of the fee as established by the Annual Appropriations Act.

(6) A waste tire transporter registration certificate is not transferable and shall be issued for the term of one year.

(7) If a waste tire transporter is required to be registered by a local government or a local health department:

(a) the waste tire transporter may be assessed an annual registration fee by the local government or the local health department not to exceed to the following schedule:

(i) for one through five trucks, $50; and

(ii) $10 for each additional truck;

(b) the Director shall issue a non-transferable registration certificate upon the applicant meeting the requirements of Subsections R315-320-4(2) and (3) and shall not require the payment of the fee specified in Subsection R315-320-4(5)(c), if the fee allowed in Subsection R315-320-4(7)(a) is paid; and

(c) the registration certificate shall be valid for one year.

(8) Waste tire transporters storing tires in piles must meet the requirements of Rule R315-314.

(9) Reporting Requirements.

(a) Each waste tire transporter shall submit a quarterly activity report to the Director. The activity report shall be submitted on or before the 30th of the month following the end of each quarter.

(b) The activity report shall contain the following information:

(i) the number of waste tires collected at each waste tire generator, including the name, address, and telephone number of the waste tire generator;

(ii) the number of tires shall be listed by the type of tire based on the following:

(A) passenger/light truck tires or tires with a rim diameter of 19.5 inches or less;

(B) truck tires or tires ranging in size from 7.50x20 to 12R24.5; and

(C) other tires such as farm tractor, earth mover, motorcycle, golf cart, ATV, etc.

(iii) the number or tons of waste tires shipped to each waste tire recycler or processor for a waste tire recycler, including the name, address, and telephone number of each recycler or processor;

(iv) the number of tires shipped as used tires to be resold;

(v) the number of waste tires placed in a permitted waste tire storage facility; and

(vi) the number of tires disposed in a permitted landfill, or put to other legal use.

(c) The activity report may be submitted in electronic format.

(10) Revocation of Registration.

(a) The registration of a waste tire transporter may be revoked upon the Director finding that:

(i) the activities of the waste tire transporter that are regulated under Section R315-320-4 have been or are being conducted in a way that endangers human health or the environment;

(ii) the waste tire transporter has made a material misstatement of fact in applying for or obtaining a registration as a waste tire transporter or in the quarterly activity report required by Subsection R315-320-4(9);

(iii) the waste tire transporter has provided a recycler with a material misstatement of fact which the recycler subsequently used as documentation in a request for partial reimbursement under Section 19-6-813;

(iv) the waste tire transporter has violated any provision of the Waste Tire Recycling Act, Title 19 Chapter 6, or any order, approval, or rule issued or adopter under the Act;

(v) the waste tire transporter failed to meet or no longer meets the requirements of Section R315-320-4;

(vi) the waste tire transporter has been convicted under Subsection 19-6-822; or

(vii) the waste tire transporter has had the registration from a local government or a local health department revoked.

(b) Registration will not be revoked for submittal of incomplete information required for registration or a reimbursement request if the error was not a material misstatement.

(c) For purposes of Subsection R315-320-4(10)(a), the statements, actions, or failure to act of a waste tire transporter shall include the statements, actions, or failure to act of any officer, director, agent or employee of the waste tire transporter.

(d) The administrative procedures set forth in Section R305-7 shall govern revocation of registration.

R315-320-5. Waste Tire Recycler Requirements.

(1) Each waste tire recycler requesting the reimbursement allowed by Subsection 19-6-809(1), must apply for, receive, and maintain a current waste tire recycler registration certificate from the Director.

(2) Each applicant for registration as a waste tire recycler shall complete a waste tire recycler application form provided by the Director and provide the following information:

(a) business name;

(b) address to include:

(i) mailing address; and

(ii) site address if different from mailing address;

(c) telephone number;

(d) owner name;

(e) operator name;

(f) description of the recycling process;

(g) proof that the recycling process described in Subsection R315-320-5(2)(f) :

(i) is being conducted at the site; or

(ii) for the initial application for a recycler registration, that the recycler has the equipment in place and the ability to conduct the process at the site;

(h) estimated number of tires to be recycled each year;

(i) liability insurance information as follows:

(i) name of company issuing policy;

(ii) proof of the amount of liability insurance coverage; and

(iii) term of policy; and

(j) meet the requirements of Subsection R315-320-5(3)(b).

(3) A waste tire recycler shall:

(a) demonstrate financial responsibility for bodily injury and property damage, including bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising from storing and recycling waste tires. The waste tire recycler shall have and maintain liability coverage for sudden or nonsudden accidental occurrences in the amount of $300,000; and

(b) for the initial application for a recycler registration or for any subsequent application for registration at a site not previously registered, demonstrate to the Director that all local requirements for a waste tire recycler have been met, including obtaining all necessary permits or approvals where required.

(4) A waste tire recycler shall notify the Director of:

(a) any change in liability insurance coverage within 5 working days of the change; and

(b) any other change in the information provided in Subsection R315-320-5(2) within 20 days of the change.

(5) A registration certificate will be issued to an applicant following the:

(a) completion of the application required by Subsection R315-320-5(2);

(b) presentation of proof of liability coverage as required by Subsection R315-320-5(3); and

(c) payment of the fee as established by the Annual Appropriations Act.

(6) A waste tire recycler registration certificate is not transferable and shall be issued for a term of one year.

(7) If a waste tire recycler is required to be registered by a local government or a local health department:

(a) the waste tire recycler may be assessed an annual registration fee by the local government or local health department according to the following schedule:

(i) if up to 200 tons of waste tires are recycled per day, the fee shall not exceed $300;

(ii) if 201 to 700 tons of waste tires are recycled per day, the fee shall not exceed $400; or

(iii) if over 700 tons of waste tires are recycled per day, the fee shall not exceed $500.

(b) The Director shall issue a non-transferable registration certificate upon the applicant meeting the requirements of Subsections R315-320-5(2) and (3) and shall not require the payment of the fee specified in Subsection R315-320-5(5)(c), if the fee allowed by Subsection R315-320-5(7)(a) is paid.

(c) The registration certificate shall be valid for one year.

(8) Waste tire recyclers must meet the requirements of Rule R315-314 for waste tires stored in piles.

(9) Revocation of Registration.

(a) The registration of a waste tire recycler may be revoked upon the Director finding that:

(i) the activities of the waste tire recycler that are regulated under Section R315-320-5 have been or are being conducted in a way that endangers human health or the environment;

(ii) the waste tire recycler has made a material misstatement of fact in applying for or obtaining a registration as a waste tire recycler;

(iii) the waste tire recycler has made a material misstatement of fact in applying for partial reimbursement under Section 19-6-813;

(iv) the waste tire recycler has violated any provision of the Waste Tire Recycling Act, Title 19 Chapter 6, or any order, approval, or rule issued or adopted under the Act;

(v) the waste tire recycler has failed to meet or no longer meets the requirements of Subsection R315-320-5(1);

(vi) the waste tire recycler has been convicted under Subsection 19-6-822; or

(vii) the waste tire recycler has had the registration from a local government or a local health department revoked.

(b) Registration will not be revoked for submittal of incomplete information required for registration or a reimbursement request if the error was not a material misstatement.

(c) For purposes of Subsection R315-320-5(9)(a), the statements, action, or failure to act of a waste tire recycler shall include the statements, actions, or failure to act of any officer, director, agent, or employee of the waste tire recycler.

(d) The administrative procedures set forth in Section R305-7 shall govern revocation of registration.

R315-320-6. Reimbursement for Recycling Waste Tires.

(1) No partial reimbursement request submitted by a waste tire recycler for the first time, or the first time a specific recycling process or a beneficial use activity is used, shall be approved by a local health department under Section 19-6-813 until the local health department has received from the Director a written certification that the Director has determined the processing of the waste tires is recycling or a beneficial use. If the reimbursement request contains sufficient information, the Director shall make the recycling or beneficial use determination and notify the local health department in writing within 15 days of receiving the request for determination.

(2) No partial reimbursement may be requested or paid for waste tires that were generated in Utah and recycled at an out-of-state location except as allowed by Subsection 19-6-809(1)(a)(ii)(C) or (D).

(3) In addition to any other penalty imposed by law, any person who knowingly or intentionally provides false information required by Section R315-320-5 or Section R315-320-6 shall be ineligible to receive any reimbursement and shall return to the Division of Finance any reimbursement previously received that was obtained through the use of false information.

R315-320-7. Reimbursement for the Removal of an Abandoned Tire Pile or a Tire Pile at a Landfill Owned by a Governmental Entity.

(1) A county or municipality applying for payment for removal of an abandoned tire pile or a tire pile at a county or municipal owned landfill shall meet the requirements of Section 19-6-811.

(2) Determination of Reasonability of a Bid.

(a) The following items shall be submitted to the Director when requesting a determination of reasonability of a bid as specified in Subsections 19-6-811(3) and (4):

(i) a copy of the bid;

(ii) a letter from the local health department stating that the tire pile is abandoned or that the tire pile is at a landfill owned or operated by a governmental entity; and

(iii) a written statement from the county or municipality that the bidding was conducted according to the legal requirements for competitive bidding.

(b) The Director will review the submitted documentation in accordance with Subsection 19-6-811(4) and will inform the county or municipality if the bid is reasonable.

(c) A determination of reasonability of the bid will be made and the county or municipality notified within 30 days of receipt of the request by the Director.

(d) A bid determined to be unreasonable shall not be deemed eligible for reimbursement.

(3) If the Director determines that the bid to remove

waste tires from an abandoned waste tire pile or from a waste tire pile at a landfill owned or operated by a governmental entity is reasonable and that there are sufficient monies in the trust fund to pay the expected reimbursements for the transportation, recycling, or beneficial use under Section 19-6-809 during the next quarter, the Director may authorize a maximum reimbursement of:

(a) 100% of a waste tire transporter's or recycler's costs allowed under Subsection 19-6-811(2) to remove the waste tires from the waste tire pile and deliver the waste tires to a recycler if no waste tires have been added to the waste tire pile after June 30, 2001; or

(b) 60% of a waste tire transporter's or recycler's costs allowed under Subsection 19-6-811(2) to remove the waste tires from the waste tire pile and deliver the waste tires to a recycler if waste tires have been added to the waste tire pile after June 30, 2001.

KEY: solid waste management, waste disposal
April 25, 2013 19-6-105
Notice of Continuation January 12, 2018 19-6-819

R317. Environmental Quality, Water Quality.
R317-9. Administrative Procedures.
R317-9-1. Administrative Procedures.

Administrative proceedings under Utah Water Quality Act are governed by Rule R305-7.

KEY: adjudicative proceedings, administrative proceedings, hearings
August 29, 2011 19-1-103
Notice of Continuation January 24, 2018 19-5-104
63G-4-201 through 63G-4-205
63G-4-503

R317. Environmental Quality, Water Quality.
R317-10. Certification of Wastewater Works Operators.
R317-10-1. Objectives.

The certification program is established in order to assist in protecting the quality of waters in the state of Utah by helping ensure that personnel in charge of wastewater works are trained, experienced, reliable and efficient; protect the public health and the environment; provide for the health and safety of wastewater works operators; and establish standards and methods whereby wastewater works operating personnel can demonstrate competency.

R317-10-2. Scope.

A. These certification rules apply to all wastewater treatment works and sewerage systems, with the exception of Onsite Wastewater Systems and Large Underground Wastewater Disposal Systems as defined in Section R317-1-1. This includes both wastewater collection systems and wastewater treatment systems except underground wastewater disposal systems.

B. Wastewater works operated by political subdivisions must employ certified operators as required in this rule.

C. Operators of wastewater systems not requiring certified operators, such as industrial wastewater treatment systems, may be certified according to provisions of these rules for testing and certification.

R317-10-3. Authority.

The certification program for wastewater works operators is authorized by Section 19-5-104.

R317-10-4. Definitions.

"Board" means the Water Quality Board.

"Category" means type of certification, such as collection or wastewater treatment.

"Certificate" means a certificate issued by the director, with recommendation from the council, stating that the recipient has met the minimum requirements for the specified operator category and grade described in this rule.

"Certified Operator" means a person with the appropriate education and experience, as specified in this rule, who has successfully completed the certification exam or otherwise meets the requirements of this rule.

"Chief Operator" means the supervisor in direct responsible charge of all shift operators for a collection or treatment system.

"Collection System" means the system designed to collect and transport sewage from the beginning points that the collection entity regards as their responsibility to maintain and operate, to the points where the treatment facility assumes responsibility for operation and maintenance.

"Council" means the Utah Wastewater Operator Certification Council, as established in Section R317-10-8.

"Continuing Education Unit (CEU)" means ten contact hours of participation in and successful completion of an organized and approved continuing education experience. College credit in approved courses may be substituted for CEUs on an equivalency basis as defined in this rule.

"Direct Responsible Charge (DRC)" means active on-site charge and performance of operation duties. The person in direct responsible charge is generally a supervisor over wastewater treatment or collection who independently makes decisions affecting all treatment or system processes during normal operation which may affect the quality, safety, and adequacy of treatment of wastewater discharged from the plant. In cases where only one operator is employed, this operator shall be considered to be in direct responsible charge.

"Director" means the Director of the Division of Water Quality.

"Grade Level" means any one of the possible steps within a certification category. There are four levels each for collection and treatment system operators, Grade I being the lowest and Grade IV the highest level. There is one level for lagoon operators.

"Grandfather Certificate" means a certificate issued to an operator, without taking an examination, by virtue of the operator meeting experience and other requirements in Subsection R317-10-11.H of this rule.

"Operating Experience" means experience gained in operating a wastewater treatment plant or collection system which enables the operator to make correct supervisory, operational, safety, and maintenance decisions affecting personnel, water quality, public health, regulatory compliance, and wastewater works operation, efficiency, and longevity.

"Operator" means any person who is directly involved in or may be responsible for operation of any wastewater works or facilities treating wastewater.

"Population Equivalent (P.E.)" means the population which would contribute an equivalent waste load based on the calculation of total pounds of BOD contributed divided by 0.2. This calculation may be used where a significant amount of industrial waste is discharged to a wastewater system.

"Restricted Certificate" means a certificate issued upon passing the certification examination when other requirements have not been met.

"Small Lagoon System" means a Class I wastewater lagoon treatment system with attached collection system serving fewer than 3,500 population equivalent.

"Wastewater Works" means facilities for collecting, pumping, treating, or disposing of sanitary wastewater.

R317-10-5. Wastewater Works Owner Responsibilities.

A. The chief operator and supervisors who make process decisions for the system and are designated to be in direct responsible charge must be certified at no less than the level of the facility classification.

1. All other operators in direct responsible charge must be certified at no less than one grade lower than the facility classification, or at the lowest required facility classification except as provided in Subsection R317-10-5.

2. All facilities must have an operator certified at the facility level on duty or on call.

3. If a facility or system undergoes a re-rating, all operators considered to be in DRC must be certified at the appropriate level within one year after the date of the notification by the division of the new rating.

B. The facility owner must notify the director within 10 working days after the chief operator considered in DRC has terminated employment, or is otherwise unable to perform those duties. The wastewater works must have an appropriately certified operator, or an operator with a restricted certificate at the appropriate level, designated as DRC within one year from the date the vacancy occurred.

C. For newly constructed wastewater works, an appropriately certified operator, or an operator with a restricted certificate at the appropriate level, must be employed within one year after the system is deemed operable.

D. Those required to be certified may operate a system with a restricted certificate of the required grade for up to one year for a Class I or Class II facility, or up to two years for a Class III or Class IV facility, but may not continue to operate a system if they are unable to obtain an unrestricted certificate at the end of the stipulated period.

E. Contracts

1. General. In lieu of employing a DRC operator as part

of its workforce, a facility owner may enter into a contract for DRC services with an operator certified at the appropriate level, or with another public or private entity with operators certified at the appropriate level.

2. Any such contract must be reviewed and approved by the director.

3. If there is a contract, it must include the names of the certified individuals who will be in direct responsible charge of the operation of the facility. At a minimum the contract must contain the following elements:

a. a clear description of the overall duties and responsibilities of the facility owner, and the responsibilities of any contracted DRC operator related to the supervision of the facility's operation, including the frequency of visits and the duties to be performed;

b. identification of the contract period and effective date of the contract;

c. consideration;

d. termination clause; and

e. execution by authorized signatories.

R317-10-6. Facility Classification System.

Treatment plants and collection systems shall be classified in accordance with Table 1.

TABLE 1
FACILITY CLASSIFICATION SYSTEM

FACILITY CATEGORY		CLASS I	II	III	IV
Collection and (1)	Pop. Served	3,500 and less	3,501 to 15,000	15,001 to 50,000	50,001 greater
Treatment Plant (2)	Range of Fac. Points	30 and less	31 to 55	56 to 75	76 and greater
Small Lagoon Systems(3)	Pop. Equiv. Served	3,500 and less			

(1) Simple "in-line" treatment, such as booster pumping, preventive chlorination, or odor control, is considered an integral part of a collection system.

(2) Treatment plants shall be assigned "facility points" in accordance with Table 2 "Wastewater Treatment Plant Classification System".

(3) A combined certificate shall be issued for treatment works and collection system operation.

TABLE 2
WASTEWATER TREATMENT PLANT CLASSIFICATION SYSTEM

Each Unit process should have points assigned only once.

Item	Points
SIZE (2 PT Minimum - 20 PT Maximum)	
Max. Population equivalent (PE) served, peak day(1)	1 - 10
Design flow average day or peak month average, whichever is larger(2)	1 - 10
VARIATION IN RAW WASTE (3)	
Variations do not exceed those normally or typically expected	0
Recurring deviations or excessive variations of 100 - 200% in strength and/or flow	2
Recurring deviations or excessive variations of more than 200% in strength and/or flow	4
Raw wastes subject to toxic waste discharges	6
Acceptance of septage or truck-hauled waste	2
PRELIMINARY TREATMENT	
Plant pumping of main flow	3
Screening, comminution	3
Grit removal	3
Equalization	1
PRIMARY TREATMENT	
Clarifiers	5
Imhoff tanks or similar	5
SECONDARY TREATMENT	
Fixed film reactor	10
Activated sludge	15
Stabilization ponds w/o aeration	5
Stabilization ponds w/aeration	8
TERTIARY TREATMENT	
Polishing ponds for advanced waste treatment	2
Chemical/physical advanced waste treatment w/o secondary	15
Chemical/physical advanced waste treatment following secondary	10
Biological or chemical/biological advanced waste treatment	12
Nitrification by designed extended aeration only	2
Ion exchange for advanced waste treatment	10
Reverse osmosis, electrodialysis and other membrane filtration techniques	15
Advanced waste treatment chemical recovery, carbon regeneration	4
Media Filtration	5
ADDITIONAL TREATMENT PROCESSES	
Chemical additions (2 pts./each for max. of 6 pts.)	2 - 6
Dissolved air flotation (for other than sludge thickening)	8
Intermittent sand filter	2
Recirculating intermittent sand filter	3
Microscreens	5
Generation of oxygen	5
SOLIDS HANDLING	
Solids conditioning	2
Solids thickening (based on technology)	2 - 5
Mechanical dewatering	8
Anaerobic digestion of solids	10
Utilization of digester gas for heating or cogeneration	5
Aerobic digestion of solids	6
Evaporative sludge drying	2
Solids reduction (including incineration, wet oxidation)	12
On-site landfill for solids	2
Solids composting	10
Land application of biosolids by contractor	2
Land application of biosolids under direction of facility operator in DRC	10
DISINFECTION (10 pt. max.)	
Chlorination or ultraviolet irradiation	5
Ozonation	10
EFFLUENT DISCHARGE (10 pt. max.)	
Mechanical Post aeration	2
Direct recycle and reuse	6
Land treatment and disposal (surface or subsurface)	4
INSTRUMENTATION (6 pt. max.)	
Use of SCADA or similar instrumentation systems to provide data with no process operation	0
Use of SCADA or similar instrumentation systems to provide data with limited process operation	2
Use of SCADA or similar instrumentation systems to provide data with moderate process operation	4
Use of SCADA or similar instrumentation systems to provide data with extensive/total process operation	6
LABORATORY CONTROL (15 pt. max)(4)	
Bacteriological/biological (5 pt. max):	
Lab work done outside the plant	0
Membrane filter procedures	3
Use of fermentation tubes or any dilution method (or E. coli determination)	5
Chemical/physical (10 pt. max):	
Lab work done outside the plant	0
Push-button, visual methods for simple tests (i.e. pH, settleable solids)	3
Additional procedures (ie, DO, COD, BOD, gas analysis, titrations, solids volatile content)	5
More advanced determinations (ie, specific constituents; nutrients, total oils,	7

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     phenols)
    Highly sophisticated instrumentation (i.e.,              10
     atomic absorption, gas chromatography)

    (1)  1 point per 10,000 P.E. or part; maximum of 10 points
    (2)  1 point per MGD or part
    (3)  Key concept is frequency and/or intensity of deviation
or excessive variation from normal or typical fluctuations; such
deviation may be in terms of strength, toxicity, shock loads,
inflow and infiltration, with point values ranging from 0 - 6.
    (4)  Key concept is to credit laboratory analyses done
on-site by plant personnel under the direction of the operator
in direct responsible charge with point values ranging
from 0 - 15.
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R317-10-7. Qualifications for Operator Grades.

A. General

1. "Qualification Points" means the accumulated points earned through education and experience required to obtain a certification without restriction. Points allocated for relevant education and experience must meet the minimum requirements for each grade. All substitutions are year for year equivalents. A college "year" is considered 45 quarter hours or 30 semester hours of credit.

2. College-level education must be in a job-related field to be credited. However, partial credit may be given for non-job related education at the discretion of the director with the recommendation of the council.

3. Experience may be substituted for a high school education or a graduate equivalence degree in Grades I and II only.

4. Education may be substituted for experience, as specified for each grade.

B. Grade I - minimum 13 points required.

1. High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. One year of operating experience (one point per year).

3. Experience may be substituted for all or any part of the education requirements, on a one-to-one basis.

4. Education may not be substituted for experience.

C. Grade II - minimum 14 points required.

1. High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. Two years of operating experience (one point per year).

3. Up to one year of additional education may be substituted for an equivalent amount of operating experience.

4. Experience may be substituted for all or any part of the education requirement, on a one-to-one basis.

D. Grade III - minimum 16 points required.

1. High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. Four years of operating experience (one point per year).

3. Up to two years of additional education may be substituted for an equivalent amount of operating experience.

4. Relevant and specialized operator training may be substituted for education requirement, where 25 CEUs is equivalent to one year of education.

E. Grade IV - minimum 18 points required.

1. High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. Six years of operating experience (one point per year).

3. Up to two years of additional education may be substituted for an equivalent amount of operating experience.

4. Relevant and specialized operator training may be substituted for education requirement, where 25 CEUs is equivalent to one year of education.

F. An applicant is also required to meet the requirements of Section 63G-12-104 regarding citizenship or alien identification certification.

R317-10-8. Utah Wastewater Operator Certification Council.

A. Membership.

1. Members of the council shall be appointed by the board.

a. Recommendations for appointments may be made by interested individuals or organizations, including the Department of Environmental Quality, Utah League of Cities and Towns, Water Environment Association of Utah, the Rural Water Association of Utah, and the Civil and Environmental Engineering Departments of universities in Utah.

b. The council shall serve at the discretion of the board to oversee the certification program in an advisory capacity to the director as provided in this rule.

2. The council shall consist of seven voting members and should include representation from interest groups as follows:

a. four members who are operators holding valid certificates, with at least two members being wastewater collection system operators and two members being wastewater treatment system operators;

b. one member with at least three years of management experience in either wastewater treatment, collection, or both, who represents municipal wastewater management;

c. two members who are at large and may represent:

(1) an educational institution in Utah;

(2) those who are currently certified as wastewater operators in the private sector; or

(3) vocational training.

3. At least two non-voting division staff should be in attendance at any council meeting.

4. Voting council members shall serve as follows:

a. terms of office shall be for three years with two members retiring each year, except for the third year when three shall retire;

b. any member who does not attend at least 50 percent of the meetings during a year of service may be replaced at the discretion of the board;

c. appointments to succeed a council member who is unable to serve his full term shall be for the remainder of the unexpired term; and

d. council members may be reappointed, but they do not automatically succeed themselves.

5. A majority of voting members shall constitute a quorum for the purpose of transacting council business.

6. Each year the Council shall elect from its membership a Chair and Vice Chair.

B. Duties of the council shall include:

1. evaluating examinations to ensure compatibility with operator responsibilities, accuracy of content, and composition of individual exam databank items;

2. evaluating certification applications, as requested by the director, and making recommendations for approval or disapproval;

3. assisting in administering examinations at various locations;

4. providing a forum for ongoing evaluation of the certification program and recommending changes to the director;

5. providing advice and recommendations for CEU approval; and

6. preparing an annual report of certification program activities for distribution to the board and other interested

parties.

R317-10-9. Application for Examination.

A. Prior to taking an examination, an applicant must file an application of intention with the director using an approved form, accompanied by:

1. evidence of qualifications for certification in accordance with the provisions of Section R317-10-11;

2. the appropriate fee; and

3. documentation that requirements for certification of citizenship or alien residency are met.

B. Approved forms are available on the internet at www.waterquality.utah.gov.

R317-10-10. Examination.

A. The time and place of examinations to qualify for a certificate shall be determined by the director upon recommendation of the council.

B. All examinations shall be scored and the applicant notified of the results.

C. Examination fees shall be charged according to the approved division fee schedule to cover the costs of testing.

D. All exams shall be administered in a manner that will ensure the integrity of the certification program.

E. Question Comment Forms completed during the testing session should be reviewed by the council and submitted to the test provider.

F. The council shall not review examination questions for the purpose of changing individual examination scores.

1. However, recommendations may be made to improve individual questions in the databank for future examinations.

2. If an error is found in the grading of the exam, credit may be given.

R317-10-11. Certificates.

A. Certificates are issued by the director and shall indicate one of the following classifications:

1. Wastewater Treatment Operator - Grades I through IV.

2. Restricted Wastewater Treatment Operator - Grades I through IV.

3. Wastewater Collection Operator - Grades I through IV.

4. Restricted Wastewater Collection Operator - Grades I through IV.

5. Small Lagoon System Operator - Grade I, Wastewater Treatment and Collection System Combined.

6. Restricted Small Lagoon System Operator - Grade I, Wastewater Treatment and Collection System Combined.

B. General.

1. An applicant shall have the opportunity to take any grade of examination.

2. Replacement certificates may be obtained by submitting a written request with payment of a duplicate certificate fee.

c. Restricted and Unrestricted Certificates.

1. A restricted certificate shall be issued if the applicant passes the exam but review of the application form indicates that the applicant lacks the experience or education required for that particular classification.

2. An unrestricted certificate shall be issued if the applicant passes the exam and the experience and education requirements appropriate to the particular grade are met.

3. Restricted certificates shall become unrestricted when an application is submitted to the division showing that the appropriate experience and education requirements are met and a change in status fee is paid.

4. A restricted certificate does not qualify a person as a certified operator for the classification that the restricted certificate is issued, until the limiting conditions are met, except as provided in Section R317-10-5.

5. Upon application, a restricted certificate may be renewed subject to the conditions in Subsection R317-10-11.D.

D. Certificate Expiration and Renewal.

1. Each certificate shall continue in effect for a period of up to three years, unless revoked prior to that time.

2. The certificate must be renewed each three years by payment of a renewal fee and submittal of evidence of required CEUs.

3. The certificate expires on December 31 of the last year of the certificate.

4. Operators considered in DRC must renew by the expiration date in order for the wastewater works to remain in compliance with this rule.

5. Request for renewal shall be made on forms approved by the division.

6. It shall be the responsibility of the operator to make application for certificate renewal.

E. Reinstatement of Expired Certificate.

1. An expired certificate may be reinstated within one year after expiration by payment of a reinstatement fee with the renewal application when other renewal requirements are also met.

2. After one year, an expired certificate cannot be reinstated, and the operator must retest to become certified.

3. The required CEUs for renewal must be accrued before expiration of the certificate.

4. When unusual circumstances exist, an operator may petition the council to request additional time to meet the requirements.

5. Each petition for exception will be considered on its own merits and recommendation made to the director.

F. CEUs must be earned during the 3 year period prior to the expiration date of the certificate.

G. The director may, after appropriate review by the council, waive examination of applicants holding a valid certificate or license issued in compliance with other certification plans having equivalent standards, and issue a comparable Utah certificate upon payment of a reciprocity fee.

1. If the applicant is working in another state at the time of application, or has relocated to Utah but has not yet obtained employment in the corresponding wastewater field in Utah, a letter of intent to issue a certificate by reciprocity may be provided.

2. When the applicant provides proof of employment in that wastewater field in Utah, and meets all other requirements, a certificate may be issued.

H. In the past, certain individuals received a grandfather certificate.

1. A grandfather certificate was originally issued under authority of Subsection 19-5-104(2)(b)(v). The certificate shall be valid only for the wastewater works at which the operator is employed as that facility existed on March 16, 1991. The certificate may not be transferred to another facility or person. If the facility undergoes an addition of a new process, even if the facility classification does not change, or the collection system has a change in rating, the respective operator must obtain a restricted or unrestricted certificate within one year as specified in this rule.

Grandfather certificates were issued for a period of up to three years and must be renewed prior to the expiration date to remain in effect.

2. Renewal shall include:

a. the payment of a renewal fee;

b. submittal of an application form;

c. evidence of required CEUs; and

d. the applicant must meet the requirements of Section 63G-12-104 regarding citizenship or alien identification certification.

3. The renewal fee shall be the same as that charged for renewal of other wastewater operator certificates.

4. If the grandfather certificate is not renewed prior to the expiration date, the wastewater works may be considered to be out of compliance with this rule. The operator would then be required to pass the appropriate certification examination to become a certified operator.

R317-10-12. CEUs and Approved Training.

A. CEUs shall be required for renewal of each certificate according to the following schedule:

TABLE 3
REQUIRED CEUs FOR RENEWAL OF EACH CERTIFICATE

OPERATOR GRADE	CEUs REQUIRED IN A 3-YEAR PERIOD
Grade I	2
Grade II	2
Grade III	3
Grade IV	3

B. All CEUs for certificate renewal shall be subject to review for approval to ensure that the training is applicable to wastewater works operation.

C. The council shall review training documentation and recommend appropriate CEU or credit assignment to the director for approval.

D. If a person holds multiple categories of wastewater operator certificates, such as treatment and collection, CEU credit may be received for each certificate from one training experience if the training is applicable to each category.

R317-10-13. Recommendations of the Council.

A. Initial recommendations.

1. All decisions of the council shall be in the form of recommendations for action by the director.

2. The council shall notify an applicant of any initial recommendation.

3. Any such applicant may, within 30 days of the date the council's notice was mailed, request reconsideration and an informal hearing before the council by writing to: Wastewater Operator Certification Council, Division of Water Quality, P.O. Box 144870, Salt Lake City, Utah 84114-4870.

4. The council shall notify the person of the time and location for the informal hearing.

B. Following the informal hearing, or the expiration of the period for requesting reconsideration, the council shall notify the director of its final recommendation.

C. A challenge to the director's determination regarding wastewater operator certification may be made as provided in Rule R305-7.

R317-10-14. Certificate Suspension and Revocation Procedures.

A. Grounds for suspending or revoking an operator's certificate may be any of the following:

1. demonstrated disregard for the public health and safety;

2. misrepresentation or falsification of figures, reports, or both, submitted to the State;

3. cheating on a certification exam;

4. falsely obtaining or altering a certificate; or

5. significant negligence, incompetence or misconduct in the performance of duties as an operator.

B. Suspension or revocation may result where it may be shown that circumstances and events relative to the operation of the wastewater works were under the operator's jurisdiction and control. Circumstances beyond the control of an operator shall not be grounds for suspension or revocation action.

C. The council may make recommendations to the director regarding the suspension or revocation of a certificate.

1. Prior to making any such recommendation, the council shall inform the individual in writing of the reasons the council is considering such a recommendation.

2. The council shall provide an opportunity for an informal hearing if requested by the certificate holder in writing within 30 days after the date of the notice.

D. Following an informal hearing, or the expiration of the period for requesting a hearing, the director shall make a final determination, after taking into consideration the final recommendation of the council.

E. A challenge to the director's determination may be made as provided in Rule R305-7.

R317-10-15. Noncompliance.

Noncompliance with these certification rules is a violation under Section 19-5-115 and may be subject to enforcement by the director.

KEY: water pollution, operator certification, wastewater treatment, renewals
January 24, 2018 19-5
Notice of Continuation July 6, 2017

R317. Environmental Quality, Water Quality.
R317-13. Approvals and Permits for a Water Reuse Project.
R317-13-1. Definitions.

1.1 "Director" means the Director Division of Water Quality.

1.2 "Domestic wastewater" means a combination of the liquid or water-carried wastes from structures with installed plumbing facilities and industrial establishments, and any groundwater, surface water, and storm water that is present with the waste.

1.3 "POTW" means a publicly owned treatment works as defined by Utah Code Annotated Section 19-5-102.

1.4 "Public agency" means a public agency as defined by Utah Code Annotated Section 11-13-103 that:

A. owns or operates a POTW;

B. collects and transports domestic wastewater;

C. holds legal title to a water right;

D. is delegated the right to the beneficial use or reuse of water by the legal title holder of the water right;

E. is a water supplier; or

F. sells wholesale or retail water.

1.5 "Reuse water" means domestic wastewater treated to a standard acceptable under rules made by the Water Quality Board under Utah Code Annotated Section 19-5-104.

1.6 "Water reuse project" means a project for the reuse of treated domestic wastewater that requires approval by the Utah Water Quality Board in accordance with Utah Code Annotated Sections 19-5-104 and 73-3c-301, and the state engineer under Section 73-3c-302.

1.7 "Water supplier" means an entity engaged in the delivery of water for municipal purposes.

R317-13-2. Administrative Requirements.

2.1 General. This rule is issued for water reuse projects.

2.2 Authority. This rule is issued pursuant to the provisions of Utah Code Annotated Sections 19-5-104(3)(f) and Utah Code Annotated Section 73-3c-301. Violation of a construction permit, operating permit, or approval including compliance with the conditions thereof, or beginning of construction, or modification without the Director's approval, is subject to the penalties provided in Utah Code Annotated Section 19-5-115.

2.3 Applicability. This rule applies to public agencies that propose a water reuse project.

2.4 Approvals and Permits Required.

A. Approval of Water Reuse Projects. The Director may approve, approve in part, approve with conditions or deny, in writing, an application for the reuse of treated domestic wastewater.

B. Construction Permit Requirements. Water reuse projects involving the construction, installation, modification or operation of any collection system, treatment works, reuse water distribution system or part thereof, or any extension or addition thereto shall obtain a construction permit in accordance with this section and the requirements of R317-3, "Design Requirements for Wastewater Collection, Treatment and Disposal Systems", prior to construction.

C. Operating Permit for a water reuse project. If a water reuse project is approved, the Director shall issue an operating permit consistent with any construction permit and the rules of the Board.

D. Limitations. The issuance of an approval, construction permit, or operating permit does not relieve the public agency of the obligation to obtain other approvals and permits, i.e., ground water discharge permit or permits and approvals from other agencies which may have jurisdiction over the project.

R317-13-3. Reuse Project Application and Technical Requirements.

3.1 Specific application requirements for a water reuse project. If a public agency intends to reuse or provide for the reuse of treated domestic wastewater for any purpose, application shall be made to the Director as required in this rule and R317-3-11, prior to construction or operation of the water reuse project.

3.2 Technical requirements for a water reuse project. The design and operation of any water reuse utilizing treated domestic wastewater shall be in accordance with the applicable requirements of R317-3-11.

KEY: water pollution, waste disposal, industrial waste, effluent standards
February 4, 2008 19-5
Notice of Continuation January 24, 2018

R317. Environmental Quality, Water Quality.
R317-14. Approval of Change in Point of Discharge of POTW.
R317-14-1. Definitions.

1.1 "Director" means the Director of the Division of Water Quality.

1.2 "POTW" means a publicly owned treatment works as defined by Utah Code Annotated Section 19-5-102.

R317-14-2. Administrative Requirements.

2.1 General. This rule is issued for changes in point of discharge from a POTW.

2.2 Authority. This rule is issued pursuant to the provisions of Utah Code Annotated Section 73-3c-304.

2.3 Approval Required. A POTW shall apply to and receive approval from the Director prior to any change in the point of discharge of water from the POTW. The Director shall issue an approval if it is determined that the change is necessary:

A. for treatment purposes;

B. to enhance environmental quality;

C. to protect public health, safety, or welfare; or

D. to comply with rules of the Board or the POTW's discharge permit.

2.4 Before approving any change in the point of discharge from a POTW, the Director shall consult with the State Engineer.

KEY: wastewater, POTW, discharge
February 4, 2008 19-5
Notice of Continuation January 24, 2018

R356. Governor, Criminal and Juvenile Justice (State Commission on).
R356-4. Juvenile Detention or Confinement in Adult Jails and Lockups.
R356-4-1. Authority and Purpose.

(1) This rule is authorized by Sections 62A-7-201 and 63M-7-204(1)(s).

(2) The purpose of this rule is to establish standards and certification procedures for the detention or confinement of juveniles in adult jails and lockups consistent with the requirements of the JJDPA.

R356-4-2. Definitions.

Terms used in this rule include:

(1) "compliance monitor" means the Commission on Criminal and Juvenile Justice's JJDPA Compliance Monitor;

(2) "adult jail" means a locked facility, administered by State, county or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial, including facilities used to hold convicted adult criminal offenders sentenced for less than one year, but not including a court holding facility;

(3) "adult lockup" means a locked facility similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged, not including a court holding facility;

(4) "detain or confine" means to hold, keep, or restrain a person such that the person is not free to leave, or such that a reasonable person would believe that the person is not free to leave, except that a juvenile held by law enforcement solely for the purpose of returning the juvenile to the juvenile's parent or guardian or pending the juvenile's transfer to the custody of a child welfare or social service agency is not detained or confined within the meaning of this definition;

(5) "JJDPA" means the Juvenile Justice and Delinquency Prevention Act found in 42 U.S.C. Sec. 5633;

(6) "juvenile" means a child under the age of 18 years old;

(7) "juvenile facility" means a shelter, detention facility, receiving center, or other youth services center, as defined by Section 62A-7-101;

(8) "low density population" means ten or less people per square mile;

(9) "medical emergency" means any health condition, which requires immediate attention by medical professionals;

(10) "sight and sound separation" means incarcerated juveniles must be located or arranged as to be completely separated from incarcerated adults, including adult inmate trustees, by sight and sound barriers to prohibit:

(a) clear visual contact between incarcerated adults and juveniles within close proximity to each other; and

(b) direct oral communication between incarcerated adults juveniles; and

(11) "status offense" means a violation of the law that would not be a violation of the law but for the age of the offender.

R356-4-3. Detention or Confinement of a Juvenile in an Adult Jail or Lockup.

(1) A juvenile may be detained or confined in an adult jail or lockup only if:

(a) all other options for placement have been exhausted and there is no alternative that will protect the juvenile or the community;

(b) the requirements outlined in Utah Administrative Code R547-13-4 Guidelines for Admission to Secure Youth Detention Facilities are met;

(c) the adult jail or lockup provides for the sight and sound separation of juvenile and adult inmates;

(d) the purpose of the detention or confinement is:

(i) identification;

(ii) interrogation;

(iii) processing;

(iv) notification of juvenile court officials; or

(v) to allow adequate time to arrange the juvenile's:

(A) transfer to a juvenile facility if appropriate ; or

(B) release to a parent or other responsible adult; and

(e) the adult jail or lockup has been certified by the compliance monitor.

(2) A juvenile may not be detained or confined in an adult jail or lockup for any of the following reasons:

(a) ungovernable or runaway behavior;

(b) neglect, abuse, abandonment, dependency, or other situation, which requires protection of the juvenile;

(c) status offenses, not including offenses involving weapons; or

(d) attempted suicide.

(3) This rule does not apply to a juvenile:

(a) charged with a crime under Section 78A-6-701;

(b) bound over to the jurisdiction of the district court as a serious youth offender under Section 78A-6-702; or

(c) certified to stand trial as an adult pursuant to Section 78A-6-703.

(4) A juvenile under the age of 12 may not be detained or confined in an adult jail or lockup unless the juvenile:

(a) is age 10 or 11; and

(b) has been charged with a violent felony violation under Section 76-3-203.5(c).

(5)(a) A juvenile detained or confined in an adult jail or lockup shall be released to the care of a parent or other responsible adult unless:

(i) the immediate welfare or the protection of the community requires the continued detention or confinement of the juvenile; or

(ii) it is unsafe for the juvenile or the public to release the juvenile to the care of the parents, guardian or custodian.

(b) If the juvenile should continue to be detained or confined, the adult jail or lockup shall arrange for the transfer of the juvenile to an appropriate juvenile facility as soon as practicable.

(c) If a juvenile is transferred to a juvenile facility, a report shall be prepared which indicates the reason why the juvenile was not released and detention or confinement was continued.

(6) In addition to any other requirements under this rule, a juvenile may not be detained or confined in an adult jail unless:

(a) the adult jail is located in an area with a low-density population;

(b) the county in which the adult jail is located does not have a juvenile facility that meets the needs of the juvenile; and

(c) the detention is less than 6 hours.

(7) In addition to any other requirements under this rule, a juvenile may not be detained or confined in an adult lockup for more than two hours.

R356-4-4. Standards for Adult Jails and Lockups Where Juveniles Are Detained or Confined.

(1) When a juvenile is detained or confined in an adult jail or lockup, the adult jail or lockup shall:

(a) immediately notify the parents, guardian, or custodian of the juvenile's detention or confinement unless the parents, guardian, or custodian have already been notified; and

(b) arrange for the transfer or release of the juvenile as quickly as possible.

(2) An adult jail or lockup where a juvenile is detained or confined shall meet all applicable state and local:
(a) zoning laws;
(b) safety, fire, and building codes; and
(c) health codes.
(3) An adult jail or lockup shall provide to a juvenile:
(a) access to a toilet and a washbasin with hot and cold running water;
(b) shelter, heat, light, and ventilation that does not otherwise compromise security or enable escape;
(c) access to a drinking fountain; and
(d) basic furnishings, such as chairs or benches.
(4) The number of juveniles in an adult jail or lockup may not exceed the certified capacity for juveniles.
(5) There shall be no viewing devices in an adult jail or lockup, such as peepholes or mirrors, of which the juvenile is not aware.
(6) As long as classification standards are met, juveniles may be detained or confined together in an adult jail or lockup if age, compatibility, dangerousness, and other relevant factors are considered, except juveniles of different genders may not be detained or confined together.
(7) No detainee in an adult jail or lockup, whether juvenile or adult, shall be allowed to have any authority or disciplinary control over, be permitted to supervise, or provide services of any nature to a juvenile.
(8) When a juvenile is detained or confined in an adult jail or lockup, the adult jail or lockup shall:
(a) remove any items from the juvenile that could compromise the juvenile's safety, such as belts, shoelaces, and suspenders, prior to placing a juvenile in an adult jail or lockup;
(b) provide constant on-site supervision of the juvenile through visual monitoring and audio two-way communication;
(c) ensure a certified police officer or staff member who has received training about juveniles is available to provide assistance within 60 seconds should a problem or medical emergency arise with a juvenile;
(d) conduct frequent personal checks on the juvenile at least once every fifteen (15) minutes to maintain communication and prevent the juvenile from experiencing panic or feelings of isolation; and
(e) make a written record of significant incidents and activities of the juvenile.
(9) A staff member of the same gender shall supervise a juvenile's personal hygiene activities or care such as showering, using the toilet, and related activities in an adult jail or holding cell.
(10) An adult staff member of the same gender as the juvenile shall be present when a juvenile is securely detained or confined.
(11)(a) Except in an emergency, a staff member entering a juvenile's sleeping room shall be of the same gender as the juvenile.
(b) If two staff members enter a juvenile's sleeping room, there may be one male and one female staff member.
(c) When an emergency prevents a staff member of the same gender from entering the juvenile's sleeping room, at least two staff members shall be present and a written report shall be completed which indicates why a staff member of same gender was unavailable.
(12)(a) Any physical contact or examination of a juvenile conducted in an adult jail or lockup, such as a strip search, shall be done:
(i) by a staff member of the same gender;
(ii) in private; and
(iii) without camera monitoring.
(b) A strip search of a juvenile may only be performed when the following conditions exist:
(i) the juvenile is believed to be under the influence of alcohol or a controlled substance;
(ii) the juvenile is suspected of a controlled substance or weapons offense; or
(iii) there is reasonable suspicion the juvenile may be concealing contraband that could not be detected by a pat-down search or handheld metal detector.
(c) Body cavity searches are prohibited.
(13) Juveniles may not be subject to corporal or unusual punishment, humiliation, or mental abuse.
(14)(a) Restraints or physical force shall not be used to subdue a juvenile unless it is justifiable self-defense, required for the protection of persons or property, or necessary to prevent escape.
(b) Restraints or physical force may only be used to control juveniles in accordance with the principle of least restrictive action.
(c) Physical force may not be used as punishment.
(d) A written report shall be prepared following any use of force and submitted to the adult jail or lockup administrator.
(15) An adult jail or lockup shall safeguard a juvenile's health and safety by:
(a) making emergency medical services available 24 hours a day;
(b) immediately examining and treating, if appropriate, juveniles injured in an adult jail or lockup;
(c) not accepting juveniles who are unconscious, seriously injured, at risk for suicide, emotionally disturbed, or under the influence of alcohol or controlled substances and are unable to care for themselves, until they have been examined by a qualified medical practitioner or have been taken to a medical facility for appropriate diagnosis and treatment and released back to the adult jail or lockup;
(d) providing training to all staff members to recognize symptoms of mental illness;
(e) recording any medical services provided to a juvenile; and
(f) providing for detoxification of a juvenile in an adult jail or lockup only when there is no community health facility available for detoxification.
(16) An adult jail or lockup shall comply with any applicable informed consent requirements for medical care and shall seek the informed consent of a parent, guardian, or legal custodian unless otherwise ordered by a juvenile court judge or deemed a medical emergency.
(17) If a juvenile is in need of hospitalization, a staff member shall remain with the juvenile if otherwise permitted by medical personnel or until an adult family member or legal guardian arrives to remain with the juvenile.
(18) A juvenile in an adult jail or lockup shall have the same legal and civil rights, including the right to the same number of telephone calls, as an adult inmate held for the same amount of time.
(19) A juvenile's visitors in an adult jail or lockup should be limited to the juvenile's attorney, clergy, and officers of the court unless the juvenile is to be transferred to a juvenile facility in which case an effort shall be made to provide for visitation by the juvenile's parents, guardian, or custodian prior to the transfer.
(20) If a juvenile is detained or confined during daylight hours, the juvenile should be allowed access to reading materials, physical exercise, recreation, radio or television if feasible.
(21) When a juvenile arrives at an adult jail or lockup, a juvenile shall be informed of the steps in the detention process.
(22) Upon admission to an adult jail or lockup, a

referral or intake form must be completed for the juvenile, which includes:

(a) the date and time of the admission and release;

(b) the name, nicknames, and any aliases of the juvenile;

(c) the juvenile's last known address;

(d) information regarding the officer who admitted the juvenile, including the officer's name, title, and law enforcement agency;

(e) the allegations upon which the juvenile is being detained;

(f) the juvenile's gender;

(g) the juvenile's date and place of birth;

(h) the juvenile's race or nationality;

(i) any medical problems of the juvenile;

(j) the juvenile's parents, guardian, or a responsible adult to notify in case of emergency, including addresses and telephone numbers;

(k) any additional remarks, such as any open wounds or sores requiring treatment, evidence of disease or body vermin, or tattoos; and

(l) the juvenile's probation officer or caseworker, if assigned.

(23)(a) When a juvenile is released or transferred from an adult jail or lockup, the adult jail or lockup shall create a release or transfer report, which documents the following information:

(i) the juvenile's physical and emotional condition upon release; and

(ii) whether the juvenile was released from custody or was transferred to a different facility.

(b) If the juvenile was transferred to a juvenile facility, the release or transfer report shall document:

(i) the name of the facility to which the juvenile was transferred; and

(ii) the name and agency of the individual who transferred the juvenile.

(c) If the juvenile was released from custody the release or transfer report shall document:

(i) the name and relationship of the adult assuming the responsibility of the juvenile;

(ii) the form of identification used by the adult assuming responsibility of the juvenile; and

(iii) the signature of the adult assuming responsibility for the juvenile, indicating the adult is:

(A) aware of the juvenile's physical and emotional condition;

(B) understands the reason for detaining or confining the juvenile in custody; and

(C) agrees to take the juvenile to court at a time to be set by the court.

(24) Upon release or transfer of a juvenile from an adult jail or lockup, the adult jail or lockup shall verify:

(a) identity;

(b) the release papers; and

(c) property belonging to the adult jail or lockup or other residents does not leave the jail or holding cell with the juvenile.

(25) A case record shall be securely maintained on each juvenile, which contains:

(a) the initial intake information form;

(b) documentation of why the juvenile was detained or confined in the adult jail or lockup and released or transferred;

(c) a copy of any incident reports;

(d) a record of any of the juvenile's cash or valuables held by the jail or holding cell;

(e) documentation of all visitors' names and the dates of the visit;

(f) documentation of any medical/health care issues or conditions exhibited during the detention;

(g) record of any medical treatment or medications administered while the juvenile was detained or confined;

(h) consent for necessary medical or surgical care, signed by parent, person acting in loco parentis, juvenile court judge, or facility official; and

(i) the final release or transfer report.

R356-4-5. Certification of Adult Jails or Lockups Where Juveniles Are Detained or Confined.

(1) An adult jail or lockup seeking to be certified to detain or confine juveniles shall send a completed JJDPA Facility Certification Application to the compliance monitor.

(2) The compliance monitor shall conduct an on-site visit at any adult jail or lockup, which applies to be certified to detain or confine juveniles.

(3) During the on-site visit, the compliance monitor shall:

(a) review all of the policies and procedures of the adult jail or lockup, which relate to the detention or confinement of juveniles to ensure they meet the requirements of this rule;

(b) tour the adult jail or lockup to ensure compliance with the requirements of this rule; and

(c) meet with all individuals involved in overseeing and completing records related to the detention or confinement of juveniles.

(4) If an adult jail or lockup meets the requirements of this rule, the compliance monitor shall issue a certificate to the adult jail or lockup, which is good for one year.

(5) Once an adult jail or lockup is certified, the adult jail or lockup shall submit a Juvenile Confinement Monthly Report to the compliance monitor at the conclusion of each month, which documents the number of juveniles, detained or confined in the adult jail or lockup during the preceding month and provides information on each juvenile.

(6) Prior to an adult jail or lockup's certification expiring, the compliance monitor shall initiate a recertification visit to the adult jail or lockup.

(7) During a recertification visit, the compliance monitor shall:

(a) review any changes or updates to the policies and procedures of the adult jail or lockup related to the detention or confinement of juveniles;

(b) tour the adult jail or lockup to ensure continued compliance with the requirements of this rule;

(c) meet with all individuals involved in overseeing and completing records for the detention or confinement of juveniles; and

(d) review the adult jail or lockup's Juvenile Confinement Monthly Reports for the past twelve months to ensure compliance with the requirements of this rule.

(8) If an adult jail or lockup meets all of the requirements for recertification, the compliance monitor shall issue a new certificate, which shall be valid for one year.

(9) If the certification of an adult jail or lockup has been expired for more than two years, the adult jail or lockup shall re-initiate the certification process.

KEY: juvenile detention in adult jails; juvenile confinement in adult jails; juvenile detention in lockups; juvenile confinement in lockups

January 2, 2018 **62A-7-201**
63M-7-204

R357. Governor, Economic Development.
R357-16. Utah Outdoor Recreation Infrastructure Grant.
R357-16-1. Authority.

(1) Subsection 63N-9-203 requires the office to make rules establishing the eligibility and reporting criteria for an entity to receive an infrastructure grant.

R357-16-2. Definitions.

(1) Terms in these rules are defined in Utah Code Section 63N-9-102.

R357-16-3. Application Form and Submission Procedure.

(1) The application will be provided by the Office and contain the following content:

(a) General submission instructions;

(b) Grants available to be claimed;

(c) Criteria for qualification of a grant;

(d) Instructions regarding a project description including timeline;

(e) Instructions for providing an outlined budget for total project cost, highlight of funds already procured for the project; and an itemized budget showing planned use of the grant funds being requested;

(f) Instructions for reporting project impacts including community and economic impacts;

(g) The application scoring system;

(h) Any required deadlines, reports, and relevant timelines; and

(i) All required documents and information necessary for verification and approval of the application.

(2) The application shall be created in an electronic form available to the public at business.utah.gov

(3) The application shall also be available in paper form for any person or entity that requests it.

(4) Applications must be submitted to Office of Outdoor Recreation staff on or before the specified deadline in the application.

(5) Staff will review final applications for completeness and the program manager of the Office of Outdoor Recreation will verify that the documentation is complete and that it meets the program criteria as outlined in statute and this rule.

(6) All completed documentations will be reviewed and awardees selected via the criteria and method as outlined in in this rule.

R357-16-4. Eligible Entities.

(1) Grants may be awarded to the following entities within the state of Utah:

(a) Non-profit corporations physically located within the State with a 501(c)(3) status;

(b) Municipalities;

(c) Counties; and

(d) Tribal governments.

(2) The following entities may not receive an infrastructure grant:

(a) a federal government entity;

(b) a state agency; and

(c) a for-profit entity.

R357-16-5. Infrastructure Project Eligibility Criteria.

(1) Budget/Costs/Matching Requirements: The Office will not fund more than 50% of the proposed project's eligible costs. The grant recipient shall provide matching funds having a value equal to or greater than the amount of the infrastructure grant.

(a) The maximum grant request is dependent on available funds and will be outlined in the grant application.

(b) Up to 50% of the grant recipient match may be provided through an in-kind contribution by the grant recipient, if:

(i) approved by the executive director after consultation with the director and the board; and

(ii) the in-kind donation does not include real property.

(c) Matching requirements, eligible and ineligible matching costs, and other matching funding requirements will be provided in the grant application.

(d) At least 75% of the matching funds for the project must be secured in order to apply.

(2) Economic Development or Tourism Endorsement: The infrastructure project shall have an endorsement from the local economic development office and/or local tourism director stating that the project will have the ability to attract growth and retention in the community/area and/or have the potential for increased visitation to the area. Endorsement: The infrastructure project endorsement should be provided in writing at the time of application.

(a) Statement of Responsibility: The applicant must include a Statement of Responsibility from the entity who will maintain the recreational infrastructure in the future. This will be required by the Office as a condition to receiving a grant.

(3) Public Lands: If the project is located on public lands, it must have approval from the appropriate public entity.

(a) The applicant may be required to show approval from the agency that follows the National Environmental Policy Act (NEPA) process as a condition to receiving the grant.

(4) Property Ownership: All projects must be located on land that is owned by or under the control of the applicant or a partner (e.g. local government or conservancy.)

(a) If the project crosses private property, as in the case of a trail, a binding agreement must be reached with the property owners for a minimum of 10 years.

(5) Sensitive Wildlife Areas: Applicant must coordinate with the Utah Division of Wildlife Resources (DWR) to determine if the project is located in a special management area for sensitive species such as the greater sage grouse.

(a) If the project is in or near a Sage Grouse Management Area (SGMA), the project proponent shall coordinate with DWR to make reasonable accommodations to avoid, minimize or mitigate the impacts to greater sage-grouse and their habitats.

(6) infrastructure projects may include but are not limited to:

(a) The establishment, construction, or renovation of trails, trail facilities, and trail infrastructure (e.g. trail kiosk, trail wayfinding signage, trailhead parking, restroom facilities, bridge or tunnel);

(b) The construction of a project for water-related outdoor recreational activities;

(c) The development of a project for wildlife watching opportunities, including bird watching;

(d) The development of a project that provides winter recreation amenities;

(e) the construction or improvement of a community park that has amenities for outdoor recreation;

(f) The construction or improvement of a naturalistic and accessible playground;

(g) the construction of a community owned or sponsored campground; or

(h) The establishment or construction of a community owned outdoor shooting or archery range.

(8) Ineligible Infrastructure projects may include but are not limited to:

(a) A private business such as outdoor service concession, amusement park, tubing park, etc.;

(b) Outdoor education programming;

(c) Outdoor swimming pools;
(d) Golf Courses;
(e) Athletic fields or courts;
(f) Outdoor amphitheaters;
(g) General community wayfinding signage; or
(h) Harbor dredging projects.

R357-16-7. Method and Formula for Determining Grant Recipients.

(1) The Office shall use a weighted scoring system to enable the Utah Outdoor Recreation Grant Advisory Committee (pursuant to 63N-9-204) to analyze and advise on the awarding of grant and grant amounts.

(a) The scoring system shall be made available in the application;

(b) The scoring system will assess and value general categories including:

i. Community need;

ii. Economic impact including the potential to increase area tourism;

iii. Recreation access and value;

iv. Project readiness; and

v.

vi. Location within an underserved population or area.

(2) The Office shall distribute the grant applications among the committee members and ensure that each application will be reviewed and scored by members of the advisory committee.

(3) The Office will use the average of the scores to create a prioritization matrix ranking the applications in ascending order.

(4) Committee Review Procedure

(a) The Office shall convene the advisory committee for a meeting for the purpose of selecting the projects which will be recommended for the review

i. Method and formula for determining grant awards in committee meeting:

A. A prioritization matrix will be utilized to rank the projects

B. All but the lowest ranked projects will receive a review during the meeting of the committee

1. Subject to procedural rules, a member and a second may request a vote to bring a low scored project that was not scheduled for review to receive consideration by the committee

2. Subject to procedural rules, a member and a second may request a full committee vote for recommendation of an award

ii. Prioritization may be given to projects that:

A. Conform to the criteria and eligibility as set forth in the program guide; and

B. can increase visitation; or

C. will serve an underprivileged or underserved community; or

D. will provide geographic parity; or

E. are trails that are "family friendly"or

F. are trail segments that complete trail gap; or

G. will add to connect trails for a larger trail network; or

H. enhance an outdoor recreation amenity that draws tourists; and

I. have coordinated with the local tourism office to market the project as a tourism attraction.

(b) Rules for scoring during Grant scoring meeting

i. No committee member shall vote on a project in which he/she has substantial interest and shall leave the room while the project is being reviewed and voted on.

ii. To aid in the meeting evaluation, a synopsis of each of the projects will be provided and each reviewer will have access to all scored evaluations

(c) In accordance with available funds, the committee will give proposals for funding

(d) The recommendations for grant awards will be forwarded to the executive director who will consult with the director and the Governor's Office of Economic Development board and give final approval.

(e) In the event an awardee's project no long qualifies for the grant, the grant award may be awarded to the highest scored project of the denied applicants.

(f) The office will notify applicants of the funding decision within two weeks of the final decision

i. Winning applicants will be notified of expected contractual requirements

ii. The grant applicants who were unsuccessful in winning a grant award will be notified of the rejection.

A. A copy of the reviewers written comments with redacted names shall be provided to rejected applicants upon request.

R357-16-8. Reporting and Cooperation Requirements.

(1) Grant recipient will cooperate with reasonable requests for site visits during and after completion of the Project.

(2) Grant recipient will provide any additional financial records related to the grant project upon the Office's request. Grant recipient will give a progress report twice yearly until project is completed.

(3) Grant recipient will provide economic development information and supporting documentation of economic development goals achieved at minimum on an annual basis or upon the Office's request.

(a) Such information shall be provided for up to 10 years following completion of the Project.

(4) Grant recipient shall provide a description and an itemized report detailing the expenditure of the grant or the intended expenditure of any grant funds that has not been spent.

(5) Grant recipient shall provide the Office with a final written itemized report when the entire grant is spent.

(6) The reports referenced in (4) and (5) shall be provided at least annually, and no later than 60 days after the grant agreement has expired.

(a) Each report shall include:

i. an accounting of project expenditures; and

ii. assurances that all monies paid to the grant recipient were used for planning, construction, or improvements as describe in the recipient's grant application and grant agreement.

R357-16-9. Appeal of Application Denial.

(1) A denial of an applicant's request for a grant may be appealed by written request pursuant to Utah Code Section 63G-4-201, and in accordance with this rule.

(2) Hearings must be requested within 30 calendar days from the date that the Office sends written notice of its denial of grant.

(3) Failure to submit a timely request for a hearing constitutes a waiver of due process rights. The request must explain why the party is seeking agency relief, and the party must submit the request on the "Request for Hearing/Agency Action" form. The party must mail or email a scanned copy of the form to the address or email address contained on the denial.

(4) The Office considers a hearing request that a recipient sends via mail to be filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, the Office considers the request to be filed on the date that the Office receives it, unless the sender can demonstrate through convincing evidence that it was mailed

before the date of receipt.

(5) The Office shall hold informal adjudicative proceedings in accordance with Utah Code Sections 63G-4-202 and 203. The Office shall notify the petitioner and Office representative of the date, time and place of the hearing at least ten days in advance of the hearing. Continuances of scheduled hearings are not favored, but may be for good cause shown. Failure by any party to appear at the hearing after notice has been given shall be grounds for default and shall waive both the right to contest the allegations and the right to the hearing.

(6) The Petitioner named in the notice of agency action and the Office shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply; however,

(a) Testimony may be taken under oath.

(b) All hearings are open to all parties.

(c) Discovery is prohibited; informal disclosures will be ruled on at the pre-hearing conference.

(d) A respondent shall have access to relevant information contained in the Office's files and to material gathered in the investigation of respondent to the extent permitted by law.

(e) The Office may cause an official record of the hearing to be made, at the Office's expense.

(7) Within a reasonable time, not to exceed 60 days after the close of the informal proceeding, the Office shall issue a signed decision in writing that includes a findings of fact and conclusions of law, and time limits for appeals rights, and administrative or judicial review in accordance with Utah Code Subsection 63G-4-203(i).

KEY: Outdoor Recreation Infrastructure Grant, outdoor recreation, grants
January 17, 2018 63N-9-203

R364. Governor, Criminal and Juvenile Justice (State Commission on).
R364-1. Conflicts of Interest for Indigent Defense Commission Members.
R364-1-1. Authority.

This rule is authorized by Subsection 77-32-804(6).

R364-1-2. Purpose.

The purpose of this rule is to establish standards and procedures to identify and address potential conflicts of interest.

R364-1-3. Definitions.

As used in this rule, "commission" means the Utah Indigent Defense Commission created in Section 77-32-801.

R364-1-4. Identifying a Conflict of Interest.

A commission member has a potential conflict of interest with respect to a matter to be considered by the commission if:

(1) the commission member would be prohibited from participation under Title 67, Chapter 16, the Utah Public Officers' and Employees' Ethics Act;

(2) the commission member's participation constitutes a violation of constitutional due process under the Utah or United States constitutions; or

(3) the matter relates to a financial or personal interest of the commission member or a person or entity closely associated with the commission member.

R364-1-5. Procedures.

(1) A commission member who has a potential conflict of interest with respect to a matter to be heard before the commission shall:

(a) fully disclose the conflict of interest to the commission at any commission meeting where the matter is to be discussed; and

(b) recuse himself or herself from voting on the matter.

(2) This rule does not preclude a commission member from participating in a discussion of the matter in the same manner as other individuals who provide input on the matter.

KEY: conflict of interest, Utah Indigent Defense Commission
January 29, 2018 Title 77, Chapter 32, Part 8

R386. Health, Disease Control and Prevention, Epidemiology.
R386-702. Communicable Disease Rule.
R386-702-1. Purpose Statement.

(1) The Communicable Disease Rule is adopted under authority of Sections 26-1-30, 26-6-3, and 26-23b.

(2) This rule outlines a multidisciplinary approach to communicable and infectious disease control and emphasizes reporting, surveillance, isolation, treatment and epidemiological investigation to identify and control preventable causes of infectious diseases. Reporting requirements and authorizations are specified for communicable and infectious diseases, outbreaks, and unusual occurrence of any disease. Each section has been adopted with the intent of reducing disease morbidity and mortality through the rapid implementation of established practices and procedures.

(3) The successes of medicine and public health dramatically reduced the risk of epidemics and early loss of life due to infectious agents during the twentieth century. However, the emergence of diseases such as Middle Eastern Respiratory Syndrome (MERS), and the rapid spread of diseases such as West Nile virus to the United States from other parts of the world, made possible by advances in transportation, trade, food production, and other factors, highlight the continuing threat to health from infectious diseases. Continual attention to these threats and cooperation among all health care providers, government agencies, and other entities that are partners in protecting the public's health are crucial to maintain and improve the health of the citizens of Utah.

R386-702-2. Definitions.

(1) Terms in this rule defined in Section 26-6-2:
(a) Carrier
(b) Communicable disease
(c) Contact
(d) Epidemic
(e) Infection
(f) Schools
(2) Terms in this rule defined in Section 26-6-6:
(a) Health care provider
(3) Terms in this rule defined in Section 26-21-2:
(a) Assisted living facilities
(b) Nursing care facilities
(4) Terms in this rule defined in Section 26-23b-102:
(a) Bioterrorism
(5) Terms in this rule defined in Section 26-39-102:
(a) Childcare programs
(6) Terms in this rule defined in Section 78B-3-403:
(a) Health care facilities
(7) Terms in this rule defined in Section 62A-15-602:
(a) Mental health facilities
(8) Terms in this rule defined in Section R386-80-2:
(a) Local health department
(9) In addition, for purposes of this rule:

(a) "Blood and plasma center" is defined as a blood bank, blood storage facility, plasma center, hospital, any another facility where blood or blood products are collected, or any facility where blood services are provided.

(b) "Care facilities licensed through the Department of Human Services" is described as any facility licensed through the Utah Department of Human Services, and includes adult day care facilities, adult foster care facilities, crisis respite facilities, domestic violence shelters and treatment programs, foster care homes, mental health treatment programs, residential treatment and day treatment facilities for persons with disabilities, substance abuse treatment programs, and youth treatment programs.

(c) "Case" is defined as any person, living or deceased, identified as having a communicable disease, condition, or syndrome that meets criteria for being reportable under this rule, or that is otherwise under public health investigation.

(d) "Clinic" is defined as any facility where a health care provider practices.

(e) "Condition" is defined as an abnormal state of health that may interfere with a person's regular feelings of wellbeing.

(f) "Correctional facility" is defined as an facility that forcibly confines an individual under the authority of the government, including but not limited to prisons, detention centers, jails, juvenile detention centers.

(g) "Department" is defined as the Utah Department of Health.

(h) "Diagnostic facility" is defined as the facility where the case or suspect case was seen and evaluated by a healthcare provider.

(i) "Dispensary" is defined as an office in a school, hospital, industrial plant, or other organization that dispenses medications or medical supplies.

(j) "Electronic case reporting" is defined as the transmission of clinical, diagnostic, laboratory, and treatment related data from reporting entities to the Department in a structured, computer-readable format that reflects comparable content to HL7 CDA(reg trademark) R2 Implementation Guide: Public Health Case Report, Release 2 - US Realm - the Electronic Initial Case Report (eICR). Electronic Initial Case Reporting is a form of electronic reporting.

(k) "Electronic laboratory reporting" is defined as the transmission of laboratory or health related data from reporting entities to the Department using HL7 ORU-R01 2.3.1 or 2.5.1, LOINC, and SNOMED standard message structure and vocabulary. Electronic laboratory reporting is a form of electronic reporting.

(l) "Electronic reporting" is defined as the transmission of laboratory or health related data from reporting entities to the Department in a structured, computer-readable format that reflects comparable content to HL7 messaging.

(m) "Encounter" is defined as an instance of an individual presenting to a health care facility.

(n) "Event" is defined as any communicable disease, condition, laboratory result, syndrome, outbreak, epidemic, or other public health hazard that meets criteria for being reportable under this rule.

(o) "Good Samaritan" is defined as a person who gives reasonable aid to strangers in grave physical distress.

(p) "Invasive disease" is defined as infection occurring in parts of the body where organisms are not normally present, such as the bloodstream, organs, or the meninges.

(q) "Laboratory" is defined as any facility that receives, refers, or analyzes clinical specimens.

(r) "Manual reporting" is defined as the transmission of laboratory or health related data from reporting entities to the Department using processes that require hand keying for data to be incorporated into Department databases.

(s) "Normally sterile site" is defined as a part of the body where organisms are not normally present, such as the bloodstream, organs, or the meninges.

(t) "Outbreak" is defined as the increased occurrence of any communicable disease, health condition, or syndrome in a community, institution, or region; or two or more cases of a communicable disease, health condition, or syndrome in persons with a common exposure.

(u) "Public health hazard" is defined as the presence of an infectious organism or condition in the environment which endangers the health of a specified population.

(v) "Suspect case" is defined as any person, living or deceased, who a reporting entity, local health department, or

the Department believes might be a case, but for whom it has not been established that the criteria necessary to become a case have been met.

(w) "Syndrome" is defined as a set of signs or symptoms that often occur together.

R386-702-3. Reportable Events.

(1) The Department declares the following events to be of concern to public health and reporting of all instances is required or authorized by Sections 26-6-6 and 26-23b.

(2) Events Reportable by All Entities.

(a) Acute flaccid myelitis;

(b) Adverse event resulting from smallpox vaccination (Vaccinia virus, Orthopox virus);

(c) Anaplasmosis (Anaplasma phagocytophilium);

(d) Anthrax (Bacillus anthracis) or anthrax-like illness caused by Bacillus cereus strains that express anthrax toxin genes;

(e) Antibiotic resistant organisms from any clinical specimen that meet the following criteria:

(i) Resistant to a carbapenem, or with demonstrated carbapenemase, in:

(A) Acinetobacter species,

(B) Enterobacter species,

(C) Escherichia coli, or

(D) Klebsiella species,

(ii) Resistant to vancomycin in:

(A) Staphylococcus aureus (VRSA);

(f) Arbovirus infection, including but not limited to:

(i) Chikungunya virus infection,

(ii) West Nile virus infection, and

(iii) Zika virus infection, including congenital;

(g) Babesiosis (Babesia spp.);

(h) Botulism (Clostridium botulinum);

(i) Brucellosis (Brucella spp.);

(j) Campylobacteriosis (Campylobacter spp.);

(k) Candida auris or Candida haemulonii from any body site;

(l) Chagas disease;

(m) Chancroid (Haemophilus ducreyi);

(n) Chickenpox (Varicella zoster virus, VZV, Human herpesvirus 3, HHV-3);

(o) Chlamydia (Chlamydia trachomatis);

(p) Coccidioidomycosis (Coccidioides spp.), also known as valley fever;

(q) Colorado tick fever (Colorado tick fever virus, Coltivirus spp.), also known as American mountain tick fever;

(r) Cryptosporidiosis (Cryptosporidium spp.);

(s) Cyclosporiasis (Cyclospora spp., including Cyclospora cayetanensis);

(t) Dengue fever (Dengue virus);

(u) Diphtheria (Corynebacterium diphtheriae);

(v) Ehrlichiosis (Ehrlichia spp.);

(w) Encephalitis (bacterial, fungal, parasitic, protozoan, and viral);

(x) Shiga toxin-producing Escherichia coli (STEC) infection;

(y) Giardiasis (Giardia lamblia), also known as beaver fever;

(z) Gonorrhea (Neisseria gonorrhoeae), including sexually transmitted and ophthalmia neonatorum;

(aa) Haemophilus influenzae, invasive disease;

(bb) Hantavirus infection (Sin Nombre virus);

(cc) Hemolytic uremic syndrome, postdiarrheal;

(dd) Hepatitis, viral, including but not limited to:

(i) Hepatitis A,

(ii) Hepatitis B (acute, chronic, and perinatal),

(iii) Hepatitis C (acute, chronic, and perinatal),

(iv) Hepatitis D, and

(v) Hepatitis E;

(ee) Human immunodeficiency virus (HIV) infection, including acquired immune deficiency syndrome (AIDS) diagnosis;

(ff) Influenza virus infection:

(i) Associated with a hospitalization,

(ii) Associated with a death in a person under 18 years of age, or

(iii) Suspected or confirmed to be caused by a non-seasonal influenza strain;

(gg) Legionellosis (Legionella spp.), also known as Legionnaires' disease;

(hh) Leptospirosis (Leptospira spp.);

(ii) Listeriosis (Listeria spp., including Listeria monocytogenes);

(jj) Lyme disease (Borrelia burgdorferi);

(kk) Malaria (Plasmodium spp.);

(ll) Measles (Measles virus), also known as rubeola;

(mm) Meningitis (aseptic, bacterial, fungal, parasitic, protozoan, and viral);

(nn) Meningococcal disease (Neisseria meningitidis), invasive;

(oo) Middle East Respiratory Syndrome (MERS);

(pp) Mumps (Mumps virus);

(qq) Mycobacterial infections, including:

(i) Tuberculosis (Mycobacterium tuberculosis complex),

(ii) Leprosy (Mycobacterium leprae), also known as Hansen's Disease,

(iii) All other mycobacterial infections (Mycobacterium spp.);

(rr) Pertussis (Bordetella pertussis);

(ss) Plague (Yersinia pestis);

(tt) Poliomyelitis (Poliovirus), paralytic and nonparalytic;

(uu) Psittacosis (Chlamydophila psittaci), also known as ornithosis;

(vv) Q fever (Coxiella burnetii);

(ww) Rabies (Rabies virus), human and animal;

(xx) Relapsing fever (Borrelia spp.), tick-borne and louse-borne;

(yy) Rubella (Rubella virus), including congenital syndrome;

(zz) Salmonellosis (Salmonella spp.);

(aaa) Severe acute respiratory syndrome, also known as SARS (SARS coronavirus or SARS-CoV);

(bbb) Shigellosis (Shigella spp.);

(ccc) Smallpox (Variola major and Variola minor);

(ddd) Spotted fever rickettsioses (Rickettsia spp.), including Rocky Mountain spotted fever (Rickettsia rickettsii);

(eee) Streptococcal disease, invasive, due to:

(i) Streptococcus pneumoniae,

(ii) Group A Streptococcus (Streptococcus pyogenes), and

(iii) Group B Streptococcus (Streptococcus agalactiae);

(fff) Syphilis (Treponema pallidum), including:

(i) all stages,

(ii) congenital, and

(iii) syphilitic stillbirths;

(ggg) Tetanus (Clostridium tetani);

(hhh) Toxic shock syndrome, staphylococcal (Staphylococcus aureus) or streptococcal (Streptococcus pyogenes);

(iii) Transmissible spongiform encephalopathies (prion diseases), including Creutzfeldt-Jakob disease;

(jjj) Trichinellosis (Trichinella spp.);

(kkk) Tularemia (Francisella tularensis);

(lll) Typhoid (Salmonella typhi), cases and carriers;

(mmm) Vibriosis (Vibrio spp.), including Cholera

(Vibrio cholerae);

(nnn) Viral hemorrhagic fevers, including but not limited to:

(i) Ebola fever (Ebolavirus spp.),

(ii) Lassa fever (Lassa virus), and

(iii) Marburg fever (Marburg virus);

(ooo) Yellow fever (Yellow fever virus).

(3) Perinatally Transmissible Conditions Reportable by All Entities.

(a) Pregnancy is a reportable event for the following communicable diseases, and reporting is required even if the communicable disease was reported to public health prior to the pregnancy:

(i) Hepatitis B infection;

(ii) Hepatitis C infection;

(iii) HIV infection;

(iv) Listeriosis;

(v) Rubella;

(vi) Syphilis infection; and

(vii) Zika virus infection.

(4) Antibiotic Susceptibility Tests Reportable by All Entities.

(a) Full panel antibiotic susceptibility test results, including minimum inhibitory concentration and results suppressed to the ordering clinician, are reportable when performed on the following organisms:

(i) Candida auris/Candida haemulonii from any body site;

(ii) Mycobacterium tuberculosis;

(iii) Neisseria gonorrhoeae;

(iv) Salmonella species;

(v) Shigella species; and

(vi) Streptococcus pneumoniae.

(vii) Organisms resistant to a carbapenem, or with demonstrated carbapenemase, in:

(A) Acinetobacter species,

(B) Enterobacter species,

(C) Escherichia coli,

(D) Klebsiella species;

(viii) Organisms resistant to vancomycin in:

(A) Staphylococcus aureus (VRSA);

(b) All individual carbapenemase test results (positive, negative, equivocal, indeterminate), including the method used, are reportable when performed on the following organisms:

(i) Resistant to a carbapenem, or with demonstrated carbapenemase, in:

(A) Acinetobacter species,

(B) Enterobacter species,

(C) Escherichia coli, and

(D) Klebsiella species.

(b) Antiviral susceptibility test results; including nucleotide sequencing, genotyping, or phenotypic analysis; are reportable when performed on the following organisms:

(i) Human immunodeficiency virus (HIV).

(5) Unusual Events Reportable by All Entities.

(a) Unusual events include one or more cases or suspect cases of a communicable disease, condition, or syndrome considered:

(i) Rare, unusual, or new to Utah;

(ii) Previously controlled or eradicated;

(iii) Caused by an unidentified or newly identified organism;

(iv) Exposure or infection that may indicate a bioterrorism event with potential transmission to the public; or

(v) Any other infection not explicitly identified in Subsection R386-702-3(2) that public health considers a public health hazard.

(6) Outbreaks, Epidemics, or Unusual Occurrences of Events Reportable by All Entities.

(a) Entities shall report two or more cases or suspect cases, with or without an identified organism, including but not limited to:

(i) Gastrointestinal illnesses;

(ii) Respiratory illnesses;

(iii) Meningitis or encephalitis;

(iv) Infections caused by antimicrobial resistant organisms;

(v) Illnesses with suspected foodborne or waterborne transmission;

(vi) Illnesses with suspected ongoing transmission in any facility;

(vii) Infections that may indicate a bioterrorism event; or

(viii) Any other infections not explicitly identified in Subsection R386-702-3(2) that public health considers a public health hazard.

(b) Entities shall report increases or shifts in pharmaceutical sales that may indicate changes in disease trends; or

(7) Laboratory Results Reportable by Electronic Reporters.

(a) In addition to laboratory results set forth in Subsections R386-702-3(2) through R386-702-3(6), entities reporting electronically shall include the following laboratory results or laboratory results that provide presumptive evidence of the following communicable diseases:

(i) Influenza virus;

(ii) Norovirus infection;

(iii) Pseudomonas aeruginosa, resistant to a carbapenem, or with demonstrated carbapenemase production;

(iv) Staphylococcus aureus from a normally sterile site with methicillin testing performed, reported as either methicillin-susceptible Staphylococcus aureus (MSSA) or methicillin-resistant Staphylococcus aureus (MRSA); and

(v) Streptococcal disease, invasive due to all species.

(b) Entities reporting electronically shall include all laboratory results (positive, negative, equivocal, indeterminate) associated with the following tests or conditions:

(i) CD4+ T-Lymphocyte tests, regardless of known HIV status;

(ii) Chlamydia;

(iii) Clostridium difficile;

(iv) Cytomegalovirus (CMV), congenital (infants less than or equal to 12 months of age);

(v) Gonorrhea;

(vi) Hepatitis A;

(vii) Hepatitis B, including viral loads;

(viii) Hepatitis C, including viral loads;

(ix) HIV, including viral loads and confirmatory tests;

(x) Liver function tests, including ALT, AST, and bilirubin associated with a viral hepatitis case;

(xi) Lyme disease;

(xii) Syphilis;

(xiii) Tuberculosis; and

(xiv) Zika virus.

(c) Entities reporting electronically shall report full panel antibiotic susceptibility test results, including minimum inhibitory concentration and results suppressed to the ordering clinician, are reportable when performed on the following organisms:

(i) Pseudomonas aeruginosa, resistant to a carbapenem, or with demonstrated carbapenemase.

(d) The Department may, by authority granted through Section 26-23b, identify additional reporting criteria when

deemed necessary for the management of outbreaks or identification of exposures.

(e) Non-positive laboratory results reported for the events identified in Subsection R386-702-3(7)(b) will be used for the following purposes as authorized in Utah Health Code Subsections 26-1-30(2)(c), 26-1-30(2)(d), and 26-1-30(2)(f):

(i) To determine when a previously reported case becomes non-infectious;

(ii) To identify newly acquired infections through identification of a seroconversion window; or

(iii) To provide information critical for assignment of a case definition.

(f) Information associated with a non-positive laboratory result will be kept by the Department for a period of 18 months.

(i) At the end of the 18 month period, if the result has not been appended to an existing case, personal identifiers will be stripped and expunged from the result.

(ii) The de-identified result will be added to a de-identified, aggregate dataset.

(iii) The dataset will be kept for use by public health to analyze trends associated with testing patterns and case distribution, and identify and establish prevention and intervention efforts for at-risk populations.

(8) Authorized Reporting of Syndromes and Conditions.

(a) Reporting of encounters for the following syndromes and conditions is authorized by Chapter 26-23b, unless made mandatory by the declaration of a public health emergency:

(i) Respiratory illness, including but not limited to:

(A) Upper or lower respiratory tract infections,

(B) Difficulty breathing, or

(C) Adult respiratory distress syndrome;

(ii) Gastrointestinal illness, including but not limited to:

(A) Vomiting,

(B) Diarrhea, or

(C) Abdominal pain;

(iii) Influenza-like constitutional symptoms or signs;

(iv) Neurologic symptoms or signs indicating the possibility of meningitis, encephalitis, or unexplained acute encephalopathy or delirium;

(v) Rash illness;

(vi) Hemorrhagic illness;

(vii) Botulism-like syndrome;

(viii) Lymphadenitis;

(ix) Sepsis or unexplained shock;

(x) Febrile illness (illness with fever, chills or rigors);

(xi) Nontraumatic coma or sudden death; and

(xii) Other criteria specified by the Department as indicative of disease outbreaks or injurious exposures of uncertain origin.

(b) Reporting of encounters for syndromes and conditions not specified in Subsection R386-702-3(8)(a) is also authorized by Chapter 26-23b, unless made mandatory by the declaration of a public health emergency.

(c) Information included in the reporting of the events identified in Subsection R386-702-3(8)(a) and R386-702-3(8)(b) will be used for the following purposes:

(i) To support early identification and ruling out of public health threats, disasters, outbreaks, suspected incidents, and acts of bioterrorism;

(ii) To assist in characterizing population groups at greatest risk for disease or injury;

(iii) To support assessment of the severity and magnitude of possible threats; or

(iv) To satisfy syndromic surveillance objectives of the Federal Centers for Medicaid and Medicare Meaningful Use incentive program.

(9) Reporting Exceptions

(a) A university or hospital that conducts research studies exempt from reporting AIDS and HIV infection under Section 26-6-3.5 shall seek written approval of reporting exemption from the Department institutional review board prior to the study commencement.

(b) The university or hospital shall submit the following to the HIV Epidemiologist within 30 days of Department institutional review board approval:

(i) A summary of the research protocol, including funding sources and justification for requiring anonymity; and

(ii) Written approval from the Department institutional review board.

(c) The university or hospital shall submit a report that includes all of the indicators specified in Subsection 26-6-3.5(4)(a) to the HIV Epidemiologist annually during an ongoing research study.

(d) The university or hospital shall submit a final report that includes all of the indicators specified in Subsection 26-6-3.5(4)(a) to the HIV Epidemiologist within 30 days of the conclusion of the research study.

(e) Documents can be submitted to the HIV Epidemiologist by fax at (801) 538-9923 or by mail to 288 North 1460 West Salt Lake City, Utah 84116.

R386-702-4. Entities Required to Report.

(1) Section 26-6-6 lists those entities required to report cases or suspect cases of the reportable events set forth in Section R386-702-3. This includes:

(a) Health care providers, as defined in Section 78B-3-403;

(b) Health care facilities, as defined in Section 78B-3-403;

(c) Health care facilities operated by the federal government;

(d) Mental health facilities, as defined in Section 62A-15-602;

(e) Care facilities licensed through the Department of Human Services;

(f) Nursing care facilities and assisted living facilities, as defined in Section 26-21-2;

(g) Dispensaries;

(h) Clinics;

(i) Laboratories;

(j) Schools, as defined in Section 26-6-2;

(k) Childcare programs, as defined in Section 26-39-102; and

(l) Any individual with a knowledge of others who have a communicable disease.

(2) In addition, the following entities are required to report cases or suspect cases of the reportable events set forth in Section R386-702-3:

(a) Blood and plasma donation centers; and

(b) Correctional facilities

(3) When more than one entity is involved in the processing of a clinical specimen (receiving, forwarding, or analyzing); or the diagnosis, treatment, or care of a case or suspect case; all entities involved are required to report; even when diagnosis or testing is done outside of Utah.

(4) Health care entities may designate a single person or group of persons to report the events identified in Section R386-702-3 to public health on behalf of their health care providers or medical laboratories, as long as reporting complies with all requirements in this rule.

R386-702-5. Mandatory Submission of Clinical Material.

(1) Laboratories shall submit clinical material from all cases identified with organisms listed in Subsection R386-702-5(3) to the Utah Department of Health, Utah Public Health Laboratory (UPHL) within three working days of identification.

(a) Clinical material is defined as:
(i) A clinical isolate containing the organism for which submission of material is required; or
(ii) If an isolate is not available, material containing the organism for which submission of material is required, in the following order of preference:
(A) a patient specimen,
(B) nucleic acid, or
(C) other laboratory material.
(2) Laboratories submitting clinical material from cases identified with organisms designated by UPHL as potential bioterrorism agents shall first notify UPHL via telephone immediately.
(a) UPHL can be contacted during business hours at (801) 965-2400, or after hours at (801) 560-6586, of all bioterrorism agents that are being submitted.
(3) Organisms mandated for standard clinical submission include:
(a) Antibiotic resistant organisms from any clinical specimen that meet the following criteria:
(i) Resistant to a carbapenem, or with demonstrated carbapenemase, in:
(A) Acinetobacter species,
(B) Enterobacter species,
(C) Escherichia coli, or
(D) Klebsiella species,
(E) Pseudomonas aeruginosa,
(ii) Resistant to vancomycin in:
(A) Staphylococcus aureus (VRSA);
(b) Campylobacter species;
(c) Candida auris or Candida haemulonii from any body site;
(d) Corynebacterium diphtheriae;
(e) Shiga toxin-producing Escherichia coli (STEC), including enrichment and/or MacConkey broths that tested positive by any method for Shiga toxin;
(f) Haemophilus influenzae, from normally sterile sites;
(g) Influenza A virus, unsubtypeable;
(h) Influenza virus (hospitalized cases only);
(i) Legionella species;
(j) Listeria monocytogenes;
(k) Measles (rubeola) virus;
(l) Mycobacterium tuberculosis complex;
(m) Neisseria meningitidis, from normally sterile sites;
(n) Salmonella species;
(o) Shigella species;
(p) Vibrio species;
(q) West Nile virus;
(r) Yersinia species;
(s) Zika virus; and
(t) Any organism implicated in an outbreak when instructed by authorized local or state health department personnel.
(4) Organisms mandated for bioterrorism clinical submission include:
(a) Bacillus anthracis;
(b) Brucella species;
(c) Clostridium botulinum;
(d) Francisella tularensis; and
(e) Yersinia pestis.
(5) Submission of clinical material does not replace the requirement for laboratories to report the event to public health as defined in Sections R386-702-6 and R386-702-7.
(6) For additional information on this process, contact UPHL at (801) 965-2400.

R386-702-6. Reporting Criteria.
(1) Manual Reporting
(a) Reporting Timeframes
(i) Entities shall report immediately reportable events by telephone as soon as possible, but no later than 24 hours after identification. Events designated as immediately reportable by the Department include cases and suspect cases of:
(A) Anthrax or anthrax-like illness;
(B) Botulism, excluding infant botulism;
(C) Cholera;
(D) Diphtheria;
(E) Haemophilus influenzae, invasive disease;
(F) Hepatitis A;
(G) Influenza infection suspected or confirmed to be caused by a non-seasonal influenza strain;
(H) Measles;
(I) Meningococcal disease, invasive;
(J) Middle East Respiratory Syndrome (MERS);
(K) Plague;
(L) Poliovirus, paralytic and nonparalytic;
(M) Rabies, human and animal;
(N) Rubella, excluding congenital syndrome;
(O) Severe acute respiratory syndrome (SARS);
(P) Smallpox;
(Q) Staphylococcus aureus from any clinical specimen that is or intermediate resistant to vancomycin;
(R) Transmissible spongiform encephalopathies (prion diseases), including Creutzfeldt-Jakob disease;
(S) Tuberculosis;
(T) Tularemia;
(U) Typhoid, cases and carriers;
(V) Viral hemorrhagic fevers;
(W) Yellow fever; or
(X) Any event described in Subsections R386-702-3(5) or R386-702-3(6).
(ii) Entities shall report all events in Subsections R386-702-3(2) through R386-702-3(6) not required to be reported immediately within three working days from the time of identification.
(b) Methods for Reporting
(i) Entities reporting manually shall send reports to either a local health department or the Department by phone, secured fax, secured email, or mail.
(ii) Contact information for the Department is as follows:
(A) Phone: (801) 538-6191 during business hours, or 888-EPI-UTAH (888-374-8824) after hours;
(B) Secured fax: (801) 538-9923;
(C) Secured email: reporting@utah.gov (contact the Department at (801) 538-6191 for information on this option); and
(D) Mail: 288 North 1460 West Salt Lake City, Utah 84116.
(iii) A confidential morbidity report form is available at: http://health.utah.gov/epi/reporting/.
(iv) The Department incorporates by reference version 2.0 of the Utah Reporting Specifications for Communicable Diseases, which identifies individual laboratory tests that shall be reported to the Department by manual reporting entities.
(2) Electronic Reporting
(a) Reporting Timeframes
(i) All entities that report electronically must report laboratory results within 24 hours of finalization.
(A) Entities can choose to report in real-time (as each report is released) or batch reports.
(B) Entities reporting electronically must report preliminary positive results for the immediately reportable events specified in Subsection R386-702-6(1)(a)(i).
(b) Methods for Reporting
(i) All laboratories that identify cases or suspect cases shall report to the Department through electronic laboratory

reporting, in a manner approved by the Department. Reportable events shall be identified by automated computer algorithms.

(A) Laboratories may substitute electronic reporting if electronic laboratory reporting is not available, with permission from the Department, and in a manner approved by the Department.

(B) Hospitals reporting electronically shall use HL7 2.5.1 message structure, and standard LOINC and SNOMED terminology in accordance with Meaningful Use regulations.

(C) Laboratories reporting electronically shall use HL7 2.3.1 or 2.5.1 message structure, and appropriate LOINC codes designating the test performed.

(D) Entities reporting electronically shall submit all local vocabulary codes with translations to the Division of Disease Control and Prevention Informatics Program, if applicable.

(E) The Department incorporates by reference version 1.1 of the Utah Electronic Laboratory Reporting Specifications for Communicable Diseases, which identifies individual laboratory tests that shall be reported to the Department by electronic reporting entities.

(F) For additional information on this process, refer to https://health.utah.gov/phaccess/public/elr/ or contact the Division of Disease Control and Prevention Informatics Program by phone (801-538-6191) or email (elr@utah.gov).

(ii) Electronic case reporting is an authorized method of reporting to the Department. For additional information on this process, contact the Division of Disease Control and Prevention Informatics Program by phone (801-538-6191) or email (elr@utah.gov).

(3) Syndromic Reporting

(a) Reporting Timeframes

(i) Entities reporting syndromes or conditions identified in Subsection R386-702-3(8) shall report as soon as practicable using a schedule approved by the Department.

(b) Methods for Reporting

(i) For information on reporting syndromic data, refer to https://health.utah.gov/phaccess/public/SS/ or contact the Division of Disease Control and Prevention Informatics Program by phone (801-538-6191) or email (elr@utah.gov).

R386-702-7. Required Information.

(1) Entities shall include as much of the following information as is known when reporting events specified in Subsections R386-702-3(2) through R386-702-3(6) to public health:

(a) Patient information:

(i) Full name;

(ii) Date of birth;

(iii) Address, including street address, city, state, and zip code;

(iv) Telephone number;

(v) Gender;

(vi) Race and ethnicity;

(vii) Date of onset;

(viii) Hospitalization status and date of admission; and

(ix) Pregnancy status and estimated due date.

(b) Diagnostic information:

(i) Name of the diagnostic facility;

(ii) Address, including street address, city, state, and zip code; of the diagnostic facility;

(iii) Telephone number of the diagnostic facility;

(iv) Full name of the ordering or diagnosing health care provider;

(v) Address, including street address, city, state, and zip code; of the ordering or diagnosing health care provider; and

(vi) Telephone number of the ordering or diagnosing health care provider.

(c) Reporter information:

(i) Full name of the person reporting;

(ii) Name of the facility reporting; and

(iii) Telephone number of the person or facility reporting.

(d) Laboratory testing information:

(i) Name of the laboratory performing the test;

(ii) The laboratory's name for, or description of, the test;

(iii) Specimen source;

(iv) Specimen collection date;

(v) Testing results;

(vi) Test reference range; and

(vii) Test status (e.g. preliminary, final, amended and/or corrected).

(2) Entities shall submit reports that are clearly legible and do not contain any internal codes or abbreviations to the Department.

(3) Entities ordering a laboratory test identified in the Utah Electronic Laboratory Reporting Specifications for Communicable Diseases shall provide the performing laboratory with the patient's address, so that the performing laboratory can report results to the appropriate public health agency.

(a) If the patient's address is not known by the ordering entity, the ordering entity shall provide the performing laboratory with the name and address of the diagnostic facility.

(4) Entities shall reference http://health.utah.gov/epi/reporting, or contacting the Department at (801) 538-6191, for additional reporting specifications, including technical documents, reporting forms, and protocols.

(5) Full reporting of all relevant patient information is authorized when reporting events listed in Subsection R386-702-3(8) to public health.

(a) Entities shall include in reports at least the following information, if known:

(i) Name of the facility;

(ii) A patient identifier;

(iii) Date of visit;

(iv) Time of visit;

(v) Patient's age;

(vi) Patient's gender;

(vii) Zip code of patient's residence;

(viii) Chief complaint(s), reason for visit, and/or diagnosis; and

(ix) Whether the patient was admitted to the hospital.

R386-702-8. Confidentiality of Reports.

(1) All reports required by this rule are confidential and are not open to public inspection. All information collected pursuant to this rule shall not be released or made public, except as provided by Section 26-6-27. Penalties for violation of confidentiality are prescribed in Section 26-6-29.

(2) Nothing in this rule precludes the discussion of case information with an attending clinician or public health workers.

(3) Good Samaritans

(a) The Department or local health department shall disclose communicable disease-related information regarding the person who was assisted to the medical provider of a Good Samaritan when that medical provider submits a request to the Department or local health department. The request must include:

(i) Information regarding the occurrence of the accident, fire, or other life-threatening emergency;

(ii) A description of the exposure risk to the Good Samaritan; and

(iii) Contact information for the Good Samaritan and

their medical provider.

(b) The Department or local health department will ensure that the disclosed information:

(i) Includes enough detail to allow for appropriate education and follow-up to the Good Samaritan; and

(ii) Ensures confidentiality is maintained for the person who was aided.

(c) No identifying information will be shared with the Good Samaritan or their medical provider regarding the person who was assisted. The Good Samaritan shall receive written information warning them that information regarding the person who was assisted is protected by state law.

R386-702-9. Non-Compliance with Reporting Regulations.

(1) Any person who violates any provision of Section R386-702 may be assessed a penalty as provided in Section 26-23-6.

(a) Willful non-compliance may result in the Department working with other agencies to incur penalties which may include loss of accreditation or licensure.

(2) Records maintained by reporting entities are subject to review by Department personnel to assure the completeness and accuracy of reporting.

(3) If public health conducts a surveillance project, such as assessing the completeness of case finding or assessing another measure of data quality, the Department may, at its discretion, waive any penalties for participating entities if cases are found that were not originally reported for whatever reason.

R386-702-10. Information Necessary for Public Health Investigation and Surveillance.

(1) Reporting entities shall provide the Department or local health department with any records or other materials requested by public health that are necessary to conduct a thorough investigation.

(a) This includes, but is not limited to, medical records, additional laboratory testing results, treatment and vaccination history, clinical material, or contact information for cases, suspect cases, or persons potentially exposed.

(b) The Department or local health department shall be granted on-site access to a facility, when such access is critical to a public health investigation.

R386-702-11. General Measures for the Control of Communicable Diseases.

(1) The local health department shall maintain all reportable disease records as needed to enforce Chapter 6 of the Health Code and this rule, or as requested by the Utah Department of Health.

(2) General Control Measures for Reportable Diseases.

(a) The local health department shall, when an unusual or rare disease occurs in any part of the state or when any disease becomes so prevalent as to endanger the state as a whole, contact the Bureau of Epidemiology, Utah Department of Health for assistance, and shall cooperate with the representatives of the Utah Department of Health.

(b) The local health department shall investigate and control the causes of epidemic, infectious, communicable, and other disease affecting the public health. The local health department shall also provide for the detection, reporting, prevention, and control of communicable, infectious, and acute diseases that are dangerous or important or that may affect the public health. The local health department may require physical examination and measures to be performed as necessary to protect the health of others.

(c) If, in the opinion of the local health officer it is necessary or advisable to protect the public's health that any person shall be kept from contact with the public, the local health officer shall establish, maintain and enforce involuntary treatment, isolation and quarantine as provided by Section 26-6-4. Control measures shall be specific to the known or suspected disease agent. Guidance is available from the Bureau of Epidemiology, Utah Department of Health or official reference listed in R386-702-18.

(3) Prevention of the Spread of Disease From a Case.

The local health department shall take action and measures as may be necessary within the provisions of Section 26-6-4; Title 26, Chapter 6b; and this rule, to prevent the spread of any communicable disease, infectious agent, or any other condition which poses a public health hazard. Action shall be initiated upon discovery of a case or upon receipt of notification or report of any disease.

(4) Prevention of the Spread of Disease or Other Public Health Hazard.

A case, suspected case, carrier, contact, other person, or entity (e.g. facility, hotel, organization) shall, upon request of a public health authority, promptly cooperate during:

(a) An investigation of the circumstances or cause of a case, suspected case, outbreak, or suspected outbreak.

(b) The carrying out of measures for prevention, suppression, and control of a public health hazard, including, but not limited to, procedures of restriction, isolation, and quarantine.

(5) Public Food Handlers.

A person known to be infected with a communicable disease that can be transmitted by food or drink products, or who is suspected of being infected with such a disease, may not engage in the commercial handling of food or drink products, or be employed on any premises handling those types of products, unless those products are packaged off-site and remain in a closed container until purchased for consumption, until the person is determined by the local health department to be free of communicable disease, or incapable of transmitting the infection.

(6) Communicable Diseases in Places Where Food or Drink Products are Handled or Processed.

If a case, carrier, or suspected case of a disease that can be conveyed by food or drink products is found at any place where food or drink products are handled or offered for sale, or if a disease is found or suspected to have been transmitted by these food or drink products, the local health department may immediately prohibit the sale, or removal of drink and all other food products from the premises. Sale or distribution of food or drink products from the premises may be resumed when measures have been taken to eliminate the threat to health from the product and its processing as prescribed by R392-100.

(7) Request for State Assistance.

If a local health department finds it is not able to completely comply with this rule, the local health officer or his representative shall request the assistance of the Utah Department of Health. In such circumstances, the local health department shall provide all required information to the Bureau of Epidemiology. If the local health officer fails to comply with the provisions of this rule, the Utah Department of Health shall take action necessary to enforce this rule.

(8) Approved Laboratories.

Laboratory analyses that are necessary to identify the causative agents of reportable diseases or to determine adequacy of treatment of patients with a disease shall be ordered by the physician or other health care provider to be performed in or referred to a laboratory holding a valid certificate under the Clinical Laboratory Improvement Amendments of 1988.

R386-702-12. Special Measures for Control of Rabies.

(1) Rationale of Treatment.

A physician must evaluate individually each exposure to possible rabies infection. The physician shall also consult with local or state public health officials if questions arise about the need for rabies prophylaxis.

(2) Management of Biting Animals.

(a) A healthy dog, cat, or ferret that bites a person shall be confined and observed at least daily for ten days from the date of bite, regardless of vaccination status, as specified by local animal control ordinances. It is recommended that rabies vaccine not be administered during the observation period. Such animals shall be evaluated by a veterinarian at the first sign of illness during confinement. A veterinarian or animal control officer shall immediately report any illness in the animal to the local health department. If signs suggestive of rabies develop, a veterinarian or animal control officer shall direct that the animal be euthanized, its head removed, and the head shipped under refrigeration, not frozen, for examination of the brain by a laboratory approved by the Utah Department of Health.

(b) If the dog, cat, or ferret shows no signs of rabies or illness during the ten day period, the veterinarian or animal control officer shall direct that the unvaccinated animal be vaccinated against rabies at the owner's expense before release to the owner. If a veterinarian is not available, the animal may be released, but the owner shall have the animal vaccinated within 72 hours of release. If the dog, cat, or ferret was appropriately vaccinated against rabies before the incident, the animal may be released from confinement after the 10-day observation period with no further restrictions.

(c) Any stray or unwanted dog, cat, or ferret that bites a person may be euthanized immediately by a veterinarian or animal control officer, if permitted by local ordinance, and the head submitted, as described in R386-702-12(2)(a), for rabies examination. If the brain is negative by fluorescent-antibody examination for rabies, one can assume that the saliva contained no virus, and the person bitten need not be treated.

(d) Wild animals include raccoons, skunks, coyotes, foxes, bats, the offspring of wild animals crossbred to domestic dogs and cats, and any carnivorous animal other than a domestic dog, cat, or ferret.

(e) Signs of rabies in wild animals cannot be interpreted reliably. If a wild animal bites or scratches a person, the person or attending medical personnel shall notify an animal control or law enforcement officer. A veterinarian, animal control officer or representative of the Division of Wildlife Resources shall kill the animal at once, without unnecessary damage to the head, and submit the brain, as described in R386-702-12(2)(a), for examination for evidence of rabies. If the brain is negative by fluorescent-antibody examination for rabies, one can assume that the saliva contained no virus, and the person bitten need not be treated.

(f) Rabbits, opossums, squirrels, chipmunks, rats, and mice are rarely infected and their bites rarely, if ever, call for rabies prophylaxis or testing. Unusual exposures to any animal should be reported to the local health department or the Bureau of Epidemiology, Utah Department of Health.

(g) When rare, valuable, captive wild animals maintained in zoological parks approved by the United States Department of Agriculture or research institutions, as defined by Section 26-26-1, bite or scratch a human, the Bureau of Epidemiology, Utah Department of Health shall be notified. The provisions of subsection R386-702-12(2)(e) may be waived by the Bureau of Epidemiology, Utah Department of Health if zoological park operators or research institution managers can demonstrate that the following rabies control measures are established:

(i) Employees who work with the animal have received preexposure rabies immunization.

(ii) The person bitten by the animal voluntarily agrees to accept postexposure rabies immunization provided by the zoological park or research facility.

(iii) The director of the zoological park or research facility shall direct that the biting animal be held in complete quarantine for a minimum of four months for dogs and cats, and six months for ferrets. Quarantine requires that the animal be prohibited from direct contact with other animals or humans.

(h) Any animal bitten or scratched by a wild, carnivorous animal or a bat that is not available for testing shall be regarded as having been exposed to rabies. The animal shall be placed in a strict quarantine for four months for dogs and cats, or six months for ferrets.

(i) For maximum protection of the public health, unvaccinated dogs, cats, and ferrets bitten or scratched by a confirmed or suspected rabid animal shall be euthanized immediately by a veterinarian or animal control officer. If the owner is unwilling to have the animal euthanized, the local health officer shall order that the animal be held in strict isolation in a municipal or county animal shelter or a veterinary medical facility approved by the local health department, at the owner's expense, for at least four months for dogs and cats, and six months for ferrets. The animal shall be vaccinated one month before being released. If any illness suggestive of rabies develops in the animal, the veterinarian or animal control officer shall immediately report the illness to the local health department and the veterinarian or animal control officer shall direct that the animal be euthanized and the head shall be handled as described in subsection R386-702-12(2)(a).

(j) Dogs, cats, and ferrets that are currently vaccinated and are bitten by rabid animals, shall be revaccinated immediately by a veterinarian and confined and observed by the animal's owner for 45 days. If any illness suggestive of rabies develops in the animal, the owner shall report immediately to the local health department and the animal shall be euthanized by a veterinarian or animal control officer and the head shall be handled as described in subsection R386-702-12(2)(a).

(k) Livestock exposed to a rabid animal and currently vaccinated with a vaccine approved by the United States Department of Agriculture for that species shall be revaccinated immediately by a veterinarian and observed by the owner for 45 days. Unvaccinated livestock shall be slaughtered immediately. If the owner is unwilling to have the animal slaughtered, the animal shall be kept under close observation by the owner for six months.

(l) Unvaccinated animals other than dogs, cats, ferrets, and livestock bitten by a confirmed or suspected rabid animal shall be euthanized immediately by a veterinarian or animal control officer.

(3) Testing Fees at Utah Public Health Laboratory (UPHL).

(a) Animals being submitted to UPHL for rabies testing must follow criteria defined in The Compendium of Animal Rabies Prevention and Control to be eligible for testing without a fee. Testing of animals that fit this criteria will be eligible for a waived fee for testing. Testing of animals that do not meet this criteria will incur a testing fee as set forth by UPHL.

(b) The following situations will not incur a rabies testing fee if testing is ordered for them through UPHL:

(i) Any bat in an instance where a person or animal has had an exposure, or reasonable probability of exposure, including, but not limited to: known bat bites, exposure to bat saliva, a bat found in a room with a sleeping person or unattended child, or a bat found near a child or mentally impaired or intoxicated person.

(ii) Dogs, cats, or ferrets, regardless of rabies vaccination status, if signs suggestive of rabies are documented in them.

(iii) Wild mammals and hybrids that expose persons, pets, or livestock (e.g., skunks, foxes, coyotes, and raccoons) may be tested.

(iv) Livestock may be tested if signs suggestive of rabies are documented.

(v) UDOH Bureau of Epidemiology staff are available to discuss additional situations that may warrant testing at (801) 538-6191.

(c) The following situations will incur a $95 testing fee if testing is ordered for them through UPHL:

(i) Any stray with unknown or undocumented vaccination history that exposes a person, if signs suggestive of rabies are not documented, or if the animal has not been confined and observed for at least 10 days.

(ii) Dogs, cats, and ferrets: currently vaccinated animals that expose a person, if signs suggestive of rabies are not documented, or animals have not been confined and observed for at least 10 days.

(iii) Regardless of rabies vaccination status, a healthy dog, cat, or ferret that has not exposed a person.

(iv) Small rodents (e.g., rats, mice, squirrels, chipmunks, voles, or moles) and lagomorphs (rabbits and hares).

(v) Incomplete paperwork accompanying the sample will also result in a fee for testing; a thorough description of the situation must be included with each sample submission.

(vi) UDOH Bureau of Epidemiology staff are available to discuss additional situations that may not warrant testing at (801) 538-6191.

(d) If the submitting party feels they are charged inappropriately for rabies testing, they may send a letter describing the situation and requesting a waiver for fees to the: Utah Department of Health, Bureau of Epidemiology, P.O. Box 142104, Salt Lake City, UT 84114, attention: Zoonotic Diseases Epidemiologist. Information may be submitted electronically via email to: epi@utah.gov, with a note in the subject line "Attention: Zoonotic Diseases Epidemiologist".

(i) The submitting party has 30 days from receipt of the testing fee invoice to file an appeal. The letter must include copies of the original paperwork that was submitted, and a copy of the invoice received, for a waiver to be considered.

(ii) UDOH and UPHL have 30 days to review information after receipt of an appeal request to make an official decision and notify the submitter.

(iii) UDOH Bureau of Epidemiology staff are available to discuss questions about testing fees and the appeal process at (801) 538-6191.

(4) Measures for Standardized Rabies Control Practices.

(a) Humans requiring either pre- or post-exposure rabies prophylaxis shall be treated in accordance with the recommendations of the U.S. Public Health Service Immunization Practices Advisory Committee, as adopted and incorporated by reference in R386-702-18(2). A copy of the recommendations shall be made available to licensed medical personnel, upon request to the Bureau of Epidemiology, Utah Department of Health.

(b) A physician or other health care provider that administers rabies vaccine shall immediately report all serious systemic neuroparalytic or anaphylactic reactions to rabies vaccine through the Vaccine Adverse Event Reporting System (VAERS).

(c) The Compendium of Animal Rabies Prevention and Control, as adopted and incorporated by reference in R386-702-18(5), is the reference document for animal vaccine use.

(d) A county, city, town, or other political subdivision that requires licensure of animals shall also require rabies vaccination as a prerequisite to obtaining a license.

(e) Animal rabies vaccinations are valid only if performed by or under the direction of a licensed veterinarian in accordance with the Compendium of Animal Rabies Prevention and Control.

(f) All agencies and veterinarians administering vaccine shall document each vaccination on the National Association of State Public Health Veterinarians (NASPHV) form number 51, Rabies Vaccination Certificate, which can be obtained from vaccine manufacturers. The agency or veterinarian shall provide a copy of the report to the animal's owner. Computer-generated forms containing the same information are also acceptable.

(g) Animal rabies vaccines may be sold or otherwise provided only to licensed veterinarians or veterinary biologic supply firms. Animal rabies vaccine may be purchased by the Utah Department of Health and the Utah Department of Agriculture.

(5) Measures to Prevent or Control Rabies Outbreaks.

(a) The most important single factor in preventing human rabies is the maintenance of high levels of immunity in the pet dog, cat, and ferret populations through vaccination.

(i) All dogs, cats, and ferrets in Utah should be immunized against rabies by a licensed veterinarian; and

(ii) Local governments should establish effective programs to ensure vaccination of all dogs, cats, and ferrets and to remove strays and unwanted animals.

(b) If the Utah Department of Health determines that a rabies outbreak is present in an area of the state, the Utah Department of Health may require that:

(i) all dogs, cats, and ferrets in that area and adjacent areas be vaccinated or revaccinated against rabies as appropriate for each animal's age;

(ii) any such animal be kept under the control of its owner at all times until the Utah Department of Health declares the outbreak to be resolved;

(iii) an owner who does not have an animal vaccinated or revaccinated surrender the animal for confinement and possible destruction; and

(iv) such animals found at-large be confined and possibly destroyed.

R386-702-13. Special Measures for Control of Typhoid.

(1) Because typhoid control measures depend largely on sanitary precautions and other health measures designed to protect the public, the local health department shall investigate each case of typhoid and strictly manage the infected individual according to the following outline:

(2) Cases: Standard precautions are required during hospitalization. Use contact precautions for diapered or incontinent patients for the duration of illness. Hospital care is desirable during acute illness. Release of the patient from supervision by the local health department shall be based on three or more negative cultures of feces (and of urine in patients with schistosomiasis) taken at least 24 hours apart. Cultures must have been taken at least 48 hours after antibiotic therapy has ended and not earlier than one month after onset of illness as specified in R386-702-13(6). If any of these cultures is positive, repeat cultures at intervals of one month during the 12-month period following onset until at least three consecutive negative cultures are obtained as specified in R386-702-13(6). The patient shall be restricted from food handling, child care, and from providing patient care during the period of supervision by the local health department.

(3) Contacts: Administration of typhoid vaccine is recommended for all household members of known typhoid carriers. Household and close contacts of a carrier shall be

restricted from food handling, child care, and patient care until two consecutive negative stool specimens, taken at least 24 hours apart, are submitted, or when approval is granted by the local health officer according to local jurisdiction.

(4) Carriers: If a laboratory or physician identifies a carrier of typhoid, the attending physician shall immediately report the details of the case by telephone to the local health department or the Bureau of Epidemiology, Utah Department of Health using the process described in R386-702-6. Each infected individual shall submit to the supervision of the local health department. Carriers are prohibited from food handling, child care, and patient care until released in accordance with R386-702-13(4)(a) or R386-702-13(4)(b). All reports and orders of supervision shall be kept confidential and may be released only as allowed by Subsection 26-6-27(2)(c).

(a) Convalescent Carriers: Any person who harbors typhoid bacilli for three but less than 12 months after onset is defined as a convalescent carrier. Release from occupational and food handling restrictions may be granted at any time from three to 12 months after onset, as specified in R386-702-13(6).

(b) Chronic Carriers: Any person who continues to excrete typhoid bacilli for more than 12 months after onset of typhoid is a chronic carrier. Any person who gives no history of having had typhoid or who had the disease more than one year previously, and whose feces or urine are found to contain typhoid bacilli is also a chronic carrier.

(c) Other Carriers: If typhoid bacilli are isolated from surgically removed tissues, organs, including the gallbladder or kidney, or from draining lesions such as osteomyelitis, the attending physician shall report the case to the local health department or the Bureau of Epidemiology, Utah Department of Health. If the person continues to excrete typhoid bacilli for more than 12 months, he is a chronic carrier and may be released after satisfying the criteria for chronic carriers in R386-702-13(6).

(5) Carrier Restrictions and Supervision: The local health department shall report all typhoid carriers to the Bureau of Epidemiology, and shall:

(a) Require the necessary laboratory tests for release;

(b) Issue written instructions to the carrier;

(c) Supervise the carrier.

(6) Requirements for Release of Convalescent and Chronic Carriers: The local health officer or his representative may release a convalescent or chronic carrier from occupational and food handling restrictions only if at least one of the following conditions is satisfied:

(a) For carriers without schistosomiasis, three consecutive negative cultures obtained from fecal specimens authenticated by the attending physician, hospital personnel, laboratory personnel, or local health department staff taken at least one month apart and at least 48 hours after antibiotic therapy has stopped;

(b) for carriers with schistosomiasis, three consecutive negative cultures obtained from both fecal and urine specimens authenticated by the attending physician, hospital personnel, laboratory personnel, or local health department staff taken at least one month apart and at least 48 hours after antibiotic therapy has stopped;

(c) the local health officer or his representative determine that additional treatment such as cholecystectomy or nephrectomy has terminated the carrier state; or

(d) the local health officer or his representative determines the carrier no longer presents a risk to public health according to the evaluation of other factors.

R386-702-14. Special Measures for the Control of Ophthalmia Neonatorum.

Every physician or midwife practicing obstetrics or midwifery shall, within three hours of the birth of a child, instill or cause to be instilled in each eye of such newborn one percent silver nitrate solution contained in wax ampules, or tetracycline ophthalmic preparations or erythromycin ophthalmic preparations, as these are the only antibiotics of currently proven efficacy in preventing development of ophthalmia neonatorum. The value of irrigation of the eyes with normal saline or distilled water is unknown and not recommended.

R386-702-15. Special Measures for the Control of HIV/AIDS.

(1) Partner identification and notification:

(a) If an individual is tested and found to have an HIV infection, the Department and/or local health department shall provide partner services, linkage-to-care activities, and promote retention to HIV care.

(2) Definitions:

(a) "Partner" is defined as any individual, including a spouse, who has shared needles, syringes, or drug paraphernalia or who has had sexual contact with an HIV infected individual.

(b) "Spouse" is defined as any individual who is the marriage partner of that person at any time within the ten-year period prior to the diagnosis of HIV infection.

(c) "Linkage to care" is defined by a reported CD4+ T-Lymphocyte test and/or HIV viral load determination within three months of HIV positive diagnosis.

(d) "Retention to care" is defined by a reported CD4+ T-Lymphocyte test or HIV viral load determination once within a 12-month period.

(3) Partner services include:

(a) Confidential partner notification within 30 days of receiving a positive HIV result or when relevant additional information is found to aide in an investigation or case management;

(b) Prevention counseling;

(c) Testing for HIV;

(d) Providing recommendations for testing for other sexually transmitted diseases;

(e) Providing recommendations for hepatitis screening and vaccination;

(f) Treatment or linkage to medical care on an ongoing basis, as needed; and

(g) Linkage or referral to other prevention services and support.

(4) Re-engagement to care includes:

(a) Linkage to medical care, on an ongoing basis, as needed;

(b) Linkage or referral to other prevention services and support;

(c) Confidential partner notification, as needed;

(d) Prevention counseling;

(e) Providing recommendations for testing for other sexually transmitted diseases;

(f) Providing recommendations for hepatitis screening and vaccination;

(g) Medication adherence counseling; and

(h) Risk reduction counseling.

R386-702-16. Special Measures to Prevent Perinatal and Person-to-Person Transmission of Hepatitis B Infection.

(1) A licensed healthcare provider who provides prenatal care shall routinely test each pregnant woman for hepatitis B surface antigen (HBsAg) at an early prenatal care visit. The provisions of this section do not apply if the pregnant woman, after being informed of the possible consequences, objects to the test on the basis of religious or

personal beliefs.

(2) The licensed healthcare provider who provides prenatal care shall repeat the HBsAg test during late pregnancy for those women who tested negative for HBsAg during early pregnancy, but who are at high risk based on:

(a) evidence of clinical hepatitis during pregnancy;

(b) injection drug use;

(c) occurrence during pregnancy or a history of a sexually transmitted disease;

(d) occurrence of hepatitis B in a household or close family contact; or

(e) the judgment of the healthcare provider.

(3) In addition to other reporting required by this rule, each positive HBsAg result detected in a pregnant woman shall be reported to the local health department or the Department, as specified in Section 26-6-6. That report shall indicate that the woman was pregnant at time of testing if that information is available to the reporting entity.

(4) A licensed healthcare provider who provides prenatal care shall document a woman's HBsAg test results, or the basis of the objection to the test, in the medical record for that patient.

(5) Every hospital and birthing facility shall develop a policy to assure that:

(a) when a pregnant woman is admitted for delivery, or for monitoring of pregnancy status, the result from a test for HBsAg performed on that woman during that pregnancy is available for review and documented in the hospital record;

(b) when a pregnant woman is admitted for delivery, if the woman's test result is not available to the hospital or birthing facility, the mother is tested for HBsAg as soon as possible, but before discharge from the hospital or birthing facility;

(c) if a pregnant woman who has not had prenatal care during that pregnancy is admitted for monitoring of pregnancy status only, and if the woman's test result is not available to the hospital or birthing facility, the mother is tested for HBsAg status before discharge from the hospital or birthing facility;

(d) positive HBsAg results identified by testing performed or documented during the hospital stay are reported as specified in this rule;

(e) infants born to HBsAg positive mothers receive hepatitis B immune globulin (HBIG) and hepatitis B vaccine, administered at separate injection sites, within 12 hours of birth;

(f) infants born to mothers whose HBsAg status is unknown receive hepatitis B vaccine within 12 hours of birth, and if the infant is born preterm with birth weight less than 2,000 grams, that infant also receives HBIG within 12 hours; and

(g) if at the time of birth the mother's HBsAg status is unknown and the HBsAg test result is later determined to be positive, that infant receives HBIG as soon as possible but within 7 days of birth.

(h) hepatitis B immune globulin (HBIG) administration and birth dose hepatitis B vaccine status of infants born to mothers who are HBsAg-positive are reported within 24 hours of delivery to the local health department and Utah Department of Health Immunization Program at (801) 538-9450.

(6) Local health departments shall perform the following activities or assure that they are performed:

(a) All females between the ages of 12 and 50 years at the time an HBsAg positive test result is reported will be screened for pregnancy status within one week of receipt of that lab result.

(b) Infants born to HBsAg positive mothers complete the hepatitis B vaccine series as specified in in the most current version of "The Red Book" as cited in R386-702-13 (4).

(c) Children born to HBsAg positive mothers are tested for HBsAg and antibody against hepatitis B surface antigen (anti-HBs) at 9 to 12 months of age (testing is done at least one month after the final dose of hepatitis B vaccine series is administered, and no earlier than 9 months of age) to monitor the success of therapy and identify cases of perinatal hepatitis B infection.

(i) Children who test negative for HBsAg and do not demonstrate serological evidence of immunity against hepatitis B when tested as described in (c) receive three additional vaccine doses and are retested as specified in the most current version of "The Red Book" as cited in R386-702-18 (4).

(d) HBsAg positive mothers are advised regarding how to reduce their risk of transmitting hepatitis B to others.

(e) Household members and sex partners of HBsAg positive mothers are evaluated to determine susceptibility to hepatitis B infection and if determined to be susceptible, are offered or advised to obtain vaccination against hepatitis B.

(i) All identified acute hepatitis B cases shall be investigated by the local health department, and identified household and sexual contacts shall be advised to obtain vaccination against hepatitis B.

(7) The provisions of subsections (5) and (6) do not apply if the pregnant woman or the child's guardian, after being informed of the possible consequences, objects to any of the required procedures on the basis of religious or moral beliefs. The hospital or birthing facility shall document the basis of the objection.

(8) Prevention of transmission by individuals with chronic hepatitis B infection.

(a) The Department defines a chronic hepatitis B case as a person that is HBsAg positive, total antibody against hepatitis B core antigen (anti-HBc) positive (if performed) and IgM anti-HBc negative.

(b) An individual with chronic hepatitis B infection shall be advised regarding how to reduce the risk that the individual will transmit hepatitis B to others.

(c) Household members and sex partners of individuals with chronic hepatitis B infection shall be evaluated to determine susceptibility to hepatitis B infection, and if determined to be susceptible, shall be offered or advised to obtain vaccination against Hepatitis B.

R386-702-17. Public Health Emergency.

(1) Declaration of Emergency: With the Governor's and Executive Director's or in the absence of the Executive Director, his designee's, concurrence, the Department or a local health department may declare a public health emergency by issuing an order mandating reporting emergency illnesses or health conditions specified in sections R386-702-3 for a reasonable time.

(2) For purposes of an order issued under this section and for the duration of the public health emergency, the following definitions apply.

(a) "emergency center" means:

(i) a health care facility licensed under the provisions of Chapter 26-21 that operates an emergency department; or

(ii) a clinic that provides emergency or urgent health care to an average of 20 or more persons daily.

(b) "encounter" means an instance of an individual presenting at the emergency center who satisfies the criteria in section R386-702-3(2); and

(c) "diagnostic information" means an emergency center's records of individuals who present for emergency or urgent treatment, including the reason for the visit, chief complaint, results of diagnostic tests, presenting diagnosis,

and final diagnosis, including diagnostic codes.

(3) Reporting Encounters: The Department shall designate the fewest number of emergency centers as is practicable to obtain the necessary data to respond to the emergency.

(a) Designated emergency centers shall report using the process described in R386-702-6.

(b) An emergency center designated by the Department shall report the encounters to the Department by:

(i) allowing Department representatives or agents, including local health department representatives, to review its diagnostic information to identify encounters during the previous day; or

(ii) reviewing its diagnostic information on encounters during the previous day and reporting all encounters by 9:00 a.m. the following day, or

(iii) identifying encounters and submitting that information electronically to the Department, using a computerized analysis method, and reporting mechanism and schedule approved by the Department; or

(iv) by other arrangement approved by the Department.

(4) For purposes of epidemiological and statistical analysis, the emergency center shall report on encounters during the public health emergency that do not meet the definition for a reportable emergency illness or health condition. The report shall be made using the process described in R386-702-6 and shall include the following information for each such encounter:

(a) facility name;

(b) date of visit;

(c) time of visit;

(d) patient's age;

(e) patient's sex;

(f) patient's zip code for patient's residence.

(5) If either the Department or a local health department collects identifying health information on an individual who is the subject of a report made mandatory under this section, it shall destroy that identifying information upon the earlier of its determination that the information is no longer necessary to carry out an investigation under this section or 180 days after the information was collected. However, the Department and local health departments shall retain identifiable information gathered under other sections of this rule or other legal authority.

(6) Reporting on encounters during the public health emergency does not relieve a reporting entity of its responsibility to report under other sections of this rule or other legal authority.

R386-702-18. Official References.

All treatment and management of individuals and animals who have or are suspected of having a communicable or infectious disease that must be reported pursuant to this rule shall comply with the following documents, which are adopted and incorporated by reference:

(1) American Public Health Association. "Control of Communicable Diseases Manual". 20th ed., Heymann, David L., editor, 2015.

(2) Centers for Disease Control and Prevention. "Human Rabies Prevention---United States, 2008: Recommendations of the Advisory Committee on Immunization Practices." Morbidity and Mortality Weekly Report. 57 (RR03) (2008):1-26, 28.

(3) National Association of State Public Health Veterinarians Committee. "Compendium of Animal Rabies Prevention and Control, 2016." Nasphv.org. National Association of State Public Health Veterinarians, 18 October 2016. Web. http://nasphv.org/Documents/NASPHVRabiesCompendium.pdf

(4) American Academy of Pediatrics. "Red Book: 2015 Report of the Committee on Infectious Diseases" 30th Edition. Elk Grove Village, IL, American Academy of Pediatrics; 2015.

(5) National Association of State Public Health Veterinarians Animal Contact Compendium Committee 2013. "Compendium of Measures to Prevent Disease Associated with Animals in Public Settings, 2013." Journal of the American Veterinary Medicine Association 243 (2013): 1270-288.

KEY: communicable diseases, quarantines, rabies, rules and procedures

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Notice of Continuation April 15, 2016 26-6-3
26-23b

R388. Health, Disease Control and Prevention; HIV/AIDS, Tuberculosis Control/Refugee Health.
R388-805. Ryan White Part B Program.
R388-805-1. Authority and Purpose.

This rule governs program eligibility, benefits, and administration by the Department for the Ryan White HIV/AIDS Treatment Extension Act of 2009 Part B Program (Ryan White Part B Program). It is authorized by Section 26-1-5; Section 26-1-15; Section 26-1-18; and Section 26-1-30(2)(a), (b), (c), and (g).

R388-805-2. Definitions.

The following definitions apply to this rule:

(1) "HIV" means Human Immunodeficiency Virus.

(2) "Department" means the Utah Department of Health.

(3) "Client" means an individual who meets the eligibility criteria and is enrolled in the Ryan White Part B Program pursuant to the provisions of this rule.

R388-805-3. Nature of Program and Benefits.

(1) The Ryan White Part B Program provides reimbursement to providers for services rendered to HIV positive individuals who meet the eligibility requirements. The Ryan White Part B Program provides limited services as described in this rule. The Department provides reimbursement coverage under the program only for services for each program:

(a) as provided in law governing the Ryan White HIV/AIDS Treatment Extension Act of 2009;

(b) to the extent that it has agreed to reimburse providers with whom it contracts to provide services; and

(c) as limited in its agreements or contracts with providers.

(2) Within available funding, the Department provides Core Medical and Supportive Services as allowable under the legislation;

(a) The AIDS Drug Assistance Program (ADAP) provides HIV related medications, health insurance premium, and cost-sharing assistance.

(b) Supportive Services Program provides a variety of supportive services that enable the client to access medical care as well as to retain the client in medical care.

(3) The Department may adjust the services available to meet current needs and fluctuations in available funding.

(4) The Ryan White Part B Program is not health insurance. A relationship with the Department as the insurer and the client as the insured is not created under this program.

R388-805-4. Providers.

The Department reimburses only providers who contract with the Department to provide services under the program.

R388-805-5. Reimbursement.

(1) The Department shall reimburse only for services as limited in its agreements or contracts with providers.

(2) The Department shall reimburse providers according to the fee schedule or budgets that are made part of its agreements or contracts with providers.

(3) The Ryan White Part B Program is the payer of last resort. The Department does not pay for services under the Ryan White Part B Program for which an individual is eligible to receive under any other primary payer source.

R388-805-6. Ryan White Part B Program Eligibility.

(1) To receive services under the Ryan White Part B Program, an individual must physically reside in Utah, and must have a medical diagnosis of HIV infection as verified by the individual's physician.

(2) To receive Core Medical and Supportive Services, excluding Case Management services, an individual must not have gross annual household income exceeding 250% of the federal poverty level.

(3) To receive Case Management services, an individual must not have gross annual household income exceeding 500% of the federal poverty level.

(4) To be eligible to receive assistance from the AIDS Drug Assistance Program, including health insurance premium and cost-sharing assistance an individual must have a prescription for the medication requested.

(5) Clients must re-certify semi-annually in order to continue program participation.

KEY: treatment and care, HIV/AIDS, ADAP, Ryan White Part B Program

February 1, 2018	**26-1-5**
Notice of Continuation September 30, 2016	**26-1-15**
	26-1-18
	26-1-30(2)(a), (b), (c), (g)

R392. Health, Disease Control and Prevention, Environmental Services.
R392-700. Indoor Tanning Bed Sanitation.
R392-700-1. Authority and Purpose.

This rule establishes tanning facility standards. It is authorized by Section 26-15-2 and 26-15-13.

R392-700-2. Applicability.

This rule applies to places where consideration is given in exchange for access to a tanning device. This rule does not apply to private, non-commercial use of tanning equipment exclusively for non-commercial use. A tanning facility may not operate in Utah unless the facility owner has obtained a permit to do so from the local health department with jurisdiction.

R392-700-3. Definitions.

As used in this rule:

(1) "Department" means the Utah Department of Health.

(2) "Operator" means any person who owns, leases, or manages a business operating a tanning facility.

(3) "Patron" mean any person who enters a tanning facility with the intent to use a tanning device.

(4) "Phototherapy Device" means equipment that emits ultraviolet radiation used by a health care professional in the treatment of disease when used at the health care professional's health care office or clinic.

(5)(a) "Tanning device" means equipment to which a tanning facility provides access that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers and is used for tanning of the skin, including:

(i) a sunlamp; and

(ii) a tanning booth or bed.

(b) "Tanning device" does not include a phototherapy device.

(6) "Tanning Facility" means a commercial location, place, area, structure, or business that provides access to a tanning device.

(7) "Timing Device" means a device that is capable of ending the emission of ultraviolet radiation from tanning device after a preset period of time.

(8) "Ultraviolet Radiation" means electromagnetic radiation that has a wave length interval of 200 nanometers to 400 nanometers in air.

R392-700-4. Warning Sign Placement.

(1) The operator of a tanning facility shall post a warning sign that meets the requirements of this rule in a conspicuous location that is readily visible to a person about to use a tanning device.

(a) The operator shall place the warning sign so that all patrons are alerted to the hazard and informed before being exposed to UV radiation. At a minimum, the operator shall post the warning sign:

(i) in the line of sight of a person presenting at the reception or sales counter and no more than 10 feet from where a patron checks in or pays for the tanning session; and

(ii) on a vertical surface in the reception area so that the top border of the writing is between five and six feet above the patron floor level at the reception or sales counter area.

R392-700-5. Warning Sign Requirements.

(1) The warning sign required by R392-700-5 shall meet the requirements of this section. An Adobe Acrobat Portable Document Format, .pdf, file that meets the requirements of this section is available from the Department or the local health department.

(2) The sign shall be in a landscape format 11 inches high by 17 inches wide on a white background.

(3) All lettering shall be in Arial font as produced in Adobe Acrobat. In addition, the letters shall be:

(a) black in color

(b) all uppercase

(c) adequately spaced and not crowded

(4) There must be a panel at the top of the sign. The background of the panel shall be safety orange in color and shall:

(a) be 3.3 centimeters, high and 42 centimeters wide, including a black line border that is 0.16 centimeter wide surrounding the safety orange background;

(b) have the word "WARNING" in capital letters that are 80 points in size (approximately two centimeters high); and

(c) have an internationally recognized safety alert symbol that is two centimeters high and placed immediately to the left of the word "WARNING"

(5) The safety alert symbol shall be black with a yellow field.

(6) The word "WARNING" and the symbol shall be vertically and horizontally centered within the orange panel.

(7) Immediately below the orange panel shall appear the words: "UV RADIATION HEALTH RISK" in letters that are 61 points in size (approximately 1.5 centimeters high) and centered between the vertical margins. The vertical space between the "WARNING" panel and the top of the words "UV RADIATION HEALTH RISK" shall be approximately 1.6 centimeters. The vertical space between the bottom of the words "UV RADIATION HEALTH RISK" and the top of the words of the first bulleted statement required in subsection (9) shall be approximately 1.6 centimeters.

(8) Beneath the "UV RADIATION HEALTH RISK" line shall appear the body wording of the sign in letters that are 39 points in size (approximately one centimeter high).

(9) The body of the sign shall be the following four bulleted statements:

-TANNING DEVICES MAY CAUSE SEVERE EYE AND SKIN DAMAGE AND MAY CAUSE CANCER

-TALK TO A DOCTOR IF YOU ARE PREGNANT OR ON ORAL CONTRACEPTIVES OR OTHER DRUGS

-WAIT AT LEAST 48 HRS BEFORE RE-TANNING

-REQUIRED FOR ALL PERSONS UNDER 18 YEARS FOR EACH TANNING SESSION: IN PERSON WRITTEN CONSENT BY PARENT OR LEGAL GUARDIAN OR PHYSCIAN'S WRITTEN ORDER

(10) The vertical spacing between each of the bulleted statements shall be approximately 1.6 centimeters. The margins to the right and left of the bulleted statements shall be no less than 4.4 centimeters.

(11) The vertical spacing between the last bulleted statement and the bottom margin of the paper shall be no less than two centimeters.

(12) Local health departments may add additional warning requirements that are applicable to all patrons of all tanning facilities.

R392-700-6. Written Health Risk Warning and Signed Consent.

(1) It is unlawful for any operator of a tanning facility to allow a person younger than 18 years old (hereinafter "minor") to use a tanning device, unless the person either:

(a) has a written order from a physician as a medical treatment that includes the frequency and duration of tanning sessions; or

(b) at each time of use is accompanied at the tanning facility by a parent or legal guardian who signs a written consent form authorizing the minor to use the tanning device (the parent or legal guardian is not required to remain at the facility for the duration of the use).

(2) The operator shall not allow a minor to exceed a physician's order for tanning in either frequency or duration of the tanning sessions.

(3) The consent form for use of a tanning device by a minor shall conform to the Utah Department of Health Tanning Consent Form, July 2012, which is incorporated by reference.

(4) Before allowing a patron to use a tanning device, the operator shall require the patron to provide proof of age.

(5) The operator or designee shall not allow any person to use a tanning device without providing the information listed under (6) to the patron (or parent or legal guardian in the case of a minor).

(6) Before allowing any patron to use a tanning device, the operator shall upon a patron's initial visit to the tanning facility and annually thereafter:

(a) provide the patron (or parent or legal guardian in the case of a minor) a written paper health risk warning notice containing the health risk information in subsection (7);

(b) provide the patron (or parent or legal guardian in the case of a minor) an opportunity to read the notice and ask questions;

(c) obtain the patron's (or parent's or legal guardian's in the case of a minor) dated signature signifying that the patron (or parent or legal guardian in the case of a minor) has read and understands the notice;

(d) give the patron (or parent or legal guardian in the case of a minor) a copy of the notice.

(7) The notice required in subsection (3) shall include the following:

(a) a representative list of potential photosensitizing drugs and agents and the importance of consulting a physician before tanning if the patron is taking certain medicines, has a history of skin problems, is pregnant, or is sensitive to sunlight;

(b) information regarding potential negative health effects related to ultraviolet exposure including:

(i) the increased risk of skin cancer and increased risk for those patrons with health problems who sunburn easily, have a family history of melanoma, or often get cold sores;

(ii) the increased risk of skin thinning, wrinkling, and premature aging;

(iii) the possible adverse effect on some viral conditions or medical condition, such as lupus when using a tanning device.

(c) information on how to determine skin sensitivity and information on how different skin types respond to the tanning facilities different tanning devices and the importance of adhering to the time limit the manufacturer recommends for each skin type;

(d) an explanation of Ultraviolet-A (UVA) and Ultraviolet-B (UVB) light's effect on the body, the need to use proper protective eye wear with both UV-A and UV-B systems, and that closing the eyes is not sufficient to prevent possible eye damage;

(e) information on the capacity of devices, including proper exposure times and intensity;

(f) information on the risk of tanning too frequently and on over exposure including advice to space tanning sessions 48 hours apart and information on how long it takes before skin burns may develop;

(g) the importance of the use of protective eye wear including the possibility of eye damage if the eye wear is not used and the tanning device's recommendations on how to properly use eye wear while using the tanning device;

(h) information that tanning may be inadvisable during pregnancy; and

(i) other relevant medical information as determined by the local health department, but at a minimum, the local health department contact information to enable the patron to obtain additional information regarding skin cancer.

(8) The operator shall retain the signed patron notices at the tanning facility and make them readily available for inspection by the Department and local health department.

(9) The operator shall provide a separate enclosed area for each tanning device that ensures patron safety and privacy.

(10) The operator shall ensure that only one person enters tanning area during a tanning session.

(11) The operator shall not allow an animal, except for a service animal, to be in a tanning area during a tanning session. The operator shall ensure that service animals allowed in tanning areas be provided eye protection from UV exposure.

R392-700-7. Tanning Devices.

(1) A tanning facility may use only commercially available tanning devices manufactured and certified in compliance with 21 CFR 801.4, 21 CFR 1010.2 and 1010.3, and 21 CFR 1040.20.

(a) The operator shall follow all manufacturer safety instructions applicable to each tanning device.

(b) The operator shall not:

(i) operate any tanning device that has an ineffective or inoperable timing device or for which the timing device is missing;

(ii) exceed the manufacturer's maximum recommended exposure time; or

(iii) exceed the exposure time recommended by the manufacturer in compliance with 21 CFR 1040.20(d)(1)(iv).

(3) The operator shall maintain at the tanning facility the manufacturer's operating instructions, exposure recommendations, and safety instructions for each tanning device.

(4) The operator shall centrally install and locate the timing device controls for each tanning device so that a patron may not set or reset the exposure time on any tanning device.

(5) The operator shall control the temperature of the consumer contact surfaces of a tanning device and the surrounding area so that it will not exceed 100 degrees Fahrenheit.

(6) The operator shall maintain the tanning devices in good repair.

(7) The operator shall provide physical barriers to protect patrons from possible injury which may be induced by touching or breaking tanning equipment lamps.

(8) The operator shall provide physical barriers or other methods, such as handrails or floor markings to indicate the proper exposure distance between ultraviolet lamps and the patron's skin.

(9) The operator shall replace defective or burned-out lamps or filters with lamps and filters that are clearly identified by brand and model designation by the replacement lamp by the lamp manufacturer. The operator shall maintain lamp manufacturer's labeling and user instructions at the facility that demonstrate the equivalence of any replacement lamp or filter.

(10) An operator shall not advertise or promote the use of any tanning equipment using wording such as "safe," "safe tanning," "no harmful rays," "no adverse effect," "free from risk," or similar wording or concept.

(11) The operator shall track each patron's usage to ensure that a patron does not use a tanning device more frequently than once each calendar day or in excess of the manufacturer's recommended exposure.

(12) The tanning device shall allow each patron to exit the tanning device without assistance from the operator.

(13) The operator shall assess each patron's skin type and sensitivity and consider the intensity of the radiation output of the tanning devices in the tanning facility when assigning a patron to use a particular tanning device.

R392-700-8. Protective Eye Wear.

Prior to each tanning session, the operator shall offer protective eye wear to each patron, instruct the patron on proper use and the importance of proper use of eye wear, and notify the patron of possible damage that might occur to the patron if the patron does not wear it. Protective eye wear shall be eye wear that is supplied by the manufacturer for use with the tanning device or that is the equivalent to the protective eye wear supplied by the manufacturer.

R392-700-9. Tanning Physical Facilities.

(1) The operator shall provide a restroom that includes a flushing toilet and a hand-washing sink with hot and cold running water accessible to patrons at each tanning facility. The operator shall ensure that tanning facility floors and walls in the toilet rooms and hand-washing areas are constructed of smooth, non-absorbent material.

(2) The operator shall ensure that all areas of the tanning facility and temporary tanning facility are properly ventilated. The internal ambient air temperature of the facility shall not exceed 85 degrees F.

(3) The operator shall ensure that all rooms of a tanning facility are capable of being illuminated to allow for proper cleaning and sanitizing.

(4) To prevent patron slip injury, the operator shall ensure that the floor adjacent to each tanning device is clean and slip resistant to allow for safe entry and exit from the tanning device.

R392-700-10. Tanning Facility Sanitation.

(1) The operator shall maintain in good repair and in a sanitary condition all portions of the tanning facility, including wall, floors, ceilings, and equipment.

(2) The operator shall clean and sanitize before each use, all:

(a) reusable protective eye wear;

(b) body contact surfaces of the tanning device; and

(c) body contact surfaces of the tanning booth, including all seating surfaces and door knobs.

(3) The operator shall clean the items in subsection (2) using a detergent or other agent able to emulsify oils and hold dirt in suspension using a concentration as indicated by the detergent or other agent manufacturer's use directions included on the product labeling. The operator shall sanitize the items in subsection (2) with a chlorine sanitizer or a quaternary ammonia compound using a concentration as indicated by the sanitizer or compound manufacturer's use directions included on the product labeling.

(4) If the operator cleans the items in a separate process from sanitizing the items, the operator shall clean the items prior to sanitizing them. The operator may use a single product to both clean and sanitize if that product meets the requirements of subsection (3) for the cleaning and sanitizing of the items in subsection (2).

(5) The operator shall ensure that restroom facilities are maintained in a clean and sanitary condition. The operator shall provide hand soap and single use hand drying towels or a hand drying mechanism for patron use.

(6) The operator shall clean and sanitize towels or other linens after each use.

R392-700-11. Permit Requirements.

(1) A tanning facility may not operate in Utah unless it has first obtained a permit to operate from the local health department with jurisdiction.

(2) In order to obtain a permit, the facility must fill out the required local health department form, submit the form to the local health department, and pay the associated fee. A permit, unless revoked, is good for one year.

(3) Before the facility is eligible for a permit, the tanning facility operator must demonstrate to the local health department that the facility can meet the tanning physical facility requirements, warning sign requirements, and the tanning device requirements in this rule. The tanning facility operator must also demonstrate that the facility has the systems in place to meet the written consent requirements, information notification requirements, eye wear requirements, and operational requirements in this rule.

(4) The tanning facility operator must be able to demonstrate to the local health department initially and upon subsequent inspections sufficient knowledge of safe operation of the tanning device in accordance with manufacturers recommendations.

R392-700-12. Enforcement and Penalties.

A person who violates a provision of this rule that is also a provision of Section 26-15-13 may be subject to a class C misdemeanor, and revocation of the permit to operate. A person who violates a provision of this rule that is not also a provision of Section 26-15-13 is subject to a civil penalty as provided in Section 26-23-6.

KEY: tanning beds, salons, sanitation, ultraviolet light safety

October 15, 2012 26-15-2

Notice of Continuation January 16, 2018 26-15-13

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-27. Medicaid Enrollment Process for Nursing Care Facilities.
R414-27-1. Introduction and Authority.

(1) This rule governs the enrollment of nursing care facilities to receive Medicaid payments for services to Medicaid eligible individuals.

(2) This rule outlines the duties of the transferor and transferee following a change of ownership.

(3) This rule is authorized under Sections 26-18-3 and 26-18-5.

R414-27-2. Definitions.

(1) "Change of Ownership" (CHOW) means the owner of a licensed and certified nursing care facility program (transferor) transfers ownership of that program to another entity (transferee).

(2) "Transferor" is the entity or nursing care facility program transferring ownership to another entity.

(3) "Transferee" is the entity receiving ownership of the nursing care facility program from another entity.

(4) "Independent analysis" referred to in Subsection 26-18-503(5)(b) means an analysis performed by independent third-party certified public accountants in accordance with generally accepted accounting principles.

R414-27-3. Medicaid Certification Subsequent to CHOW.

(1) The Division of Medicaid and Health Financing (DMHF) may not process an enrollment application for the transferee until the transferor has voided all claims for services on or after the effective date of the CHOW.

(2) A transferor shall settle any outstanding amounts it owes to Medicaid within 30 days of Medicaid enrollment by the transferee. If the transferor fails to return any outstanding amounts as required in Subsection R414-27-3(2):

(a) The transferor shall be subject to a penalty of the greater of $50 or 5 percent of the outstanding amount;

(b) Interest shall also be accrued at a rate of 12 percent annually on any outstanding amount and shall be accrued beginning on the 31st day following the effective date of the CHOW;

(c) DMHF may waive the imposition of a penalty for good cause.

(3) The transferee shall:

(a) Once a provisional license is issued, submit the following to the DMHF Provider Enrollment team in a timely manner:

(i) A provider enrollment application; and

(ii) A copy of the provisional license.

(b) Be enrolled in Medicaid as a new provider before submitting claims.

(4) If the transferee seeks Medicare certification and the Medicare certification date is different than the issued provisional license or Medicaid enrollment effective begin date, then the Medicaid enrollment date shall be the later of the Medicare certification date or the provisional license date. If the Medicare certification date is later than the issued provisional license date, then the transferor may submit Medicaid claims up to, but not including, the Medicare certification date for the transferee in accordance with all other applicable regulations.

(5) If the transferee seeks Medicare certification, the transferee may be enrolled in Medicaid before becoming Medicare-certified provided the transferee is an approved provider, in accordance with 42 CFR 455, Subpart E.

KEY: Medicaid
December 1, 2017 **26-1-5**

Notice of Continuation January 2, 2018 **26-18-3**
26-18-503

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-301. Medicaid General Provisions.
R414-301-1. Authority and Purpose.

(1) This rule is established under the authority of Section 26-18-3.

(2) The purpose of this rule is to establish general provisions governing eligibility for medical assistance programs and the requirement to exchange information with the Federally Facilitated Marketplace (FFM) to facilitate enrollment in health insurance and eligibility determinations for advance premium tax credits.

R414-301-2. Definitions.

The definitions in Section 26-18-2 apply in this rule. In addition, the following definitions apply in Rules R414-301 through R414-308:

(1) "Aged" means an individual who is 65 years of age or older.

(2) "Agency" means the Department of Health as referenced in incorporated federal materials.

(3) "CHEC" means Child Health Evaluation and Care and is the Utah specific term for the federally mandated program of Early and Periodic Screening, Diagnosis and Treatment (EPSDT) for children under the age of 21.

(4) "Cost-of-care" means the amount of income after allowable deductions an individual must pay for their long-term care services either in a medical institution or for home and community- based waiver services.

(5) "Deemed Newborn" means a child who receives one year of continuous eligibility because at the time of the child's birth, the child's mother was a Medicaid recipient or was receiving coverage under the Children's Health Insurance Program (CHIP) in a state that provides deemed newborn coverage to infants born to a CHIP eligible mother.

(6) "Department" means the Department of Health.

(7) "Eligibility Agency" means any state office or outreach location of the Department of Workforce Services (DWS) that accepts and processes applications for medical assistance programs under contract with the Department. The Department of Human Services (DHS) is the eligibility agency under contract with the Department to process applications for children in state custody.

(8) "Federal poverty guideline" means the United States (U.S.) federal poverty measure issued annually by the Department and DHS to determine financial eligibility for certain means-tested federal programs.

(9) "Federally Facilitated Marketplace (FFM) means the entity that individuals can access to enroll in health insurance and apply for assistance from insurance affordability programs such as Advanced Premium Tax Credits, Medicaid and CHIP.

(10) "Medically needy" means medical assistance coverage under the provisions of 42 CFR 435.301 that uses the Basic Maintenance Standard as the income limit for eligibility.

(11) "Modified Adjusted Gross Income (MAGI)" means the income that is determined using the methodology defined in 42 CFR 435.603(e).

(12) "Outreach location" means any site other than a state office where state workers are located to accept applications for medical assistance programs. Locations include sites such as hospitals, clinics, homeless shelters, etc.

(13) "QI" means the Qualifying Individuals program, a Medicare Cost-Sharing program.

(14) "QMB" means Qualified Medicare Beneficiary program, a Medicare Cost-Sharing program.

(15) "Reportable change" means any change in circumstances which could affect a client's eligibility for Medicaid, including the following changes:

(a) the source of income;
(b) gross income of $25 or more;
(c) household size;
(d) residence;
(e) gain of a vehicle;
(f) resources;
(g) total allowable deductions of $25 or more;
(h) marital status, deprivation, or living arrangements;
(i) pregnancy or termination of a pregnancy;
(j) onset of a disabling condition;
(k) change in health insurance coverage including changes in the cost of coverage;
(l) tax filing status;
(m) number of dependents claimed as tax dependents;
(n) earnings of a child; and
(o) student status of a child.

(16) "Resident of a medical institution" means a single individual who is a resident of a medical institution from the month after entry into a medical institution until the month prior to discharge from the institution. Death in a medical institution is not considered a discharge from the institution and does not change the client's status as a resident of the medical institution. Married individuals are residents of an institution in the month of entry into the institution and in the month they leave the institution.

(17) "SLMB" means Specified Low-Income Medicare Beneficiary program, a Medicare Cost-Sharing program.

(18) "Spenddown" means an amount of income in excess of the allowable income standard that must be paid in cash to the eligibility agency or incurred through the medical services not paid by Medicaid or other health insurance coverage, or some combination of these.

(19) "Spouse" means any individual who has been married to an applicant or recipient and has not legally terminated the marriage.

(20) "Verification" means the proof needed to decide whether an individual meets the eligibility criteria to be enrolled in the applicable medical assistance program. Verification may include documents in paper format, electronic records from computer match systems, and collateral contacts with third parties who have information needed to determine the eligibility of the individual.

(21) "Worker" means a state employee who determines eligibility for medical assistance programs.

R414-301-3 Coordination and Agreements with Other Government Agencies.

(1) The Department adopts and incorporates by reference 42 CFR 435.1200(b) and (d) through (f), October 1, 2012 ed.

(2) The Department shall enter into an agreement with the Centers for Medicare and Medicaid Services (CMS) to allow the FFM to screen applications and reviews submitted through the FFM for Medicaid eligibility.

(a) The agreement must provide for the exchange of file data and eligibility status information between the Department and the FFM as required to determine eligibility and enrollment in insurance affordability programs, and eligibility for advance premium tax credits and reduced cost-sharing.

(b) The agreement applies to agencies under contract with the Department to provide eligibility determination services.

(3) The Department may contract with the Department of Workforce Services and the Department of Human Services to do eligibility determinations for one or more medical assistance programs authorized by the Department. The Department is responsible for the administration of

medical assistance programs authorized under the Utah Medicaid State Plan, the State Plan for the Utah Children's Health Insurance Program, and various waivers under Title XIX of the Social Security Act.

R414-301-4. Client Rights and Responsibilities.

(1) Anyone may apply or reapply any time for any program. A program subject to periods of closed enrollment will deny applications received during a closed enrollment period.

(2) If someone needs help to apply he may have a friend or family member help, or he may request help from the eligibility agency or outreach staff.

(3) Workers will identify themselves to clients.

(4) Workers will treat clients with courtesy, dignity and respect.

(5) Workers will ask for verification and information clearly and courteously. Workers shall send a written request for verifications.

(6) If a client must be visited after working hours, the eligibility worker will make an appointment.

(7) Workers will not enter a client's home without the client's permission.

(8) Clients must provide requested verifications within the time limits given. The eligibility agency may grant additional time to provide information and verifications upon client request.

(9) Clients have a right to be notified about the decision made on an application or other action taken that affects their eligibility for benefits in accordance with the requirements of 42 CFR 431.210, 42 CFR 431.211, 42 CFR 431.213, and 42 CFR 431.214.

(10) Clients may look at most information about their case.

(11) Anyone may look at the policy manuals located at any eligibility agency office or online. Policy manuals are not available for review at outreach locations or call centers.

(12) Applicants and recipients may request a fair hearing if they disagree with the eligibility agency's decision.

(13) The recipient must repay any understated liability. The recipient is responsible for repayments due to ineligibility including benefits received pending a fair hearing decision. In addition to payments made directly to medical providers, benefits include Medicare or other health insurance premiums, premium payments made in the recipient's behalf to Medicaid health plans and mental health providers even if the recipient does not receive a direct medical service from these entities.

(14) The client must report a reportable change as defined in Subsection R414-301-2(15) to the eligibility agency within ten days of the day the change becomes known.

R414-301-5. Safeguarding Information.

(1) The Department adopts and incorporates by reference 42 CFR 431.300 through 42 CFR 431.306, October 1, 2012 ed. The Department requires compliance with Section 63G-2-101 through Section 63G-2-310.

(2) Workers shall safeguard all information about specific clients.

(3) There are no provisions for taxpayers to see any information from client records.

(4) The director or designee shall decide if a situation is an emergency warranting release of information to someone other than the client. The information may be released only to an agency with comparable rules for safeguarding records. The information released cannot include information obtained through an income match system.

R414-301-6. Complaints and Agency Conferences.

(1) A client may request an agency conference with the eligibility staff or supervisor at the eligibility agency at any time to resolve a problem regarding the client's case. Requests shall be granted at the eligibility agency's discretion. Clients may have an authorized representative or a friend attend the agency conference.

(2) Requesting an agency conference does not prevent a client from also requesting a fair hearing in the event the agency conference does not resolve the client's concerns.

(3) Having an agency conference does not extend the time period in which a client has to request a fair hearing. The client must request a fair hearing according to the provisions in Section R414-301-6, to assure the right to a hearing.

(4) There is no appeal to the decisions made during an agency conference; however, if the client is not satisfied with the results of the agency conference, and makes a timely request for a fair hearing as defined in Section R414-301-7, the client may proceed with the fair hearing process.

(5) The eligibility agency shall provide proper notice if the agency makes any additional adverse changes in the client's eligibility as a result of the agency conference. The client then has a right to request a fair hearing based on the new adverse action.

R414-301-7. Hearings.

(1) The eligibility agency shall provide a fair hearing process for applicants and recipients in accordance with the requirements of 42 CFR 431.220 through 42 CFR 431.246. The eligibility agency shall comply with Title 63G, Chapter 4.

(2) An applicant or recipient must request a hearing in writing or orally at the agency that made the final eligibility decision. A request for a hearing concerning a Medicaid eligibility decision must be made within 90 calendar days of the date of the notice of agency action with which the applicant or recipient disagrees. The request need only include a statement that the applicant or recipient wants to present his case.

(3) Hearings are conducted only at the request of a client or spouse; a minor client's parent; or a guardian or representative of the client.

(4) A recipient who requests a fair hearing concerning a decision about Medicaid eligibility shall receive continued medical assistance benefits pending a hearing decision if the recipient requests a hearing before the effective date of the action or within 15 calendar days of the date on the notice of agency action.

(5) The recipient must repay the continued benefits that he receives pending the hearing decision if the hearing decision upholds the agency action.

(a) A recipient may decline the continued benefits that the Department offers pending a hearing decision by notifying the eligibility agency.

(b) Benefits that the recipient must repay include premiums for Medicare or other health insurance, premiums and fees to managed care and contracted mental health services entities, fee-for-service benefits on behalf of the individual, and medical travel fees or reimbursement to or on behalf of the individual.

(6) The eligibility agency must receive a request for a hearing by the close of business on a business day that is before or on the due date. If the due date is a non-business day, the eligibility agency must receive the request by the close of business on the next business day.

(7) DWS conducts fair hearings for all medical assistance cases except those concerning eligibility for advanced premium tax credits made by the FFM, foster care or subsidized adoption Medicaid. The Department conducts hearings for foster care or subsidized adoption Medicaid

cases. In addition, the Department conducts hearings concerning its disability determination decisions. The FFM conducts hearings concerning determinations for advanced premium tax credits.

(8) DWS conducts informal, evidentiary hearings in accordance with Section R986-100-124 through Section R986-100-134, except for the provisions in Subsection R986-100-128(17) and Subsection R986-100-134(5). Instead, the provisions in Subsection R414-301-7(16) concerning the time frame to comply with the DWS decision, and Subsection R414-301-7 (17)(c) concerning continued assistance during a superior agency review conducted by the Department apply respectively.

(9) The Department conducts informal hearings concerning eligibility for foster care or subsidized adoption Medicaid in accordance with Rule R414-1. Pursuant to Section 63G-4-402, within 30 days of the date the Department issues the hearing decision, the applicant or recipient may file a petition for judicial review with the district court.

(10) DWS may not conduct a hearing contesting resource assessment until an institutionalized individual has applied for Medicaid.

(11) An applicant or recipient may designate a person or professional organization to assist in the hearing or act as his representative. An applicant or recipient may have a friend or family member attend the hearing for assistance.

(12) The applicant, recipient or representative can arrange to review case information before the scheduled hearing.

(13) At least one employee from the eligibility agency must attend the hearing. Other employees of the eligibility agency, other state agencies and legal representatives for the eligibility agency may attend as needed.

(14) The DWS Division of Adjudication and Appeals shall mail a written hearing decision to the parties involved in the hearing. The decision shall include the decision, a summary of the facts and the policies or regulations supporting the decision.

(a) The DWS decision shall include information about the right to request a superior agency review from the Department and how to make that request.

(b) The applicant or recipient may appeal the DWS decision to the Department pursuant to Section R410-14-18. The request for agency review must be made in writing and delivered to either DWS or the Department within 30 days of the mailing date of the decision.

(15) The Department, as the single state Medicaid agency, is a party to all fair hearings concerning eligibility for medical assistance programs. The Department conducts appeals and has the right to conduct a superior agency review of medical assistance hearing decisions rendered by DWS.

(16) The DWS hearing decision becomes final 30 days after the decision is sent unless the Department conducts a superior agency review. The DWS hearing decision may be made final in less than 30 days upon agreement of all parties.

(17) The Department conducts a superior agency review when the applicant or recipient appeals the DWS decision or upon its own accord if it disagrees with the DWS decision.

(a) The Department notifies DWS whenever it conducts a superior agency review.

(b) The DWS hearing decision is suspended until the Department issues a final decision and order on agency review.

(c) A recipient receiving continued benefits continues to be eligible for continued benefits pending the superior agency review decision.

(18) The superior agency review is an informal proceeding and shall be conducted in accordance with Section 63G-4-301.

(19) A Department decision and order on agency review becomes final upon issuance.

(20) The eligibility agency takes case action within ten calendar days of the date the decision becomes final.

(21) Pursuant to Section 63G-4-402, within 30 days of the date the decision and order on agency review is issued, the applicant or recipient may file a petition for judicial review with the district court. Failure to appeal a DWS hearing decision to the Department negates this right to a judicial appeal.

(22) Recipients are not entitled to continued benefits pending judicial review by the district court.

KEY: client rights, hearings, Medicaid
October 1, 2013 26-18
Notice of Continuation January 8, 2018

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-302. Eligibility Requirements.
R414-302-1. Authority and Purpose.

This rule is authorized by Section 26-1-5 and Section 26-18-3 and establishes eligibility requirements for Medicaid and the Medicare Cost Sharing programs.

R414-302-2. Definitions.

The definitions in Rules R414-1 and R414-301 apply to this rule.

R414-302-3. Citizenship and Alienage.

(1) The Department incorporates by reference 42 CFR 435.406 October 1, 2012 ed., which requires applicants and recipients to be United States (U.S.) citizens or qualified aliens and to provide verification of their U.S. citizenship or lawful alien status.

(2) The Department elects to cover applicants and recipients who are under 19 years of age and lawfully present as defined in 42 U.S.C. 1396b(v) and 42 U.S.C. 1397gg(e)(1), and referenced in Section S89 of the Utah Medicaid State Plan.

(3) The Department shall decide if a public or private organization no longer exists or is unable to meet an alien's needs. The Department shall base the decision on the evidence submitted to support the claim. The documentation submitted by the alien must be sufficient to prove the claim.

(4) One adult household member must declare the citizenship status of all household members who will receive Medicaid.

(5) A qualified alien, as defined in 8 U.S.C. 1641 who was residing in the U.S. before August 22, 1996, may receive full Medicaid, Qualified Medicare Beneficiaries (QMB), Specified Low-Income Medicare Beneficiaries (SLMB), or Qualifying Individuals (QI) services.

(6) A qualified alien, as defined in 8 U.S.C. 1641 newly admitted into the U.S. on or after August 22, 1996, may receive full Medicaid, QMB, SLMB, or QI services after five years have passed from the person's date of entry into the U.S.

(7) The Department accepts as verification of citizenship documents from federally recognized Indian tribes evidencing membership or enrollment in such tribe including those with international borders as required under Section 211(b)(1) of the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3, or as prescribed by the Secretary.

(8) The Department provides reasonable opportunity for applicants or clients to present satisfactory documentation of citizenship as required under Section 211(b)(2) of the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3.

(9) The Department considers that an infant born to a mother who is eligible for Medicaid at the time of the infant's birth has provided satisfactory evidence of citizenship. The Department does not require further verification of citizenship for the infant as required under Section 211(b)(3) of the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3.

(10) The Department adopts and incorporates by reference 42 CFR 435.949 and 42 CFR 435.952, October 1, 2012 ed.

(a) The Department shall verify citizenship and immigration status requirements through the Federal Data Services Hub or through other electronic match systems approved by the Secretary.

(b) If the Department cannot verify citizenship or immigration status through an electronic match system or the electronic data is not reasonably compatible with the client statement, the client must provide verification of citizenship and identity as described in 42 CFR 435.407.

R414-302-4. Utah Residence.

(1) The Department adopts and incorporates by reference 42 CFR 435.403, October 1, 2012 ed. The Department also adopts and incorporates by reference Subsection 1902(b) of the Compilation of the Social Security Laws, in effect May 8, 2013.

(2) The Department considers an individual who establishes state residency to be a resident of the state during periods of temporary absence, if the individual intends to return to the state when the purpose for the temporary absence ends.

R414-302-5. Deprivation of Supports.

(1) The Department adopts and incorporates by reference the definition of "dependent child" found in 42 CFR 435.4, October 1, 2012 ed.

(2) A child who lives with two parents is deprived of support if at least one parent is working less than 100 hours a month.

(3) A child is not considered deprived of support if any of the following situations is true:

(a) The parent is absent because of military service;

(b) The parent is absent for employment, schooling, training or another temporary purpose;

(c) The parent will return to live in the home within 30 days from the date of the application;

(d) The parent is the primary child care provider and care is frequent enough that the child is not deprived of support, care and guidance.

(4) A parent is incapacitated if the parent meets one of the following criteria:

(a) The parent receives SSI;

(b) The parent is recognized as 100% disabled by the Veteran's Administration;

(c) The parent is determined disabled by the State Medicaid Disability Office or the Social Security Administration;

(d) The parent provides written documentation completed by a medical professional engaged in the practice of mental health therapy, which states that the parent is incapacitated and the incapacity is expected to last at least 30 days. The medical report must also state that the incapacity substantially reduces the parent's ability to work or care for the child. Full-time employment, however, nullifies the parent's claim of incapacity. The written documentation must be completed by one of the following medical professionals:

(i) Medical Doctor (MD);

(ii) Doctor of Osteopathy (DO);

(iii) Advanced Practice Registered Nurse (APRN);

(iv) Physician Assistant; or

(v) Mental Health Therapist who is either a psychologist, licensed clinical social worker, certified social worker, marriage and family therapist, professional counselor, MD, DO, or APRN.

R414-302-6. Residents of Institutions.

(1) The Department provides Medicaid coverage to individuals who are residents of institutions subject to the limitations in 42 CFR 435.1009 and 435.1010 (October 1, 2015), which the Department adopts and incorporates by reference.

(2) An individual who resides in a halfway house may receive Medicaid coverage if the halfway house meets the following criteria:

(a) The halfway house allows the individual to work outside the facility;

(b) The halfway house allows the individual to use

community facilities at will, such as libraries, grocery stores, recreation areas, or schools; and

(c) The halfway house allows the individual to seek health care treatment in the community to the same extent as other Medicaid enrollees.

(3) The Department does not consider an individual who resides in a temporary shelter for a limited period of time as a resident of an institution.

(4) For individuals under 22 years of age who become residents of an IMD before reaching 21 years of age, the Department limits Medicaid eligibility to individuals residing in the Utah State Hospital.

R414-302-7. Social Security Numbers.

(1) The Department adopts and incorporates by reference 42 CFR 435.910, October 1, 2012 ed., which requires the social security number (SSN) of each applicant or beneficiary, specifies the exceptions to requiring the SSN, and specifies agency verification responsibilities. The Department adopts Section 1137 of the Compilation of the Social Security Laws, in effect May 8, 2013, which is incorporated by reference.

(2) Acceptable proof of an SSN is an electronic match, a social security card, or an official document from the Social Security Administration, which identifies the correct number. Acceptable proof of an application for an SSN is a social security receipt that confirms the individual has applied for an SSN.

(3) The Department requires a new proof of application for an SSN at each recertification if the SSN has not previously been provided.

(4) The Department may assign a unique Medicaid identification number to an applicant or beneficiary who meets one of the exceptions to the requirement to provide an SSN.

R414-302-8. Application for Other Possible Benefits.

(1) The Department adopts and incorporates by reference 42 CFR 435.608, October 1, 2012 ed., which requires applicants for and recipients of medical assistance to apply for and take all reasonable steps to receive other possible benefits.

(2) The Department may not require an applicant for or recipient of medical assistance to apply for an income benefit if the applicant's or recipient's income is not counted for the purpose of determining eligibility for medical assistance for either that individual or any other household member.

(3) Individuals who may be eligible for Medicare Part B benefits must apply for Medicare Part B and, if eligible, become enrolled in Medicare Part B to be eligible for Medicaid. The state pays the applicable monthly premium and cost-sharing expenses for Medicare Part B for individuals who are eligible for both Medicaid and Medicare Part B.

(4) Individuals whose eligibility is determined using non-Modified Adjusted Gross Income (MAGI) methodologies and who may be eligible for a Veterans Administration (VA) apportionment payment of benefits, as defined by the VA, must apply for those benefits.

R414-302-9. Third Party Liability.

(1) The Department adopts and incorporates by reference 42 CFR 433.138(b), October 1, 2012 ed., on the collection of health insurance information. The Department also adopts and incorporates by reference Section 1915(b) of the Compilation of the Social Security Laws, in effect September 9, 2013.

(2) The Department requires clients to report any changes in third party liability information within 30 days.

(3) The Department considers a client uncooperative if the client knowingly withholds third party liability information without good cause.

(4) The Department shall decide whether employer provided group health insurance would be cost effective for the state to purchase as a benefit of Medicaid.

(5) The Department requires clients residing in selected communities to be enrolled in a Health Maintenance Organization as their primary care provider. The Department shall enroll clients who do not make a selection in a Health Maintenance Organization that the Department selects. The Department shall notify clients of the Health Maintenance Organization that they will be enrolled in and allowed ten days to contact the Department with a different selection. If the client fails to notify the Department to make a different selection within ten days, the enrollment shall become effective for the next benefit month.

R414-302-10. Assignment of Rights and Medical Support Enforcement.

The Department adopts and incorporates by reference 42 CFR 433.145 through 433.148, and 435.610, October 1, 2012 ed., which spell out the assignment of rights to the state to collect from liable third parties and to cooperate in establishing paternity and medical support.

R414-302-11. Financial Responsibility.

(1) The Department adopts and incorporates by reference 42 CFR 435.602(a), October 1, 2012 ed., on the financial responsibility of family members.

(2) The Department shall apply the requirements of 42 CFR 435.603 for all individuals eligible for coverage groups subject to the Modified Adjusted Gross Income (MAGI) methodology.

KEY: state residency, citizenship, third party liability, Medicaid
February 15, 2017 26-18-3
Notice of Continuation January 8, 2018

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-303. Coverage Groups.
R414-303-1. Authority and Purpose.

This rule is authorized by Sections 26-1-5 and 26-18-3 and establishes eligibility requirements for Medicaid and the Medicare Cost Sharing programs.

R414-303-2. Definitions.

(1) The definitions in Rules R414-1 and R414-301 apply to this rule. In addition, the Department adopts and incorporates by reference the following definitions as found in 42 CFR 435.4, October 1, 2012 ed.:

(a) "Caretaker relative;"

(b) "Family size;"

(c) "Modified Adjusted Gross Income (MAGI);"

(d) "Pregnant woman."

(2) A dependent child who is deprived of support is defined in Section R414-302-5.

(3) The definition of caretaker relative includes individuals of prior generations as designated by the prefix great, or great-great, etc., and children of first cousins.

(a) To qualify for coverage as a non-parent caretaker relative, the non-parent caretaker relative must assume primary responsibility for the dependent child and the child must live with the non-parent caretaker relative or be temporarily absent.

(b) The spouse of the caretaker relative may also qualify for Medicaid coverage.

R414-303-3. Medicaid for Individuals Who Are Aged, Blind or Disabled for Community and Institutional Coverage Groups.

(1) The Department provides Medicaid coverage to individuals as described in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.232, 435.236, 435.301, 435.320, 435.322, 435.324, 435.340, and 435.350, October 1, 2012 ed., which are adopted and incorporated by reference. The Department provides coverage to individuals as required by 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), and 1902(a)(10)(E)(i) through (iv) of Title XIX of the Social Security Act in effect January 1, 2013, which are adopted and incorporated by reference. The Department provides coverage to individuals described in Section 1902(a)(10)(A)(ii)(XIII) of Title XIX of the Social Security Act in effect January 1, 2013, which is adopted and incorporated by reference. Coverage under Section 1902(a)(10)(A)(ii)(XIII) is known as the Medicaid Work Incentive Program.

(2) Proof of disability includes a certification of disability from the State Medicaid Disability Office, Supplemental Security Income (SSI) status, or proof that a disabled client is recognized as disabled by the Social Security Administration (SSA).

(3) An individual can request a disability determination from the State Medicaid Disability Office. The Department adopts and incorporates by reference the disability determination requirements described in 42 CFR 435.541, October 1, 2012 ed., and Social Security's disability requirements for the Supplemental Security Income program as described in 20 CFR 416.901 through 416.998, April 1, 2012 ed., to decide if an individual is disabled. The Department notifies the eligibility agency of its disability decision, which then sends a disability decision notice to the client.

(a) If an individual has earned income, the State Medicaid Disability Office shall review medical information to determine if the client is disabled without regard to whether the earned income exceeds the Substantial Gainful Activity level defined by the Social Security Administration.

(b) If, within the prior 12 months, SSA has determined that the individual is not disabled, the eligibility agency must follow SSA's decision. If the individual is appealing SSA's denial of disability, the State Medicaid Disability Office must follow SSA's decision throughout the appeal process, including the final SSA decision.

(c) If, within the prior 12 months, SSA has determined an individual is not disabled but the individual claims to have become disabled since the SSA decision, the State Medicaid Disability Office shall review current medical information to determine if the client is disabled.

(d) Clients must provide the required medical evidence and cooperate in obtaining any necessary evaluations to establish disability.

(e) Recipients must cooperate in completing continuing disability reviews as required by the State Medicaid Disability Office unless they have a current approval of disability from SSA. Medicaid eligibility as a disabled individual will end if the individual fails to cooperate in a continuing disability review.

(4) If an individual who is denied disability status by the State Medicaid Disability Office requests a fair hearing, the individual may request a reconsideration as part of the fair hearing process. The individual must request the hearing within the time limit defined in Section R414-301-7.

(a) The individual may provide the eligibility agency additional medical evidence for the reconsideration.

(b) The reconsideration may take place before the date the fair hearing is scheduled to take place.

(c) The Department may not delay the individual's fair hearing due to the reconsideration process.

(d) The State Medicaid Disability Office shall notify the individual and the Hearings Office of the reconsideration decision.

(i) If disability status is approved pursuant to the reconsideration, the eligibility agency shall complete the Medicaid eligibility determination for disability Medicaid. The individual may choose whether to pursue or abandon the fair hearing.

(ii) If disability status is denied pursuant to the reconsideration, the fair hearing process will proceed unless the individual chooses to abandon the fair hearing.

(5) If the eligibility agency denies an individual's Medicaid application because the State Medicaid Disability Office or SSA has determined that the individual is not disabled and that determination is later reversed on appeal, the eligibility agency determines the individual's eligibility back to the application that gave rise to the appeal. The individual must meet all other eligibility criteria for such past months.

(a) Eligibility cannot begin any earlier than the month of disability onset or three months before the month of application subject to the requirements defined in Section R414-306-4, whichever is later.

(b) If the individual is not receiving medical assistance at the time a successful appeal decision is made, the individual must contact the eligibility agency to request the Disability Medicaid coverage.

(c) The individual must provide any verification the eligibility agency needs to determine eligibility for past and current months for which the individual is requesting medical assistance.

(d) If an individual is determined eligible for past or current months, but must pay a spenddown or Medicaid Work Incentive (MWI) premium for one or more months to receive coverage, the spenddown or MWI premium must be met before Medicaid coverage may be provided for those months.

(6) The age requirement for Aged Medicaid is 65 years of age.

(7) For children described in Section 1902(a)(10)(A)(i)(II) of the Social Security Act in effect January 1, 2013, the eligibility agency shall conduct periodic redeterminations to assure that the child continues to meet the SSI eligibility criteria as required by such section.

(8) Coverage for qualifying individuals described in Section 1902(a)(10)(E)(iv) of Title XIX of the Social Security Act in effect January 1, 2013, is limited to the amount of funds allocated under Section 1933 of Title XIX of the Social Security Act in effect January 1, 2013, for a given year, or as subsequently authorized by Congress under the American Taxpayer Relief Act, Pub. L. No. 112 240, signed into law on January 2, 2013. The eligibility agency shall deny coverage to applicants when the uncommitted allocated funds are insufficient to provide such coverage.

(9) To determine eligibility under Section 1902(a)(10)(A)(ii)(XIII), if the countable income of the individual and the individual's family does not exceed 250% of the federal poverty guideline for the applicable family size, the eligibility agency shall disregard an amount of earned and unearned income of the individual, the individual's spouse, and a minor individual's parents that equals the difference between the total income and the Supplemental Security Income maximum benefit rate payable.

(10) The eligibility agency shall require individuals eligible under Section 1902(a)(10)(A)(ii)(XIII) to apply for cost-effective health insurance that is available to them.

R414-303-4. Medicaid for Parents and Caretaker Relatives, Pregnant Women, Children, and Individuals Infected with Tuberculosis Using MAGI Methodology.

(1) The Department provides Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.116, 435.118, and 435.139, and 42 U.S.C. 1396a(a)(10)(A)(ii)(XII). The Department uses the MAGI methodology defined in Section R414-304-5 to determine household composition and countable income for these individuals.

(2) To qualify for coverage, a parent or other caretaker relative must have a dependent child living with the parent or other caretaker relative.

(3) The Department provides Medicaid coverage to parents and other caretaker relatives as required in 42 CFR 435.110, whose countable income is equal to or below 55% of the Federal Poverty Level (FPL).

(4) The Department provides Medicaid coverage to children who are zero through five years of age as required in 42 CFR 435.118, whose countable income is equal to or below 139% of the FPL.

(5) The Department provides Medicaid coverage to children who are six through 18 years of age as required in 42 CFR 435.118, whose countable income is equal to or below 133% of the FPL.

(6) The Department provides Medicaid coverage to pregnant women as required in 42 CFR 435.116.

(a) The Department elects the income limit of 139% of the FPL to determine a pregnant woman's eligibility for Medicaid.

(b) An individual, as defined in Subsection R414-302-3(2), may only receive coverage through the end of the month in which the individual turns 19 years old.

(7) The Department provides Medicaid coverage to an infant until the infant turns one-year old when born to a woman eligible for Utah Medicaid on the date of the delivery of the infant, in compliance with Sec. 113(b)(1), Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3. The infant does not have to remain in the birth mother's home and the birth mother does not have to continue to be eligible for Medicaid. The infant must continue to be a Utah resident to receive coverage.

(8) The Department provides Medicaid coverage to an individual who is infected with tuberculosis and who does not qualify for a mandatory Medicaid coverage group. The individual's income cannot exceed the amount of earned income an individual, or if married, a couple, can have to qualify for Supplemental Security Income.

R414-303-5. Medicaid for Parents and Caretaker Relatives, Pregnant Women, and Children Under Non-MAGI-Based Community and Institutional Coverage Groups.

(1) The Department provides Medicaid coverage to individuals who are eligible as described in 42 CFR 435.117, 435.139, 435.170 and 435.301 through 435.310, October 1, 2012 ed. and Title XIX of the Social Security Act Sections 1902(e)(1), (4), (5), (6), (7) in effect January 1, 2013, which are adopted and incorporated by reference.

(2) To qualify for coverage as a medically needy parent or other caretaker relative, the parent or caretaker relative must have a dependent child living with the parent or other caretaker relative.

(a) The parent or other caretaker relative must be determined ineligible for the MAGI-based Parent and Caretaker Relative coverage group.

(b) The parent or other caretaker relative must not have resources in excess of the medically needy resource limit defined in Section R414-305-5.

(3) The income and resources of the non-parent caretaker relative are not counted to determine medically needy eligibility for the dependent child.

(4) To qualify for Child Medically Needy coverage, the dependent child does not have to be deprived of support and does not have to live with a parent or other caretaker relative.

(5) If a child receiving SSI elects to receive Medically-Needy Child Medicaid, the child's SSI income shall be counted with other household income.

(6) The eligibility agency shall determine the countable income of the non-parent caretaker relative and spouse in accordance with Section R414-304-6 and Section R414-304-8.

(a) Countable earned and unearned income of the non-parent caretaker relative and spouse is divided by the number of family members living in the household.

(b) The eligibility agency counts the income attributed to the caretaker relative, and the spouse if the spouse is included in the coverage, to determine eligibility.

(c) The eligibility agency does not count other family members in the non-parent caretaker relative's household to determine the applicable income limit.

(d) The household size includes the caretaker relative and the spouse if the spouse also wants medical coverage.

(7) An American Indian child in a boarding school and a child in a school for the deaf and blind are considered temporarily absent from the household.

(8) An individual who is pregnant, and under 19 years of age as described in Subsection R414-302-3(2), may only receive coverage through the end of the month in which the individual turns 19 years old.

R414-303-6. 12-Month Transitional Medicaid.

The Department shall provide 12 months of extended medical assistance as set forth in 42 U.S.C. 1396r-6, when the parent or caretaker relative is eligible and enrolled in Medicaid as defined in 42 CFR 435.110, and loses eligibility as described in Subsection 1931(c)(2) of the Social Security Act.

(1) A pregnant woman who is eligible and enrolled in Medicaid as defined in 42 CFR 435.116, and who meets the income limit defined in 42 CFR 435.110 for three of the prior six months, is eligible to receive 12-month Transitional Medicaid.

(2) Children who live with the parent are eligible to receive Transitional Medicaid.

R414-303-7. Four-Month Transitional Medicaid.

(1) The Department adopts and incorporates by reference 42 CFR 435.112 and 435.115(f), (g) and (h), October 1, 2012 ed., and Title XIX of the Social Security Act, Section 1931(c)(1) and Section 1931(c)(2) in effect January 1, 2013, to provide four months of extended medical assistance to a household when the parent or caretaker relative is eligible and enrolled in Medicaid as defined in 42 CFR 435.110, and loses eligibility for the reasons defined in 42 CFR 435.112 and 435.115.

(a) A pregnant woman who is eligible and enrolled in Medicaid as defined in 42 CFR 435.116, and who meets the income limit defined in 42 CFR 435.110 for three of the prior six months, is eligible to receive Four-Month Transitional Medicaid for the reasons defined in 42 CFR 435.112 and 435.115.

(b) Children who live with the parent are eligible to receive Four-Month Transitional Medicaid.

(2) Changes in household composition do not affect eligibility for the four-month extension period. Newborn babies are considered household members even if they are not born the month the household became ineligible for Medicaid. New members added to the case will lose eligibility when the household loses eligibility. Assistance shall be terminated for household members who leave the household.

R414-303-8. Foster Care, Former Foster Care Youth and Independent Foster Care Adolescents.

(1) The Department adopts and incorporates by reference 42 CFR 435.115(e)(2), October 1, 2015 ed. The Department also adopts and incorporates by reference Subsection 1902(a)(10)(A)(i)(IX) and Subsection 1902(a)(10)(A)(ii)(XVII) of the Social Security Act, effective January 1, 2016.

(2) Eligibility for foster children who meet the definition of a dependent child under the State Plan for Aid to Families with Dependent Children in effect on July 16, 1996, is not governed by this rule. The Department of Human Services determines eligibility for foster care Medicaid.

(3) The Department covers individuals who are under the responsibility of any state and meet the criteria of Subsection 1902(a)(10)(A)(i)(IX) of the Social Security Act. Former Foster Care Youth is the name of this coverage group.

(a) Coverage is available through the month in which the individual turns 26 years of age.

(b) There is no income or asset test for eligibility under this group.

(4) The Department elects to cover individuals who are in foster care under the responsibility of the State at the time the individual turns 18 years of age, are not eligible under the Former Foster Care Youth coverage group, and who are 18 years old but not yet 21 years old as described in Subsection 1902(a)(10)(A)(ii)(XVII) of the Social Security Act. This coverage is under the Independent Foster Care Adolescents program. The Department determines eligibility according to the following requirements.

(a) At the time the individual turns 18 years of age, the individual must be in the custody of the Division of Child and Family Services, or the Department of Human Services if the Division of Child and Family Services is the primary case manager, or a federally recognized Indian tribe, but not in the custody of the Division of Youth Corrections.

(b) Income and assets of the child are not counted to determine eligibility under the Independent Foster Care Adolescents program.

(c) When funds are available, an eligible independent foster care adolescent may receive Medicaid under this coverage group until he or she reaches 21 years of age, and through the end of that month.

R414-303-9. Subsidized Adoptions and Kinship Guardianship.

(1) The Department adopts and incorporates by reference 42 CFR 435.115(e)(1), October 1, 2013 ed, in regard to Subsidized Adoption Medicaid.

(2) The Department elects to cover individuals under a state adoption agreement as defined in 42 CFR 435.227, October 1, 2013 ed., which is adopted and incorporated by reference.

(3) The Department may not impose resource or income tests for a child eligible under a state subsidized adoption agreement.

(4) The Department adopts and incorporates by reference Subsection 1902(a)(10)(A)(i)(I) of the Social Security Act, effective January 1, 2014, in regard to Kinship Guardianship Medicaid.

(5) The Department of Human Services determines eligibility for subsidized adoption and Kinship Guardianship Medicaid.

R414-303-10. Refugee Medicaid.

(1) The Department adopts and incorporates by reference 45 CFR 400.90 through 400.107 and 45 CFR, Part 401, October 1, 2012 ed., relating to refugee medical assistance.

(2) Child support enforcement rules do not apply.

(3) The sponsor's income and resources are not counted. In-kind service or shelter provided by the sponsor is not counted.

(4) Cash assistance payments received by a refugee from a resettlement agency are not counted.

(5) Refugees may qualify for medical assistance for eight months after entry into the United States.

R414-303-11. Presumptive Eligibility for Medicaid.

(1) The Department adopts and incorporates by reference, the definitions found at 42 CFR 435.1101, and the provisions found at 42 CFR 435.1103, and 42 CFR 435.1110, October 1, 2013 ed., in relation to determinations of presumptive eligibility.

(2) The following definitions apply to this section:

(a) "covered provider" means a provider whom the Department determines is qualified to make a determination of presumptive eligibility for a pregnant woman and who meets the criteria defined in Section 1920(b)(2) of the Social Security Act. Covered provider also means a hospital that elects to be a qualified entity under a memorandum of agreement with the Department;

(b) "presumptive eligibility" means a period of eligibility for medical services based on self-declaration that the individual meets the eligibility criteria.

(3) The Department provides coverage to a pregnant woman during a period of presumptive eligibility if a covered provider determines, based on preliminary information, that the woman states she:

(a) is pregnant;

(b) meets citizenship or alien status criteria as defined in Section R414-302-3;

(c) has household income that does not exceed 139% of

the federal poverty guideline applicable to her declared household size; and

(d) is not already covered by Medicaid or CHIP.

(4) A pregnant woman may only receive medical assistance during one presumptive eligibility period for any single term of pregnancy.

(5) A child born to a woman who is only presumptively eligible at the time of the infant's birth is not eligible for the one year of continued coverage defined in Section 1902(e)(4) of the Social Security Act. If the mother applies for Utah Medicaid after the birth and is determined eligible back to the date of the infant's birth, the infant is then eligible for the one year of continued coverage under Section 1902(e)(4) of the Social Security Act. If the mother is not eligible, the eligibility agency shall determine whether the infant is eligible under other Medicaid programs.

(6) A child determined presumptively eligible who is under 19 years of age may receive presumptive eligibility only through the end of the month after the presumptive determination date or until the end of the month in which the child turns 19, whichever occurs first.

(7) An individual determined presumptively eligible for former foster care children coverage may receive presumptive eligibility only through the end of the month after the presumptive determination date or until the end of the month in which the individual turns 26 years old, whichever occurs first.

(8) The Department shall limit the coverage groups for which a hospital may make a presumptive eligibility decision to the groups defined in Section 1920 (pregnant women, former foster care children, parents or caretaker relatives), Section 1920A (children under 19 years of age) and 1920 B (breast and cervical cancer patients but only Centers for Disease Control provider hospitals can do presumptive eligibility for this group) of the Social Security Act, January 1, 2013.

(9) A hospital must enter into a memorandum of agreement with the Department to be a qualified entity and receive training on policy and procedures.

(10) The hospital shall cooperate with the Department for audit and quality control reviews on presumptive eligibility determinations the hospital makes. The Department may terminate the agreement with the hospital if the hospital does not meet standards and quality requirements set by the Department.

(11) The covered provider may not count as income the following:

(a) Veteran's Administration (VA) payments;

(b) Child support payments; or

(c) Educational grants, loans, scholarships, fellowships, or gifts that a client uses to pay for education.

(12) An individual found presumptively eligible for one of the following coverage groups may only receive one presumptive eligibility period in a calendar year:

(a) Parents or caretaker relatives;

(b) Children under 19 years of age;

(c) Former foster care children; and

(d) Individuals with breast or cervical cancer.

R414-303-12. Medicaid Cancer Program.

(1) The Department shall provide coverage to individuals described in Section 1902(a)(10)(A)(ii)(XVIII) of the Social Security Act in effect January 1, 2013, which the Department adopts and incorporates by reference. This coverage shall be referred to as the Medicaid Cancer Program.

(2) The Department provides Medicaid eligibility for services under this program to individuals who are screened for breast or cervical cancer under the Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and are in need of treatment.

(3) An individual who is covered for treatment of breast or cervical cancer under a group health plan or other health insurance coverage defined by the Health Insurance Portability and Accountability Act (HIPAA) of Section 2701 (c) of the Public Health Service Act, is not eligible for coverage under the program. If the individual has insurance coverage but is subject to a pre-existing condition period that prevents the receipt of treatment for breast or cervical cancer or precancerous condition, the individual is considered to not have other health insurance coverage until the pre-existing condition period ends at which time eligibility for the program ends.

(4) An individual who is eligible for Medicaid under any mandatory categorically needy eligibility group, or any optional categorically needy or medically needy program that does not require a spenddown or a premium, is not eligible for coverage under the program.

(5) An individual must be under 65 years of age to enroll in the program.

(6) Coverage for the treatment of precancerous conditions is limited to two calendar months after the month benefits are made effective.

(7) Coverage for an individual with breast or cervical cancer under Section 1902(a)(10)(A)(ii)(XVIII) ends when treatment is no longer needed for the breast or cervical cancer. At each eligibility review, eligibility workers determine whether treatment is still needed based on the doctor's statement or report.

KEY: MAGI-based, coverage groups, former foster care youth, presumptive eligibility

July 1, 2017 26-18-3

Notice of Continuation January 8, 2018 26-1-5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-304. Income and Budgeting.
R414-304-1. Authority and Purpose.

(1) This rule is established under the authority of Section 26-18-3.

(2) The purpose of this rule is to establish the income eligibility criteria for determining eligibility for medical assistance programs.

R414-304-2. Definitions.

(1) The definitions in Rule R414-1, Rule R414-301, and Rule R414-303 apply to this rule. In addition:

(a) "Aid to Families with Dependent Children" (AFDC) means a State Plan for aid that was in effect on June 16, 1996.

(b) "Allocation for a spouse" means an amount of income that is the difference between the Social Security Income (SSI) federal benefit rate for a couple minus the federal benefit rate for an individual.

(c) "Basic maintenance standard" or "BMS" means the income level for eligibility for Medicaid coverage of the medically needy based on the number of family members who are counted in the household size.

(d) "Benefit month" means a month or any portion of a month for which an individual is eligible for medical assistance.

(e) "Best estimate" means that income is calculated for the upcoming certification period based on current information about income being received, expected income deductions, and household size.

(f) "Deeming" or "deemed" means a process of counting income from a spouse or a parent, or the sponsor of a qualified alien, to decide what amount of income after certain allowable deductions, if any, must be considered income to the applicant or recipient.

(g) "Eligible spouse" means the member of a married couple who is either aged, blind or disabled.

(h) "Factoring" means the eligibility agency calculates the monthly income or income deductions by prorating income to account for months when an individual receives a fifth payment when paid weekly, or a third paycheck with paid every other week. Weekly income is factored by multiplying the weekly income amount by 4.3 to obtain a monthly amount. Income paid every other week is factored by multiplying the bi-weekly income by 2.15 to obtain a monthly amount.

(i) "Family Medicaid" means medical assistance for families caring for dependent children and is a general term used to refer to Medicaid coverage for medically needy parents, caretaker relatives, pregnant women, and children.

(j) "Family member" means a son, daughter, parent, or sibling of the client or the client's spouse, the spouse of the client, and the parents of a dependent child.

(k) "Full-time employment" means an average of 100 or more hours of work a month or an average of 23 hours a week.

(l) "Full-time student" means a person enrolled for the number of hours defined by the particular institution as fulfilling full-time requirements.

(m) "Income annualizing" means using total income earned during one or more past years, or a shorter applicable time period, and anticipating any future changes, to estimate the average annual income. That estimated annual income is then divided by 12 to determine the household's average monthly income.

(n) "Income averaging" means using a history of past income and expected changes, and averaging it over a determined period of time that is representative of future monthly income.

(o) "Income anticipating" means using current facts regarding rate of pay and number of working hours, and reasonably expected future income changes, to anticipate future monthly income.

(p) "In-kind support donor" means an individual who provides food or shelter without receiving full market value compensation in return.

(q) "Prospective budgeting" is the process of calculating income and determining eligibility and spenddown for future months based on the best estimate of income, deductions, and household size.

(r) "School attendance" means enrollment in a public or private elementary or secondary school, a university or college, vocational or technical school or the Job Corps, for the express purpose of gaining skills that lead to gainful employment.

(s) "Presumed maximum value" means the allowed maximum amount an individual is charged for the receipt of food and shelter. This amount will not exceed one-third of the SSI federal benefit rate plus $20.

(t) "Temporarily absent" means a member of a household is living away from the home for a period of time but intends to return to the home when the reason for the temporary absence is accomplished. Reasons for a temporary absence may include an absence for the purpose of education, medical care, visits, military service, temporary religious service or other volunteer service such as the Peace Corps.

R414-304-3. Aged, Blind and Disabled Non-Institutional and Institutional Medicaid Unearned Income Provisions.

(1) The Department adopts and incorporates by reference 42 CFR 435.811 and 435.831, October 1, 2012 ed., and 20 CFR 416.1102, 416.1103, 416.1120 through 416.1124, 416.1140 through 416.1148, 416.1150, 416.1151, 416.1157, 416.1163 through 416.1166, and Appendix to Subpart K of 416, April 1, 2012 ed. The Department also adopts and incorporates by reference Subsections 404(h)(4) and 1612(b)(24) and (25) of the Compilation of the Social Security Laws in effect January 1, 2013, to determine income and income deductions for Medicaid eligibility. The Department may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The eligibility agency may not count Veterans Administration (VA) payments for aid and attendance or the portion of a VA payment that an individual receives because of unusual medical expenses. Other VA income based on need is countable income, but is not subject to the $20 general income disregard.

(3) The eligibility agency may only count as income the portion of a VA check to which the individual is legally entitled.

(4) The eligibility agency may not count as income Social Security Administration (SSA) reimbursements of Medicare premiums.

(5) The eligibility agency may not count as income the value of special circumstance items if the items are paid for by donors.

(6) For aged, blind and disabled Medicaid, the eligibility agency shall count as income two-thirds of current child support that an individual receives in a month for the disabled child. It does not matter if the payments are voluntary or court-ordered. It does not matter if the child support is received in cash or in-kind. If there is more than one child for whom the payment is made, the amount is divided equally among the children unless a court order indicates a different division.

(7) The eligibility agency shall count as income of the

child, child support payments received from a parent or guardian for past months or years.

(8) The agency shall use countable income of the parent to determine the amount of income that will be deemed from the parent to the child to determine the child's eligibility.

(9) For aged, blind and disabled Institutional Medicaid, court-ordered child support payments collected by the Office of Recovery Services (ORS) for a child who resides out-of-home in a Medicaid 24-hour care facility are not counted as income to the child. If ORS allows the parent to retain up to the amount of the personal needs allowance for the child's personal needs, that amount is counted as income for the child. All other current child support payments received by the child or guardian that are not subject to collection by ORS count as unearned income to the child.

(10) The eligibility agency shall count as unearned income the interest earned from a sales contract on either or both the lump sum and installment payments when the interest is received or made available to the client.

(11) If the client, or the client and spouse do not live with an in-kind support donor, in-kind support and maintenance is the lesser of the value or the presumed maximum value of food or shelter received. If the client, or the client and spouse live with an in-kind support donor and do not pay a prorated share of household operating expenses, in-kind support and maintenance is the difference between the prorated share of household operating expenses and the amount the client, or the client and spouse actually pay, or the presumed maximum value, whichever is less.

(12) Payments under a contract that provide for payments at set intervals or after completion of the contract period are not lump sum payments. The payments are subject to regular income counting rules. Retroactive payments from SSI and SSA reimbursements of Medicare premiums are not lump sum payments.

(13) The eligibility agency may not count as income educational loans, grants, and scholarships received from Title IV programs of the Higher Education Act or from Bureau of Indian Affairs educational programs, and may not count any other grants, scholarships, fellowships, or gifts that a client uses to pay for education. The eligibility agency shall count as income, in the month that the client receives them, any amount of grants, scholarships, fellowships, or gifts that the client uses to pay for non-educational expenses. Allowable educational expenses include:

(a) tuition;

(b) fees;

(c) books;

(d) equipment;

(e) special clothing needed for classes;

(f) travel to and from school at a rate of 21 cents a mile, unless the grant identifies a larger amount; and

(g) child care necessary for school attendance.

(14) The eligibility agency may not count as income, payments from a qualified long-term care insurance partnership plan as defined in 42 U.S.C. 1396p(b)(1)(C)(iii), paid directly to a long-term care provider or collected by the Office of Recovery Services as a third-party liability source.

(15) Except for an individual eligible for the Medicaid Work Incentive (MWI) program, the following provisions apply to non-institutional medical assistance:

(a) For aged, blind and disabled Medicaid, the eligibility agency may not count income of a spouse or a parent to determine Medicaid eligibility of a person who receives SSI or meets 1619(b) criteria. SSI recipients and 1619(b) status individuals who meet all other Medicaid eligibility factors are eligible for Medicaid without spending down.

(b) If an ineligible spouse of an aged, blind or disabled person has more income after deductions than the allocation for a spouse, the eligibility agency shall deem the spouse's income to the aged, blind or disabled spouse to determine eligibility.

(c) The eligibility agency shall determine household size and whose income counts for aged, blind and disabled Medicaid as described below.

(i) If only one spouse is aged, blind or disabled:

(A) The eligibility agency shall deem income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. The eligibility agency shall compare the combined income to 100% of the federal poverty guideline for a two-person household. If the combined income exceeds that amount, the eligibility agency shall compare the combined income, after allowable deductions, to the BMS for two to calculate the spenddown.

(B) If the ineligible spouse's income does not exceed the allocation for a spouse, the eligibility agency may not count the ineligible spouse's income and may not include the ineligible spouse in the household size. Only the eligible spouse's income is compared to 100% of the federal poverty guideline for one. If the income exceeds that amount, it is compared, after allowable deductions, to the BMS for one to calculate the spenddown.

(ii) If both spouses are either aged, blind or disabled, the eligibility agency shall combine the income of both spouses and compare to 100% of the federal poverty guideline for a two-person household. SSI income is not counted.

(A) If the combined income exceeds that amount and one spouse receives SSI, the eligibility agency may only compare the income of the non-SSI spouse, after allowable deductions, to the BMS for a one-person household to calculate the spenddown.

(B) If neither spouse receives SSI and their combined income exceeds 100% of the federal poverty guideline, the eligibility agency shall compare the income of both spouses, after allowable deductions, to the BMS for a two-person household to calculate the spenddown.

(C) If neither spouse receives SSI and only one spouse will be covered under the applicable program, the eligibility agency shall deem income of the non-covered spouse to the covered spouse when that income exceeds the spousal allocation. If the non-covered spouse's income does not exceed the spousal allocation, the eligibility agency may only count the covered spouse's income. In both cases, the countable income is compared to 100% of the two-person poverty guideline. If the countable income exceeds the limit, the eligibility agency shall compare the income, after allowable deductions, to the BMS.

(I) If the non-covered spouse has income to deem to the covered spouse, the eligibility agency shall compare the countable income, after allowable deductions, to a two-person BMS to calculate a spenddown.

(II) If the non-covered spouse does not have income to deem to the covered spouse, the eligibility agency may only compare the covered spouse's income, after allowable deductions, to a one-person BMS to calculate the spenddown.

(iii) In determining eligibility under (c) for an aged or disabled person whose spouse is blind, both spouses' income is combined.

(A) If the combined income after allowable deductions is under 100% of the federal poverty guideline, the aged or disabled spouse will be eligible under the 100% poverty group defined in 1902(a)(10)(A)(ii) of the Social Security Act, and the blind spouse is eligible without a spenddown under the medically needy group defined in 42 CFR 435.301.

(B) If the combined income after allowable deductions is over 100% of poverty, both spouses are eligible with a spenddown under the medically needy group defined in 42 CFR 435.301.

(iv) If one spouse is disabled and working, the other is aged, blind or disabled and not working, and neither spouse is an SSI recipient nor a 1619(b) eligible individual, the working disabled spouse may choose to receive coverage under the MWI program. If both spouses want coverage, however, the eligibility agency shall first determine eligibility for them as a couple. If a spenddown is owed for them as a couple, they must meet the spenddown to receive coverage for both of them.

(d) Except when determining countable income for the 100% poverty-related Aged and Disabled Medicaid programs, the eligibility agency shall not deem income from a spouse who meets 1619(b) protected group criteria.

(e) The eligibility agency shall determine household size and whose income counts for QMB, SLMB, and QI assistance as described below:

(i) If both spouses receive Part A Medicare and both want coverage, the eligibility agency shall combine income of both spouses and compare it to the applicable percentage of the poverty guideline for a two-person household.

(ii) If one spouse receives Part A Medicare and the other spouse is aged, blind or disabled and does not receive Part A Medicare or does not want coverage, then the eligibility agency shall deem income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. If the income of the ineligible spouse does not exceed the allocation for a spouse, then only the income of the eligible spouse is counted. In both cases, the eligibility agency shall compare the countable income to the applicable percentage of the federal poverty guideline for a two-person household.

(iii) If one spouse receives Part A Medicare and the other spouse is not aged, blind or disabled, the eligibility agency shall deem income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. The agency shall combine countable income to the applicable percentage of the federal poverty guideline for a two-person household. If the deemed income of the ineligible spouse does not exceed the allocation for a spouse, only the eligible spouse's income is counted and compared to the applicable percentage of the poverty guideline for a one-person household.

(iv) The eligibility agency may not count SSI income to determine eligibility for QMB, SLMB or QI assistance.

(f) If any parent in the home receives SSI or is eligible for 1619(b) protected group coverage, the eligibility agency may not count the income of either parent to determine a child's eligibility for B or D Medicaid.

(g) Payments for providing foster care to a child are countable income. The portion of the payment that represents a reimbursement for the expenses related to providing foster care is not countable income.

(16) For Institutional Medicaid, the eligibility agency may only count the client in the household size. Only the client's income and deemed income from an alien client's sponsor is counted to determine the cost of care contribution. The provisions in Rule R414-307 govern who to include in the household size and whose income is counted to determine eligibility for home and community-based waiver services and the cost-of-care contribution.

(17) The eligibility agency shall deem, and count as unearned income, both unearned and earned income from an alien's sponsor and the sponsor's spouse when the sponsor signs an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997.

(a) The eligibility agency shall end sponsor deeming when the alien becomes a naturalized United States (U.S.) citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act, or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(b) The eligibility agency may not apply sponsor deeming to applicants or recipients who are eligible for Medicaid for emergency services only, or who are eligible for Medicaid as described in Subsection R414-302-3(2).

(18) If retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, the eligibility agency may only count as income the amount that is paid to the individual.

(19) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(20) The eligibility agency may not count as income any federal tax refund and refundable credit that an individual receives in accordance with the requirements of Sec. 6409, Pub. L. 112 240.

(21) The eligibility agency may not count income that is derived from an ownership interest in certain property and rights of federally-recognized American Indians and Alaska Natives including:

(a) certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation;

(b) ownership interests in rents, leases, royalties, or usage rights related to natural resources that include extraction of natural resources; and

(c) ownership interests and usage rights in personal property which has unique religious, spiritual, traditional, or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(22) The eligibility agency may not count as income, payments from the Department of Workforce Services under the Family Employment program, the General Assistance program, or the Refugee Cash Assistance program.

R414-304-4. Medicaid Work Incentive Program Unearned Income Provisions.

(1) The Department adopts and incorporates by reference 20 CFR 416.1102, 416.1103, 416.1120 through 416.1124, 416.1140 through 416.1148, 416.1150, 416.1151, 416.1157, and Appendix to Subpart K of 416, October 1, 2012 ed. The Department also adopts and incorporates by reference Subsections 404(h)(4) and 1612(b)(24) and (25) of the Compilation of the Social Security Laws, effective January 1, 2013. The eligibility agency may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The eligibility agency shall allow the provisions found in Subsection R414-304-3(2) through (13), and (17) through (21).

(3) The eligibility agency shall determine income from an ineligible spouse or parent by the total of the earned and unearned income using the appropriate exclusions in 20 CFR 416.1161, except that court ordered support payments are not allowed as an income deduction.

(4) For the MWI program, the income of a spouse or parent is not considered in determining eligibility of a person who receives SSI. SSI recipients who meet all other MWI program eligibility factors are eligible without paying a Medicaid buy-in premium.

(5) The eligibility agency shall determine household size and whose income counts for the MWI program as described below:

(a) If the MWI program individual is an adult and is not living with a spouse, the eligibility agency may only count the income of the individual. The eligibility agency shall include in the household size, any children of the individual who are under 18 years of age, or who are 18, 19, or 20 years of age and are full-time students. These children must be living in the home or be temporarily absent. After allowable deductions, the eligibility agency shall compare the countable income to 250% of the federal poverty guideline for the household size involved.

(b) If the MWI program individual is living with a spouse, the eligibility agency shall combine their income before allowing any deductions. The eligibility agency shall include in the household size the spouse and any children of the individual or spouse under 18 years of age, or who are 18, 19, or 20 years of age and are full-time students. These children must be living in the home or be temporarily absent. After allowable deductions, the eligibility agency shall compare the countable income of the MWI program individual and spouse to 250% of the federal poverty guideline for the household size involved.

(c) If the MWI program individual is a child living with a parent, the eligibility agency shall combine the income of the MWI program individual and the parents before allowing any deductions. The eligibility agency shall include in the household size the parents, any minor siblings, and siblings who are age 18, 19, or 20 and are full-time students, who are living in the home or temporarily absent. After allowable deductions, the eligibility agency shall compare the countable income of the MWI program individual and the individual's parents to 250% of the federal poverty guideline for the household size involved.

R414-304-5. MAGI-Based Coverage Groups.

(1) The Department adopts and incorporates by reference 42 CFR 435.603 (October 1, 2015), which applies to the methodology of determining household composition and income using the Modified Adjusted Gross Income (MAGI)-based methodology.

(a) The eligibility agency shall count in the household size, the number of unborn children that a pregnant household member expects to deliver.

(b) The Department elects the option in 42 CFR 435.603(f)(3)(iv)(B).

(c) The eligibility agency will treat separated spouses, who are not living together, as separate households.

(2) The eligibility agency may not count as income any payments from sources that federal law specifically prohibits from being counted as income to determine eligibility for federally-funded programs.

(3) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(4) The eligibility agency shall count as income cash support received by an individual when:

(a) it is received from the tax filer who claims a tax exemption for the individual;

(b) the individual is not a spouse or child of the tax filer; and

(c) the cash support exceeds a nominal amount set by the Department.

(5) To determine eligibility for MAGI-based coverage groups, the eligibility agency deducts an amount equal to 5% of the federal poverty guideline for the applicable household size from the MAGI-based household income determined for the individual. This deduction is allowed only to determine eligibility for the eligibility group with the highest income standard for which the individual may qualify.

R414-304-6. Unearned Income Provisions for Medically Needy Family, Child and Pregnant Woman Non-Institutional and Institutional Medicaid.

(1) The Department adopts and incorporates by reference 42 CFR 435.811 and 435.831,October 1, 2012 ed., 45 CFR 233.20(a)(1), 233.20(a)(3)(iv), 233.20(a)(3)(vi)(A), 233.20(a)(4)(ii), October 1, 2012 ed., and Subsection 404(h)(4) of the Compilation of the Social Security Laws, in effect January 1, 2013. The eligibility agency may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The eligibility agency may not count as income money loaned to the individual if the individual proves the money is from a loan that the individual is expected to repay.

(3) The eligibility agency may not count as income support and maintenance assistance provided in-kind by a non-profit organization certified by the Department of Human Services.

(4) The eligibility agency may not count as income the value of food stamp assistance, USDA food donations or WIC vouchers received by members of the household.

(5) The eligibility agency may not count income that is received too irregularly or infrequently to count as regular income, such as cash gifts, up to $30 a calendar quarter per household member. Any amount that exceeds $30 a calendar quarter per household member counts as income when received. Irregular or infrequent income may be divided equally among all members of the household.

(6) The eligibility agency may not count as income the amount deducted from benefit income to repay an overpayment.

(7) The eligibility agency may not count as income the value of special circumstance items paid for by donors.

(8) The eligibility agency may not count as income payments for home energy assistance.

(9) The eligibility agency may not count payments from any source that are to repair or replace lost, stolen or damaged exempt property. If the payments include an amount for temporary housing, the eligibility agency may only count the amount that the client does not intend to use or that is more than what is needed for temporary housing.

(10) The eligibility agency may not count as income SSA reimbursements of Medicare premiums.

(11) The eligibility agency may not count as income payments from the Department of Workforce Services under the Family Employment program, the General Assistance program, and the Refugee Cash Assistance program. To determine eligibility, the eligibility agency shall count income that the client receives to determine the amount of these payments, unless the income is an excluded income for medical assistance programs under other laws or regulations.

(12) The eligibility agency may not count as income interest or dividends earned on countable resources. The eligibility agency may not count as income interest or dividends earned on resources that are specifically excluded by federal laws from being counted as available resources to determine eligibility for federally-funded, means-tested medical assistance programs, other than resources excluded by 42 U.S.C. 1382b(a).

(13) The eligibility agency may not count as income the increase in pay for a member of the armed forces that is called "hostile fire pay" or "imminent danger pay," which is

compensation for active military duty in a combat zone.

(14) The eligibility agency shall count as income SSI and State Supplemental payments received by children who are included in the coverage under medically needy Medicaid programs for families, pregnant women and children.

(15) The eligibility agency shall count unearned rental income. The eligibility agency shall deduct $30 a month from the rental income. If the amount charged for the rental is consistent with community standards, the eligibility agency shall deduct the greater of either $30 or the following actual expenses that the client can verify:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property, including utility costs paid by the applicant or recipient;

(c) interest paid on a loan or mortgage made for upkeep or repair; and

(d) the value of a one-person food stamp allotment, if meals are provided to a boarder.

(16) The eligibility agency shall count deferred income when the client receives the income, the client does not defer the income by choice, and the client reasonably expects to receive the income. If the client defers the income by choice, the agency shall count the income according to when the client could receive the income. The eligibility agency shall count as income the amount deducted from income to pay for benefits like health insurance, medical expenses or child care in the month that the client could receive the income.

(17) The eligibility agency shall count the amount deducted from income to pay an obligation of child support, alimony or debts in the month that the client could receive the income.

(18) The eligibility agency shall count payments from trust funds as income in the month the payment is received by the individual or made available for the individual's use.

(19) The eligibility agency may only count as income the portion of a VA check to which the individual is legally entitled.

(20) The eligibility agency shall count as income deposits to financial accounts jointly-owned between the client and one or more other individuals, even if the deposits are made by a non-household member. If the client disputes ownership of the deposits and provides adequate proof that the deposits do not represent income to the client, the eligibility agency may not count those funds as income. The eligibility agency may require the client to terminate access to the jointly-held accounts.

(21) The eligibility agency shall count as unearned income the interest earned from a sales contract on lump sum payments and installment payments when the interest payment is received by or made available to the client.

(22) The eligibility agency shall count current child support payments as income to the child for whom the payments are being made. If a payment is for more than one child, the agency shall divide that amount equally among the children unless a court order indicates otherwise. Child support payments received by a parent or guardian to repay amounts owed for past months or years are countable income to determine eligibility of the parent or guardian who receives the payments. If ORS collects current child support, the eligibility agency shall count the child support as current even if ORS mails the payment to the client after the month it is collected.

(23) The eligibility agency shall count payments from annuities as unearned income in the month that the client receives the payments.

(24) If retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, the eligibility agency may only count the amount paid to the individual.

(25) The eligibility agency shall deem, and count as unearned income, both unearned and earned income from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997.

(a) The eligibility agency shall stop deeming income from a sponsor when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(b) The eligibility agency may not apply sponsor deeming to applicants or recipients who are eligible for emergency services only, or who are eligible for Medicaid as described in Subsection R414-302-3(2).

(26) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(27) The eligibility agency may not count as income any federal tax refund and refundable credit that an individual receives in accordance with the requirements of Sec. 6409 of the American Taxpayer Relief Act of 2012, Pub. L. No. 112 240, 126, Stat. 2313.

(28) The eligibility agency may not count income that is derived from an ownership interest in certain property and rights of federally-recognized American Indians and Alaska Natives including:

(a) certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation;

(b) ownership interests in rents, leases, royalties, or usage rights related to natural resources that include extraction of natural resources; and

(c) ownership interests and usage rights in personal property which has unique religious, spiritual, traditional, or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

R414-304-7. Aged, Blind and Disabled Non-Institutional and Institutional Medicaid Earned Income Provisions.

(1) The Department adopts and incorporates by reference 42 CFR 435.811 and 435.831, October 1, 2012 ed., and 20 CFR 416.1110 through 416.1112, April 1, 2012 ed. The Department may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) If an SSI recipient has a plan for achieving self-support approved by the (SSA), the eligibility agency may not count income set aside in the plan that allows the individual to purchase work-related equipment or meet self-support goals. This income may include earned and unearned income.

(3) The eligibility agency may not deduct from income expenses relating to the fulfillment of a plan to achieve self-support.

(4) For Aged, Blind and Disabled Medicaid, the eligibility agency may not count earned income used to compute a needs-based grant.

(5) For aged, blind and disabled Institutional Medicaid, the eligibility agency shall deduct $125 from earned income

before it determines contribution towards cost of care.

(6) The eligibility agency shall include capital gains in the gross income from self-employment.

(7) To determine countable net income from self-employment, the eligibility agency shall allow a 40% flat rate exclusion off the gross self-employment income as a deduction for business expenses. For a self-employed individual who has allowable business expenses greater than the 40% flat rate exclusion amount and who also provides verification of the expenses, the eligibility agency shall calculate the self-employment net profit amount by using the deductions that are allowed under federal income tax rules.

(8) The eligibility agency may not allow deductions for the following business expenses:

(a) transportation to and from work;

(b) payments on the principal for business resources;

(c) net losses from previous tax years;

(d) taxes;

(e) money set aside for retirement; and

(f) work-related personal expenses.

(9) The eligibility agency may deduct net losses of self-employment from the current tax year from other earned income.

(10) The eligibility agency shall disregard earned income paid by the U.S. Census Bureau to temporary census takers to prepare for and conduct the census, for individuals defined in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.320, 435.322, 435.324, 435.340, 435.350 and 435.541. The eligibility agency shall also exclude this income for individuals described in Subsections 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), 1902(a)(10)(A)(ii)(XIII) and 1902(a)(10)(E)(i) through (iv) of Title XIX of the Social Security Act. The eligibility agency may not exclude earnings paid to temporary census takers from the post-eligibility process of determining the person's cost of care contribution for long-term care recipients.

(11) The eligibility agency shall count deductions from earned income that include insurance premiums, savings, garnishments, or deferred income in the month when the client could receive the funds.

R414-304-8. Earned Income Provisions for Medically Needy Family, Child and Pregnant Woman Non-Institutional and Institutional Medicaid.

(1) The Department adopts and incorporates by reference 42 CFR 435.811, 435.831, October 1, 2012 ed., and 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(B), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), October 1, 2012 ed. The eligibility agency may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The eligibility agency may not count the income of a dependent child if the child is:

(a) in school or training full-time;

(b) in school or training part-time, which means the child is enrolled for at least half of the hours needed to complete a course, or is enrolled in at least two classes or two hours of school a day and employed less than 100 hours a month; or

(c) is in a job placement under the federal Workforce Investment Act.

(3) For medically needy Family Medicaid, the eligibility agency shall allow the AFDC $30 and one-third of earned income deduction if the wage earner receives Parent/Caretaker Relative Medicaid in one of the four previous months and this disregard is not exhausted.

(4) The eligibility agency shall determine countable net income from self-employment by allowing a 40 % flat rate exclusion off the gross self-employment income as a deduction for business expenses. If a self-employed individual provides verification of actual business expenses greater than the 40 % flat rate exclusion amount, the eligibility agency shall allow actual expenses to be deducted. The expenses must be business expenses allowed under federal income tax rules.

(5) Items such as personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods, are not business expenses.

(6) For Family Medicaid, the eligibility agency shall deduct from the income of clients who work at least 100 hours in a calendar month a maximum of $200 a month in child care costs for each child who is under the age of two and $175 a month in child care costs for each child who is at least two years of age. The maximum deduction of $175 shall also apply to provide care for an incapacitated adult. The eligibility agency shall deduct from the income of clients who work less than 100 hours in a calendar month a maximum of $160 a month in child care costs for each child who is under the age of two and $140 a month for each child who is at least two years of age. The maximum deduction of $140 a month shall also apply to provide care for an incapacitated adult.

(7) For Family Institutional Medicaid, the eligibility agency shall deduct a maximum of $160 in child care costs from the earned income of clients who work at least 100 hours in a calendar month. The eligibility agency shall deduct a maximum of $130 in child care costs from the earned income of clients working less than 100 hours in a calendar month.

(8) The eligibility agency shall exclude earned income paid by the U.S. Census Bureau to temporary census takers to prepare for and conduct the census, for individuals defined in 42 CFR 435.301(b)1, 435.308, 435.310 and individuals defined in Title XIX of the Social Security Act Section 1902(e)(1), (7), and Section 1925. The eligibility agency may not exclude earnings paid to temporary census takers from the post-eligibility process of determining the person's cost of care contribution for long-term care recipients.

R414-304-9. Aged, Blind and Disabled Non-Institutional Medicaid and Medically Needy Family, Pregnant Woman and Child Non-Institutional Medicaid Income Deductions.

(1) The Department shall determine income deductions based on the financial methodologies in 42 CFR 435.601, and the deductions defined in 42 CFR 435.831.

(2) For aged, blind and disabled individuals eligible under 42 CFR 435.301(b)(2)(iii), (iv), and (v), described more fully in 42 CFR 435.320, .322 and .324, the eligibility agency shall deduct from income an amount equal to the difference between 100% of the federal poverty guideline and the current BMS income standard for the applicable household size to determine the spenddown amount.

(3) Health insurance premiums:

(a) The eligibility agency shall deduct from income health insurance premiums the client or a financially responsible family member pays. The coverage must be for the client or any family members living with the client. The eligibility agency shall also deduct from income premiums the Department pays on behalf of the client as authorized by Section 1905(a) of Title XIX of the Compilation of the Social Security Laws, except no deduction is allowed for Medicare premiums the Department pays for recipients.

(b) For Aged, Blind and Disabled programs, the eligibility agency shall deduct the entire payment in the month it is due and may not prorate the amount.

(c) For Medically Needy Family, Pregnant Woman and

Child programs, factor premiums due weekly or bi-weekly before deducting. For payments due on any other basis, deduct the actual amount in the month due.

(d) The eligibility agency may not deduct health insurance premiums to determine eligibility for the poverty-related medical assistance programs or coverage groups subject to the use of MAGI-based methodologies.

(e) For medically needy programs, the actual amount of insurance premiums paid in a retroactive month will be deducted as follows:

(i) Deducted in the month paid; or

(ii) Deducted in a month after it was paid, but only through the month of application and only to the extent it was not already used as a deduction.

(5) To determine eligibility for medically needy coverage groups, the eligibility agency shall deduct from income medically necessary expenses that the client verifies only if the expenses meet all of the following conditions:

(a) The medical service was received by the client, a client's spouse, a parent of a dependent client, a dependent sibling of a dependent client, a deceased spouse, or a deceased dependent child;

(b) Medicaid does not cover the medical bill and it is not payable by a third party;

(c) The medical bill remains unpaid or the client receives and pays for the medical service during the month of application or during the three months immediately preceding the date of application. The date that the medical service is provided on an unpaid expense is irrelevant if the client still owes the provider for the service. Bills for services that the client receives and pays for during the application month or the three months preceding the date of application can be used as deductions only through the month of application.

(6) The eligibility agency may not allow a medical expense as a deduction more than once.

(7) The eligibility agency may only allow as an income deduction a medical expense for a medically necessary service. The eligibility agency shall determine whether the service is medically necessary.

(8) The eligibility agency shall deduct medical expenses in the order required by 42 CFR 435.831(h)(1). When expenses have the same priority, the eligibility agency shall deduct paid expenses before unpaid expenses.

(9) A client who pays a cash spenddown may present proof of medical expenses paid during the coverage month and request a refund of spenddown paid up to the amount of bills paid by the client. The following criteria apply:

(a) Expenses for which a refund can be made include medically necessary expenses not covered by Medicaid or any third party, co-payments required for prescription drugs covered under a Medicare Part D plan, and co-payments or co-insurance amounts for Medicaid-covered services as required under the Utah Medicaid State Plan;

(b) The expense must be for a service that the client receives during the benefit month;

(c) The Department may not refund any portion of any medical expense that the client uses to meet a Medicaid spenddown when the client assumes responsibility to pay that expense;

(d) A refund cannot exceed the actual cash spenddown amount paid by the client;

(e) The Department may not refund spenddown amounts that a client pays based on unpaid medical expenses for services that the client receives during the benefit month. The client may present to the eligibility agency any unpaid bills for non-Medicaid-covered services that the client receives during the coverage month. The client may use the unpaid bills to meet or reduce the spenddown that the client owes for a future month of Medicaid coverage to the extent that the bills remain unpaid at the beginning of the future month;

(f) The Department shall reduce the refund amount by the amount of any unpaid obligation that the client owes the Department.

(10) For poverty-related coverage groups and coverage groups subject to the MAGI-based methodologies, an individual or household is ineligible if countable income exceeds the applicable income limit. The eligibility agency may not deduct medical costs from income to determine eligibility for poverty-related or MAGI-based medical assistance programs. An individual may not pay the difference between countable income and the applicable income limit to become eligible for poverty-related or MAGI-based medical assistance programs.

(11) When a client must meet a spenddown to become eligible for a medically needy program, the client must sign a statement that says:

(a) the eligibility agency told the client how spenddown can be met;

(b) the client expects his or her medical expenses to exceed the spenddown amount;

(c) whether the client intends to pay cash or use medical expenses to meet the spenddown; and

(d) that the eligibility agency told the client that the Medicaid provider may not use the provider's funds to pay the client's spenddown and that the provider may not loan the client money for the client to pay the spenddown.

(12) A client may meet the spenddown by paying the eligibility agency, or by providing proof to the eligibility agency of medical expenses the client owes equal to the spenddown amount.

(a) The client may elect to deduct from countable income unpaid medical expenses for services the client receives in non-Medicaid covered months to meet or reduce the spenddown.

(b) Expenses must meet the criteria for allowable medical expenses.

(c) Expenses may not be payable by Medicaid or a third party.

(d) For each benefit month, the client may choose to change the method of meeting the spenddown.

(13) The eligibility agency may not accept spenddown payments from a Medicaid provider if the source of the funds is the Medicaid provider's own funds. In addition, the eligibility agency may not accept spenddown payments from a client if a Medicaid provider loans funds to the client to make a spenddown payment.

(14) The eligibility agency may only deduct the amount of prepaid medical expenses equal to the cost of services received during the month in which the client pays the expenses. The eligibility agency may not deduct from income any payments a client makes for medical services in a month before the client receives the service.

(15) The eligibility agency may not require a client to pay a spenddown of less than $1.

(16) Medical costs that a client incurs in a benefit month may not be used to meet a spenddown when the client is enrolled in a Medicaid health plan.

(17) Bills for mental health services that a client incurs in a benefit month may not be used to meet spenddown if Medicaid contracts with a single mental health provider to provide mental health services to all recipients in the client's county of residence.

(18) Bills for mental health services a client pays in a retroactive or application month may be used to meet a spenddown if the services were not provided by a Medicaid-contracted mental health provider.

R414-304-10. Medicaid Work Incentive Program Income

Deductions.

(1) To determine eligibility for the MWI program, the eligibility agency shall deduct the following amounts from income to determine countable income that is compared to 250% of the federal poverty guideline:

(a) $20 from unearned income. If there is less than $20 in unearned income, the eligibility agency shall deduct the balance of the $20 from earned income;

(b) Impairment-related work expenses;

(c) $65 plus one-half of the remaining earned income;

(d) A current year loss from a self-employment business can be deducted only from other earned income.

(2) For the MWI program, an individual or household is ineligible if countable income exceeds the applicable income limit. The eligibility agency may not deduct health insurance premiums and medical costs from income before comparing countable income to the applicable limit.

(3) The eligibility agency shall deduct from countable income the amount of health insurance premiums paid by the MWI-eligible individual or a financially responsible household member, to purchase health insurance for himself or other family members in the household before determining the MWI buy-in premium.

(4) An eligible individual may meet the MWI buy-in premium with cash, check or money order payable to the eligibility agency. The client may not meet the MWI premium with medical expenses.

(5) The eligibility agency may not require a client to pay a MWI buy-in premium of less than $1.

R414-304-11. Aged, Blind and Disabled Institutional Medicaid and Family Institutional Medicaid Income Deductions.

(1) The Department shall determine income deductions based on the financial methodologies in 42 CFR 435.601 and the deductions defined in 42 CFR 435.725, 435.726, 435.832, and 42 USC 1396a(r)(1), and 1396r-5(d).

(2) Health insurance premiums:

(a) For institutionalized and waiver eligible clients, the eligibility agency shall deduct from income health insurance premiums only for the institutionalized or waiver eligible client and only if paid with the institutionalized or waiver eligible client's funds. The eligibility agency shall deduct premiums the Department is paying on behalf of the client as authorized by Section 1905(a) of Title XIX of the Social Security Act, except no deduction is allowed for Medicare premiums that the Department pays for recipients.

(b) For Aged, Blind and Disabled programs, the eligibility agency shall deduct health insurance premiums in the month the payment is due.

(c) For Medically Needy Family, Pregnant Woman and Child programs, factor premiums due weekly or bi-weekly before deducting. For payments due on any other basis, deduct the actual amount in the month due.

(d) The eligibility agency shall deduct from income the portion of a combined premium attributable to the institutionalized or waiver-eligible client if the combined premium includes a spouse or dependent family member. The client's portion must be paid from the funds of the institutionalized or waiver-eligible client.

(3) The eligibility agency may only deduct medical expenses from income under the following conditions:

(a) the client receives the medical service;

(b) Medicaid or a third party will not pay the medical bill;

(c) a paid medical bill can only be deducted through the month of payment. No portion of any paid bill can be deducted after the month of payment.

(4) The eligibility agency may not deduct from income to determine cost-of-care contribution for long-term care services, or when a client incurs expenses for medical or remedial care services, even if the expense remains unpaid when:

(a) a client is in a penalty period resulting from a transfer of assets; or

(b) a client's residential home exceeds the equity value as defined in 42 U.S.C. 1396p(f).

(5) The eligibility agency may not allow a medical expense as an income deduction more than once.

(6) The eligibility agency may only allow as an income deduction a medical expense for a medically necessary service. The eligibility agency shall determine whether the service is medically necessary.

(7) The eligibility agency may only deduct the amount of prepaid medical expenses equal to the cost of services received during the month in which the client pays the expenses. The eligibility agency may not deduct from income any payments a client makes for medical services in a month before the client receives the service.

(8) When a client must meet a spenddown to become eligible for a medically needy program or receive Medicaid under a home and community based care waiver, the client must sign a statement that says:

(a) the eligibility agency told the client how spenddown can be met;

(b) the client expects his or her medical expenses to exceed the spenddown amount;

(c) whether the client intends to pay cash or use medical expenses to meet the spenddown; and

(d) the eligibility agency told the client that Medicaid providers may not use the provider's funds to pay the client's spenddown or loan the client money for the client to pay the spenddown.

(9) A client may meet the spenddown by paying the eligibility agency, or by providing proof to the eligibility agency of medical expenses the client owes equal to the spenddown amount.

(a) The client may elect to deduct from countable income unpaid medical expenses for services the client receives in non-Medicaid-covered months to meet or reduce the spenddown.

(b) Expenses must meet the criteria for allowable medical expenses.

(c) Expenses may not be payable by Medicaid or a third party.

(d) For each benefit month, the client may choose to change the method of meeting spenddown by either presenting proof of allowable medical expenses to the eligibility agency or by making a payment to the eligibility agency equal to the spenddown amount.

(10) The eligibility agency may not accept spenddown payments from a Medicaid provider if the source of the funds is the Medicaid provider's own funds. In addition, the eligibility agency may not accept spenddown payments from a client if a Medicaid provider loans funds to the client to make a spenddown payment.

(11) The eligibility agency shall require institutionalized clients to pay all countable income remaining after allowable income deductions to the institution in which an individual resides, as the individual's cost-of-care contribution.

(12) A client who pays a cash spenddown or a cost-of-care amount to the medical facility in which he resides, may present proof of medical expenses paid during the coverage month and request a refund of spenddown or cost-of-care paid up to the amount of bills. The following criteria apply:

(a) Expenses for which a refund can be made include medically necessary medical expenses not covered by Medicaid or any third party, co-payments required for

prescription drugs covered under a Medicare Part D plan, and co-payments or co-insurance amounts for Medicaid-covered services as required under the Utah Medicaid State Plan;

(b) The expense must be for a service the client receives during the benefit month;

(c) The eligibility agency may not refund any portion of a medical expense the client uses to meet a Medicaid spenddown or to reduce his cost-of-care to the institution when the client assumes that payment responsibility;

(d) A refund cannot exceed the actual cash spenddown or cost-of-care amount paid by the client;

(e) The eligibility agency may not refund a spenddown or cost-of-care amounts paid by a client based on unpaid medical expenses for services the client receives during the benefit month. The client may present to the eligibility agency any unpaid bills for non-Medicaid-covered services the client receives during the coverage month. The client may use these unpaid bills to meet or reduce the spenddown the client owes for a future month of Medicaid coverage to the extent the bills remain unpaid at the beginning of the future month, and the bills are not payable by a third party;

(f) The Department shall reduce a refund by the amount of any unpaid obligation the client owes the Department.

(13) The eligibility agency shall deduct a personal needs allowance for residents of medical institutions equal to $45.

(14) When a doctor verifies a single person or a person whose spouse resides in a medical institution is expected to return home within six months of entering a medical institution or nursing home, the eligibility agency shall deduct a personal needs allowance equal to the BMS for one person defined in Subsection R414-304-13(6), for up to six months to maintain the individual's community residence.

(15) A client is not eligible for Medicaid coverage if medical costs are not at least equal to the contribution required towards the cost of care.

(16) Medical costs a client incurs in a benefit month may not be used to meet a spenddown when the client is enrolled in a Medicaid health plan.

(17) Bills for mental health services a client incurs in a benefit month may not be used to meet a spenddown if Medicaid contracts with a single mental health provider to provide mental health services to all recipients in the client's county of residence.

(18) Bills for mental health services a client pays in a retroactive or application month may be used to meet a spenddown if the services are not provided by a Medicaid-contracted mental health provider.

R414-304-12. Budgeting.

(1) The Department adopts and incorporates by reference 42 CFR 435.601 and 435.640, October 1, 2012 ed., and 45 CFR 233.20(a)(3)(iii), 233.31, and 233.33, October 1, 2012 ed., relating to financial responsibility and budgeting for non-MAGI-based Medicaid coverage groups.

(2) The Department adopts and incorporates by reference, 42 CFR 435.603(c), (d), (e), (g) and (h), October 1, 2012 ed., relating to household income and budgeting for MAGI-based Medicaid coverage groups.

(3) The eligibility agency shall do prospective budgeting to determine a household's expected monthly income.

(a) The eligibility agency shall include in the best estimate of MAGI-based income, reasonably predictable income changes such as seasonal income or contract income to determine the average monthly income expected to be received during the certification period.

(b) The eligibility agency shall prorate income over the eligibility period to determine an average monthly income.

(4) A best estimate of income based on the best available information is considered an accurate reflection of client income in that month.

(5) The eligibility agency shall use the best estimate of income to be received or made available to the client in a month to determine eligibility. For individuals eligible under a medically needy coverage group, the best estimate of income is used to determine the individual's spenddown.

(6) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing.

(7) For non-MAGI-based coverage groups, the eligibility agency shall count income in the following manner:

(a) For QMB, SLMB, QI, MWI program, and aged, blind, disabled, and Institutional Medicaid income is counted as it is received. Income that is received weekly or every other week is not factored;

(b) For medically needy Family, Pregnant Woman and Child Medicaid programs, income that is received weekly or every other week is factored.

(8) Lump sums are income in the month received. Lump sum payments can be earned or unearned income.

(9) For non-MAGI-based coverage groups, income paid out under a contract is prorated over the time period the income is intended to cover to determine the countable income for each month. The prorated amount is used instead of actual income that a client receives to determine countable income for a month.

(10) To determine the average monthly income for farm and self-employment income, the eligibility agency shall determine the annual income earned during one or more past years, or other applicable time period, and factors in any current changes in expected income for future months. Less than one year's worth of income may be used if this income has recently begun, or a change occurs making past information unrepresentative of future income. The monthly average income is adjusted during the year when information about changes or expected changes is received by the eligibility agency.

(11) Countable educational income that a client receives other than monthly income is prorated to determine the monthly countable income. This is done by dividing the total amount by the number of calendar months that classes are in session.

(12) Eligibility for retroactive assistance is based on the income received in the month for which retroactive coverage is sought. When income is being prorated or annualized, then the monthly countable income determined using this method is used for the months in the retroactive period, except when the income was not being received during, and was not intended to cover those specific months in the retroactive period.

R414-304-13. Income Standards.

(1) The Department adopts and incorporates by reference Subsections 1902(a)(10)(E), 1902(l), 1902(m), 1903(f), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 2013.

(2) The eligibility agency shall calculate the aged and disabled poverty-related Medicaid income standard as 100% of the federal non-farm poverty guideline. If an aged or disabled person's income exceeds this amount, the Basic Maintenance Standard (BMS) applies unless the disabled individual or a disabled aged individual has earned income. In that case, the income standards of the MWI program apply.

(3) The income standard for the MWI for disabled individuals with earned income is equal to 250% of the federal poverty guideline for a family of the size involved. If income exceeds this amount, the BMS applies.

(a) The eligibility agency shall charge a MWI buy-in premium for the MWI program when the countable income of the eligible individual's or the couple's income exceeds 100%

of the federal poverty guideline for the Aged and Disabled 100% poverty-related coverage group. When the eligible individual is a minor child, the eligibility agency shall charge a MWI buy-in premium when the child's countable income, including income deemed from parents, exceeds 100% of the federal poverty guideline for a one-person household.

(b) The premium is equal to 5% of income when income is over 100% but not more than 110% of the federal poverty guideline, 10% of income when income is over 110% but not over 120% of the federal poverty guideline, or 15% of income when income is over 120% of the federal poverty guideline. The premium is calculated using only the eligible individual's or eligible couple's countable income multiplied by the applicable percentage.

(4) The income limit for parents and caretaker relatives, pregnant women, and children under the age of 19 are defined in Section R414-303-4.

(5) To determine eligibility and the spenddown amount of individuals under medically needy coverage groups, the BMS applies.

(6) The BMS is as follows:

TABLE

Household Size	Basic Maintenance Standard (BMS)
1	382
2	468
3	583
4	683
5	777
6	857
7	897
8	938
9	982
10	1,023
11	1,066
12	1,108
13	1,150
14	1,192
15	1,236
16	1,277
17	1,320
18	1,364

R414-304-14. Aged, Blind and Disabled Medicaid, Medicaid Work Incentive, QMB, SLMB, and QI Filing Unit.

(1) The Department adopts and incorporates by reference 42 CFR 435.601 and 435.602, October 1, 2012 ed., and Subsections 1902(m)(1) and (2), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 2013.

(2) The eligibility agency shall count the following individuals in the BMS for aged, blind and disabled Medicaid:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is eligible for aged, blind and disabled Medicaid, and is included in the coverage;

(c) a spouse who lives in the same home, if the spouse has deemed income above the allocation for a spouse.

(3) The eligibility agency shall count the following individuals in the household size for the 100% of poverty aged or disabled Medicaid program:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is aged, blind, or disabled, regardless of the type of income the spouse receives, or whether the spouse is included in the coverage;

(c) a spouse who lives in the same home, if the spouse is not aged, blind or disabled, but has deemed income above the allocation for a spouse.

(4) The eligibility agency shall count the following individuals in the household size for a QMB, SLMB, or QI case:

(a) the client;

(b) a spouse living in the same home who receives Part A Medicare or is Aged, Blind, or Disabled, regardless of whether the spouse has any deemed income or whether the spouse is included in the coverage;

(c) a spouse living in the same home who does not receive Part A Medicare and is not Aged, Blind, or Disabled, if the spouse has deemed income above the allocation for a spouse.

(5) The eligibility agency shall count the following individuals in the household size for the MWI program:

(a) the client;

(b) a spouse living in the same home;

(c) parents living with a minor child;

(d) children who are under the age of 18;

(e) children who are 18, 19, or 20 years of age if they are in school full-time.

(6) Eligibility for aged, blind and disabled non-institutional Medicaid and the spenddown, if any; aged and disabled 100% poverty-related Medicaid; and QMB, SLMB, and QI programs is based on the income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client. Income of the spouse is counted based on Section R414-304-3;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(7) Eligibility for the MWI program is based on income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(8) If a person is included in the BMS, it means that the eligibility agency shall count that family member as part of the household and also count his income and resources to determine eligibility for the household, whether or not that family member receives medical assistance.

(9) If a person is included in the household size, it means that the eligibility agency shall count that family member as part of the household to determine what income limit applies, regardless of whether the agency counts that family member's income or whether that family member receives medical assistance.

R414-304-15. Medically Needy Family, Pregnant Woman and Child Medicaid Filing Unit.

(1) The Department adopts and incorporates by reference 42 CFR 435.601 and 435.602, October 1, 2012 ed., and 45 CFR 206.10(a)(1)(iii), 233.20(a)(1) and 233.20(a)(3)(vi), October 1, 2012 ed.

(2) If a household includes individuals who meet the U.S. citizen or qualified alien status requirements and family members who do not meet U.S. citizen or qualified alien status requirements, the eligibility agency shall include the ineligible alien family members in the household size to determine the applicable income limit for the eligible family members. The ineligible alien family members may not receive regular Medicaid coverage, but may be able to qualify for Medicaid that covers emergency services only under other provisions of Medicaid law.

(3) The eligibility agency may exclude any unemancipated minor child from the Medicaid coverage group, and may exclude an ineligible alien child from the household size at the request of the named relative who is

responsible for the children. An excluded child is considered an ineligible child and is not counted as part of the household size to determine what income limit is applicable to the family. The eligibility agency may not consider income and resources of an excluded child to determine eligibility or spenddown.

(4) The eligibility agency may not include a non-parent caretaker relative in the household size of the minor child.

(5) If anyone in the household is pregnant, the eligibility agency shall include the expected number of unborn children in the household size.

(6) If the parents voluntarily place a child in foster care and in the custody of a state agency, the eligibility agency shall include the parents in the household size.

(7) The eligibility agency may not include parents in the household size who have relinquished their parental rights.

(8) If a court order places a child in the custody of the state and the state temporarily places the child in an institution, the eligibility agency may not include the parents in the household size.

(9) If the eligibility agency includes or counts a person in the household size, that family member is counted as part of the household and his income and resources are counted to determine eligibility for the household, whether or not that family member receives medical assistance. The household size determines which BMS income level applies to determine eligibility for the client or family.

R414-304-16. Aged, Blind and Disabled Institutional Family Institutional Medicaid Filing Unit.

(1) For aged, blind and disabled institutional Medicaid, the eligibility agency may not use income of the client's parents or the client's spouse to determine eligibility and the contribution to cost-of-care.

(2) For family institutional Medicaid programs, the Department adopts and incorporates by reference 45 CFR 206.10(a)(1)(vii), October 1, 2012 ed.

(3) The eligibility agency shall determine eligibility and the contribution to cost of care, which may be referred to as a spenddown, using the income of the client and the income deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997. The eligibility agency shall end sponsor deeming when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

KEY: financial disclosures, income, budgeting
March 28, 2017 26-18-3
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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-305. Resources.
R414-305-1. Purpose and Authority.

This rule is established under the authority of Section 26-18-3 and establishes the resource provisions for Medicaid eligibility.

R414-305-2. Definitions.

(1) The definitions in Rules R414-1 and R414-301 apply to this rule.

(2) The following definitions apply in this rule:

(a) "Burial plot" means a burial space and any item related to repositories customarily used for the remains of any deceased member of the household. This includes caskets, concrete vaults, urns, crypts, grave markers, and the cost of opening and closing a grave site.

(b) "Penalty period" means a period of time during which a person is not eligible for Medicaid services for institutional care or services provided under a home and community-based waiver due to a transfer of assets for less than fair market value.

(c) "Transfer" in regard to assets means a person has disposed of assets for less than fair market value.

R414-305-3. Aged, Blind and Disabled Non-Institutional and Institutional Medicaid Resource Provisions.

(1) To determine resource eligibility of an individual on the basis of being aged, blind or disabled, the Department adopts and incorporates by reference 42 CFR 435.840, 435.845, October 1, 2012 ed., and 20 CFR 416.1201, 416.1202, 416.1205 through 416.1224, 416.1229 through 416.1239, and 416.1247 through 416.1250, April 1, 2012 ed. The Department also adopts and incorporates by reference Section 1917(b), (d), (e), (f) and (g) of the Compilation of the Social Security Laws in effect January 1, 2013. The eligibility agency may not count as an available resource any assets that are prohibited under other federal laws from being counted as a resource to determine eligibility for federally-funded medical assistance programs. In addition, the eligibility agency applies the following rules.

(2) A resource is available when the individual owns it or has the legal right to sell or dispose of the resource for the individual's own benefit.

(3) Except for the Medicaid Work Incentive Program, the resource limit for aged, blind or disabled Medicaid is $2,000 for a one-person household and $3,000 for a two-person household.

(4) For an individual who meets the criteria for the Medicaid Work Incentive Program, the resource limit is $15,000. This limit applies whether the household size is one or more than one.

(5) The eligibility agency shall base non-institutional and institutional Medicaid eligibility on all available resources owned by the individual, or considered available to the individual from a spouse or parent. The eligibility agency may not grant eligibility based upon the individual's intent to or action of disposing of non-liquid resources as described in 20 CFR 416.1240, April 1, 2012 ed., unless Social Security is excluding the resources for an SSI recipient while the recipient takes steps to dispose of the excess resources.

(6) The eligibility agency may not count any resource or the interest from a resource held within the rules of the Uniform Transfers to Minors Act. Any money from the resource that is given to the child as unearned income is a countable resource that begins the month after the child receives it.

(7) The eligibility agency shall count the resources of a ward that are controlled by a legal guardian as the ward's resources.

(8) The eligibility agency may not count lump sum payments that an individual receives on a sales contract for the sale of an exempt home if the entire proceeds are used to purchase a new exempt home within three calendar months of when the property is sold. The eligibility agency shall grant the individual one three-month extension if more than three months is needed to complete the actual purchase. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal.

(9) If a resource is available, but a legal impediment exists, the eligibility agency may not count the resource until it becomes available. The individual must take appropriate steps to make the resource available unless one of the following conditions as determined by a person with established expertise relevant to the resource exists:

(a) Reasonable action does not allow the resource to become available; and

(b) The cost of making the resource available exceeds its value.

(10) Water rights attached to the home and the lot on which the home sits are exempt as long as the home is the individual's principal place of residence.

(11) For an institutionalized individual, the eligibility agency may not consider a home or life estate to be an exempt resource.

(12) To determine eligibility for nursing facility or other long-term care services, the eligibility agency shall exclude the value of the individual's principal home or life estate from countable resources if one of the following conditions is met:

(a) the individual intends to return to the home;

(b) the individual's spouse resides in the home;

(c) the individual's child who is under the age of 21, or who is blind or disabled resides in the home; or

(d) a reliant relative of the individual resides in the home.

(13) Even if the conditions in Subsection R414-305-3(12) are met, an individual is ineligible to receive nursing facility services or other long-term care services if the full equity value of the individual's home or life estate exceeds $500,000, or increased value according to the provisions of 42 U.S.C. 1396p(f)(1)(C) unless the individual's spouse, or the individual's child who is under the age of 21 or is blind or permanently disabled lawfully resides in the home. The individual may only qualify for Medicaid to cover ancillary services.

(14) For Aged, Blind and Disabled Medicaid, the eligibility agency may not count up to $6,000 of equity value of non-business property used to produce goods or services essential to home use daily activities.

(15) The eligibility agency may retroactively designate for burial a previously unreported resource that meets the criteria for burial funds found in 20 CFR 416.1231. The effective date of the exclusion cannot be earlier than the first day of the month after the month in which the funds were designated for burial or intended for burial, were separated from non-burial funds, and the client was eligible for Medicaid. The eligibility agency shall treat the resources as funds set aside for burial and the amount exempted cannot exceed the limit established for the SSI program.

(16) One vehicle is exempt if it is used for regular transportation needs of the individual or a household member.

(17) The eligibility agency may not count resources of an SSI recipient who has a plan for achieving self-support approved by the Social Security Administration when the resources are set aside under the plan to purchase work-related equipment or meet self-support goals.

(18) The eligibility agency may not count an irrevocable

burial trust as a resource. Nevertheless, if the owner is institutionalized or on home and community-based waiver Medicaid, the value of the trust, which exceeds $7,000, is considered a transferred resource.

(19) The eligibility agency may not count business resources that are required for employment or self-employment.

(20) For the Medicaid Work Incentive Program, the eligibility agency may not count the following additional resources of the eligible individual:

(a) Retirement funds held in an employer or union pension plan, retirement plan or account, including 401(k) plans, or an Individual Retirement Account, even if the funds are available to the individual.

(b) A second vehicle when it is used by a spouse or child of the eligible individual living in the household to get to work.

(21) After qualifying for the Medicaid Work Incentive Program, the eligibility agency may not count the resources described in Subsection R414-305-3(20) to allow the individual to qualify for other Medicaid programs for the aged, blind or disabled, and not solely the Medicaid Work Incentive, even if the individual ceases to have earned income or no longer meets the criteria for the Work Incentive Program.

(22) Assets of an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997, are considered available to the alien. The eligibility agency shall stop counting assets from a sponsor when the alien becomes a naturalized United States (U.S.) citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(23) The eligibility agency shall not consider a sponsor's assets as being available to applicants who are eligible for Medicaid for emergency services only.

(24) The eligibility agency may not count as a resource any federal tax refund and refundable credit that an individual receives for 12 months after the month of receipt.

(25) The eligibility agency may not count as a resource, for one year after the date of receipt, any payments that an individual receives under the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(26) The eligibility agency may not count certain property and rights of federally-recognized American Indians including certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation; ownership interests in rents, leases, royalties or usage rights related to natural resources (including extraction of natural resources); and ownership interests and usage rights in personal property which has unique religious, spiritual, traditional or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(27) The eligibility agency shall not count as a resource a qualified Achieving a Better Life Experience (ABLE) account.

(28) The eligibility agency shall count only the portion of an asset such as a retirement plan that is legally available to an individual when that asset has been divided between two divorced spouses pursuant to a qualified domestic relations order.

(29) Under the authority of Subsection 1902(r)(2) of the Social Security Act, to determine an individual's eligibility for Medicaid for long-term care services, the Department disregards otherwise countable assets or resources in an amount equal to the insurance benefit payments made to or on behalf of an individual who is a beneficiary under a qualified long-term care insurance partnership policy that meets the provisions found in 42 U.S.C. 1396p(b)(1)(C)(iii). The amount of the disregard applies to otherwise countable assets the client owns or that are deemed available to the client for the purpose of determining eligibility, and is equal to the amount of benefits the client has received from the partnership policy up through the month immediately before the month of application for long-term care assistance under Utah Medicaid.

(a) This resource disregard applies to aged, blind or disabled individuals who qualify for Medicaid under one of the following eligibility coverage groups found under:

(i) Subsection 1902(a)(10)(A)(ii)(V) of the Social Security Act; or

(ii) Subsection 1902(a)(10)(A)(ii)(VI) of the Social Security Act.

(b) The Department treats payments received after eligibility for long-term care services as a third-party liability that does not result in the disregard of additional resources.

(c) Assets disregarded under Subsection R414-305-3(28) are not subject to estate recovery authorized under Section 26-19-13.7, with the exception defined below in Subsection R414-305-3(28)(e).

(d) This disregard is not specific to any one asset. Any countable assets the individual owns or that are deemed available to the client are subject to the provisions defined in Section R414-305-9 regarding transfers of assets. The Department shall apply a penalty period or an overpayment proceeding for any transfer of assets for less than fair market value. In the event the Department learns of an asset transfer at the time of an estate recovery action for which a penalty period is not assessed or an overpayment is not collected, the Department shall reduce the amount of assets in the estate that could otherwise be excluded from the estate recovery requirements by the value of the assets transferred for less than fair market value. The Department may also take legal steps to recover assets transferred for less than fair market value.

(e) Home equity in excess of the standard described in Subsection R414-305-3(13) is not a countable resource, so this disregard does not affect the application of Subsection R414-305-3(13).

(f) The Department recognizes long-term care insurance partnership policies purchased in other states under the reciprocity requirements of the statute. The beneficiary of the policy must have been a resident in a partnership state when coverage first became effective under the policy.

(30) Life estates.

(a) For non-institutional Medicaid, the eligibility agency shall count life estates as resources only when a market exists for the sale of the life estate as established by knowledgeable sources.

(b) For Institutional Medicaid, the eligibility agency shall count life estates even if no market exists for the sale of the life estate, unless the life estate can be excluded as defined in Subsection R414-305-3(12).

(c) The individual may dispute the value of the life estate by verifying the property value to be less than the established value or by submitting proof based on the age and life expectancy of the life estate owner that the value of the life estate is lower. The value of a life estate shall be based upon the age of the individual and the current market value of the property.

(d) The following table lists the life estate figure

corresponding to the individual's age. The eligibility agency uses this figure to establish the value of a life estate:

TABLE

Age	Life Estate Figure
0	.97188
1	.98988
2	.99017
3	.99008
4	.98981
5	.98938
6	.98884
7	.98822
8	.98748
9	.98663
10	.98565
11	.98453
12	.98329
13	.98198
14	.98066
15	.97937
16	.97815
17	.97700
18	.97590
19	.97480
20	.97365
21	.97245
22	.97120
23	.96986
24	.96841
25	.96678
26	.96495
27	.96290
28	.96062
29	.95813
30	.95543
31	.95254
32	.94942
33	.94608
34	.94250
35	.93868
36	.93460
37	.93026
38	.92567
39	.92083
40	.91571
41	.91030
42	.90457
43	.89855
44	.89221
45	.88558
46	.87863
47	.87137
48	.86374
49	.85578
50	.84743
51	.83674
52	.82969
53	.82028
54	.81054
55	.80046
56	.79006
57	.77931
58	.76822
59	.75675
60	.74491
61	.73267
62	.72002
63	.70696
64	.69352
65	.67970
66	.66551
67	.65098
68	.63610
69	.62086
70	.60522
71	.58914
72	.57261
73	.55571
74	.53862
75	.52149
76	.50441
77	.48742
78	.47049
79	.45357
80	.43659
81	.41967
82	.40295
83	.38642
84	.36998
85	.35359
86	.33764
87	.32262
88	.30859
89	.29526
90	.28221
91	.26955
92	.25771
93	.24692
94	.23728
95	.22887
96	.22181
97	.21550
98	.21000
99	.20486
100	.19975
101	.19532
102	.19054
103	.18437
104	.17856
105	.16962
106	.15488
107	.13409
108	.10068
109	.04545

R414-305-4. Parents and Caretaker Relatives, Pregnant Woman and Child using MAGI methodology Resource Provisions.

The Department adopts 42 CFR 435.603(g), October 1, 2012 ed., which is incorporated by reference, regarding no resource test for coverage groups subject to MAGI-based methodologies for determining eligibility.

R414-305-5. Resource Provisions for Parents and Caretaker Relatives, Pregnant Woman, and Child Under Non-MAGI-Based Community and Institutional Medicaid.

(1) The Department determines resource eligibility for an individual under the Parents and Caretaker Relatives, Pregnant Woman, and Child non-MAGI-based Medicaid programs, as described in 45 CFR 233.20(a)(3)(i)(B)(1), (2), (3), (4), and (6), 233.20(a)(3)(vi)(A), 42 U.S.C. 604(h), 1382b(a)(13), and 1396p(d), (e), (f) and (g). The eligibility agency may not count as an available resource retained funds from sources that federal laws specifically prohibit from being counted as a resource to determine eligibility for federally-funded medical assistance programs. In addition, the eligibility agency shall apply the following rules.

(2) A resource is available when the individual owns it or has the legal right to sell or dispose of the resource for the individual's own benefit.

(3) The medically needy resource limit is $2,000 for a one-person household, $3,000 for a two-person household and $25 for each additional household member.

(4) To determine countable resources for Medicaid eligibility, the eligibility agency shall consider all available resources owned by the individual. The agency may not consider a resource unavailable based upon the individual's intent or action of disposing of non-liquid resources.

(5) The eligibility agency shall count resources of a household member who has been disqualified from Medicaid for failure to cooperate with third party liability or duty of support requirements.

(6) If a legal guardian, conservator, authorized representative, or other responsible person controls any resources of an individual, the eligibility agency shall count the resources as the individual's. The arrangement may be formal or informal.

(7) If a resource is available, but a legal impediment exists, the agency may not count the resource until it becomes available. The individual must take appropriate steps to make the resource available unless one of the following conditions exist:

(a) Reasonable action does not allow the resource to become available; and

(b) The cost of making the resource available exceeds its value.

(8) The eligibility agency shall exclude a maximum of $1,500 in equity value of one vehicle.

(9) The eligibility agency may not count as resources the value of household goods and personal belongings that are essential for day-to-day living. The agency shall count any single household good or personal belonging with a value that exceeds $1,000 toward the resource limit. The agency may not count as a resource the value of any item that a household member needs because of the household member's medical or physical condition.

(10) The eligibility agency may not count the value of one wedding ring and one engagement ring as a resource.

(11) For a non-institutionalized individual, the eligibility agency may not count the value of a life estate as an available resource if the life estate is the individual's principal residence. If the life estate is not the principal residence, the provision in Subsection R414-305-3(28) shall apply.

(12) The eligibility agency may not count the resources of a child who is not counted in the household size to determine eligibility of other household members.

(13) For a non-institutionalized individual, the eligibility agency may not count as a resource, the value of the lot on which the excluded home stands if the lot does not exceed the average size of residential lots for the community in which it is located. The agency shall count as a resource the value of the property in excess of an average size lot. If the individual is institutionalized, the provisions of Subsections R414-305-3(12), (13) and (28) shall apply to the individual's home or life estate.

(14) The agency may not count as a resource the value of water rights attached to an excluded home and lot.

(15) The eligibility agency may not count any resource or interest from a resource held within the rules of the Uniform Transfers to Minors Act. The agency shall count as a resource any money that a child receives as unearned income, which the child retains beyond the month of receipt.

(16) The eligibility agency may not count lump sum payments that an individual receives on a sales contract for the sale of an exempt home if the entire proceeds are used to purchase a new exempt home within three calendar months of when the property is sold. The eligibility agency shall grant the individual one three-month extension, if more than three months is needed to complete the actual purchase. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal.

(17) The eligibility agency shall exclude as a resource retroactive benefits received from the Social Security Administration and the Railroad Retirement Board for the first nine months after receipt.

(18) The eligibility agency shall exclude from resources a burial and funeral fund or funeral arrangement up to $1,500 for each household member who is counted in the household size. Burial and funeral agreements include burial trusts, funeral plans, and funds set aside expressly for the purposes of burial. The client shall separate and clearly designate the burial funds from the non-burial funds. The agency may not count as a resource interest earned on exempt burial funds that is left to accumulate. If an individual uses exempt burial funds for some other purpose, the agency shall count the remaining funds as an available resource beginning on the date that the funds are withdrawn.

(19) Assets of an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997, are considered available to the alien. The eligibility agency shall stop counting a sponsor's assets when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(20) The eligibility agency may not consider a sponsor's assets as being available to applicants who are eligible for Medicaid for emergency services only.

(21) The eligibility agency may not count business resources that are required for employment or self-employment. The agency shall treat non-business, income-producing property in the same manner as the SSI program as defined in 42 CFR 416.1222.

(22) The eligibility agency may not count as a resource retirement funds held in an employer or union pension plan, a retirement plan or account including 401(k) plans, and Individual Retirement Accounts of a disabled parent or disabled spouse who is not included in the coverage.

(23) The eligibility agency may not count as a resource any federal tax refund and refundable credit that an individual receives for 12 months after the month of receipt.

(24) The eligibility agency may not count as income, for one year after the date of receipt, any payments that an individual receives under the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(25) The eligibility agency may not count as resources certain property and rights of federally-recognized American Indians including:

(a) certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation;

(b) ownership interests in rents, leases, royalties or usage rights related to natural resources (including extraction of natural resources); and

(c) ownership interests and usage rights in personal property which has unique religious, spiritual, traditional or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(26) The eligibility agency may not count as a resource, funds held in a Utah Educational Savings Plan for the following individuals:

(a) Medically Needy Children as described in Subsection 1902(a)(10)(C)(ii)(I) of the Social Security Act;

(b) Medically Needy Children as described in Subsection 1905(a)(i) of the Social Security Act, who are 18 years old, in school, and expected to graduate before turning 19 years of age;

(c) Medically Needy Pregnant Women as describe in Subsection 1902(a)(10)(C)(ii)(II) of the Social Security Act; and

(d) Medically Needy Parents and Caretaker Relatives as described in Subsection 1905(a)(ii) of the Social Security Act.

(27) The eligibility agency may only count the portion of an asset such as a retirement plan that is legally available to an individual when that asset has been divided between two divorced spouses pursuant to a qualified domestic relations order.

R414-305-6. Spousal Impoverishment Resource Rules for Married Institutionalized Individuals.

(1) The eligibility agency shall apply the provisions of

42 U.S.C. 1396r-5 to determine the value of the total joint resources of an institutionalized individual and a community spouse, and the spousal assessed share.

(2) The resource limit for an institutionalized individual is $2,000.

(3) At the request of either the institutionalized individual or the individual's spouse and upon receipt of relevant documentation of resources, the eligibility agency shall assess and document the total value of resources using the methodology described in Subsection R414-305-6(4) as of the first continuous period of institutionalization or upon application for Medicaid home and community-based waiver services. The eligibility agency shall notify the requester of the results of the assessment. The agency may not require the individual to apply for Medicaid or pay a fee for the assessment.

(4) The assessment is a computation of the total value of resources in which the institutionalized individual or the community spouse has an ownership interest. The spousal share is equal to one-half of the total value computed. The eligibility agency shall count the resources for the assessment that include those the couple has on the date that one spouse becomes institutionalized or applies for Medicaid for home and community-based waiver services, and the other spouse remains in the community and is not eligible for Medicaid for home and community-based waiver services.

(a) The community spouse's assessed share of resources is one-half of the total resources. Nevertheless, the protected resource allowance for the community spouse may be less than the assessed share.

(b) Upon application for Medicaid, the eligibility agency shall set the protected share of resources for the community spouse when countable resources equal no more than the community spouse's protected share as determined under 42 U.S.C. 1396r-5(f) plus the resource limit for the institutionalized spouse.

(c) The eligibility agency shall set the community spouse's protected share of resources at the community spouse's assessed share of the resources with the following exceptions:

(i) If the spouse's assessed share of resources is less than the minimum resource standard, the protected share of resources is the minimum resource standard;

(ii) If the spouse's assessed share of resources is more than the maximum resource standard, the protected share of resources is the maximum resource standard;

(iii) The eligibility agency shall use the minimum and maximum resource standards permitted under 42 U.S.C. 1396r-5(f) to determine the community spouse's protected share.

(d) In making a decision to modify the community spouse's protected share of resources, the eligibility agency shall apply the income first provisions of 42 U.S.C. 1396r-5(d)(6).

(5) The eligibility agency shall count any resource owned by the community spouse in excess of the community spouse's protected share of resources to determine the institutionalized individual's initial Medicaid eligibility.

(6) After the eligibility agency establishes eligibility for the institutionalized spouse, the agency shall allow a protected period for the couple to either use excess resources, or change the ownership of resources held jointly or held only in the name of the institutionalized spouse.

(a) The protected period continues until the resources held in the institutionalized spouse's name do not exceed $2,000, or until the time of the next regularly scheduled eligibility redetermination, whichever occurs first.

(b) The institutionalized individual may do the following:

(i) use resources held in his name for his benefit or for the benefit of his spouse;

(ii) transfer resources to the community spouse to bring the resources held only in the name of the community spouse up to the amount of the community spouse's protected share of resources and to bring the resources held only in the name of the institutionalized spouse down to the Medicaid resource limit; or

(iii) a combination of both.

(7) The eligibility agency may not count resources held in the name of the community spouse as available to the institutionalized spouse beginning the month after the month in which the agency establishes eligibility.

(8) If an individual is otherwise eligible for institutional Medicaid, the eligibility agency may not count the community spouse's resources as available to the institutionalized individual due to an uncooperative spouse or because the spouse cannot be located if all of the following criteria are met:

(a) The individual assigns support rights to the agency;

(b) The individual cannot get medical care without Medicaid;

(c) The individual is at risk of death or permanent disability without institutional care.

R414-305-7. Treatment of Trusts.

(1) The eligibility agency shall apply the criteria in 42 U.S.C. 1396a(k), to determine the availability of trusts established before August 11, 1993.

(a) A Medicaid qualifying trust is a trust, or similar legal device, established (other than by will) by an individual (or an individual's spouse) under which the individual may be the beneficiary of all or part of the payments from the trust. The distribution of payments is determined by one or more trustees who are permitted to exercise some amount of discretion with respect to the distribution to the individual.

(b) The amount of the trust property that is counted as an available resource to the individual who established the trust (or whose spouse established the trust) is the maximum amount that the trustee is permitted to distribute under the terms of the trust for the individual's benefit. This amount of property is counted as available whether or not it is actually disbursed by the trustee or received by the beneficiary. It does not matter whether the trust is irrevocable or whether it is established for a purpose other than to qualify for Medicaid.

(c) Payments made from the available portion of the trust do not count as income because the available portion of the trust is counted as a resource. If payments are made from any portion of the trust that is not counted as a resource, the payments are counted as income in the month received.

(2) The Department adopts the provisions of 42 U.S.C. 1396p(d)(4)(A) concerning trusts for a Disabled Person under Age 65. These trusts are commonly known as a special needs trust for a disabled person. Assets held in a trust that complies with the provisions in Subsection R414-305-7(2) and (4) do not count as available resources.

(a) The trust must be established solely for the benefit of the disabled individual by the individual, a parent, grandparent, legal guardian of the individual, or a court. A trust established by the disabled individual must be established on or after December 13, 2016.

(b) The eligibility agency shall treat any additions to the trust corpus with assets not belonging to the disabled trust beneficiary as a gift to the trust beneficiary. The additions irrevocably become part of the trust corpus and are subject to all provisions of Medicaid restrictions that govern special needs trusts.

(c) The trust must be irrevocable. No one may have any

right or power to alter, amend, revoke, or terminate the trust or any of its terms, except that the trust may include language that provides that the trust may be amended but only if necessary to conform with subsequent changes to the requirements of 42 U.S.C. 1396p(d)(4)(A) or synonymous state law.

(d) The trust cannot be altered or converted from an individual trust to a "pooled trust" under 42 U.S.C. 1396p(d)(4)(C).

(e) The trust must terminate upon the death of the disabled individual or exhaustion of trust corpus and must include language that specifically provides that upon the death of the beneficiary or early termination of the trust, whichever occurs first, the trustees will notify Medicaid and will pay all amounts remaining in the trust to the State up to the total amount of medical assistance the State has paid on behalf of the individual. The trust shall comply fully with this obligation to first repay the State without requiring the State to take any action except to establish the amount to be repaid.

(f) The sole lifetime beneficiary of the trust must be the disabled individual, and the Medicaid agency must be the preferred remainder beneficiary. Distributions from the trust during the beneficiary's lifetime may be made only to or for the benefit of the disabled individual.

(g) The eligibility agency shall continue to exclude assets held in the trust from countable resources after the disabled individual reaches age 65. Subsequent additions to the trust other than interest on the corpus after the person turns 65 are not assets of an individual under age 65 and the agency shall treat the transfer as a transfer of resources for less than fair market value, which may create a period of ineligibility for certain Medicaid services.

(h) A trust that provides benefits to other persons is not an individual special needs trust and does not the meet the criteria to be excluded from resources.

(i) A corporate trustee may charge a reasonable fee for services.

(j) The trust may compensate a guardian only as provided by law. The trust may not compensate the parent of a minor child from the trust as the child's guardian.

(k) Additional trusts cannot be created within the special needs trust.

(3) The Department adopts the provisions of 42 U.S.C. 1396p(d)(4)(C) concerning pooled trusts for disabled individuals. A pooled trust is a specific trust for disabled individuals that meets all of the following conditions:

(a) The trust contains the assets of disabled individuals;

(b) The trust must be established and managed by an entity that has been granted non-profit status by the Internal Revenue Service. The non-profit entity must submit to the State a letter documenting the non-profit status with the trust documents;

(c) The trustees must maintain a separate account for each disabled beneficiary whose assets are placed in the pooled trust; however, for the purposes of investment and management of the funds, the trust may pool the funds from the individual accounts. If someone other than the beneficiary transfers assets to the pooled trust administrator to be used on behalf of that beneficiary of the pooled trust, the eligibility agency shall treat the assets as a gift to that beneficiary, which the administrator must add to and manage as part of the balance of the beneficiary's account and which are subject to all provisions of Medicaid restrictions that govern pooled trusts.

(d) Accounts in the trust must be established solely for the benefit of individuals who are disabled as defined in 42 U.S.C. 1382c(a)(3).

(e) The trust must be irrevocable; accounts set up in the trust must be irrevocable.

(f) Individual accounts may be established only by the parent, grandparent or legal guardian of the individual, by the individual, or by a court.

(g) An initial transfer of funds or any additions or augmentations to a pooled trust account by an individual 65 years of age or older is a transfer of assets for less than fair market value and may create a period of ineligibility for certain Medicaid services.

(h) The disabled individual cannot control any spending by the trust.

(i) Individual trust accounts may not be liquidated before the death of the beneficiary without first making payment to the State for medical assistance paid on behalf of the individual.

(j) The trust must include language that specifically provides that upon the death of the trust account beneficiary, the trustees will notify the Medicaid agency and will pay all amounts remaining in the beneficiary's account to the State up to the total medical assistance paid on behalf of the beneficiary. The trust may retain a maximum of 50% of the amount remaining in the beneficiary's account at death to be used for other disabled individuals if the trust has established provisions by which it will assure that the retained funds are used only for individuals meeting the disability criteria found in 42 U.S.C. 1382c(a)(3).

(k) A pooled trust that retains some portion of a deceased beneficiary's trust funds must describe how retained funds are used for other disabled persons. Any funds that are placed in an individual beneficiary's account or that are used to set up an account for an individual beneficiary who does not otherwise have funds to place in the pooled trust are subject to all of the provisions of Medicaid restrictions that govern pooled trusts. The pooled trust may include a plan for using retained funds only for incidental, one-time services to qualified disabled individuals who do not have accounts in the pooled trust.

(4) The following provisions apply to both individual trusts and pooled trusts described in Subsection R414-305-7(2) and (3):

(a) No expenditures may be made after the death of the beneficiary before repayment to the State, except for federal and state taxes and necessary and reasonable administrative costs of the trust incurred in closing the trust;

(b) The trust must provide that if the beneficiary has received Medicaid benefits in more than one state, each state that provided Medicaid benefits shall be repaid. If the remaining balance is insufficient to repay all benefits paid, then each state will be paid its proportionate share;

(c) The trust or an attached schedule must identify the amount and source of the initial trust property. The disabled individual must report subsequent additions to the trust corpus to the eligibility agency;

(d) If the trust is funded, in whole or in part, with an annuity or other periodic payment arrangement, the State must be named in controlling documents as the preferred remainder beneficiary in the first position up to the total amount of medical assistance paid on behalf of the individual;

(i) Any funds remaining after full repayment of the medical assistance can be paid to a secondary remainder beneficiary;

(ii) The eligibility agency shall treat any provision or action that does or will divert payments or principal from the annuity or payment arrangement to someone other than the excluded trust or the Medicaid agency as a transfer of assets for less than fair market value with the exception that any remainder after the Medicaid agency has been fully repaid may be paid to a secondary beneficiary;

(e) The eligibility agency shall count cash distributions from the trust as income in the month received;

(f) The eligibility agency shall count retained distributed amounts as resources beginning the month which follows the month that the amounts are distributed. The agency shall apply the applicable resource rules to assets purchased with trust funds and given to the beneficiary as his or her personal possessions. The disabled individual must report the receipt of payments or assets from the trust within ten days of receipt. The agency shall exclude assets purchased with trust funds if the trust retains ownership;

(g) The eligibility agency shall count distributions from the trust covering the individual's expenses for food or shelter as in-kind income to determine Medicaid eligibility in the month paid;

(h) If expenditures made from the trust also incidentally provide an ongoing and continuing benefit to other persons, those other persons who also benefit must contribute a pro-rata share to the trust for the expenses associated with their use of the acquisition;

(i) Contracts to provide personal services to the disabled individual must be in writing, describe the services to be provided, pay fair market rate consistent with rates charged in the community for the type and quality of services to be provided, and be executed in advance of any services being provided and paid. The eligibility agency may require a statement of medical need for the services from the individual's medical practitioner. If the person who is to provide the services is a family member or friend, the eligibility agency may require verification of the person's ability to carry out the needed services;

(j) Distributions from the trust made to or for the benefit of a third party that are not for the benefit of the disabled individual are treated as a transfer of assets for less than fair market value and may create a period of ineligibility for certain Medicaid services. This includes such things as payments of the expenses or travel costs of persons other than a medically necessary attendant;

(k) The beneficiary must submit an annual accounting of trust income and expenditures and a statement of trust assets to the eligibility agency upon request or upon any change of trustee.

(5) The eligibility agency may not count assets held in a pooled trust that comply with the provisions in Subsection R414-305-7(3) and (4) as available resources.

(6) 42 U.S.C. 1396p(d)(4)(B), provides for an exemption from the trust provisions for qualified income trusts (also known as Miller Trusts). Special provisions for this form of trust apply, under federal law, only in those states that do not provide medically needy coverage for nursing facility services. Because Utah covers services in nursing facilities under the medically needy coverage group of the Medicaid program, the establishment of a qualified income trust shall be treated as an asset transfer for the purposes of qualifying for Medicaid. This presumption shall apply whether the individual is seeking nursing facility services or home and community-based services under one of the waiver programs.

R414-305-8. Transfer of Resources for Non-Institutional Medicaid Coverage Groups.

The eligibility agency may not impose a penalty period for the transfer of resources to determine eligibility for individuals who are not institutionalized or eligible for home and community-based services waivers.

R414-305-9. Transfer of Resources for Institutional Medicaid and Home and Community Based Services Waivers.

(1) The eligibility agency shall apply the provisions of 42 U.S.C. 1396p(c) and (e) to determine if a penalty period applies for a transfer of assets for less than fair market value.

(2) The transfer requirements of 42 U.S.C. 1396p(c) and (e) apply if an individual or the individual's spouse transfers the home, life estate, assets disregarded for eligibility purposes pursuant to Subsection R414-305-3(28), or any other asset on or after the look-back date based on an application for long-term care Medicaid services.

(3) If an individual or the individual's spouse transfers assets in more than one month after February 7, 2006, the uncompensated value of all transfers including fractional transfers are combined to determine the penalty period. The eligibility agency shall apply partial month penalty periods for transferred amounts that are less than the monthly average private pay rate for nursing home services.

(4) In accordance with 42 U.S.C. 1396p(c), the penalty period for a transfer of assets that occurs after February 7, 2006, begins the first day of the month during or after which assets are transferred, or the date on which the individual is eligible for Medicaid coverage and would otherwise receive institutional level care based on an approved application for Medicaid, but for the application of the penalty period, whichever is later.

(a) If a previous penalty period is in effect on the date that the new penalty period begins, the new penalty period begins immediately after the previous one ends.

(b) The eligibility agency shall apply penalty periods consecutively so that they do not overlap.

(5) If assets are transferred during any penalty period, the penalty period for those transfers does not begin until the previous penalty period expires.

(6) If a transfer occurs, or the eligibility agency discovers an unreported transfer after the agency approves an individual for Medicaid for nursing home or home and community-based services, the penalty period shall begin on the first day of the month after the month that the individual transfers the asset.

(7) The statewide average private-pay rate for nursing home care in Utah that the eligibility agency shall use to calculate the penalty period for transfers is $4,526 per month.

(8) To determine if a resource is transferred for the sole benefit of a spouse, disabled or blind child, or disabled individual, a binding written agreement must be in place which establishes that the resource transferred may only be used to benefit the spouse, disabled child, or disabled individual, and must be actuarially sound. The written agreement must specify the payment amounts and schedule. Any provisions in the agreement that benefit another person at any time nullify the sole benefit provision. An excluded trust established under 42 U.S.C. 1396p(d)(4) that meets the criteria in Section R414-305-7 does not have to meet the actuarially sound test.

(9) The eligibility agency may not impose a penalty period if the total value of a whole life insurance policy is:

(a) irrevocably assigned to the State;

(b) the recipient is the owner of and the insured in the policy; and

(c) no further premium payments are necessary for the policy to remain in effect.

(d) When the individual dies, the State shall distribute the benefits of the policy as follows:

(i) The State may distribute up to $7,000 to cover burial and funeral expenses. The total value of this distribution plus the value of any irrevocable burial trusts and the burial and funeral funds for the individual cannot exceed $7,000;

(ii) The State may distribute an amount that does not exceed the total amount of previously unreimbursed medical assistance correctly paid on behalf of the individual;

(iii) The State may distribute to a remainder beneficiary named by the individual any amount that remains after

payments are made as defined in Subsection R414-305-9(9)(d)(i) and Subsection R414-305-9(9)(d)(ii).

(10) If the eligibility agency determines that a penalty period applies for an otherwise eligible institutionalized person, the agency shall notify the individual that the Department may not pay the costs for nursing home or other long-term care services during the penalty period. The notice shall include when the penalty period begins and ends.

(a) The individual may request a waiver of the penalty period based on undue hardship.

(b) The individual must send a written request for a waiver of the penalty period due to undue hardship to the eligibility agency within 30 days of the date printed on the penalty period notice.

(c) The request must include an explanation of why the individual believes undue hardship exists.

(d) The eligibility agency shall make a decision on the undue hardship request within 30 days of receipt of the request.

(11) An individual who claims an undue hardship as a result of a penalty period for a transfer of resources must meet both of the following conditions:

(a) The individual or the person who transferred the resources may not access the asset immediately; however, the eligibility agency shall require the individual to exhaust all reasonable means including legal remedies to regain possession of the transferred resource;

(i) The agency may determine that it is unreasonable to require the individual to take action if a knowledgeable source confirms that the individual's efforts cannot succeed;

(ii) The agency may determine that it is unreasonable to require the individual to take action based on evidence that the individual's action is more costly than the value of the resource; and

(b) Application of the penalty period for a transfer of resources deprives the individual of medical care, endangers the individual's life or health, or deprives the individual of food, clothing, shelter, or other necessities of life.

(12) If the eligibility agency waives the penalty period based on undue hardship, the agency shall notify the individual. The Department shall provide Medicaid coverage on the condition that the individual takes all reasonable steps to regain the transferred assets. The eligibility agency shall notify the individual of the date that the individual must provide verifications of the steps taken. The individual must, within the time frames set by the agency, verify to the agency all reasonable actions. The agency shall review the undue hardship waiver and the actions of the individual to try to regain the transferred assets. The time period for the review may not exceed six months. Upon review, the agency shall decide whether:

(a) The individual must take additional steps and whether undue hardship still exists, in which case the agency shall notify the individual of the continuation of undue hardship and the need to take additional steps to recover the assets;

(b) The individual has taken all reasonable steps without success, in which case the agency shall notify the individual that it requires no further action. If the individual continues to meet eligibility criteria, the eligibility agency may not apply the penalty period; or

(c) The individual has not taken all reasonable steps, in which case the eligibility agency shall discontinue the undue hardship waiver. The eligibility agency shall then apply the penalty period and the individual is responsible to repay Medicaid for services and benefits that the individual received during the months that the undue hardship waiver was in place.

(13) Based on a review of the facts about what happened to the assets, whether the individual has taken reasonable steps to recover or regain the assets, the results of those steps, and the likelihood that additional steps will prove unsuccessful or too costly, the eligibility agency may determine that the individual cannot recover or regain the transferred resource. If the agency decides that the assets cannot be recovered and that applying the penalty period may result in undue hardship, the agency may not apply a penalty period or shall end a penalty period that has already begun.

(14) The eligibility agency shall base its decision that undue hardship exists upon the medical condition and the financial situation of the individual. The agency shall compare the income and resources of the individual, individual's spouse, and parents of an unemancipated individual to the cost of providing medical care and daily living expenses to decide whether the financial situation creates an undue hardship. The agency shall send written notice of its decision on the undue hardship request. The individual has 90 days from the date printed on the notice of decision to file a request for a fair hearing.

(15) The eligibility agency shall consider the portion of an irrevocable burial trust that exceeds $7,000 a transfer of resources. The agency shall deduct the value of any fully paid burial plot from the burial trust first before determining the transferred amount.

R414-305-10. Qualified Medicare Beneficiary, Specified Low-Income Medicare Beneficiary, and Qualifying Individual Resource Provisions.

(1) To determine eligibility for Qualified Medicare Beneficiaries, Specified Low-Income Medicare Beneficiaries, and Qualifying Individuals, the eligibility agency shall apply the resource limit defined in 42 U.S.C. Sec.1396d(p)(1)(C).

(2) The eligibility agency shall determine countable resources in accordance with the provisions of Section R414-305-3.

R414-305-11. Treatment of Annuities.

(1) An individual must report any annuities in which either the individual or the individual's spouse has any interest at application for Medicaid, at each review, and as part of the change reporting requirements. Parents of a minor individual must report any annuities in which the child or either of the parents has an interest.

(2) For annuities purchased after February 7, 2006, in which the individual or spouse has an interest, the provisions in 42 U.S.C. 1396p(c) apply. The eligibility agency shall treat annuities purchased after February 7, 2006, which do not meet the requirements of 42 U.S.C. 1396p(c), as a transfer of assets for less than fair market value.

(3) With the exception of annuities that meet the criteria in Subsection R414-305-11(4), the eligibility agency shall count annuities in which the individual, the individual's spouse or a minor individual's parent has an interest as an available resource to determine Medicaid eligibility, whether they are irrevocable or non-assignable. The agency shall presume that a market exists to purchase annuities or the stream of income from annuities, which make them available resources. The individual may rebut the presumption that the annuity may be sold by providing evidence that the individual has been rejected by several entities in the business of purchasing annuities or the revenue stream from annuities, in which case, the agency may not consider the annuity as an available resource.

(4) For individuals eligible under the aged, blind, or disabled category of Medicaid, the eligibility agency shall exclude an annuity from countable resources in the form of the periodic payment if it meets the following requirements.

(a) The annuity is either an individual retirement

annuity according to Section 408(b) of the Internal Revenue Code (IRC) of 1986 or a deemed Individual Retirement Account under a qualified employer plan according to Section 408(q) of the IRC; or

(b) The annuity is purchased with the proceeds from one of the following:

(i) As described in Sections 408(a), (c), or (p) of the IRC, a traditional IRA, accounts or trusts which are treated as a traditional IRA, or a simplified retirement account;

(ii) A simplified employee pension (Section 408(p) of the IRC); or

(iii) A Roth IRA (Section 408A of the IRC); and

(c) The annuity is irrevocable and non-assignable, the individual who was the owner of the retirement account or plan is receiving equal periodic payments at least quarterly with no deferral or balloon payments, and the scheduled payout period is actuarially sound based on the individual's life expectancy.

(d) If the individual purchases or annuitizes the annuities after February 7, 2006, the annuities must name the State as the preferred remainder beneficiary in the first position upon the individual's death, or as secondary remainder beneficiary after a surviving spouse or minor or disabled child.

(5) For family-related medically needy Medicaid programs, the eligibility agency shall count all annuities as resources if the individual can access the funds, even if the annuities qualify as retirement funds or plans.

(6) Annuities purchased on or after February 8, 2006, in which the individual or the spouse has an interest are a transfer of assets for less than fair market value unless the annuity names the State as the preferred remainder beneficiary in the first position, or in the second position after a surviving spouse, or a surviving minor or disabled child, up to the amount of medical assistance paid on behalf of the institutionalized individual.

(a) The State shall give individuals who have purchased annuities before applying for long-term care Medicaid, 30 days to request the issuing company to name the State as the preferred remainder beneficiary and to verify that fact to Medicaid.

(b) The individual must verify to the eligibility agency that the change in beneficiary has been made by the date requested by the agency.

(c) If the change of beneficiary is not completed and verified, the annuities are a transfer of resources and the eligibility agency shall apply the penalty period. If the eligibility agency has approved institutional Medicaid coverage pending verification, Medicaid coverage for long-term care ends and the penalty period begins the day after the closure date.

(7) The eligibility agency shall treat an annuity purchased before February 8, 2006, as an annuity purchased on or after February 8, 2006, if the individual or spouse take any actions that change the course of payments to be made or the treatment of the income or principal of the annuity. These actions include additions of principal, elective withdrawals, requests to change the distribution of the annuity, elections to annuitize the contract, or other similar actions. Routine changes and automatic events that do not involve an action or decision from the individual or spouse do not cause an annuity purchased before February 8, 2006, to be treated as one purchased on or after February 8, 2006.

(8) If a penalty period for a transfer of assets begins because the individual or the individual's spouse has not changed an annuity to name the State as the preferred remainder beneficiary of the annuity, the penalty period for a transfer does not end until the individual completes and verifies the change of beneficiary to the eligibility agency. The eligibility agency may not rescind the penalty period.

(9) If the individual or spouse does not provide all information about annuities for which they have an interest by the requested due date, the eligibility agency shall deny the application. The individual may reapply, but may not protect the original application date.

(10) The issuer of the annuity shall inform the eligibility agency of any change in the amount of income or principal being withdrawn from the annuities, any change of beneficiaries, or any sale or transfer of the annuity. The issuer of the annuity shall also inform the agency if a surviving spouse or a surviving minor or disabled child attempts to transfer the annuity or any portion of the annuity to someone other than the agency.

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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-306. Program Benefits and Date of Eligibility.
R414-306-1. Medicaid Benefits and Coordination with Other Programs.

(1) The Department provides medical benefits to Medicaid recipients as outlined in Section R414-1-6.

(2) The Department elects to coordinate Medicaid with Medicare Part B for all Medicaid recipients.

(3) The Department must inform applicants about the Child Health Evaluation and Care (CHEC) program. By signing the application form the client acknowledges receipt of CHEC program information.

(4) The Department must coordinate with the Children's Health Insurance Program to assure the enrollment of eligible children.

(5) The Department must coordinate with the Women, Infants and Children Program to provide information to applicants and recipients about the availability of services.

R414-306-2. QMB, SLMB, and QI Benefits.

The Department shall provide the services outlined under 42 U.S.C. 1396d(p) and 42 U.S.C. 1396u-3 for Qualified Medicare Beneficiaries.

(2) The Department shall provide the benefits outlined under 42 U.S.C. 1396d(p)(3)(ii) for Specified Low-Income Medicare Beneficiaries and Qualifying Individuals. Benefits for Qualifying Individuals are subject to the provisions of 42 U.S.C. 1396u-3.

(3) The Department does not cover premiums for enrollment with any health insurance plans except for Medicare.

R414-306-3. Qualified Medicare Beneficiary Date of Entitlement.

(1) Eligibility for the Qualified Medicare Beneficiary (QMB) program begins the first day of the month after the month the Medicaid eligibility agency determines that the individual is eligible, in accordance with the requirements of 42 U.S.C. 1396a(e)(8).

(2) There is no provision for retroactive QMB assistance.

R414-306-4. Effective Date of Eligibility.

(1) Subject to the exceptions in Subsection R414-306-4(3), eligibility for any Medicaid program, and for the Specified Low-income Medicare Beneficiary (SLMB) or Qualified Individual (QI) programs begins the first day of the application month if the individual is determined to meet the eligibility criteria for that month.

(2) An applicant for Medicaid, SLMB or QI benefits may request medical coverage for the retroactive period. The retroactive period is the three months immediately preceding the month of application.

(a) An applicant may request coverage for one or more months of the retroactive period.

(b) Subject to the exceptions in Subsection R414-306-4(3), eligibility for retroactive medical coverage begins no earlier than the first day of the month that is three months before the application month.

(c) The applicant must receive medical services during the retroactive period and be determined eligible for the month he receives services.

(3) To determine the date eligibility for medical assistance may begin for any month, the following requirements apply:

(a) Eligibility of an individual cannot begin any earlier than the date the individual meets the state residency requirement defined in Section R414-302-4;

(b) Eligibility of a qualified alien subject to the five-year bar on receiving regular Medicaid services cannot begin earlier than the date that is five years after the date the person became a qualified alien, or the date the five-year bar ends due to other events defined in statute;

(c) Eligibility of a qualified alien not subject to the five-year bar on receiving regular Medicaid services can begin no earlier than the date the individual meets qualified alien status.

(d) An individual who is ineligible for Medicaid while residing in a public institution or an Institution for Mental Disease (IMD) may become eligible on the date the individual is no longer a resident of either one of these institutions. If an individual is under the age of 22 and is a resident of an IMD, the individual remains a resident of the IMD until he is unconditionally released.

(4) If an applicant is not eligible for the application month, but requests retroactive coverage, the agency will determine eligibility for the retroactive period based on the date of that application.

(5) The eligibility agency shall determine retroactive eligibility by using the eligibility criteria in effect during the retroactive month. Modified Adjusted Gross Income (MAGI) methodology is effective only on or after January 1, 2014, and the eligibility agency may not apply MAGI methodology before that date.

(6) The agency may use the same application to determine eligibility for the month following the month of application if the applicant is determined ineligible for both the retroactive period and the application month. In this case, the application date changes to the date eligibility begins. The retroactive period associated with the application changes to the three months preceding the new application date.

(7) The effective date of eligibility is January 1, 2014, for applicants who file for eligibility from October 1, 2013, through December 31, 2013, and are not found eligible using 2013 eligibility criteria, but are found eligible for a coverage group using MAGI methodology.

(8) Medicaid eligibility for certain services begins when the individual meets the following criteria:

(a) Eligibility for coverage of institutional services cannot begin before the date that the individual has been admitted to a medical institution and meets the level of care criteria for admission. The medical institution must provide the required admission verification to the Department within the time limits set by the Department in Rule R414-501. Medicaid eligibility for institutional services does not begin earlier than the first day of the month that is three months before the month of application for Medicaid coverage of institutional services.

(b) Eligibility for coverage of home and community-based services under a Medicaid waiver cannot begin before the first day of the month the client is determined by the case management agency to meet the level of care criteria and home and community-based services are scheduled to begin within the month. The case management agency must verify that the individual meets the level of care criteria for waiver services. Medicaid eligibility for waiver services does not begin earlier than the first day of the month that is three months before the month of application for Medicaid coverage of waiver services.

(9) An individual determined eligible for QI benefits in a calendar year is eligible to receive those benefits throughout the remainder of the calendar year, if the individual continues to meet the eligibility criteria and the program still exists. Receipt of QI benefits in one calendar year does not entitle the individual to QI benefits in any succeeding year.

(10) After being approved for Medicaid, a client may later request coverage for the retroactive period associated

with the approved application if the following criteria are met:

(a) The client did not request retroactive coverage at the time of application; and

(b) The agency did not make a decision about eligibility for medical assistance for that retroactive period; and

(c) The client states that he received medical services and provides verification of his eligibility for the retroactive period.

(11) The Department may not provide retroactive coverage if a client requests coverage for the retroactive period associated with a denied application after the date of denial. The client, however, may reapply and the eligibility agency may consider a new retroactive coverage period based on the new application date.

R414-306-5. Medical Transportation.

The Medical Transportation program provides medical transportation services for Medicaid recipients in accordance with the Medical Transportation Utah Medicaid Provider Manual, as incorporated into Section R414-1-5.

R414-306-6. State Supplemental Payments for Institutionalized SSI Recipients.

(1) The Department incorporates by reference Section 1616(a) through (d) of the Compilation of the Social Security Laws, January 1, 2009 ed.

(2) A State Supplemental payment equal to $15 shall be paid to a resident of a medical institution who receives a Supplemental Security Income (SSI) payment.

(3) Recipients must be eligible for Medicaid benefits to receive the State Supplemental payment.

(4) Recipients are eligible to receive the $15 State Supplemental payment beginning with the first month that their SSI assistance is reduced to $30 a month because they stay in an institution and they are eligible for Medicaid.

(5) The State Supplemental payment terminates effective the month the recipient no longer meets the eligibility criteria for receiving such supplemental payment.

KEY: effective date, program benefits, medical transportation
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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-308. Application, Eligibility Determinations and Improper Medical Assistance.
R414-308-1. Authority and Purpose.

(1) This rule is authorized by Section 26-18-3.

(2) The purpose of this rule is to establish requirements for medical assistance applications, eligibility decisions and reviews, eligibility period, verifications, change reporting, notification and improper medical assistance for Medicaid and Medicare cost sharing programs.

R414-308-2. Definitions.

(1) The definitions in Rules R414-1 and R414-301 apply to this rule.

(2) In addition, the following definitions apply:

(a) "Due date" means the date that a recipient is required to report a change or provide requested verification to the eligibility agency.

(b) "Eligibility review" means a process by which the eligibility agency reviews current information about a recipient's circumstances to determine whether the recipient is still eligible for medical assistance.

(c) "Open enrollment" means a period of time when the eligibility agency accepts applications.

R414-308-3. Application and Signature.

(1) The Department adopts and incorporates by reference, 42 CFR 435.907, October 1, 2012 ed., concerning the application requirements for medical assistance programs.

(a) The applicant or authorized representative must complete and sign the application under penalty of perjury. If an applicant cannot write, the applicant must make his mark on the application form and have at least one witness to the signature.

(b) A representative may apply on behalf of an individual. A representative may be a legal guardian, a person holding a power of attorney, a representative payee or other responsible person acting on behalf of the individual. In this case, the eligibility agency may send notices, requests and forms to both the individual and the individual's representative, or to just the individual's representative. The eligibility agency may assign someone to act as the authorized representative when the individual requires help to apply and cannot appoint a representative.

(c) If the Division of Child and Family Services (DCFS) has custody of a child and the child is placed in foster care, DCFS completes the application. DCFS determines eligibility for the child pursuant to a written agreement with the Department. DCFS also determines eligibility for children placed under a subsidized adoption agreement. The Department does not require an application for Title IV-E eligible children.

(2) The application date for medical assistance is the date that the eligibility agency receives the application during normal business hours on a week day that does not include Saturday, Sunday or a state holiday except as described below:

(a) When the individual applies through the federally facilitated marketplace (FFM) and the application is transferred from the FFM for a Medicaid eligibility determination, the date of application is the date the individual applies through the FFM.

(b) If the application is delivered to the eligibility agency after the close of business, the date of application is the next business day;

(c) If the applicant delivers the application to an outreach location during normal business hours, the date of application is that business day when outreach staff is available to receive the application. If the applicant delivers the application to an outreach location on a non-business day or after normal business hours, the date of application is the last business day that a staff person from the eligibility agency was available at the outreach location to receive or pick up the application;

(d) When the eligibility agency receives application data transmitted from the Social Security Administration (SSA) pursuant to the requirements of 42 U.S.C. Sec. 1320b-14(c), the eligibility agency shall use the date that the individual submits the application for the low-income subsidy to the SSA as the application date for Medicare cost sharing programs. The application processing period for the transmitted data begins on the date that the eligibility agency receives the transmitted data. The transmitted data meets the signature requirements for applications for Medicare cost sharing programs;

(e) If an application is filed through the "myCase" system, the date of application is the date the application is submitted to the eligibility agency online.

(3) The eligibility agency shall accept a signed application that an applicant sends by facsimile as a valid application.

(4) If an applicant submits an unsigned or incomplete application form to the eligibility agency, the eligibility agency shall notify the applicant that he must sign and complete the application no later than the last day of the application processing period. The eligibility agency shall send a signature page to the applicant and give the applicant at least ten days to sign and return the signature page. When the application is incomplete, the eligibility agency shall notify the applicant of the need to complete the application and offer ways to complete the application.

(a) The date of application for an incomplete or unsigned application form is the date that the eligibility agency receives the application if the agency receives a signed signature page and completed application within the application processing period.

(b) If the eligibility agency does not receive a signed signature page and completed application form within the application processing period, the application is void and the eligibility agency shall send a denial notice to the applicant.

(c) If the eligibility agency receives a signed signature page and completed application within 30 calendar days after the notice of denial date, the date of receipt is the new application date and the provisions of Section R414-308-3(2) apply.

(d) If the eligibility agency receives a signed signature page and completed application more than 30 calendar days after it sends the denial notice, the applicant must reapply by completing and submitting a new application form. The new application date is determined in accordance with this rule.

(5) The eligibility agency treats the following situations as a new application without requiring a new application form. The application date is the day that the eligibility agency receives the request or verification from the recipient. The effective date of eligibility for these situations depends on the rules for the specific program:

(a) A household with an open medical assistance case asks to add a new household member by contacting the eligibility agency;

(b) The eligibility agency ends medical assistance when the recipient fails to return requested verification, and the recipient provides all requested verification to the eligibility agency before the end of the calendar month that follows the closure date. The eligibility agency waives the requirement for the open enrollment period during that calendar month for programs subject to open enrollment;

(c) A medical assistance program other than PCN ends

due to an incomplete review, and the recipient responds to the review request within the three calendar months that follow the closure date. The provisions of Section R414-310-14 apply to recertification for PCN enrollment;

(d) Except for PCN and UPP that are subject to open enrollment periods, the eligibility agency denies an application when the applicant fails to provide all requested verification, but provides all requested verification within 30 calendar days of the denial notice date. The new application date is the date that the eligibility agency receives all requested verification and the retroactive period is based on that date. The eligibility agency does not act if it receives verification more than 30 calendar days after it denies the application. The recipient must complete a new application to reapply for medical assistance;

(e) For PCN and UPP applicants, the eligibility agency denies an application when the applicant fails to provide all requested verification, but provides all requested verification within 30 calendar days of the denial notice date and the eligibility agency has not stopped the open enrollment period. If the eligibility agency has stopped enrollment, the applicant must wait for an open enrollment period to reapply.

(6) The eligibility agency shall use the 2013 eligibility criteria in effect from October 1, 2013, through December 31, 2013, when considering applications that it receives during that time period. The agency may also use the three-month retroactive period.

(7) For an individual who applies for and is found ineligible for Medicaid from October 1, 2013, and December 31, 2013, the eligibility agency shall redetermine eligibility under the policies that become effective January 1, 2014, using the modified adjusted gross income (MAGI)-based methodology without requiring a new application.

(a) Medicaid eligibility may begin no earlier than January 1, 2014, for an individual who becomes eligible using the MAGI-based methodology;

(b) For applications received on or after January 1, 2014, the eligibility agency shall apply the MAGI-based methodology first to determine Medicaid eligibility.

(c) The eligibility agency shall determine eligibility for other Medicaid programs that do not use MAGI-based methodology if the individual meets the categorical requirements of these programs, which may include a medically needy eligibility group for individuals found ineligible using the MAGI-based methodology.

(8) If a medical assistance case closes for one or more calendar months, the recipient must complete a new application form to reapply, except as defined in Subsection R414-308-6(7).

(9) An individual determined eligible for a presumptive eligibility period must file an application for medical assistance with the eligibility agency in accordance with the requirements of Sections 1920, 1920A and 1920B of the Social Security Act.

(10) The eligibility agency shall process low-income subsidy application data transmitted from SSA in accordance with 42 U.S.C. Sec. 1320b-14(c) as an application for Medicare cost sharing programs. The eligibility agency shall take appropriate steps to gather the required information and verification from the applicant to determine the applicant's eligibility.

(a) Data transmitted from SSA is not an application for Medicaid.

(b) An individual who wants to apply for Medicaid when contacted for information to process the application for Medicare cost sharing programs must complete and sign a Department-approved application form for medical assistance. The date of application for Medicaid is the date that the eligibility agency receives the application for Medicaid.

R414-308-4. Verification of Eligibility and Information Exchange.

(1) The Department adopts and incorporates by reference 42 CFR 435.945, 435.948, 435.949, 435.952, and 435.956, October 1, 2012 ed.

(a) The Department may seek approval from the Secretary in accordance with 42 CFR 435.945(k) to use alternative electronic data sources in lieu of using the data available from the federal data hub.

(b) Medical assistance applicants and recipients must provide identifying information that the eligibility agency needs to complete electronic data matches.

(c) The eligibility agency may request verification from applicants and recipients in accordance with the agency's verification plan that is necessary to determine eligibility.

(2) Medical assistance applicants and recipients must verify all eligibility factors requested by the eligibility agency to establish or to redetermine eligibility when the information cannot be verified through electronic data matches, or when the electronic data match information is not reasonably compatible with the client provided information.

(a) The eligibility agency shall provide the applicant or recipient a written request of the needed verification.

(b) The applicant or recipient has at least ten calendar days from the date that the eligibility agency gives or sends the verification request to provide verification.

(c) The due date for returning verification, forms or information requested by the eligibility agency is the close of business on the date that the eligibility agency sets as the due date in a written request.

(d) An applicant must provide all requested verification before the close of business on the last day of the application period. If the last day of the application processing period is a non-business day, the applicant or recipient has until the close of business on the next business day to return verification.

(e) The eligibility agency shall allow the applicant or recipient more time to provide verification if he requests more time by the due date. The eligibility agency shall set a new due date based on what the applicant or recipient needs to do to obtain the verification and whether he shows a good faith effort to obtain the verification.

(f) If an applicant or recipient does not provide verification by the due date and does not contact the eligibility agency to ask for more time to provide verification, the eligibility agency shall deny the application or review, or end eligibility.

(g) If a due date falls on a non-business day, the due date is the close of business on the next business day.

(3) The eligibility agency must receive verification of an individual's income, both unearned and earned. To be eligible under the Medicaid Work Incentive program, the eligibility agency may require proof such as paycheck stubs showing deductions of FICA tax, self-employment tax filing documents, or for newly self-employed individuals who have not filed tax forms yet, a written business plan and verification of gross receipts and business expenses, to verify that the income is earned income.

(4) If an applicant's citizenship and identity do not match through the Social Security electronic match process and the eligibility agency cannot resolve this inconsistency, the eligibility agency shall require the applicant to provide verification of his citizenship and identity in accordance with 42 U.S.C. 1396a(ee)(1)(B).

(a) The individual must provide verification to resolve the inconsistency or provide original documentation to verify his citizenship and identity within 90 days of the request.

(b) The eligibility agency shall continue to provide medical assistance during the 90-day period if the individual

meets all other eligibility criteria.

(c) If the individual fails to provide verification, the eligibility agency shall end eligibility within 30 days after the 90-day period. The eligibility agency may not extend or repeat the verification period.

(d) An individual who provides false information to receive medical assistance is subject to investigation of Medicaid fraud and penalties as outlined in 42 CFR 455.13 through 455.23.

R414-308-5. Eligibility Decisions or Withdrawal of an Application.

(1) The Department adopts and incorporates by reference 42 CFR 435.911, 435.912 and 435.919, October 1, 2012 ed., regarding eligibility determinations and timely determinations. The eligibility agency shall provide proper notice about a recipient's eligibility, changes in eligibility, and the recipient's right to request a fair hearing in accordance with the provisions of 78 FR 42303, which is incorporated by reference and 42 CFR 431.206, 431.210, 431.211, 431.213, 431.214, October 1, 2012 ed., which are incorporated by reference.

(2) The eligibility agency shall extend the time limit if the applicant asks for more time to provide requested information before the due date. The eligibility agency shall give the applicant at least ten more days after the original due date to provide verifications upon the applicant's request. The eligibility agency may allow a longer period of time for the recipient to provide verifications if the agency determines that the delay is due to circumstances beyond the recipient's control.

(3) If an individual who is determined presumptively eligible files an application for medical assistance in accordance with the requirements of Sections 1920 and 1920A of the Social Security Act, the eligibility agency shall continue presumptive eligibility until it makes an eligibility decision based on that application. The filing of additional applications by the individual does not extend the presumptive eligibility period.

(4) An applicant may withdraw an application for medical assistance any time before the eligibility agency makes an eligibility decision. An individual requesting an assessment of assets for a married couple under 42 U.S.C. 1396r-5 may withdraw the request any time before the eligibility agency completes the assessment.

R414-308-6. Eligibility Period and Reviews.

(1) The eligibility period begins on the effective date of eligibility as defined in Section R414-306-4, which may be after the first day of a month, subject to the following requirements.

(a) If a recipient must pay one of the following fees to receive Medicaid, the eligibility agency shall determine eligibility and notify the recipient of the amount owed for coverage. The eligibility agency shall grant eligibility when it receives the required payment, or in the case of a spenddown or cost-of-care contribution for waivers, when the recipient sends proof of incurred medical expenses equal to the payment. The fees a recipient may owe include:

(i) a spenddown of excess income for medically needy Medicaid coverage;

(ii) a Medicaid Work Incentive (MWI) premium; or

(iii) a cost-of-care contribution for home and community-based waiver services.

(b) A required spenddown, MWI premium, or cost-of-care contribution is due each month for a recipient to receive Medicaid coverage.

(c) The recipient must make the payment or provide proof of medical expenses within 30 calendar days from the mailing date of the application approval notice, which states how much the recipient owes.

(d) For ongoing months of eligibility, the recipient has until the close of business on the tenth day of the month after the benefit month to meet the spenddown or the cost-of-care contribution for waiver services, or to pay the MWI premium. If the tenth day of the month is a non-business day, the recipient has until the close of business on the first business day after the tenth. Eligibility begins on the first day of the benefit month once the recipient meets the required payment. If the recipient does not meet the required payment by the due date, the recipient may reapply for retroactive benefits if that month is within the retroactive period of the new application date.

(e) A recipient who lives in a long-term care facility and owes a cost-of-care contribution to the medical facility must pay the medical facility directly. The recipient may use unpaid past medical bills, or current incurred medical bills other than the charges from the medical facility, to meet some or all of the cost-of-care contribution subject to the limitations in Section R414-304-9. An unpaid cost-of-care contribution is not allowed as a medical bill to reduce the amount that the recipient owes the facility.

(f) Even when the eligibility agency does not close a medical assistance case, no eligibility exists in a month for which the recipient fails to meet a required spenddown, MWI premium, or cost-of-care contribution for home and community-based waiver services.

(g) The eligibility agency shall continue eligibility for a resident of a nursing home even when an eligible resident fails to pay the nursing home the cost-of-care contribution. The resident, however, must continue to meet all other eligibility requirements.

(2) The eligibility period ends on:

(a) the last day of the month in which the eligibility agency determines that the recipient is no longer eligible for medical assistance and sends proper closure notice;

(b) the last day of the month in which the eligibility agency sends proper closure notice when the recipient fails to provide required information or verification to the eligibility agency by the due date;

(c) the last day of the month in which the recipient asks the eligibility agency to discontinue eligibility, or if benefits have been issued for the following month, the end of that month;

(d) for time-limited programs, the last day of the month in which the time limit ends;

(e) for the pregnant woman program, the last day of the month which is at least 60 days after the date the pregnancy ends, except that for pregnant woman coverage for emergency services only, eligibility ends on the last day of the month in which the pregnancy ends; or

(f) the date the individual dies.

(3) A presumptive eligibility period begins on the day the qualified entity determines an individual to be presumptively eligible. The presumptive eligibility period shall end on the earlier of:

(a) the day the eligibility agency makes an eligibility decision for medical assistance based on the individual's application when that application is filed in accordance with the requirements of Sections 1920 and 1920A of the Social Security Act; or

(b) in the case of an individual who does not file an application in accordance with the requirements of Sections 1920 and 1920A of the Social Security Act, the last day of the month that follows the month in which the individual becomes presumptively eligible.

(4) For an individual selected for coverage under the Qualified Individuals Program, the eligibility agency shall

extend eligibility through the end of the calendar year if the individual continues to meet eligibility criteria and the program still exists.

(5) The eligibility agency shall complete a periodic review of a recipient's eligibility for medical assistance in accordance with the requirements of 42 CFR 435.916, October 1, 2013 ed., which the Department adopts and incorporates by reference. The Department elects to conduct reviews for non-MAGI-based coverage groups in accordance with 42 CFR 435.916(a)(3) if eligibility cannot be renewed in accordance with 42 CFR 435.916(a)(2). The eligibility agency shall review factors that are subject to change to determine if the recipient continues to be eligible for medical assistance.

(6) For non-MAGI-based coverage groups, the eligibility agency may complete an eligibility review more frequently when it:

(a) has information about anticipated changes in the recipient's circumstances that may affect eligibility;

(b) knows the recipient has fluctuating income;

(c) completes a review for other assistance programs that the recipient receives; or

(d) needs to meet workload demands.

(7) If a recipient fails to respond to a request for information to complete the review, the eligibility agency shall end eligibility effective at the end of the review month and send proper notice to the recipient.

(a) If the recipient responds to the review or reapplies within three calendar months of the review closure date, the eligibility agency shall consider the response to be a new application without requiring the client to reapply. The application processing period shall apply for the new request for coverage.

(b) If the recipient becomes eligible based on this reapplication, the recipient's eligibility becomes effective the first day of the month after the closure date if verification is provided timely. If the recipient fails to return verification timely or if the recipient is determined to be ineligible, the eligibility agency shall send a denial notice to the recipient.

(c) The eligibility agency may not continue eligibility while it makes a new eligibility determination.

(8) If the eligibility agency sends proper notice of an adverse decision in the review month, the agency shall change eligibility for the following month.

(9) If the eligibility agency does not send proper notice of an adverse change for the following month, the agency shall extend eligibility to the following month. Upon completing an eligibility determination, the eligibility agency shall send proper notice of the effective date of any adverse decision.

(10) If the recipient responds to the review in the review month and the verification due date is in the following month, the eligibility agency shall extend eligibility to the following month. The recipient must provide all verification by the verification due date.

(a) If the recipient provides all requested verification by the verification due date, the eligibility agency shall determine eligibility and send proper notice of the decision.

(b) If the recipient does not provide all requested verification by the verification due date, the eligibility agency shall end eligibility effective the end of the month in which the eligibility agency sends proper notice of the closure.

(c) If the recipient returns all verification after the verification due date and before the effective closure date, the eligibility agency shall treat the date that it receives the verification as a new application date. The agency shall then determine eligibility and send notice to the recipient.

(11) The eligibility agency shall provide ten-day notice of case closure if the recipient is determined ineligible or if the recipient fails to provide all verification by the verification due date.

(12) The eligibility agency may not extend coverage under certain medical assistance programs in accordance with state and federal law. The agency shall notify the recipient before the effective closure date.

(a) If the eligibility agency determines that the recipient qualifies for a different medical assistance program, the agency shall notify the recipient. Otherwise, the agency shall end eligibility when the permitted time period for such program expires.

(b) If the recipient provides information before the effective closure date that indicates that the recipient may qualify for another medical assistance program, the eligibility agency shall treat the information as a new application. If the recipient contacts the eligibility agency after the effective closure date, the recipient must reapply for benefits.

R414-308-7. Change Reporting and Benefit Changes.

(1) A recipient must report to the eligibility agency reportable changes as defined in Section R414-301-2 within 10 calendar days of the change.

(2) The eligibility agency shall:

(a) Act on the reported change; and

(b) Request verification from the recipient if the change cannot be verified through an electronic interface or other credible source.

(3) If verification is needed, the agency shall send a written request and give the recipient at least 10 calendar days from the notice date to respond.

(a) If the recipient does not provide verification by the due date, the agency shall end eligibility after the month in which proper notice is sent.

(b) If the recipient provides verification by the due date, the agency shall re-determine eligibility.

(c) If the recipient provides verification during the month that follows the effective closure date, the eligibility agency shall treat the date as a new application date without requiring a new application.

(d) If the recipient does not provide verification by the end of the month that follows the effective closure date, the recipient must submit a new application.

(4) If the recipient does not provide verification, or a reported change does not affect all household members, the agency may only take action on those individuals who are affected by the change.

(5) If a due date falls on a non-business day, then the due date shall be the close of the next business day.

(6) If a change has an adverse effect on the recipient, the agency shall change eligibility after the month in which proper notice is sent.

(7) If the agency can verify that a change is timely, the change becomes effective on the first day of the month of report.

(8) If the agency cannot verify that a change is timely, the change becomes effective on the first day of the month in which the agency receives verification.

(9) If a recipient requests to add a new household member, the effective date of the change is the date of request, and the following provisions apply:

(a) The agency does not require a new application; and

(b) The applicant must meet all other eligibility requirements.

(10) An overpayment may occur if the recipient does not report changes timely, or if the recipient does not return verification by the verification due date.

(a) The eligibility agency shall determine whether an overpayment has occurred based on when the agency could have made the change if the recipient had reported the change

on time or returned verification by the due date.

(b) If a recipient fails to report a change timely or return verification or forms by the due date, the recipient must repay all services and benefits paid by the Department for which the recipient is ineligible.

R414-308-8. Case Closure and Redetermination.

(1) The eligibility agency shall end medical assistance when the recipient requests the agency to close his case, when the recipient fails to respond to a request to complete the eligibility review, when the recipient fails to provide all verification needed to determine continued eligibility, or when the agency determines that the recipient is no longer eligible.

(2) If a recipient fails to complete the review process in accordance with Section R414-308-6, the eligibility agency shall close the case and notify the recipient.

(3) Before terminating a recipient's medical assistance, the eligibility agency shall determine whether the recipient is eligible for any other available medical assistance provided under Medicaid, the Medicare Cost Sharing programs, the Children's Health Insurance Program (CHIP), the Primary Care Network (PCN), and Utah's Premium Partnership for Health Insurance (UPP).

(a) The eligibility agency may not require a recipient to complete a new application to make the redetermination. The agency, however, may request more information from the recipient to determine whether the recipient is eligible for other medical assistance programs. If the recipient does not provide the necessary information by the close of business on the due date, the recipient's medical assistance ends.

(b) When determining eligibility for other programs, the eligibility agency may only enroll an individual in a medical assistance program during an open enrollment period, or when that program allows a person who becomes ineligible for Medicaid to enroll during a period when enrollment is closed. Open enrollment applies only to the PCN and UPP programs.

(4) The eligibility agency shall comply with the requirements of 42 CFR 435.1200, regarding transfer of the electronic file for the purpose of determining eligibility for other insurance affordability programs.

R414-308-9. Improper Medical Coverage.

(1) Improper medical coverage occurs when:

(a) an individual receives medical assistance for which the individual is not eligible. This assistance includes benefits that an individual receives pending a fair hearing or during an undue hardship waiver when the individual fails to take actions required by the eligibility agency;

(b) an individual receives a benefit or service that is not part of the benefit package for which the individual is eligible;

(c) an individual pays too much or too little for medical assistance benefits; or

(d) the Department pays in excess or not enough for medical assistance benefits on behalf of an eligible individual.

(2) As applied in this section, services and benefits include all amounts that the Department pays on behalf of the recipient during the period in question and includes:

(a) premiums that the recipient pays to any Medicaid health plan or managed care plan including any payments for administration costs, Medicare, and private insurance plans;

(b) payments for prepaid mental health services; and

(c) payments made directly to service providers or to the recipient.

(3) If the eligibility agency determines that a recipient is ineligible for the services and benefits that he receives, the recipient must repay to the Department any costs that result from the services and benefits.

(4) The eligibility agency shall reduce the amount that the recipient must repay by the amount that the recipient pays to the eligibility agency for a Medicaid spenddown, a cost-of-care contribution, or a MWI premium for the month.

(5) If the recipient is eligible but the overpayment is because the spenddown, the MWI premium, or the cost-of-care contribution is incorrect, the recipient must repay the difference between the correct amount that the recipient should pay and the amount that the recipient has paid.

(6) If the eligibility agency determines that the recipient is ineligible due to having resources that exceed the resource limit, the recipient must pay the lesser of the cost of services or benefits that the recipient receives, or the difference between the recipient's countable resources and the resource limit for each month resources exceed the limit.

(7) A recipient may request a refund from the Department if the recipient believes that:

(a) the monthly spenddown, or cost-of-care contribution that the recipient pays to receive medical assistance is less than what the Department pays for medical services and benefits for the recipient; or

(b) the amount that the recipient pays in the form of a spenddown, an MWI premium, or a cost-of-care contribution for long-term care services, exceeds the payment requirement.

(8) Upon receiving the request, the Department shall determine whether it owes the recipient a refund.

(a) In the case of an incorrect calculation of a spenddown, MWI premium, or cost-of-care contribution, the refundable amount is the difference between the incorrect amount that the recipient pays to the Department for medical assistance and the correct amount that the recipient should pay, less the amount that the recipient owes to the Department for any other past due, unpaid claims.

(b) If the spenddown or a cost-of-care contribution for long-term care exceeds medical expenditures, the refundable amount is the difference between the correct spenddown or cost-of-care contribution that the recipient pays for medical assistance and the amount that the Department pays on behalf of the recipient for services and benefits, less the amount that the recipient owes to the Department for any other past due, unpaid claims. The Department shall issue the refund only after the 12-month time period that medical providers have to submit claims for payment.

(c) The Department may not issue a cash refund for any portion of a spenddown or cost-of- care contribution that is met with medical bills. Nevertheless, the Department may pay additional covered medical bills used to meet the spenddown or cost-of-care contribution equal to the amount of refund that the Department owes the recipient, or apply the bill amount toward a future spenddown or cost-of-care contribution.

(9) A recipient who pays a premium for the MWI program may not receive a refund even when the Department pays for services that are less than the premium that the recipient pays for MWI.

(10) If the cost-of-care contribution that a recipient pays a medical facility is more than the Medicaid daily rate for the number of days that the recipient is in the medical facility, the recipient may request a refund from the medical facility. The Department shall refund the amount that it owes the recipient only when the medical facility sends the excess cost-of-care contribution to the Department.

(11) If the sponsor of an alien does not provide correct information, the alien and the alien's sponsor are jointly liable for any overpayment of benefits. The Department shall recover the overpayment from both the alien and the sponsor.

KEY: public assistance programs, applications, eligibility, Medicaid

March 28, 2017 **26-18**
Notice of Continuation January 8, 2018

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 R414-517-6.

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. Intergovernmental Transfer Calculation and Schedule.

The non-state government hospital-intergovernmental transfer, as specified in Title 26, Chapter 36b, shall be calculated at a uniform rate for each hospital discharge. The uniform rate shall be determined using the total number of hospital discharges for non-state government hospitals. Any quarterly changes to the uniform rate shall be applied uniformly to all non-state government hospitals.

R414-517-6. 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.

R414-517-7. 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
January 29, 2018 **26-1-5**
26-18-3
26-36b

R432. Health, Family Health and Preparedness, Licensing.
R432-1. General Health Care Facility Rules.
R432-1-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-1-2. Purpose.

The purpose of this rule is to define the standard terms for all licensed health care facilities and agencies.

R432-1-3. Definitions.

(1) Terms used in this rule are defined in Section 26-21-2. In addition:

(2) "AWOL/Elopement" means absence without leave; an unauthorized departure from the facility.

(3) "Abortion" is defined in Section 76-7-301(1).

(4) "Abuse" is defined in 62A-3-301 as:

(a) attempting to cause, or intentionally or knowingly causing physical harm, or intentionally placing another in fear of imminent physical harm;

(b) physical injury caused by criminally negligent acts or omissions;

(c) unlawful detention or unreasonable confinement;

(d) gross lewdness;

(e) deprivation of life sustaining treatment, except:

(i) as provided in Title 75, Chapter 2, Part 11, Personal Choice and Living Will Act; or

(ii) when informed consent, as defined in Section 76-5-111, has been obtained.

(5) "Act" means the Health Facility Licensure and Inspection Act, Title 26, Chapter 21.

(6) "Active Treatment" means the habilitative program of care for ICF/MR patients described in 42 CFR Part 483 (1983) that addresses training in daily living, self-help, and social skills; activities; recreation; appropriate staffing level; special resident programs; program evaluation; nursing services; documented resident surveys and progress; and social services.

(7) "Activities of Daily Living" ("ADL") means those personal functional activities required for an individual for continued well-being; including eating/nutrition, mobility, dressing, bathing, toileting, and behavior management. ADLs 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 activity, but cannot do it entirely alone.

(c) "Dependent" means the resident cannot perform any part of an activity; it must be done entirely by someone else.

(8) "Administering" means the direct application of a prescription drug or device, whether by injection, inhalation, ingestion, or by any other means, to the body of a human patient or research subject by another person.

(9) "Affiliation" means a relationship, usually signified by a written agreement, between two organizations, under the terms of which one organization agrees to provide specified services and personnel to meet the needs of the other, usually on a scheduled basis.

(10) "Aftercare" means post-institution services designed to help a patient maintain or improve on the gains made during inpatient treatment.

(11) "Aide or Attendant" means a person employed to assist in activities of daily living and in the direct personal care of patients.

(12) "ADAAG" means the Americans with Disability Act Accessibility Guidelines, 28 CFR 36, Appendix A, July 1993.

(13) "Ambulatory" means a person who is capable of achieving mobility sufficient to exit his residence without assistance of another person.

(14) "Annual Report" means a document containing annual statistical information from a licensed health facility or agency.

(15) "Assessment" means a process of observing, testing and evaluating a patient in order to obtain information.

(16) "Bathing Facility" means a bathtub or shower.

(17) "Bed Capacity" means the maximum number of beds which the facility is licensed to offer for patient care.

(18) "Behavior Management" means a planned, systematic application of methods and findings of behavioral science with the intent of reducing observable negative behaviors.

(19) "Birthing Room" means a room and environment designed, equipped and arranged to provide for the care of a woman and newborn and to accommodate her support person(s) during the process of vaginal birth.

(20) "Certificate of Completion" means a document issued by the Utah Board of Education to a person who completes an approved course of study not leading to a diploma; to a person who passes a challenge exam for that same course of study; or to a person whose out-of-state credentials and certificate are acceptable to the Board.

(21) "Certified" means a health facility or agency which holds a current license issued by the Department, and which also meets the standards established for participation in federally funded programs, such as Medicare.

(22) "Certified Nurse Aide" means a nursing assistant who has completed a federally approved training program and proved competency through testing, thereby he is entitled to be employed in a licensed health care facility or agency.

(23) "Certified Registered Nurse Anesthetist" means a registered nurse who is licensed by the Utah Department of Commerce under Title 58 Chapter 31b.

(24) "Certified Nurse Midwife" means an individual licensed to practice by the Utah Department of Commerce under Title 58, Chapter 44a.

(25) "Certified Social Worker" means an individual licensed by the Utah Department Commerce under Title 58, Chapter 60.

(26) "Chronic Noncompliance" means a violation of the same licensing administrative rule which is documented in any three inspections within a four year period. Inspections may include complaint investigations, surveys, or follow-up inspections on plans of correction, or any combination of these inspections that is documented by the Department, an accrediting organization or a federal agency.

(27) "Clinical Note" means a dated, written notation by a member of the health team which indicates contact with a patient and describes any of the following: signs and symptoms of dysfunction, treatment given or medication administered, the patient's reaction, changes in physical or emotional condition, or services provided.

(28) "Clinical Staff" means the physicians and certified providers appointed by the governing authority to practice within the health facility or agency.

(29) "Consultant" means an individual who provides professional services either upon request or on the basis of a prearranged schedule, usually on a contract basis, who is neither a member of the employed staff of the facility or agency, nor whose services are provided within the terms of an affiliation agreement.

(30) "Continuous Noncompliance" means three or more violations of a single licensing rule requirement occurring within a 12-month time period.

(31) "Contract Services" means services purchased by a health facility or agency under a contract with an individual or a provider whose personnel are not salaried employees of the facility or agency.

(32) "Control Station" means a central office or area for charting, drug preparation, and other patient-care tasks normally performed at a nursing station.

(33) "Critical Care Unit" means a special physical and functional unit for the segregation, concentration and close or continuous nursing observation and care of patients who are critically, seriously, or acutely ill.

(34) "Day Treatment" means training and habilitation services delivered outside the patient's place of residence which are intended to aid the vocational, pre-vocational, and self-sufficiency skill development of an ICF/MR patient. These services must meet active treatment requirements and must be coordinated and integrated with the active treatment program of the facility or agency.

(35) "Dentist" means a person registered and currently licensed by the Utah Department of Commerce under Title 58, Chapter 69.

(36) "Department" means the Utah Department of Health.

(37) "Developmental Disability" means a severe, chronic disability that meets all of the following conditions:

(a) Is attributable to: cerebral palsy, epilepsy, autism; or any other condition, other than mental illness, closely related to mental retardation which results in impairment of general intellectual functioning adaptive behavior, or requires treatment or services similar to those required for mentally retarded persons;

(b) Is manifested before the person reaches the age of 22;

(c) Is likely to continue indefinitely; and

(d) Results in substantial functional limitations in three or more of the following areas of major activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; or

(vi) capacity for independent living.

(38) "Dietitian" means a person who is certified pursuant to Title 58, Chapter 49.

(39) "Direct Services" means services provided by salaried employees of a health facility or agency, as opposed to services provided by contract.

(40) "Direct Supervision" means the critical observation and guidance by a qualified person of another person's activities or course of action.

(41) "Discharge" means the point at which the patient's involvement with a facility or agency program is terminated and the facility or agency program no longer maintains active responsibility for the care of the patient.

(42) "Distinct Part" means a discrete, physically definable entity located within a structure constructed and equipped according to applicable codes which:

(a) provides within the structure the necessary unique physical facilities, equipment, staff, and supplies to deliver all basic services that are offered to and needed for the diagnosis, therapy, and treatment of patients, and to comply with licensing standards;

(b) provides or arranges for necessary administrative and non-unique, non-clinical, ancillary type services such as dietary, laundry, housekeeping, business office and medical records; and

(c) protects the rights of patients including freedom from unwanted intrusion by visitors, guests, staff, and residents of adjacent licensed facilities and use occupancies.

(43) "Documentation" means written supportive information, records, or references to verify information required by law or rule.

(44) "Drug History" means identifying all of the drugs used by a patient, including prescribed and unprescribed drugs.

(45) "Emergency" means any situation or event that threatens or poses a threat to the occupants of the facility or agency, or prohibits one or more occupants (staff, patient, or visitor) from receiving services normally offered by the facility or agency, or requires action not normally performed by the facility or agency staff.

(46) "Emotional or psychological abuse" means deliberate conduct that is directed at a person through verbal or nonverbal means and that causes the individual to suffer emotional distress or to fear bodily injury, harm, or restraint.

(47) "Environment" means the physical and emotional atmosphere including architectural design, furnishings, color, privacy, and safety, as well as other people.

(48) "Executive Director" means the Executive Director of the Utah Department of Health.

(49) "Freestanding" means existing independently or physically separated from another health care facility by fire walls and doors and administrated by separate staff with separate records.

(50) "Free-standing Urgent Care Center," as distinguished from a private physician's office or emergency room setting, means a facility which provides out-patient health care service (on an as-needed basis, without appointment) to the public for diagnosis and treatment of medical conditions which do not require hospitalization or emergency intervention for a life-threatening or potentially permanently disabling condition. Diagnostic and therapeutic services provided by a free-standing urgent care center include: a medical history physical examination, assessment of health status and treatment for a variety of medical conditions commonly offered in a physician's office.

(51) "Governing Authority or Governing Body" means the board of trustees, owner, person or persons designated by the owner with ultimate authority and responsibility, both moral and legal, for the management, control, conduct and functioning of the health care facility or agency.

(52) "Governmental Unit" means the state, or any county, municipality, or other political subdivision of any department, division, board or other agency of any of the foregoing.

(53) "Guardian" means a person legally responsible for the care and management of a person who is considered by law to be incompetent to manage his own affairs.

(54) "Habilitation" means techniques and treatment which actively build and develop new or alternative styles of independent functioning and promote new behavior which results in greater self-sufficiency and sense of well-being.

(55) "Health Care Facility or Agency" means any facility or agency licensed under the authority of the Health Facility Committee and designated as such in Subsection 26-21-2(10).

(56) "Health Services Supervisor" means a person with a professional medical license or certificate, such as a nurse, social worker, physical therapist, or psychologist, responsible for the development, supervision, and implementation of a written health care plan for each resident.

(57) "Homemaker" means a person who cares for the environment in the home through performance of duties such as housekeeping, meal planning and preparation, laundry, shopping and errands.

(58) "Hospitalization" means an inpatient stay of at least 24 hours, or an overnight stay or emergency care, except a stay at a freestanding ambulatory surgical center that meets the requirements of R432-500.

(59) "ICD-9-CM" means the International Classification of Diseases, 9th revision, Clinical Modification, 1986.

(60) "Imminent Danger" means a situation or condition

which presents a substantial likelihood of death or serious physical or mental harm to a patient or resident in the facility or agency.

(61) "Inpatient Program" means treatment provided in a suitably equipped setting that provides services to persons who require care that warrants 24-hour supervision.

(62) "Intake" means the administrative and assessment process for admission to a program.

(63) "Interdisciplinary Team" means a group of staff members composed of representatives from different professions, disciplines, or services.

(64) "Involuntary Medication" means medication which is prescribed by the physician but not taken willingly by the patient, and is administered due to compelling medical reasons.

(65) "Joint Commission" means the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

(66) "Lavatory" means a plumbing fixture designed and equipped for handwashing purposes.

(67) "License" means the certificate issued by the Department of Health for the operation of the facility or agency. This document constitutes the authority to receive patients and residents and to perform the services included within the scope of the rule and as specified on the license.

(68) "Licensed Practical Nurse (LPN)" means a person registered and licensed by the Utah Department of Commerce under Title 58, Chapter 31b.

(69) "Licensed Practitioner" means a health professional whose license allows diagnosis, treatment, and prescribing practices within the scope of the license and established protocols.

(70) "Licensee" means the person or organization who is granted a license to operate a health facility or agency and who has ultimate authority and responsibility for the operation, management, control, conduct, and functioning of the facility or agency.

(71) "Licensing Agency" means the Bureau of Licensing of the Utah Department of Health.

(72) "Licensure" means the process of obtaining official or legal permission to operate a health facility or agency.

(73) "Living Unit" means the area or part of a facility where residents sleep and may include dining and other resident activity areas.

(74) "Low Risk Maternal Mother" means a woman who is in good general health throughout pregnancy and birth and who meets the criteria for low risk birth services as developed by the clinical staff and approved by the governing board and licensing agency for a Birthing Center.

(75) "Maladaptive (negative) Behavior" means behavior that is either self-injurious, or dangerous to others, or environmentally destructive, demonstrating a reduction in or lack of ability necessary to adjust to environmental demands.

(76) "Medical Equipment and Supplies" means items used for therapeutic or diagnostic purposes essential for patient care, such as dressings, catheters, or syringes.

(77) "Medical Staff" means, the organized body composed of all specified professional personnel, appointed by the governing body and granted privileges to practice in the facility or agency.

(78) "Medication" means any drug, chemical compound, suspension, or preparation suitable for internal or external use by persons for the treatment or prevention of disease or injury.

(79) "Mental Retardation" means significantly subaverage general intellectual functioning resulting in, or associated with, concurrent impairments in adaptive behavior and manifested during the developmental period. Significantly subaverage general intellectual functioning is operationally defined as a score of two or more standard deviations below the mean on a standardized general intelligence test. Developmental period is defined as the period between conception and the 18th birthday.

(80) "Mental Disease" means any disease listed as a mental disorder in the ICD-9-CM excluding the codes for senility or organic brain syndrome (290 through 294.9 and 310 through 310.9), the codes for adjustment reaction (309); the codes for psychic factors associated with diseases classified elsewhere (316); and the codes for mental retardation (317 through 319). Codes 314 through 315.9 may also be excluded for individuals suffering impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons. Codes 309 and 316 are also excluded.

(81) "Mobile" means a person who is able to take action for self-preservation under emergency conditions with the assistance of supportive equipment such as crutches, braces, walkers, or wheelchairs, but without the assistance, except for verbal instructions, from other persons.

(82) "Neglect" means the same as 62A-3-301(10).

(83) "New Construction" means any of the following:

(a) New medical or health care facilities licensed under these rules;

(b) Addition(s) to an existing building;

(c) Alteration(s) or modification(s) (other than strictly repair and maintenance) costing more than $3,000 or that affect the structure, electrical or mechanical system of a health care facility.

(84) "Non-Ambulatory" means unable to walk without assistance of other persons.

(85) "Nursing Care" means assistance provided to sick or disabled individuals, by or under the direction of licensed nursing personnel, for their health care needs.

(86) "Nursing Home" means any facility licensed by the Department as a nursing care facility that provides licensed nursing care and related services to residents who need continuous health care and supervision.

(87) "Occupational Therapist" means a person currently licensed by the Utah Department of Commerce under Title 58, Chapter 42a.

(88) "Oral Surgeon" means a person who has successfully completed a postgraduate program in oral surgery accredited by a nationally recognized accrediting body approved by the U.S. Office of Education and is licensed by the Utah Department of Commerce to practice dentistry.

(89) "PRN medication" means medication which is administered pro re nata. Pro re nata means as needed. The time of medication administration is determined by the resident's need.

(90) "Parent Facility" means all free-standing health facilities under a single ownership licensed under Section 26-21-2 except home health agencies. The parent facility includes:

(a) the main structure, wings, or detached buildings where a service within the scope of the facility's license is offered and any detached building used for storage, heating or cooling equipment located on the main grounds bounded by a city, county or a state street or road, or a property line; and

(b) any structure located outside the main facility grounds connected to the main facility by a heating or cooling system or by a covered walkway where a service is provided within the scope of the parent facility's license.

(91) "Patient" means a resident or person receiving care in a health care facility or agency. Patient, client or resident terms are interchangeable meaning a person who is receiving needed services.

(92) "Patient Care Plan" means an integrated plan of care developed for the patient.

(93) "Pediatric Patients" means infants, children, adolescents, and young adults up to the age of 18.

(94) "Personal Care" means assistance provided to residents in activities of daily living.

(95) "Personal Care Aide" means a person who assists patients or residents in the activities of daily living and emergency first aid; and who may be supervised by a licensed nurse.

(96) "Personal Resource Funds" means monies received by a patient from a variety of sources which the patient may spend as needed or desired.

(97) "Personnel" means individual(s) in training or employed by the health care facility or agency.

(98) "Pharmacist" means a person currently licensed by the Utah Department of Commerce to practice pharmacology pursuant to Title 58, Chapter 17a.

(99) "Physical Therapist" means a person currently licensed by the Utah Department of Commerce to practice under Title 58, Chapter 24a.

(100) "Physician" means a person who is licensed to practice medicine and surgery by the Utah Department of Commerce under Section 58-67-301, the Utah Medical Practice Act, or Section 58-68-301, Utah Osteopathic Medical Practice Act, or a physician in the employment of the government of the United States who is similarly qualified.

(101) "Place of Residence" means the place a patient makes his home. This may be a house, an apartment, a relative's home, housing for the elderly, a retirement home, an assisted living facility, or a place other than a health care facility which provides continuous nursing care.

(102) "Plan of Care or Plan of Treatment" are interchangeable terms which mean a written plan based on assessment data or physician orders that identifies the patient's needs, who shall provide needed services and how often, treatment goals, and anticipated outcomes.

(103) "Podiatrist" means a person registered and licensed by the Utah Department of Commerce under Title 58, Chapter 5a.

(104) "Policies and Procedures" means a set of rules adopted by the governing body to govern the health care facility or agency's operation.

(105) "Practitioner" means a registered nurse, with advanced or specialized training, who is licensed by Utah Department of Commerce, Title 58, Chapter 31b.

(106) "Prognosis" means a statement given as:

(a) the likelihood of an individual achieving stated goals;

(b) the degree of independence likely to be achieved; or

(c) the length of time to achieve goals.

(107) "Program" means a general term for an organized system of services designed to address the treatment needs of the patient.

(108) "Protected Living Arrangement" means provision for food, shelter, sleeping accommodations, and supervision of activities of daily living for persons of any age who are unable to independently maintain these basic needs and functions.

(109) "Provider" means a supplier of goods or services.

(110) "Public Agency" means an agency operated by a state or local government.

(111) "Public Health Center" means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers.

(112) "Qualified Mental Retardation Professional (QMRP)" means a person who has specialized training or one year of experience in treating or working with the mentally retarded including any one of the following: psychologist with a master's degree from an accredited program; licensed physician; educator with a bachelor's degree in education from an accredited program; social worker with a bachelor's degree in social work from an accredited program or a field other than social work and at least three years of social work experience under the supervision of a qualified social worker; licensed physical or occupational therapist; licensed speech pathologist or audiologist; registered nurse; therapeutic recreation specialist who is a graduate of an accredited program and is licensed to perform recreational therapy under the provisions of Title 58, Chapter 40; Rehabilitation counselor who is certified by the Committee on Rehabilitation Counselor Certification.

(113) "Quality of Care" means the provision of patient treatment, including medical or nursing care as well as restorative therapies.

(114) "Quality of Life" means how a patient experiences the state of existing and functioning in the facility environment, and is related to the human and humane processes involved in normal human functioning, including rights and freedoms.

(115) "Recovery," for birthing centers, means that period or duration of time starting at birth and ending with the discharge of a client from the birthing center, or the period of time between the birth and the time a mother leaves the premises of the birthing center.

(116) "Recreational Therapist" means any person licensed to perform recreational therapy under the provisions of Title 58, Chapter 40.

(117) "Referred Outpatient" means a person who is receiving his medical diagnosis, treatment, or other health care services from one or more sources outside the hospital, but who receives from the hospital diagnostic tests or examinations ordered by health care practitioners, legally permitted to order such tests and examinations, and to whom the hospital reports findings and results.

(118) "Refurbish" means to clean or otherwise change the appearance without making significant changes in the existing physical structure of a facility.

(119) "Registered Nurse" means any person who is registered and licensed by the Utah Department of Commerce to practice as a registered nurse under Title 58, Chapter 31.

(120) "Rehabilitation" means a program of care designed to restore a patient to a former capacity.

(121) "Relative" means spouse, parent, stepparent, son, daughter, brother, sister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin or any such person denoted by the prefix "grand" or "great" or the spouse of any of the persons specified in this definition, even if the marriage has been terminated by death or dissolution.

(122) "Remodel" means to reconstruct or to make significant changes in the existing physical structure of a facility.

(123) "Representative" means a person employed by the Department.

(124) "Request for Hearing" means any clear expression in writing by a provider requesting an opportunity to appeal a Department action following R432-30.

(125) "Resident Living" means residential services provided by an ICF/MR facility.

(126) "Responsible Person" means an individual, relative, or close friend designated in writing by the resident, or a court-appointed guardian or person with durable power of attorney, who assists the resident and assumes responsibility for the resident's well-being and for any care not provided by the facility or agency.

(127) "Restrictive Procedures" means a class of procedures designed to reduce or eliminate maladaptive behaviors including:

(a) restricting an individual's movement;
(b) restricting an individual's ability to obtain positive reinforcement; and
(c) restricting an individual's ability to participate in programs.
(128) "Safety Device" means a protective device used to offer protection from inadvertent acts (such as falling out of bed) as well as deliberate acts (such as removing a nasogastric tube).
(129) "Seclusion" means a procedure that isolates the patient in a specific room or designated area to temporarily remove the patient from the therapeutic community and reduce external stimuli.
(130) "Self Administration of Medication" means the act by which a resident independently removes an individual dose from a properly labeled container and takes that medication. The resident must know the medication type, dosage and frequency of administration.
(131) "Service Delivery Area" means any area in the facility where a specific service or group of services is organized, performed or carried out. For example the dietary services area includes the kitchen; patient care services delivery area includes patient rooms, corridors, and adjacent areas.
(132) "Service Pattern" means a continuum of medical and psychological needs expressed as a type and used in evaluation for appropriate placement and treatment purposes.
(133) "Social Service Worker (SSW)" means a person currently licensed by the Utah Department of Commerce to function as a social service worker under Title 58, Chapter 60.
(134) "Social Worker, Certified (CSW)" means a person currently licensed by the Utah Department of Commerce to practice social work under Title 58, Chapter 60.
(135) "Specialty Hospital" means a hospital which provides specialized diagnostic, therapeutic, or rehabilitative services in the recognized specialty or specialties for which the hospital is licensed.
(136) "Speech-Language Pathologist" means a person licensed by the Utah Department of Commerce to practice speech-language pathology pursuant to Title 58, Chapter 41.
(137) "Substantial Noncompliance" means any occurrence of a Class I violation, or the occurrence of one or more Class II violations resulting in continuous noncompliance, or chronic noncompliance with one or more rule requirements in the administrative rules specific to the health care facility licensure category.
(138) "Summary Report" means a compilation of pertinent facts from the clinical notes regarding a patient, usually submitted to the patient's physician as part of a plan of treatment.
(139) "Supervision" means guidance of another person or persons by a qualified person to assure that a service, function, or activity is provided within the scope of a license, certificate, job description, or instructions.
(140) "Support Person" means the individual(s) selected or chosen by a mother to provide emotional support and to assist her during the process of labor and childbirth.
(141) "Surgeon General" means the surgeon general of the United States public health service.
(142) "Therapist" means a professionally trained licensed or registered person (such as a physical therapist, occupational therapist, or speech therapist), who is skilled in applying treatment techniques and procedures under the general direction of a physician.
(143) "Training and Habilitation Services" means services intended to improve or aid the intellectual, sensorimotor, and emotional development of a patient or resident.

R432-1-4. Identification Badges.
(1) Health care facilities and agencies shall ensure that the following persons, shall wear an identification badge:
(a) professional and non-professional employees who provide direct care to patients; and
(b) volunteers.
(2) The identification badge shall include the following:
(a) the person's first or last name; however, the badge does not have to reveal the persons full name; and
(b) the person's title or position, in terms generally understood by the public.

KEY: health care facilities
August 7, 2001 **26-21-2**
Notice of Continuation January 29, 2018

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.

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26-21-13

R432. Health, Family Health and Preparedness, Licensing.
R432-3. General Health Care Facility Rules Inspection and Enforcement.
R432-3-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-3-2. Purpose.

This rule delineates the role and responsibility of the Department and the licensing agency in the enforcement of rules and regulations pertaining to health, safety, and welfare in all licensed and unlicensed health facilities and agencies regulated by Title 26, Chapter 21. These provisions provide guidelines and criteria to ensure that sanctions are applied consistently and appropriately.

R432-3-3. Deemed Status.

The Department may grant licensing deemed status to facilities and agencies accredited by The Joint Commission (TJC), Accreditation Association for Ambulatory Health Care (AAAHC), Accreditation Commission for Health Care, Community Health Accreditation Program or the American Osteopathic Association's Health Facilities Accreditation Program (AOA/HFAP) in lieu of the licensing inspection by the Department upon completion of the following by the facility or agency:

(1) As part of the license renewal process, the licensee shall identify on the Request for Agency Action/Application its desire to:

(a) initiate deemed status,

(b) continue deemed status, or

(c) relinquish deemed status during the licensing year of application.

(2) This request shall constitute written authorization for the Department to attend the accrediting agency exit conference.

(3) Upon receipt from the accrediting agency, the facility shall submit copies of the following:

(a) accreditation certificate;

(b) Joint Commission Statement of Construction;

(c) survey reports and recommendations;

(d) progress reports of all corrective actions underway or completed in response to accrediting body's action or Department recommendations.

(4) Regardless of deemed status, the Department may assert regulatory responsibility and authority pursuant to applicable state and federal statutes to include:

(a) inspections,

(b) complaint investigations,

(c) verification of the violations of state law, rule, or standard identified in a Department survey or, violations of state law, rule, or standard identified in the accrediting body's survey including:

(i) facilities or agencies granted a provisional or conditional accreditation by the Joint Commission until a full accreditation status is achieved,

(ii) any facility or agency that does not have a current, valid accreditation certificate, or

(iii) construction, expansion, or remodeling projects required to comply with standards for construction promulgated in the rules by the Health Facility Committee.

(5) The Department may annually conduct validation inspections of facilities or agencies accredited for the purpose of determining compliance with state licensing requirements. If a validation survey discloses a failure to comply with the standards for licensing, the provisions relating to regular inspections shall apply.

R432-3-4. Access for Inspections.

(1) The Department or its designee may, upon presentation of proper identification, inspect each licensed health care facility or agency as necessary to determine compliance with applicable laws, rules and federal regulations.

(2) Each licensed health care facility or agency must:

(a) allow authorized representatives of the Department immediate access to the facility or agency, including access to all staff and patients; and

(b) make available and permit photocopying of facility records and documents by, or on behalf of, the Department as necessary to ascertain compliance with applicable laws, rules and federal regulations. Copies become the responsibility and property of the Department.

R432-3-5. Statement of Findings.

(1) Whenever the Department has reason to believe that a health facility or agency is in violation of Title 26, Chapter 21 or any of the rules promulgated by the Health Facility Committee, the Department shall serve a written Statement of Findings to the licensee or his designee within the following timeframe.

(a) Statements for Class I and III violations are served immediately.

(b) Statements for Class II violations are served within ten working days.

(2) Violations shall be classified as Class I, Class II, and Class III violations.

(a) "Class I Violation" means any violation of a statute or rule relating to the operation or maintenance of a health facility or agency which presents imminent danger to patients or residents of the facility or agency or which presents a clear hazard to the public health.

(b) "Class II Violation" means any violation of a statute or rule relating to the operation or maintenance of a health facility or agency which has a direct or immediate relationship to the health, safety, or security of patients or residents in a health facility or agency.

(c) "Class III Violation" means establishing, conducting, managing, or operating a health care facility or agency regulated under Title 26, Chapter 21 and this rule without a license or with an expired license.

(3) The Department may cite a facility or agency with one or more rule or statute violations. If the Department finds that there are no violations, a letter shall be sent to the facility acknowledging the inspection findings.

(4) The Statement of Findings shall include:

(a) the statute or rule violated;

(b) a description of the violation;

(c) the facts which constitute the violation; and

(d) the classification of the violation.

R432-3-6. Plan of Correction.

(1) A health facility or agency shall submit within 14 calendar days of receipt of a Statement of Findings a Plan of Correction outlining the following:

(a) how the required corrections shall be accomplished;

(b) who is the responsible person to monitor the correction is accomplished; and

(c) the date the facility or agency will correct the violation.

(2) Within ten working days of receipt of the Plan of Correction, the Department shall make a determination as to the acceptability of the Plan of Correction.

(3) If the Department rejects the Plan of Correction, the Department shall notify the facility or agency of the reasons for rejection and may request a revised Plan of Correction or issue a Notice of Agency Action directing a Plan of Correction and imposing a deadline for the correction. If the

Department requests a revised Plan of Correction, the facility or agency shall submit the revised Plan of Correction within 14 days of receipt of the Department request.

(4) If the facility or agency corrects the violation prior to submitting the Plan of Correction, the facility or agency shall submit a report of correction.

(5) If violations remain uncorrected after the time specified for completion in the Plan of Correction or if the facility or agency fails to submit a Plan of Correction as specified, the Department shall notify the facility or agency.

(6) Any person aggrieved by the agency action shall have the right to seek review under the provisions outlined in Rule R432-30, Adjudicative Proceedings.

(7) If a licensed or unlicensed health facility or agency is served with a Statement of Findings citing a Class I violation, the facility or agency shall correct the situation, condition, or practice constituting the Class I violation immediately, unless a fixed period of time is determined by the Department and is specified in the Plan of Correction.

(a) The Department shall conduct a follow-up inspection within 14 calendar days or within the agreed -upon correction period to determine correction of Class I violations.

(b) If a health facility or agency fails to correct a Class I violation as outlined in the accepted Plan of Correction, the Department shall pursue sanctions or penalties through a formal adjudicative proceeding as outlined in Rule R432-30.

(8) A facility or agency served with a Statement of Findings citing a Class II violation shall correct the violation within the time specified in the Plan of Correction or within a time-frame approved by the Department which does not exceed 60 days unless justification is provided in the accepted Plan of Correction.

(9) The Department may issue a conditional license or impose sanctions to the license or initiate a formal adjudicative proceeding to close the facility or agency if a facility or agency is cited with a Class II violation and fails to take required corrective action as outlined in Rule R432-30.

(10) The Department shall determine which sanction to impose by considering the following:

(a) the gravity of the violation;

(b) the effort exhibited by the licensee to correct violations;

(c) previous facility or agency violations; and

(d) other relevant facts.

(11) The Department shall serve a facility or agency with a Statement of Findings for a Class III violation. A facility of agency cited for a Class III violation must file a Request for Agency Action/License Application form and pay the required licensing fee within 14 days of the receipt of the Class III Statement of Findings.

(a) The Statement of Findings may include the names of individuals residing in the facility who require services outside the scope of the proposed licensing category.

(b) The facility shall arrange for all individuals to be relocated if the facility is unable to meet the individuals' needs within the scope of the proposed license category.

(c) If the facility or facility fails to submit the Request for Agency Action/License Application as specified, the Department shall issue a written Notice of Agency Action ordering closure of the facility or agency.

(d) If the Executive Director determines that the lives, health, safety or welfare of the patients or residents cannot be adequately assured pending a full formal adjudicative proceeding, he may order immediate closure of the facility or agency under an emergency adjudicative proceeding, as outlined in Rule R432-30.

R432-3-7. Sanction Action on License.

(1) The Department may initiate an action against a health facility or agency pursuant to Section 26-21-11. That action may include the following sanctions:

(a) denial or revocation of a license if the facility or agency fails to comply with the rules established by the Committee, or demonstrates conduct adverse to the public health, morals, welfare, and safety of the people of the state;

(b) restriction or prohibition on admissions to a health facility or agency for:

(i) any Class I deficiency,

(ii) Class II deficiencies that indicate a pattern of care and have resulted in the substandard quality of care of patients,

(iii) repeat Class I or II deficiencies that demonstrate continuous noncompliance or chronic noncompliance with the rules, or

(iv) permitting, aiding, or abetting the commission of any illegal act in the facility or agency;

(c) distribution of a notice of public disclosure to at least one newspaper of general circulation or other media form stating the violation of licensing rules or illegal conduct permitted by the facility or agency and the Department action taken;

(d) placement of Department employees or Department-approved individuals as monitors in the facility or agency until such time as corrective action is completed or the facility or agency is closed;

(e) assessment of the cost incurred by the Department in placing the monitors to be reimbursed by the facility or agency;

(f) during the correction period, placement of a temporary manager to ensure the health and safety of the patients; or

(g) issuance of a civil money penalty pursuant to UCA 26-23-6, not to exceed the sum of $10,000 per violation.

(2) If the Department imposes a restriction or prohibition on admissions to a long-term care facility or agency, the Department shall send a written notice to the licensee.

(a) The licensee shall post the copies of the notice on all public entry doors to the licensed long-term care facility or agency.

(b) The Department shall impose the restriction or prohibition if:

(i) the long-term care facility or agency has previously received a restriction or prohibition on admissions within the previous 24 month period; or

(ii) the long-term care facility or agency has failed to meet the timeframes in the Plan of Correction which is the basis for the restriction or prohibition on admissions; or

(iii) circumstances in the facility or agency indicate actual harm, a pattern of harm, or a serious and immediate threat to patients.

(3) If telephone inquiries are made to a long-term care facility or agency with a restriction or prohibition on admissions, the facility or agency shall inform the caller, during the call, about the restriction or prohibition on admissions. If the facility or agency fails to inform the caller, the department may assess penalties as allowed by statute and shall require the facility or agency to post a written notice on all public entry doors.

R432-3-8. Immediate Closure of Facility.

(1) The Department may order the immediate closure of any licensed or unlicensed health facility or agency when the health, safety, or welfare of the patients or residents cannot be assured pending a full formal adjudicative proceeding.

(2) The provisions for an emergency adjudicative proceeding as provided in section 63-46b-20 shall be followed.

(3) If the Department determines to close a facility or agency, it shall serve an order that the facility or agency is ordered closed as of a given date. The order shall:

(a) state the reasons the facility is ordered closed;

(b) cite the statute or rule violated; and

(c) advise as to the commencement of a formal adjudicative proceeding in accordance with this rule.

(4) The Department may maintain an action in the name of the state for injunction or other process against the health facility or agency which disobeys a closure order as provided in section 26-21-15.

(5) The Department may assist in relocating patients or residents to another licensed facility or agency.

(6) The Department may pursue other lesser sanctions in lieu of the closure order.

(7) The Department may, in addition to emergency closure, seek criminal penalties.

R432-3-9. Mandatory License Revocation.

(1) The Department may revoke a license or refuse to renew a license for a health care facility that is in chronic noncompliance with one or more of the rule requirements identified as mandatory license revocation criteria in the rules specific to the facility or agency licensing category.

(2) The Department may not revoke a license or refuse to renew a license for chronic noncompliance on the third or subsequent violation unless it has documented within 14 working days from receipt of the Statement of Findings two prior violations and given the licensee or facility administrator a written warning notice. The written notice shall include a statement that continued violation could result in revocation of the license.

(3) If the Department revokes the license because of chronic noncompliance and the evidence supports the Department's finding of chronic noncompliance, no lesser sanction may be substituted, either by the Department or upon subsequent review by the Health Facility Committee or the courts.

R432-3-10. Alternative Remedies for Nursing Facilities.

(1) The department conducts on-site inspections of nursing facilities to determine compliance with state and federal nursing home requirements. When the department finds that a nursing facility is out of compliance with requirements of participation, the department may apply remedies, including Federal civil money penalties (CMP) to compel the facility to implement corrective measures to achieve compliance.

(2) For Medicare and/or Medicaid certified nursing facilities the authority to apply the remedies described in this section is defined in the federal Omnibus Budget Reconciliation Act (OBRA) of 1987 (P.L. 100-203), which mandates compliance with requirements for participation in the program, and in Section 26-18-3 of the Utah Code Annotated 1953. Section 1819(h) and 1919(h) of the Social Security Act specifies remedies available to a state when a skilled nursing facility (SNF) or nursing facility (NF) is out of compliance with the participation requirements. This section requires the state to ensure prompt compliance, and it further specifies that the available remedies are in addition to other remedies available under state or federal law and, except for Federal CMP, are imposed prior to the conduct of a hearing.

(3) This rule establishes criteria for the imposition of remedies authorized by statute.

(4) The department adopts and incorporates by reference the regulations in 42 CFR, Part 488-Survey, Certification, and Enforcement Procedures, as amended in the Federal Register for November 10, 1994, 59 FR 56237. Remedies available for non-compliance with one or more participation requirements may include:

(a) temporary management;

(b) denial of payment for new admissions;

(c) transfer of residents;

(d) closure of the facility and transfer of residents;

(e) state monitoring; and

(f) Civil Money Penalties. Civil Money Penalties may be imposed for either:

(i) the number of days a facility is out of compliance with one or more participation requirements; or

(ii) for each instance that a facility is not in substantial compliance.

(5) Interest shall be assessed on the unpaid balance of the Federal CMP, beginning on the due date. The interest rate charged shall be the average of the bond equivalent of the weekly 90-day U.S. Treasury bill auction rates during the period for which interest will be charged.

(6) Disposition of Federal CMP Collected.

(a) The department shall deposit Federal CMP and corresponding interest collected from Medicaid certified facilities in the General Fund in accordance with Section 26-18-3(5).

(b) Federal CMP collected by the department must be applied in accordance with Section 1819 and 1919 of the act for the protection of the health and property of residents.

R432-3-11. Annual Reporting Requirements.

(1) A nursing care facility approved for a health facility license under Section 26-21-23(2)(c) shall submit an annual financial report within 90 days of the end of each calendar year.

(2) the financial report shall contain:

(a) total of all revenues received within the calendar year;

(b) total of all Medicare inpatient revenue received within the calendar year;

(c) total of all Medicare Advantage revenue received within the calendar year; and

(d) Percentage of Medicare inpatient revenue including Medicare Advantage revenue in relation to the total of all revenues received within the calendar year.

(3) The department shall review the submitted reports for compliance with 26-21-23(7)(a). The Department may perform financial audits as part of the review. If the department determines a facility is not in compliance with 26-21-23(7)(a)a CMP of $50,000 will be issued for the facility's failure to comply.

KEY: health care facilities

December 6, 2016	**26-21-5**
Notice of Continuation January 29, 2018	**26-21-14 through 26-21-16**

R432. Health, Family Health and Preparedness, Licensing.
R432-4. General Construction.
R432-4-1. Legal Authority.

This rule is adopted pursuant to Title 26 Chapter 21 for General Hospitals; Specialty Hospitals; Ambulatory Surgical Facilities; Nursing Care Facilities; Inpatient Hospices; Birthing Centers; Abortion Clinics; End Stage Renal Disease Facilities; and Small Health Care Facilities.

R432-4-2. Purpose.

The purpose of this rule is to promote the health and welfare of individuals receiving services by establishing construction standards.

R432-4-3. General Design.

(1) The licensee is responsible for assuring compliance with this section.

(2) When testing and certification compliance can only be verified through written documentation, the licensee must maintain documentation in the facility for Department review.

(3) Additional requirements for individual health care facility categories are included in the individual category construction rules sections of the Health Facility Licensure Rules, R432. If conflicts exist between R432-4 and individual category rules, the individual category rules govern.

(4) If conflicts exist between applicable codes, the most restrictive code applies.

(5) When other authorities having jurisdiction adopt more restrictive requirements than contained in these rules, the more restrictive requirements apply.

(6) The licensee shall ensure the building complies with the functional requirements for the applicable licensure classification and shall ensure provisions are made for all facilities and equipment necessary to meet the care and safety needs of all clients served, when construction is completed.

(7) When the terms "room" or "office" are used in this rule it describes a specific, separate, enclosed space for a service. When the term "area" is used, multiple services may be accommodated in one enclosed space.

R432-4-4. Site Location.

(1) The site of the licensed health care facility shall be accessible to both community and service vehicles, including fire protection apparatus.

(2) Facilities shall ensure that public utilities are available.

R432-4-5. Site Design.

(1) Paved roads shall be provided within the property for access to all entrances, service docks and for fire equipment access to all exterior walls.

(2) Paved walkways shall be provided for pedestrian traffic.

(3) Paved walkways shall be provided from every required exit to a dedicated public way.

(4) Hospitals with an organized emergency service shall have well marked emergency access to facilitate entry from public roads or streets serving the site. Vehicular or pedestrian traffic shall not conflict with access to the emergency service area. The emergency entrance shall be covered to ensure protection for patients during transfer from automobile or ambulance.

R432-4-6. Parking.

(1) Parking shall be provided in accordance with local zoning ordinances.

(2) The requirements of the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines, (ADA/ABA-AG) for handicapped parking access shall apply and parking spaces for the disabled shall be directly accessible to the facility without the need to go behind parked cars or cross vehicle traffic lanes.

R432-4-7. Environmental Pollution Control.

Public Law 91-190, National Environment Policy Act, requires the site and project be developed to minimize any adverse environmental effects on the neighborhood and community. Environmental clearances and permits shall be obtained from local jurisdictions and the Utah Department of Environmental Quality.

R432-4-8. Standards Compliance.

(1) The following standards are adopted by reference:

(a) Illuminating Engineering Society of North America, IESNA, publication RP-29-06, Lighting for Hospitals and Health Care Facilities, 2006 edition;

(b) The following chapters of the National Fire Protection Association Life Safety Code, NFPA 101, as adopted by the Legislature in Title 15A-5-207, The State Construction and Fire Codes Act:

(i) Chapter 18, New Health Care Occupancies;

(ii) Chapter 20, New Ambulatory Health Care Occupancies.

(c) Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (ADA/ABA-AG).

(2) The following codes and standards apply to health care facilities. The licensee shall obtain clearance from the authority having jurisdiction and submit documentation to the Department verifying compliance with these codes and standards as they apply to the category of health care facility being constructed:

(a) Local zoning ordinances;

(b) International Building Code, as adopted by the Legislature in Title 15A-2-103, The State Construction and Fire Codes Act;

(c) International Mechanical Code, as adopted by the Legislature in Title 15A-2-103, The State Construction and Fire Codes Act;

(d) International Plumbing Code, as adopted by the Legislature in Title 15A-2-103, The State Construction and Fire Codes Act;

(e) International Fire Code, as adopted by the Legislature in Title 15A-2-103, The State Construction and Fire Codes Act;

(f) R313. Environmental Quality, Radiation Control;

(g) R309. Environmental Quality, Drinking Water and Sanitation;

(h) R315. Environmental Quality, Solid and Hazardous Waste;

(i) NFPA 70, National Electric Code, as adopted by the Legislature in Title 15A-2-103, The State Construction and Fire Codes Act;

(j) NFPA 99, Standards for Health Care Facilities, 2005 edition;

(k) NFPA 110, Emergency and Standby Power Systems, 2010 edition;

(l) American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE), Handbook of Fundamentals, 2009 edition.

(3) The licensee shall obtain a Certificate of Occupancy from the local building official having jurisdiction.

(4) The licensee shall obtain a Certificate of Fire Clearance from the Fire Marshal having jurisdiction.

(5) The licensee must obtain clearance from the Department prior to utilization of newly constructed facilities and additions or remodels of existing facilities.

R432-4-9. New Construction, Additions and Remodeling.

(1) New construction, additions and remodels to existing structures, shall comply with Department rules in effect on the date the schematic drawings are submitted to the Department.

(2) If the remodeled area or addition in any building, wing, floor or service area of a building exceeds 50 percent of the total square foot area of the building, wing, floor or service area, then the entire building, wing, floor or service area shall be brought into compliance with adopted codes and rules governing new construction which are in effect on the date the schematic drawings are submitted to the Department.

(3) During remodeling and new construction, the licensee must maintain the safety level which existed prior to the start of work.

R432-4-10. Existing Building Licensure.

(1) Existing buildings, currently licensed, shall conform to Department construction rules in effect at the time of original facility licensure.

(2) Existing buildings which are currently licensed, or which were previously licensed, but are changing classification; or for which the licensed has lapsed, shall comply with requirements for new construction.

R432-4-11. Building Refurbishing.

(1) Paint, carpet, wall coverings, and other new materials installed as part of a refurbishing project shall comply with R432-4-8.

(2) The licensee shall maintain documentation of compliance with codes, rules, and standards.

R432-4-12. Mixed Occupancies.

(1) Health care occupancies must be separated from non-health care occupancies in accordance with requirements of the local jurisdiction and NFPA 101.

(2) If separation of occupancies is not practical, the most restrictive occupancy requirements apply to the building.

R432-4-13. Campus and Contract Facilities.

All housing, treatment, and diagnostic areas and facilities utilized by a patient admitted to a licensed health care facility shall be constructed in accordance with the requirements of R432-4 if:

(1) the area will be used by one or more patients who are physically or mentally incapable of taking independent life saving action in an emergency;

(2) the prescribed or administered treatment renders the patient incapable of taking independent life saving action in an emergency; or

(3) the patient is incapable of taking independent life saving action in an emergency due to physical or chemical restraints.

R432-4-14. Plan Review.

(1) Prior to submitting documents for plans review, the facility licensee or designee shall schedule a conference with Department representatives, the licensee's architect, and the licensee or his designee to outline the required plans review process.

(2) The licensee shall submit the following for Department review:

(a) a functional program,

(b) schematic drawings,

(c) design development drawings,

(d) working drawings,

(e) specifications.

(3) The Department may initiate review when all required documents and fees are received.

(4) Working drawings and specifications for new construction, additions, or remodeling must have the seal of a Utah licensed architect affixed, in compliance with Section 58-3a-602.

(5) The licensee shall pay a plans review and construction inspection fee assessed by the Department in accordance with the fee schedule approved by the Legislature.

(6) Plans approval by the Department shall not relieve the licensee of responsibility for full compliance with R432-4.

(7) Plan approval expires 12 months after the date of the Department's approval letter, or the latest plan review response letter, if construction has not commenced.

(8) After a 12 month lapse, the licensee must resubmit plans and a new plan review fee to the Department and obtain a new letter of approval before work proceeds.

(9) The Department may issue a license or modify a license only after the Department has determined the facility complies with adopted construction rules and has obtained all clearances and certifications.

R432-4-15. Functional Program.

The functional program required in R432-4-14(2)(a) must include the following:

(1) the purpose and proposed license category of the facility;

(2) services offered, including a detailed description of each service;

(3) ancillary services required to support each function or program;

(4) departmental relationships;

(5) services offered under contract by outside providers and the required in-house facilities to support these services;

(6) services shared with other licensure categories or functions;

(7) a description of anticipated in-patient workloads;

(8) a description of anticipated out-patient workloads;

(9) physical and mental condition of intended patients;

(10) patient age range;

(11) ambulatory condition of intended patients, such as non-ambulatory, mobile, or ambulatory;

(12) type and use of general or local anesthetics;

(13) use of physical or chemical restraints;

(14) special requirements which could affect the building;

(15) area requirements for each service offered, stated in net square feet;

(16) seclusion treatment rooms, if provided, including staff monitoring procedures;

(17) exhaust systems, medical gases, laboratory hoods, filters on air conditioning systems, and other special mechanical requirements;

(18) special electrical requirements;

(19) x-ray facilities, nurse call systems, communication systems, and other special systems;

(20) a list of specialized equipment which could require special dedicated services or special structures.

(21) a description of how essential core services will accommodate increased demand, if a building is designed for expansion;

(22) inpatient services, treatment areas, or diagnostic facilities planned or anticipated to be housed in other buildings, the construction type of the other buildings, and provisions for protecting the patient during transport between buildings.

(23) infection control risk assessment to determine the need for the number and types of isolation rooms over and above the minimum numbers required by the Guidelines.

R432-4-16. Drawings.

Drawings must show all equipment necessary for the operation of the facility.

(1) Schematic drawings may be single line and shall contain the following information:

(a) list of applicable building codes;

(b) location of the building on the site and access to the building for public, emergency, and service vehicles;

(c) site drainage;

(d) any unusual site conditions, including easements which might affect the building or its appurtenances;

(e) relationships of departments to each other, to support facilities, and to common facilities;

(f) relationships of rooms and areas within departments;

(g) number of inpatient beds;

(h) total building area or area of additions or remodeled portions.

(2) Design development drawings, drawn to scale, shall contain the following information:

(a) room sizes;

(b) type of construction, using International Building Code classifications;

(c) site plan, showing relationship to streets and vehicle access;

(d) outline specification;

(e) location of fire walls, corridor protection, fire hydrants, and other fire protection equipment;

(f) location and size of all public utilities;

(g) types of mechanical, electrical and auxiliary systems; and

(h) provisions for the installation of equipment which requires dedicated building services, special structure or which require a major function of space.

(3) Working drawings shall include all previous submitted drawings and specifications.

(a) The licensee shall provide one copy of completed working drawings and specifications to the Department.

(b) Within 30 days after receipt of the required documentation and plan review fee, the Department will provide to the licensee and the project architect a written report of modifications required to comply with construction standards.

(c) The licensee shall submit the revised plans for review and final Department approval.

R432-4-17. Construction Inspections.

(1) The Department may conduct interim inspections during construction.

(2) The licensee shall schedule with the Department a final construction inspection when the project is complete and all furnishings and equipment are in place, but prior to utilization.

R432-4-18. Construction Without Plans Approval.

(1) If construction is commenced without prior Department plans approval, the Department may issue a license and approve occupancy only after as-built drawings have been approved by the Department and the Department has conducted a construction inspection.

(2) The licensee must correct all noncompliant items and pay the full plans review fee and inspection fee in accordance with the established fee schedule prior to licensure and patient occupancy.

R432-4-19. Existing Buildings Without Plans.

(1) If plans are not available for existing buildings, or for facilities requesting an initial license or license category change, the licensee may submit to the Department the following information:

(a) a functional program described in R432-4-15;

(b) a report identifying modifications to the building required to bring it into compliance with construction rules for the requested licensure category.

(2) The Department shall review the material submitted and within 30 days after receipt of the required material, furnish to the licensee a letter of approval or rejection. The Department may provide, at its option, a report of modifications required to comply with construction standards.

(3) The licensee shall request and schedule a Department follow up inspection upon completion of the modifications.

(4) Prior to a final Department inspection, the licensee must pay an inspection fee in accordance with the fee schedule approved by the Legislature.

(5) The Department may issue a license when the building is in compliance with all licensing rules.

R432-4-20. Construction Phasing.

Projects involving remodeling or additions to existing buildings shall be scheduled and phased to minimize disruption to the occupants of facilities and to protect the occupants against construction traffic, dust, and dirt from the construction site.

R432-4-21. Outpatient Unit Features.

(1) If a building entrance is used to reach outpatient services, the entrance must be at grade level, clearly marked, and located to minimize the need for outpatients to traverse other program areas. The outpatient surgery discharge location must provide protection from the weather by canopies that extend from the building to permit sheltered transfer to an automobile.

(2) Lobbies of multi-occupancy buildings may be shared if the design prohibits unrelated traffic within or through units or suites of the licensed health care facility.

R432-4-22. Standards for Accessibility.

(1) At least one drinking fountain, toilet, and handwashing facility shall be available on each floor for persons with disabilities.

(2) Each room required to be accessible to persons utilizing wheelchairs shall comply with ADA/ABA-AG.

R432-4-23. General Construction.

(1) Guidelines for Design and Construction of Health Care Facilities 2010 edition, Part 1 and Part 6, are adopted and incorporated by reference except as modified in this section. Other sections of the Guidelines apply to specific facility types as identified elsewhere in this rule or in construction rules specific to individual license categories.

(2) If a modification is cited for the Guidelines, the modification supersedes conflicting requirements of the Guidelines.

(3) Yard equipment and supply storage areas shall be located so that equipment may be moved directly to the exterior without passing through building rooms or corridors.

(4) Waste Processing Systems. Facilities shall provide sanitary storage and treatment areas for the disposal of all categories of waste, including hazardous and infectious wastes using techniques acceptable to the Utah Department of Environmental Quality, and the local health department having jurisdiction.

(5) Windows, in rooms intended for 24-hour occupancy, shall open to the building exterior or to a court which is open to the sky.

(a) Windows shall be equipped with insect screens.

(b) Operation of windows shall be restricted to a maximum opening of six inches to prevent escape or suicide.

(c) Window opening shall be restricted regardless of the

method of operation or the use of tools or keys.

(6) Trash chutes, laundry chutes, dumb waiters, elevator shafts, and other similar systems shall not pump contaminated air into clean areas.

(7) All public and patient toilet and bath areas must have grab bars. Grab bar sizes and configurations shall comply with ADA/ABA-AG.

(8) Each patient handwashing fixture shall have a mirror. Patient toilet and bath rooms that are required to be accessible to persons utilizing wheel chairs shall have mirrors installed in accordance with ADA/ABA-AG.

(9) If showers or tubs contain soap dishes or shelves, they shall be recessed.

(10) Cubicle curtains and draperies shall be affixed to permanently mounted tracks or rods. Portable curtains or visual barriers are not permitted.

(11) Floors and bases of kitchens, toilet rooms, bath rooms, janitor's closets and soiled workrooms shall be homogenous and shall be coved. Other areas subject to frequent wet cleaning shall have coved bases that are tight fitting to the floor.

(12) Acoustical treatment for sound control shall be provided in areas where sound control is needed, including corridors in patient areas, nurse stations, dayrooms, recreation rooms, dining areas, and waiting areas.

(13) Carpet.

Carpet in institutional occupancy patient areas, except public lobbies and offices, shall be treated to meet the following microbial resistance ratings as tested in accordance with test methods of the American Association of Textiles, Chemists, and Colorists (AATCC):

(a) Rating: minimum 90% bacterial reduction, test method: AATCC 100.

(b) Rating: maximum 20% fungal growth, test method: AATCC 174-99.

(c) Rating: Exhibits no zone of inhibition, test method: AATCC 174-99.

(d) Closed cell resilient backed carpet may be used in lieu of anti-microbial carpet.

(e) Carpet and padding shall be stretched taut and be free of loose edges to prevent tripping.

(14) Signs shall be provided as follows:

(a) General and circulation direction signs in corridors;

(b) Identification on or by the side of each door; and

(c) Emergency evacuation directional signs.

(15) Elevators.

Elevators intended for patient transport shall accommodate a gurney with attendant and have minimum inside cab dimensions of 5'8" wide by 8'5" deep and a minimum clear door width of 3'8".

(16) All rooms and occupied areas in the facility shall have provisions for ventilation. Natural window ventilation may be used for ventilation of nonsensitive areas and patient rooms when weather conditions permit, but mechanical ventilation shall be provided during periods of temperature extremes.

(a) Bottoms of ventilation openings shall be located at least three inches, above the floor.

(b) Supply and return systems shall be in ducts. Common returns using corridors or attic spaces as plenums are prohibited.

(i) Plenum returns for HVAC systems serving only nonpatient care areas shall be permitted.

(c) Evaporative cooling where the airstream is exposed to a wet coil, a mat, or an open reservoir, are prohibited except for laundry processing areas and kitchen hoods that provide 100% exhaust air.

(17) In facilities other than general hospitals, specialty hospitals, and nursing care facilities, hot water recirculation is not required if the linear distance along the supply pipe from the water heater to the fixture does not exceed 50 feet.

(18) Bed pan washing devices may be deleted from inpatient toilet rooms where a soiled utility room is within the unit which includes bed pan washing capability.

(19) Building sewers shall discharge into a community sewer system. If a system is not available, the facility shall treat its sewage in accordance with local requirements and Utah Department of Environmental Quality requirements.

(20) Dishwashers and other kitchen food storage and cooking appliances shall be National Sanitation Foundation, NSF, approved and shall have the NSF seal affixed.

(21) Electrical materials shall be listed as complying with standards of Underwriters Laboratories, Inc. or other equivalent nationally recognized standards.

(a) Approaches to buildings and all spaces within the buildings occupied by people, machinery, or equipment shall have fixtures for lighting in accordance with requirements shown in Tables 3A and 3B of Recommended Practice 29-06, Lighting for Hospitals and Health Care Facilities, by the Illuminating Engineering Society of North America.

(b) Parking lots shall have fixtures for lighting to provide light levels as recommended in IESNA Lighting for Parking Facilities (RP-20-1998).

(c) Receptacles and receptacle cover plates on the electrical emergency system shall be red.

(d) The activating device for nurse call stations shall be of a contrasting color to the adjacent floor and wall surfaces to make it easily visible in an emergency.

(e) Fuel storage capacity of the emergency generator shall permit continuous operation of the facility for 48 hours.

(f) Building electrical services connected to the emergency electrical source must comply with the specific rules for each licensure category.

R432-4-24. General Construction, Patient Service Facilities.

The Guidelines for Design and Construction of Health Care Facilities 2010 edition, (Guidelines), are incorporated and adopted by reference and shall be met except as modified in this section. Where a modification is cited, the modification supersedes conflicting requirements of the Guidelines.

(1) General Hospitals shall comply with Guidelines sections 2.1 and 2.2.

(a) The following paragraphs of the appendix of the Guidelines are also adopted by reference as requirements.

(i) A2.2-2.2.6.1 Nurse station locations shall permit visual observation of traffic into the unit.

(ii) A2.2-3.1.3.6(4) Emergency Department pediatric rooms must provide soundproofing with a STC rating for walls and ceiling assemblies of not less than 50.

(iii) A2.2-3.1.3.6(9) Exterior portable decontamination units in accordance with this paragraph shall be acceptable to meet the requirement for emergency department decontamination and may be provided in lieu of decontamination rooms within the building. Portable units shall have the capability for heating shower water and for heating ventilation air.

(iv) A2.2-3.1.8 A patient hygiene shower with direct access to a sink and toilet shall be provided in the emergency department.

(v) A2.2-3.1.8.1 A bereavement room in the emergency department shall be provided.

(vi) A2.2-3.3.3.3 Separate pediatric and adult post anesthesia care rooms shall be provided.

(vii) A2.2-3.12 Hyperbaric Suites shall meet the requirements of this section.

(2) Critical Access Hospitals shall comply with

Guidelines sections 2.1 and 2.3.

(3) Freestanding satellites and in-house outpatient programs shall comply with Guidelines sections 3.1, 3.2, 3.3, 3.7 and 3.9.

(4) Abortion Clinics shall comply with Guidelines sections 3.1 and 3.2.

(5) Acute care hospital beds that swing to nursing home care and payment shall also comply with R432-5.

(6) Hospitals must have at least one nursing unit of at least six beds containing patient rooms, patient care spaces, and service areas.

(a) When more than one nursing unit shares spaces and service areas, as permitted in this rule, the service areas shall be contiguous to each nursing unit served.

(b) Identifiable spaces shall be provided for each of the required services.

(c) Facility services shall be accessible from common areas without compromising patient privacy.

(7) Patient room area is identified in each individual construction rule for the licensure category rule.

(a) The closets in each patient room shall be a minimum of 22 inches deep by at least 22 inches wide and high enough to hang full length garments and to accommodate two storage shelves.

(b) Pediatric units must have at least one tub room with a bathtub, toilet and sink convenient to the unit. The tub room may be omitted if all patient rooms contain a tub in the toilet room.

(8) The facility must provide linen services as follows:

(a) Processing laundry may be done within the facility, in a separate building on or off site, or in a commercial or shared laundry.

(b) If laundry is processed by an outside commercial laundry, the following shall be provided:

(i) a separate room for receiving and holding soiled linen until ready for transport;

(ii) a central, clean linen storage and issuing room(s) to accommodate linen storage for four days operation or two normal deliveries, whichever is greater; and

(iii) handwashing facilities in each area where unbagged, soiled linen is handled.

(c) If the facility processes its own laundry, within the facility or in a separate building, the following shall be provided:

(i) a receiving, holding, and sorting room for control and distribution of soiled linen;

(ii) a washing room with handwashing facilities and commercial equipment that can process a seven day accumulation of laundry within a regularly scheduled work week;

(iii) a drying room with dryers adequate for the quantity and type of laundry being processed; and

(iv) a clean linen storage room with space and shelving adequate to store one half of all linens and personal clothing being processed.

(d) Soiled linen chutes shall discharge directly into the receiving room or in a room separated from the washing room, drying room and clean linen storage.

(e) Prewash facilities may be provided in the receiving, holding and sorting rooms.

(f) If laundry is processed by the facility, either a two or three room configuration may be used as follows;

(i) A two room configuration shall consist of the following:

(A) a room housing soiled linen receiving, sorting, holding, and prewash facilities; washers; and handwashing facilities; and

(B) a room housing dryers; clean linen folding, sorting, and storage facilities; and handwashing facilities.

(ii) A three room configuration shall consist of:

(A) a soiled linen receiving, sorting, holding room with prewash and handwashing facilities;

(B) a combination washer and dryer room arranged so linen flows from the soiled receiving area to the washers, to the dryers, and then to clean storage; and

(C) a clean storage room with folding, sorting, storage and handwashing facilities.

(iii) Physical separation shall be maintained between rooms by means of self closing doors.

(iv) Air movements shall be from the clean area to the soiled area. Air from the soiled area shall be exhausted directly to the outside.

(g) Handwashing sinks shall be provided and located within the laundry areas to maintain the functional separation of the clean and soiled processes.

(h) Rooms shall be arranged to prevent the transport of soiled laundry through clean areas and the transport of clean laundry through soiled areas.

(i) Convenient access to employee lockers and lounges shall be provided.

(j) Storage for laundry supplies shall be provided.

(k) A cart storage area for separate parking of clean and soiled linen carts shall be provided out of normal traffic paths.

R432-4-25. Excluded Sections and Paragraphs of the Guidelines.

The following sections and paragraphs of the Guidelines do not apply:

(1) Section 2.2-5.2 Linen Services.

(2) Section 1.2-5 Patient Handling and Movement Assessment.

(3) Section 1.2-6.2 Sustainable Design.

(4) Paragraph 2.2-2.16.2.5(2) special structural requirements for sinks in bariatric rooms.

(5) Paragraph 3.1-6.1.1 Vehicular Drop-Off and Pedestrian Entrance.

(6) Paragraph 3.1-7.2.2.3(1)(b) The requirement for 3'-8" wide doors shall apply only to doors along gurney travel routes, not to wheelchair accessible routes.

(7) Paragraph 3.1-8.2.6.1 (2) requiring on site boiler fuel supply at outpatient facilities for emergency use.

R432-4-26. Penalties.

The Department may assess a civil money penalty of up to $10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

KEY: health care facilities
February 21, 2012 26-21-5
Notice of Continuation January 29, 2018 26-21-16

R432. Health, Family Health and Preparedness, Licensing.
R432-5. Nursing Facility Construction.
R432-5-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 21.

R432-5-2. Purpose.

The purpose of this rule is to promote the health and welfare through the establishment and enforcement of construction standards. The intent is to provide residential like environments and encourage social interaction of residents.

R432-5-3. Definitions.

(1) "Special Care Unit" means a physical area within a licensed facility designated for the housing and treatment of residents diagnosed with a specifically defined disease or medical condition.

(2) "Room or Office" when used in this rule describes a specific, separate, enclosed space for the service. When room or office is not used, multiple services may be accommodated in one enclosed space.

R432-5-4. Description of Service.

(1) A nursing unit shall consist of resident rooms, resident care spaces, and services spaces.

(2) Each nursing unit shall contain at least four resident beds.

(3) Rooms and spaces composing a nursing unit shall be contiguous.

(4) A nursing care facility operated in conjunction with a general hospital or other licensed health care facility shall comply with all provisions of this section. Dietary, storage, pharmacy, maintenance, laundry, housekeeping, medical records, and laboratory functions may be shared by two or more facilities.

(5) Special care units shall comply with all provisions of R432-5.

R432-5-5. General Design Requirements.

R432-4-1 through R432-4-23, and R432-4-24(8) apply with the following modifications.

(1) Fixtures in all public and resident toilet and bathrooms shall comply with Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines, (ADA/ABA-AG). These rooms shall be wheelchair accessible with wheelchair turning space within the room.

(2) Lavatories, counters, and door clearances within resident rooms shall be wheelchair accessible.

R432-5-6. General Construction Requirements.

(1) Nursing facilities shall be constructed in accordance with the Guidelines for Design and Construction of Health Care Facilities (Guidelines), Sections 4.1 and 4.2, 2010 edition which is adopted and incorporated by reference.

(2) Where a modification is cited, the modification supersedes conflicting requirements of the Guidelines.

R432-5-7. Nursing Unit.

(1) When more than one nursing unit shares spaces and service areas, as permitted in this rule, the shared spaces and service areas shall be contiguous to each nursing unit served.

(2) Facility service areas shall be accessible from common areas without compromising resident privacy.

(3) Each nursing unit shall have a maximum number of 60 beds.

(4) At least two single-bed rooms, each with private toilet room containing a toilet, lavatory, and bathing facility shall be provided for each nursing unit.

(a) In addition to the lavatory in the toilet room, in new construction and remodeling, a lavatory or handwashing sink shall be provided in the resident room.

(b) Ventilation shall be continuous with not less than two outside air changes per hour with all air exhausted to the outside.

(5) Each resident sleeping room shall have a window in accordance with R432-4-23(5). Windows in resident rooms intended for sleeping shall be operable.

(6) Each resident closet shall be a minimum of 22 inches deep by 36 inches wide with a shelf to store clothing and a clothes rod positioned to accommodate full length garments.

(7) A nurse call system is not required in facilities which care for persons with mental retardation or developmental disabilities. With prior approval of the Department, a nursing facility may modify the system to alleviate hazards to residents.

(8) Handwashing facilities shall be located near the nursing station and the drug distribution station.

(9) A staff toilet room may also serve as a public toilet room if it is located in the nursing unit.

(10) A clean workroom or clean holding room with a minimum area of 80 square feet shall provide for preparing resident care items.

(a) The clean work room shall contain a counter, handwashing facilities and storage facilities.

(b) The work counter and handwashing facilities may be omitted in rooms used only for storage and holding, as part of a larger system for distribution of clean and sterile supply materials.

(11) If a medical cart is used it shall be under visual control of staff.

(a) Double locked storage shall be provided for controlled drugs.

(b) Provisions shall be made for receiving, assembling, and storage of drugs and other pharmacy products.

(12) If a closed cart is used for clean linen storage, it shall be stored in a room with a self closing door. Storage in an alcove in a corridor is prohibited.

(13) Ice intended for human consumption shall be dispensed by self dispensing ice makers. Bin type storage units are prohibited.

(14) One bathtub and shower shall be provided on each nursing floor in addition to bath fixtures in resident toilet rooms.

(a) At least one shower on each floor shall be at least four feet square without curbs designed for use by a resident using a wheelchair. A gurney shower may be provided at the option of the facility and shall satisfy this requirement.

(b) Each resident bathtub and shower shall be in a separate room or enclosure large enough to ensure privacy and to allow staff to assist with bathing, drying, and dressing.

(15) At least one toilet room shall be provided on each floor containing a nursing unit to be used for resident toilet training.

(a) The room shall contain a toilet and lavatory with wheelchair turning space within the room.

(16) A toilet room with direct access from the bathing area shall be provided at each central bathing area if a toilet is not otherwise provided in the bathing area. The toilet training facility may serve this function if there is direct access from the bathing area.

(17) Doors to toilet rooms shall be equipped with hospital privacy locks or other hardware that protects resident privacy and permits access from the outside without the use of keys or tools in case of an emergency.

(18) A handwashing fixture shall be provided in each

toilet room.

(19) An equipment storage room with a minimum area of 120 square feet for portable equipment shall be provided.

R432-5-8. Resident Support Areas.

(1) Occupational therapy service areas may be counted in the calculation of support space.

(2) Physical Therapy, personal care room, and public waiting lobbies shall not be included in the calculation of support space.

(3) There shall be resident living areas equipped with tables, reading lamps, and comfortable chairs designed to be usable by all residents.

(4) There shall be a general purpose room with a minimum area of 100 square feet equipped with a table and comfortable chairs.

(5) A minimum area of ten square feet per bed shall be provided for outdoor recreation. This space shall be provided in addition to the setbacks on street frontages required by local zoning ordinances.

(6) Examination and Treatment rooms.

(a) An examination and treatment room shall be provided except when all resident rooms are single bed rooms.

(b) An examination and treatment room may be shared by multiple nursing units.

(c) When provided, the room shall have a minimum floor area of 100 square feet, excluding space for vestibules, toilet, closets, and work counters, whether fixed or moveable.

(d) The room shall contain a lavatory equipped for handwashing, work counter, storage facilities, and a desk, counter, or shelf space for writing.

(7) In addition to facility general storage areas, at least five square feet per bed shall be provided for resident storage.

R432-5-9. Rehabilitation Therapy.

(1) A separate storage room for clean and soiled linen shall be provided contiguous to the rehabilitation therapy area.

(2) Storage for rehabilitation therapy supplies and equipment shall be provided.

R432-5-10. General Services.

(1) Linen services shall comply with R432-4-24(8).

(2) There shall be one housekeeping room for each nursing unit.

(3) Yard equipment and supply storage areas shall be located so that equipment may be moved directly to the exterior without passing through building rooms or corridors.

R432-5-11. Waste Storage and Disposal.

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 defined by the Utah Department of Environmental Quality, and the local health department having jurisdiction.

R432-5-12. Details and Finishes.

(1) Grab bars shall be installed in all toilet rooms in accordance with the ADA/ABA-AG.

(2) Corridor and hallway handrails shall comply with ADA/ABA-AG. The top of the rail shall be 34 inches above the floor, except for areas serving children and other special care areas. Corridor handrails shall have a graspable profile with finger wrap recesses not less than 5/8" deep. Handrails shall have color that contrasts to the wall.

(3) Cubicle curtains and draperies shall be affixed to permanently mounted tracks or rods. Portable curtains or visual barriers are not permitted.

(4) Signs shall be provided as follows:

(a) general and circulation direction signs in corridors;

(b) identification at each door; and

(c) emergency directional signs;

(d) all signs in corridors shall comply with ADA/ABA-AG.

R432-5-13. Elevators.

At least one elevator serving all levels shall accommodate a gurney with attendant and have minimum inside cab dimensions of 5'8" wide by 8'5" deep and a minimum clear door width of 3'8".

R432-5-14. Mechanical Standards.

(1) Mechanical tests shall be conducted prior to final Department construction inspection.

(2) Written test results shall be retained in facility maintenance files and available for Department review.

(3) Air Conditioning, Heating, and Ventilating Systems shall include:

(a) A heating system capable of maintaining a temperature of 80 degrees Fahrenheit in areas occupied by residents.

(b) A cooling system capable of maintaining a temperature of 72 degrees Fahrenheit in areas occupied by residents.

(4) Plumbing and other Piping Systems shall include:

(a) Handwashing facilities that are arranged to provide sufficient clearance for single lever operating handles.

(b) Kitchen grease traps that are located and arranged to permit access without the need to enter food preparation or storage areas.

(c) Hot water provided in patient tubs, showers, whirlpools, and handwashing facilities that is regulated by thermostatically controlled automatic mixing valves. These valves may be installed on the recirculating system or on individual inlets to appliances.

R432-5-15. Electric Standards.

(1) Operators shall maintain written certification to the Department verifying that systems and grounding comply with NFPA 99 and NFPA 70.

(2) Approaches to buildings and all spaces within buildings occupied by people, machinery, or equipment shall have fixtures for lighting in accordance with the requirements of the Illuminating Engineering Society of North America (IESNA). Parking lots shall have fixtures for lighting to provide light levels as recommended in IES Recommended Practice RP-20-1998, Lighting for parking facilities by the Illuminating Engineering Society of North America.

(3) Automatic emergency lighting shall be provided in accordance with NFPA 99 and NFPA 101.

(4) Each examination and work table shall have access to a minimum of two duplex outlets.

(5) Receptacles and receptacle cover plates on the emergency system shall be red.

(6) An on-site emergency generator shall be provided in all nursing care facilities except small ICF/MR health care facilities of 16 beds or less.

(a) In addition to requirements of NFPA 70, Section 517-40, the following equipment shall be connected to the critical branch of the essential electrical system.

(i) heating equipment necessary to provide heated space sufficient to house all residents under emergency conditions,

(ii) duplex convenience outlets in the emergency heated area at the ratio of one duplex outlet for each ten residents,

(iii) nurse call system,

(iv) one duplex receptacle in each resident bedroom.

(b) Fuel storage shall permit continuous operation of the services required to be connected to the emergency generator for 48 hours.

(c) Skilled nursing facilities that accept residents that are dependant on ventilators or other electrically operated life support equipment shall be equipped with Type I essential electrical systems that meet the requirements of NFPA 99 and NFPA 70, Section 517-30.

R432-5-16. Exclusions to the Guidelines.

The following sections of the Guidelines do not apply:

(1) Linen Services, section 4.2-5.2.

(2) Clusters, paragraph 4.2-2.2.1.3(2)(a), and Household models, paragraph 4.2-2.1.3(2)(b). These design concepts have proven beneficial in numerous cases, but are optional. However, the Department encourages new construction projects to consider these concepts.

R432-5-17. Penalties.

The Department may assess a civil money penalty of up to $10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

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R432. Health, Family Health and Preparedness, Licensing.
R432-6. Assisted Living Facility General Construction.
R432-6-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 21. Sections numbered less than R432-6-99 apply to all assisted living facilities. Sections in the R432-6-100 series apply to Type I assisted living facilities. Sections in the R432-6-200 series apply to Type II assisted living facilities.

R432-6-2. Purpose.

The purpose of this rule is to promote the health and welfare of individuals receiving assisted living services through the establishment and enforcement of construction standards.

R432-6-3. Definitions.

(1) Assisted Living Facility Type I is a residential facility that provides assistance with activities of daily living and social care to two or more ambulatory residents who require protected living arrangements.

(2) Assisted Living Facility Type II is a residential facility that provides coordinated supportive personal and health care services to two or more semi-independent residents.

(a) "Semi-independent means a person who is:

(i) physically disabled but able to direct his or her own care; or

(ii) cognitively impaired or physically disabled but able to evacuate from the facility, or to a zone or area of safety, with the physical assistance of one person.

(b) "Resident Living Unit" means:

(i) a one bedroom unit which may also include a bathroom and additional living space; or

(ii) a two bedroom unit which may also include a bathroom and additional living space.

(c) "Additional Living Space" means a living room, dining area and kitchen, or a combination of these rooms or areas in a resident living unit.

(3) "Room" or "office" means a specific, separate, fully enclosed space for the service. If "room" or "office" is not used, multiple services may be accommodated in one enclosed space.

(4) Assisted Living Facilities Type I and Type II may be classified as either large, small or limited capacity.

(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 up to five residents.

R432-6-4. General Requirements.

(1) The licensee is responsible for assuring compliance with R432-6.

(2) If testing and certification compliance can only be verified through written documentation, the documentation shall be maintained in the facility for Department inspection.

(3) If conflicts exist between applicable codes or if other authorities having jurisdiction adopt more restrictive requirements than contained in these rules, the most restrictive requirement applies.

(4) If the Department has concerns about compliance, the licensee is responsible to demonstrate compliance.

R432-6-5. Codes and Code Compliance.

(1) The following codes and standards enforced by other agencies or jurisdictions apply to assisted living facilities. The licensee shall obtain documentation of compliance for the following codes and standards from the authority having jurisdiction and submit the documentation to the Department:

(a) Local zoning ordinances;

(b) International Building Code;

(c) International Plumbing Code;

(d) International Fire Code;

(e) International Mechanical Code; and

(f) National Electrical Code, NFPA 70.

(2) The licensee shall obtain a certificate of occupancy from the local building official having jurisdiction.

(3) The licensee shall obtain a certificate of fire clearance from the Fire Marshal having jurisdiction.

(4) The licensee shall submit a copy of the certificates to the Department prior to resident utilization of newly constructed facilities, additions or remodels of existing facilities.

(5) Where portions of the building are required to be accessible to persons with disabilities, they shall comply with the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (ADA/ABA-AG).

R432-6-6. Application of Codes for New and Existing Buildings.

(1) New construction, additions and remodels to existing buildings shall comply with Department rules in effect on the date the first drawings are received by the Department.

(2) If the remodeled area or addition in any building, wing, floor or service area of a building exceeds 50 percent of the total square foot area of the building, wing, floor or service area, then the entire building, wing, floor or service area shall be brought into compliance with rules governing new construction which are in effect on the date the first drawings are submitted to the Department.

(3) During remodeling, new construction or additions, the safety level which existed prior to the start of work shall be maintained.

(4) Current licensed buildings shall conform to Department construction rules in effect at the time of initial facility licensure.

(5) Buildings which are changing license classification shall comply with requirements for new construction.

(6) Buildings undergoing refurbishing shall comply with the following:

(a) All materials installed as part of a refurbishing project shall comply with flame spread ratings required by the fire marshal having jurisdiction.

(b) The facility shall keep written documentation of compliance with codes and standards.

R432-6-7. Plans Review and Approval and Construction Inspection.

(1) Health facilities shall obtain Department approval before occupying any newly constructed buildings or remodeled systems, or areas in existing buildings.

(2) Prior to submitting documents for plans review, the facility architect and licensee must schedule a conference with Department representatives to outline the required plans review process.

(3) The licensee shall submit the following for Department review:

(a) a functional program;

(b) schematic drawings;

(c) design development drawings; and

(d) working drawings, including specifications.

(4) The Department shall initiate its review when it receives all required documents and fees.

(5) Working drawings and specifications for new construction, additions, or remodeling shall have the seal of a

Utah licensed architect affixed in compliance with Section 58-3a-602.

(6) Plans approved by the Department do not relieve the licensee of responsibility for full compliance with R432-6.

(7) Plan approval expires 12 months after the date of the Department's approval letter, or latest plan review response letter if construction has not commenced. After a 12 month lapse the licensee must resubmit plans to the Department with a new plan review paid. A new letter of approval must be obtained from the Department.

(8) The Department shall issue an initial license, renewal license, or modified license only after the Department has determined the facility conforms with applicable licensure construction rules and has obtained all required clearances and certifications.

R432-6-8. Functional Program.

(1) The licensee must furnish to the Department a functional program which includes the following:

(a) the purpose and license category of the facility;

(b) services offered, including a detailed description of each service;

(c) ancillary services required to support each function or program;

(d) services offered under contract by outside providers and the required in-house facilities to support these services;

(e) services shared with other health care licensure categories or functions;

(f) physical and mental condition of intended residents;

(g) ambulatory condition of intended residents, such as mobile or ambulatory;

(h) special electrical requirements related to resident care; and

(i) communication systems and other special systems.

(2) The functional program must include a description of how essential core services will accommodate increased demand if the building is designed for later expansion.

R432-6-9. Drawings.

(1) Drawings shall show all equipment necessary for the operation of the facility, such as kitchen equipment, laundry equipment, and similar equipment.

(2) Schematic drawings, which may be single line, shall contain the following information:

(a) list of applicable building codes;

(b) location of the building on the site and access to the building for public, emergency, and service vehicles;

(c) site drainage and any natural drainage channels which traverse the site;

(d) any unusual site conditions, including easements which might affect the building or its appurtenances;

(e) relationships of rooms and areas within departments;

(f) number of resident beds; and

(g) total building area or area of additions or remodeled portions.

(3) Design development drawings, drawn to scale, shall contain the following information:

(a) room dimensions and room square footage;

(b) site plan, showing relationship to streets and vehicle access;

(c) location and size of public utilities; and

(d) types of mechanical, electrical and auxiliary systems.

(4) Working drawings shall include all the drawings outlined above in R432-6-9(1) through (3).

(a) The licensee shall provide one copy of completed working drawings and specifications which shows all equipment necessary for the operation of the facility such as kitchen, laundry, and other equipment.

(b) The Bureau of Licensing will keep the final drawings for 12 months after final approval of the project. Drawings may then be returned to the owner upon request.

(5) Within 30 days after receipt of required documentation and fee, the Department shall provide to the licensee and the project architect a written report of plans review outlining necessary modifications required to comply with Department rules.

(6) If changes are necessary, the licensee shall submit revised plans for review and final approval.

R432-6-10. Construction Inspections.

(1) The Department may conduct interim inspections.

(2) Prior to resident utilization, the licensee shall schedule a final inspection with the Department when the project is complete and furnishings and equipment are in place.

R432-6-11. Construction Without Plans Approval.

(1) If construction is commenced without prior Department plans approval, the Department may issue a license and authorize resident utilization only after it has approved as-built drawings and has conducted a construction inspection.

(2) The licensee shall correct all non-compliant items and pay the full plans review fee and inspection fee.

R432-6-12. Buildings Without Plans.

(1) If plans are not available for existing buildings involved in initial licensing or license category change, the licensee shall submit to the Department a functional program as defined in subsection R432-6-8, and a report identifying modifications to the building required to bring it into compliance with construction rules for the requested licensure category.

(2) The Department shall review the functional program and furnish to the licensee a letter of approval or rejection within 30 days after receipt of the material. The Department may provide, at its option, a written report of modifications required to comply with construction standards.

(3) The licensee shall request and schedule a Department inspection upon completion of the modifications.

(4) Prior to a final Department inspection, the licensee shall pay the inspection fee.

(5) The Department shall issue a license when the building is in compliance with all licensing rules.

R432-6-13. Construction Phasing.

Projects involving remodeling or additions to an occupied building shall be programmed and phased to minimize detrimental effects to and disruption of residents and employees of the facility by protecting against construction traffic, dust, and dirt from the construction site.

R432-6-14. Site Location.

(1) The site shall be accessible to both visitor and service vehicles.

(2) Facilities shall be located to ensure that public utilities are available.

R432-6-15. Site Design.

The site design shall include the following:

(1) Surrounding land for outdoor activities;

(2) Paved roads for access to service docks and entrances;

(3) Fire equipment access as required by the fire marshal; and

(4) Paved walkways for pedestrian traffic and from every required exit to a dedicated public way.

R432-6-16. Parking.

(1) Parking requirements must comply with local zoning ordinances.

(2) Parking spaces for persons with disabilities shall be as level as practical and conform to requirements for disabled parking access as required by ADA/ABA-AG.

(a) The extra width required for disabled parking may be used as part of a common walkway.

(b) Parking spaces for the disabled shall be directly accessible to the facility without requiring the disabled to go behind parked cars or cross vehicle traffic lanes.

R432-6-17. Elevators.

All large multi-level assisted living facilities shall have an elevator which serves all levels. At least one elevator serving all levels shall accommodate a gurney with attendant and have minimum inside cab dimensions of 5'8" wide by 8'5" deep and a minimum clear door width of 3'8".

R432-6-18. Special Design Features.

(1) Building entrances in large facilities shall be at grade level, clearly marked, and located to minimize the need for residents to traverse other program areas. A main facility entrance shall be designated and accessible to persons with disabilities.

(2) Lobbies of multi-occupancy buildings may be shared if the design precludes unrelated traffic within or through units or suites of the licensed health care facility.

(3) At least one building entrance shall be accessible to persons with physical disabilities. Entrances requiring ramps with a slope in excess of 1:20 shall have steps as well as ramps.

(4) In Large facilities where all resident units do not have kitchens or toilet facilities, at least one drinking fountain or water cooler, toilet, and handwashing fixture on each floor shall be wheelchair accessible.

(5) Each resident bedroom or sleeping room shall have a wardrobe, closet, or locker for each resident occupying the unit. The closet, wardrobe or locker shall have a shelf and a hanging rod, with minimum inside dimensions of 22 inches deep by 36 inches wide by 72 inches tall, suitable for hanging full-length garments.

R432-6-19. General Standards for Details.

(1) Placement of drinking fountains, telephone booths, or vending machines shall not restrict corridor traffic or reduce required corridor width.

(2) Doors and windows shall comply with the following requirements:

(a) Rooms which contain bathtubs, showers, or water closets for resident use shall be equipped with doors and hardware which permit emergency access.

(b) Doors, except those to spaces such as small closets not subject to occupancy, shall not swing into corridors in a manner which will obstruct traffic or reduce corridor width. Large walk-in type closets are occupiable spaces.

(c) Windows which open to the exterior shall be equipped with insect screens.

(d) Resident rooms and suites intended for 24-hour occupancy shall have operable windows which open to the exterior of the building or to a court open to the sky.

(e) Doors, sidelights, borrowed lights, and windows glazed to within 18 inches of the floor shall be constructed of safety glass, wired glass, or plastic break-resistant material that creates no dangerous cutting edges when broken.

(f) Safety glass, wired glass, or plastic break-resistant materials shall be used for wall openings in recreation rooms, exercise rooms, and other activity areas unless prohibited in the International Building Code.

(g) Doors used for shower and bath enclosures shall be made of safety glass or plastic glazing materials.

(3) Trash chutes, laundry chutes, dumbwaiters, elevator shafts, and other similar systems shall not allow movement of contaminated air into clean areas.

(4) Thresholds and expansion joint covers shall be flush with the floor surface to facilitate use of wheelchairs and carts.

(5) All lavatories must be equipped with hand drying facilities.

(a) Lavatories that are expected to serve more than one resident shall have single use paper towel dispensing units or cloth towel dispensing units that are enclosed to protect towels from being soiled. Double occupancy units are not required to provide towel dispensing units if occupied by two related persons.

(b) Lavatories shall be anchored to withstand an applied vertical load of not less than 250 pounds on the fixture front.

R432-6-20. General Standards for Finishes.

(1) Curtains and draperies shall be affixed to permanently mounted tracks or rods.

(2) Floors and walls shall be designed and constructed as follows:

(a) Floor materials shall be easily cleanable;

(b) Floors in areas used for food preparation or food assembly shall be water-resistant. Floor surfaces, including tile joints, shall be resistant to food acids.

(c) In areas subject to frequent wet-cleaning, floor materials shall not be physically affected by germicidal cleaning solutions.

(d) Floors in shower and bath areas, kitchens, and similar work areas subject to traffic while wet shall have non slip surfaces.

(e) Floors and wall bases of kitchens, toilet rooms, bath rooms, janitors' closets, and other areas subject to frequent wet cleaning shall be homogeneous with coved bases and tightly sealed seams.

(f) Wall finishes shall be washable and, in the immediate vicinity of plumbing fixtures, smooth and moisture-resistant.

(g) Finish, trim, floor, and wall construction in dietary and food preparation areas shall be free of insect and rodent harboring spaces.

(h) Floor and wall openings for pipes, ducts, conduits, and joints of structural elements shall be tightly sealed to resist passage of fire and smoke and minimize entry of pests.

(i) Carpet and padding shall be stretched taut and be free of loose edges.

(j) Carpet pile shall be sufficiently dense so as not to interfere with the operation of wheel chairs, walkers, wheeled carts, and other wheeled equipment.

(k) Carpet and other floor coverings shall comply with provisions of ADA/ABA-AG.

(3) Ceiling finishes shall be designed and constructed as follows:

(a) Finishes of all exposed ceilings and ceiling structures in resident rooms and staff work areas shall be readily cleanable with routine housekeeping equipment.

(b) In large facilities, acoustical treatment for sound control shall be provided in areas where sound control is needed, including corridors in resident areas, dayrooms, recreation rooms, dining areas, and waiting areas.

(c) Finished ceilings may be omitted in mechanical and equipment spaces, shops, general storage areas, and similar spaces unless required for fire resistive purposes.

(4) The following signs shall be provided:

(a) general and circulation direction signs in corridors of large assisted living facilities;

(b) emergency evacuation directional signs for all facilities; and

(c) room identification signs on the corridor side of all corridor doors.

R432-6-21. Building Systems.

(1) 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 State Department of Environmental Quality, and the local health department having jurisdiction.

(2) The following engineering service and equipment shall be provided for effective service and maintenance functions:

(a) rooms for mechanical equipment or electrical equipment;

(b) a storage room for building maintenance supplies;

(c) yard equipment and supply storage areas located so that equipment may be moved directly to the exterior of the building without passing through building rooms or corridors;

(d) central storage for supplies, equipment and miscellaneous storage in large and small facilities; and

(e) in large facilities, a separate maintenance room or office.

(3) In small and large facilities a housekeeping room shall be located on each floor of the assisted living facility. In large facilities this room shall have a floor receptor or service sink. All housekeeping rooms shall be mechanically exhausted.

(4) Sound Control for large assisted living facilities must be designed and constructed to meet the noise reduction criteria as outlined in Table 1.

TABLE 1
Sound Transmission Limitations

	Airborne Sound Transmissions Class	
	Partitions	Floors
Residents' room to residents' room	35	40
Public space to residents' room	40	40
Service areas to residents' room	45	45

(a) Sound transmission class shall be determined by tests in accordance with methods set forth in ASTM Standard E 90 and ASTM Standard E 413. Where partitions do not extend to the structure above, sound transmission through ceilings and composite STC performance must be considered.

(b) Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar space.

(c) Service areas include kitchens, elevators, elevator machine rooms, laundries, garages, maintenance rooms, boilers and mechanical equipment rooms, and similar spaces of high noise. Mechanical equipment located on the same floor or above resident's rooms, offices, and similarly occupied space shall be effectively isolated from the floor.

(d) Recreation rooms, exercise rooms, equipment rooms and similar spaces where impact noises may be generated may not be located directly over residents' rooms.

R432-6-22. Mechanical, Heating, Cooling and Ventilation Systems.

(1) The HVAC system design shall prevent large temperature differentials, high velocity supply, excessive noise, and air stagnation.

(2) Air supply and exhaust in rooms for which no minimum total air change rate is mandated by Table 2 may vary to zero in response to room load.

(3) Mechanical ventilation shall be provided independent of thermostat-controlled demands.

(a) Minimum total air change, room temperature, and temperature control shall comply with standards in Table 2.

(b) To maintain asepsis and odor control, airflow supply and exhaust shall be controlled to ensure movement of air from clean to less clean areas.

(c) Rooms containing heat-producing equipment shall be insulated and ventilated to prevent the floor surface above or the walls of adjacent occupied areas from exceeding a temperature of ten degrees Fahrenheit above ambient room temperature.

(d) All rooms and occupiable areas in the facility shall have provisions for ventilation. Natural window ventilation may be used for ventilation of nonsensitive areas and resident rooms when weather conditions permit, but mechanical ventilation shall be provided during periods of temperature extremes. Outside ventilation air shall be tempered to between room temperature and the supply air temperature for the appropriate heating or cooling mode.

(e) The heating system shall be capable of maintaining temperatures of 80 degrees F. in areas occupied by residents.

(f) The cooling system shall be capable of maintaining temperatures of 72 degrees F. in areas occupied by residents.

(g) Equipment must be available to provide essential heating during a loss of normal heating capability. All emergency heating devices shall be approved by the local fire jurisdiction.

(h) Fans serving exhaust systems shall be located at the discharge end and shall be readily serviceable. Exhaust fans may be on the inlet side if individually ducted directly to the outside.

(i) Fresh air intakes shall be located at least 10 feet from exhaust outlets of ventilating systems, combustion equipment stacks, plumbing vents, or areas subject to vehicular exhaust or other noxious fumes.

(j) All ventilation, air conditioning systems and air delivery equipment, including through wall units, shall be equipped with filters as follows:

(i) All areas for resident care, and those areas providing direct service or clean supplies shall provide at least one filter bed with a minimum of 30% efficiency.

(ii) All administrative, bulk storage, soiled holding, food preparation and laundries shall provide at least one filter bed with a minimum of 25% efficiency.

(k) Gravity exhaust may be used where conditions permit for boiler rooms, central storage, and other nonresident areas.

(l) The ventilation system shall be air tested and balanced prior to the final Department construction inspection. The initial test results and air balancing report shall be maintained for Department review.

TABLE 2
Ventilation Requirements

AREA DESIGNATION	AIR MOVEMENT IN RELATION TO ADJACENT AREAS	MINIMUM AIR CHANGES OF OUTDOOR AIR PER HOUR TO ROOM	MINIMUM TOTAL AIR CHANGES PER HOUR	ALL AIR EXHAUSTED OUTSIDE
Bath and Shower Rooms	N	Optional	10	YES
Clean Linen Storage	P	Optional	2	Optional
Dietary Day Storage	V	Optional	2	Optional

Food Preparation Center	E	2	10	YES
Janitors' Closets	N	Optional	10	YES
Laundry	V	2	10	YES
Corridor	E	Optional	2	Optional
Grooming Area	N	2	2	YES
Resident Room	E	Greater CFM/	2	Optional of one air change or minimum 20 person
Soiled Linen holding	N	Optional	10	YES
Toilet Rooms	N	Optional	10	YES
Ware Washing	N	Optional	10	YES
Common Areas	E	2	2	Optional

E = Equal; N = Negative; P = Positive; V = Variable

(m) The requirements of Table 2 do not apply to limited capacity facilities. Limited capacity facilities shall provide exhaust for kitchens and bathrooms.

(n) If an existing building bathroom or toilet room is not exhausted to the outside, the licensee may submit a Request for Agency Action Variance to the Table 2 requirements at the time of initial licensing.

R432-6-23. Plumbing.

(1) Showers and tubs shall have non-slip or slip-resistant surfaces.

(2) Potable water supply systems shall comply with the following requirements:

(a) Water supply systems shall be designed with sufficient pressure to operate all fixtures and equipment during maximum demand.

(b) Each water service main, branch main, riser, and branch to a group of fixtures shall have a stop valve. A stop valve shall be provided for each fixture. Panels shall be provided for access to valves.

(c) All fixtures used by residents shall be trimmed with valves with cross, tee or single lever handles.

(3) Hot water systems shall meet the following requirements:

(a) As a minimum, water-heating systems shall provide supply capacity at temperatures and amounts indicated in Table 3. Water temperature shall be measured at the point of use or inlet to equipment.

TABLE 3
Hot Water Use

	Resident Care Areas	Dietary	Laundry
Gallons per Hour per Bed	3	2	2
Temperature Centigrade	43	49	71
Temperature Fahrenheit	110	120	160

(b) Distribution systems that exceed 50 linear feet and that service resident care areas shall be under constant recirculation to provide continuous hot water to each outlet. The temperature of hot water for lavatories, showers and bathing shall not exceed 120 degrees Fahrenheit. Thermostatically controlled automatic mixing valves may be used to maintain hot water at these temperatures.

(c) 180 degrees Fahrenheit rinse water must be provided at the dishwasher if an approved low temperature chemical rinse is not utilized.

(d) 160 degrees Fahrenheit hot water must be available at the laundry equipment as needed.

(4) Quantities indicated for design demand of hot water are for general reference minimums and shall not substitute for accepted engineering design procedures using actual number and types of fixtures to be installed.

(5) Drainage system shall comply with the following requirements:

(a) Building sewers shall discharge into community sewerage. Where such a system is not available, the facility shall treat its sewage in accordance with local requirements and State Department of Environmental Quality requirements.

(b) Where overhead drain piping is exposed, special provisions shall be made to protect the space below from contamination from leakage, condensation, and dust particles. Approval of special provisions in food preparation, food service areas, and food storage areas shall be obtained from the local health department.

(c) Kitchen grease trap locations shall comply with local health department rules.

(6) Dishwashers and other kitchen food storage or cooking appliances shall be National Sanitation Foundation, NSF, approved and have the NSF seal affixed. Residential NSF certified appliances shall be acceptable.

R432-6-24. Electrical.

(1) In large assisted living facilities, panel boards serving normal lighting and appliance circuits shall be located on the same floor or on the same wing as the circuits served. Panels for emergency circuits, if provided, may serve the floors above and below for general resident areas and administration.

(2) Corridors shall be illuminated at night in accordance with Table 4. Corridor lighting shall be adjustable so that light levels may be reduced at night and still provide a maximum brightness ratio of 1:10.

(3) Light intensity shall be at or above the minimum foot-candle in accordance with Table 4. Values in table 4 are minimum maintained average illuminance measured at the task plane. Areas not shown in Table 4, including parking lots and approaches to the building, shall have fixtures to provide light levels as recommended in IES Recommended Practice RP-20-1998, Lighting for Parking Facilities by the Illuminating Engineering Society of North America, which is adopted and incorporated by reference.

TABLE 4
Assisted Living Facilities Lighting Standards

Physical Plant Area	Minimum Foot-candle
Corridors	
Day	15
Night	7.5
Exits	15
Stairways	15
Res. Room	
General	7.5
Reading/Mattress Level	30
Toilet area	30
Lounge	
General	7.5
Reading	30
Recreation	30
Dining	20
Dining and Recreation	30
Laundry	30

(4) Each resident room shall have a duplex grounded receptacle on every wall. If a TV jack is included, there must be an extra duplex receptacle on the wall with the TV jack.

(5) Duplex grounded receptacles for general use shall be installed no more than 50 feet apart in corridors, on either side, and within 25 feet of corridor ends.

(6) A night light shall be provided in each resident bedroom and bathroom.

R432-6-25. Food Service.

(1) Food service facilities and equipment shall comply with R392-100, the Utah Department of Health Food Service Sanitation Rules.

(2) Food service space and equipment shall be provided as follows:

(a) storage area for food supplies, including a cold storage area, for a seven-day supply of staple foods and a three-day supply of perishable foods;

(b) food preparation area;

(c) an area to serve and distribute resident meals;

(d) an area for receiving, scraping, sorting, and washing soiled dishes and tableware;

(e) a storage area for waste which is located next to an outside facility exit for direct pickup; and

(f) a space for meal planning.

R432-6-26. Penalties.

The Department may assess a civil money penalty of up to $10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

R432-6-100. Type I Facilities.

The following sections in the 100 series apply to Type I assisted living facilities.

R432-6-101. Occupancy Type.

(1) Large assisted living facilities shall comply with I-1, International Building Code, requirements.

(2) Small assisted living facilities shall comply with R-4, International Building Code, requirements.

(3) Limited capacity assisted living facilities shall comply with R-3, International Building Code, requirements.

R432-6-102. Common Areas.

(1) A common room or rooms shall be provided for dining, sitting, visiting, recreation, worship, and other activities.

(a) Common rooms shall have sufficient space and separation to promote and facilitate the activity without interfering with concurrent activities or functions in the building.

(i) In a small facility the common rooms shall be at least 28 square feet per bed, but no less than a total of 225 square feet.

(ii) In a large facility the common rooms shall be at least 30 square feet per bed. In a facility with 100 beds or more, the common rooms minimum square footage per bed may be reduced to 25.

(b) Space shall be provided for necessary equipment and storage of recreational equipment and supplies.

R432-6-103. Resident Units.

(1) Minimum room areas, exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, and vestibules, shall be 100 square feet in single-bed rooms and 80 square feet per bed in multiple-bed rooms.

(a) The areas noted above are minimums and do not prohibit larger rooms.

(b) Resident units may not have more than two beds per unit

(2) No room used for other purposes, such as a hall, corridor, unfinished attic, garage, storage area, shed, or similar detached building, may be used as a residents' sleeping room.

(3) No bedroom may be used as a passageway to another room, bath, or toilet other than those serving the bedroom.

(4) Bedrooms shall open directly into a corridor or common living area, but shall not open into a food preparation area.

(5) Unless furnished by the resident, the licensee shall provide for each resident a bed, comfortable chair, a chest of drawers and a reading lamp.

R432-6-104. Toilet and Bathing Facilities.

(1) Residents shall have privacy in toilet and bathrooms. Toilet and bathrooms shall be conveniently located.

(2) Resident toilet, bathtub, shower rooms, and facilities designed for use by persons with disabilities shall comply with ADA/ABA-AG.

(3) Grab bars configured to meet ADA/ABA-AG shall be provided in all resident bathtubs and showers. Grab bars configured to meet ADA/ABA-AG shall be provided at the side of each resident toilet facility.

(4) Bars, including those which are an integral part of soap dishes, towel bars, and other fixtures shall be anchored to sustain a concentrated load of 250 pounds.

(5) There shall be one toilet and lavatory on each floor for each six occupants not otherwise served by toilet and lavatory in the resident rooms. A large type I assisted living facility shall have separate and additional toilet and bathing facilities for live-in family and staff.

(6) There shall be at least one bathtub or shower for each 10 residents not otherwise served by bathing facilities in resident rooms. Separate and additional facilities shall be provided for live-in family and staff. In a multistory building, there shall be at least one bathtub or shower which opens from the corridor on each floor that contains resident bedrooms not otherwise served.

(7) Each central bathroom shall have a toilet and lavatory.

(8) Toilet and bathing facilities shall not open directly into food preparation areas.

(9) All toilet, shower, and tub facilities shall have impermeable walls and surfaces that can be easily cleaned and sanitized.

(10) If showers or bathtubs contain soap dishes or shelves, they shall be recessed.

(11) Each lavatory fixture shall have a mirror, except in food preparation areas.

R432-6-105. Service Areas.

There shall be adequate space and equipment for the following service or functions.

(1) Large assisted living facilities must provide the following:

(a) an administrator's office with equipment for keeping records and supplies;

(b) an employee toilet room, lockers, and lounges, in addition to and separate from those required for the public;

(c) a public reception or information area; and

(d) housekeeping closets each with a floor receptor or

service sink.

(2) The following required spaces apply to all type I assisted living facilities:

(a) A secure area for administrative activities and storage for resident records;

(b) a medication-storage area including a locked drug cabinet;

(c) a closet or compartment for the staff's personal effects;

(d) a clean linen storage area;

(e) a telephone for private use by residents or visitors;

(f) at least one general use housekeeping closet accessible from a general corridor on each wing or each floor; and

(g) storage space for housekeeping equipment and supplies with a mechanical exhaust system.

R432-6-106. Linen Services.

(1) Each facility shall have space and equipment to store and process clean and soiled linen as required for resident care. Laundry may be done within the facility, in a separate building, on or off site, or in a commercial or shared laundry.

(2) At least one washing machine, one clothes dryer, and ironing equipment in good working order shall be available for use by residents who wish to do their personal laundry.

R432-6-107. Signal System.

(1) A signal system is required for the following facilities:

(a) a large facility;

(b) a facility with bedrooms on more than one floor; and

(c) when staff are not continuously present on the same level as any resident.

(2) The signal system shall be designed to:

(a) operate from each resident's living unit, and from each bathroom or toilet room;

(b) transmit a visual or auditory signal or both to a centrally staffed location, or produce an auditory signal at the living unit loud enough to summon staff;

(c) the signal system shall be designed to turn off only at the resident calling station; and

(d) identify the location of the resident summoning help.

R432-6-200. Type II Facilities.

The following sections in the 200 series apply to Type II assisted living facilities.

R432-6-201. Occupancy Type.

(1) Large assisted living facilities shall comply with I-2 International Building Code requirements and shall have, at a minimum, 6 foot wide corridors.

(2) Small assisted living facilities shall comply with I-1, International Building Code, requirements and shall have, at a minimum, six-foot wide corridors.

(3) Limited capacity assisted living facilities that house Type II assisted living residents shall comply with R-4, International Building Code requirements and shall either have an approved sprinkler system, or provide a staff to resident ratio of one to one on a 24-hour basis. Residents shall be housed on floors at grade level.

R432-6-202. Campus-Type Facilities.

(1) If a campus-type facility has separate buildings, all of the buildings shall be located on the same site within 150 feet of each other.

(2) Resident living units shall be connected to bathing facilities and common areas by enclosed temperature controlled corridors.

(3) Recreation and dining spaces that are also utilized by residents of other licensed health care facilities within the same campus may be counted in determining common area space as long as all applicable code and space requirements are met for all licensed facilities and the shared space is accessible without the need to pass through corridors or resident care areas of another licensed facility. The shared space may not account for more than fifty percent of the total common square footage required for any one licensed facility.

R432-6-203. Resident Units.

(1) Facility services shall be accessible from common areas without compromising resident privacy.

(2) Resident living units shall include room areas exclusive of space for toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules as follows:

(a) A single occupant unit without additional living space shall be a minimum of 120 square feet.

(b) A double occupant unit without additional living space shall be a minimum of 200 square feet.

(c) A single occupant bedroom in a unit with additional living space shall be a minimum of 100 square feet.

(d) A double occupant bedroom in a unit with additional living space shall be a minimum of 160 square feet.

(3) No space used for other purposes, such as a hall, corridor, unfinished attic, garage, storage area, shed, or similar detached building, may be used as a resident's bedroom.

(4) Bedrooms may not be used as a passageway to another room, bath, or toilet other than those serving the bedroom.

(5) Each resident living unit shall open directly into a corridor or common living area, but must not open into a food preparation area.

(6) A maximum of two residents may occupy a resident living unit.

(7) Unless furnished by the resident, the licensee shall provide for each resident a bed, comfortable chair, a chest of drawers and a reading lamp.

R432-6-204. Toilet and Bathing Facilities.

(1) If toilet and bathrooms are shared by more than one resident, the facility shall provide individual privacy.

(2) A minimum of fifty percent of all toilet rooms, bathrooms and shower rooms shall be designed in compliance with ADA/ABA-AG.

(3) Public toilet rooms shall be accessible from a corridor, and shall comply with ADA/ABA-AG.

(4) If the living unit includes a private bathroom, the bathroom shall contain a toilet and a lavatory.

(5) If resident living units do not have a private bathroom, the facility shall provide the following:

(a) a toilet and lavatory for every four residents;

(b) a bathtub or shower for every 10 residents designed to accommodate a resident in a wheelchair and space to allow staff to assist a resident in taking a shower; and

(c) a bathroom with bathtub or shower, toilet and lavatory which open from a corridor on each floor of a multiple story facility.

(6) If resident living units have private bathrooms that do not allow staff assistance, then each floor or level shall provide a bathroom equipped with a bathtub or shower, toilet, and lavatory which opens from a corridor that provides wheelchair clearances and allows for staff assistance in bathing.

(7) Grab bars configured to meet ADA/ABA-AG shall be provided in all resident bathtubs and showers. Grab bars configured to meet ADA/ABA-AG shall be provided at the side of each resident toilet facility not designed for accessibility.

(8) Toilet and bathing facilities may not open directly into food preparation areas.

(9) All toilet, shower, and tub facilities shall have impermeable walls and surfaces that may be easily cleaned and sanitized.

(10) Showers and tubs shall contain recessed soap dishes.

(11) Each lavatory fixture shall have a mirror. Mirrors over lavatories located in food preparation areas are prohibited.

(12) Bars, including those which are parts of soap dishes, towel bars, and other fixtures shall be anchored to a wall and withstand a concentrated load of 250 pounds.

R432-6-205. Common Areas.

(1) The facility shall provide a common room or rooms for dining, sitting, visiting, recreation, worship, and other activities.

(a) If concurrent activities are planned in a common room, the room shall be arranged to promote and facilitate the activities to minimize disruption through the use of physical barriers for separation.

(b) Space shall be provided for storing recreational equipment and supplies.

(2) The facility shall provide the following minimum space for recreational activities:

(a) in large facilities, 20 square feet per bed;

(b) in small facilities, 20 square feet per bed, or a minimum of 160 square feet total area whichever is greater;

(c) in a limited capacity facility, a minimum of 120 square feet.

(3) If a facility adds 40 square feet per bed to a bedroom area square footage requirement, or adds 80 square feet of recreation space in a separate living room within the resident living unit, the square footage requirements for common recreational space may be reduced by 20 square feet per licensed bed in large and small facilities, not to exceed a reduction of 50 percent of the total common area square footage.

(4) The facility shall provide the following space for dining activities:

(a) in large and small facilities, a minimum of 15 square feet per licensed bed;

(b) in limited capacity facilities, a minimum of 100 square feet.

(5) If a kitchen and a minimum of 30 square feet of dining area space are provided in a resident unit in a large or small facility, then the common dining area may be reduced by 15 square feet per licensed bed. The maximum reduction shall be 50 percent of the total required dining area.

(6) A separate private living room for family or informal gatherings shall be provided in a large facility as part of the common area space. The private living room shall be a minimum of 110 square feet. If all resident living units include additional living space, the facility is not required to provide a separate private living room.

(7) Corridors and public reception space may not be included in the calculation for required square footage for dining or recreation space.

(8) The facility shall provide ten square feet per bed, or a minimum area of 100 square feet, whichever is greater, for outdoor recreation activities.

R432-6-206. Resident Support Areas.

A large facility shall provide a nourishment station which contains a work counter, a refrigerator, a sink, and cabinets for storage. The station may be located in a single purpose room, dining room, or in a kitchen if staff has 24-hour access to the area.

R432-6-207. Administrative and General Service Areas.

(1) There shall be space and equipment for the administrative services as follows:

(a) in large facilities, an administrative office of sufficient size to store records and equipment;

(b) in small and limited capacity facilities, a designated area for administrative activities and record storage.

(2) Storage shall be provided for securing staff belongings as follows:

(a) In large facilities, a room shall be provided to serve as a staff lounge with staff lockers for storage. A staff toilet room shall also be provided.

(b) In small and limited care facilities, a storage area shall be identified to store staff belongings.

(3) A large facility shall provide a public reception or information area.

(4) A telephone shall be provided for private use by residents and visitors.

R432-6-208. Special Design Features.

(1) A signal system shall be provided to alert staff of a resident's need for help.

(2) The signal system shall be designed to:

(a) operate from each resident's living unit and from each bath room or toilet room;

(b) transmit a visual and auditory signal to a 24-hour staffed location, except a limited capacity facility signal system shall produce an auditory signal to summon staff;

(c) identify the location of the resident summoning help; and

(d) allow it to be turned off only at the source of the call.

(3) Large and small facilities shall provide a thermostat control in each resident living unit. The Department shall grant a variance upon request from the licensee to this requirement for an existing building seeking initial licensure.

(4) Plumbing shutoff valves shall be located on the main water supply line and at each fixture. In addition, large facilities shall provide an accessible shutoff valve on each primary hot and cold branch of the water line and shall provide a minimum of two hot and two cold water zones. The Department shall grant a variance upon request from the licensee to this requirement for an existing building seeking initial licensure.

(5) Building entrances in large and small facilities shall be at grade level, clearly marked, and located to minimize the need for residents to traverse other program areas. A main facility entrance shall be designated and accessible to persons with disabilities.

(6) Special units intended to accommodate residents with Alzheimers or Dementia shall comply with Section 4.2-2.2.3.2 of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, which is adopted and incorporated by reference.

R432-6-209. General Standards for Details.

(1) Each resident living unit entry door shall be constructed as follows:

(a) be 36 inches wide;

(b) open inward into the resident living unit or designed so that an outward swinging door does not restrict the corridor width;

(c) be lockable, but operable from the inside by single-action lever; and

(d) be individually keyed with the key under resident control.

(2) A master key shall be available for staff.

(3) Door handles for all doors used by residents shall be of the lever type and shall meet ADA/ABA-AG requirements.

Building entrances and exit doors may have panic hardware.

(4) Each door to toilet and bathing facilities shall comply with ADA/ABA-AG and the following:

(a) be equipped with hardware which permits emergency access from the outside; and

(b) open out or be double acting.

(5) Handrails meeting the profile and gripability requirements of ADA/ABA-AG shall be provided on both sides of all resident corridors. Handrail color shall contrast that of the wall it is mounted on.

R432-6-210. Linen Services.

(1) Each facility shall have space and equipment to store and process clean and soiled linen as required for resident care. Laundry may be done within the facility, in a building on or off-site, or in a commercial or shared laundry.

(2) If laundry is done off the site, the following shall be provided:

(a) a room for receiving and holding soiled linen until ready for pickup or processing;

(b) a central, clean linen storage room(s); and

(c) a lavatory in each area where unbagged, soiled linen is handled.

(3) If a large or small facility processes its own laundry on-site, the following shall be provided:

(a) a laundry room for receiving, holding, washing, drying, and sorting soiled linens, with the following:

(i) a pre-wash sink at least 13 inches deep by 20 inches wide;

(ii) a separate hand washing sink;

(iii) washer(s) and dryer(s); and

(iv) storage for laundry supplies;

(b) arrangement of equipment that will permit an orderly workflow and minimize cross-traffic that might mix clean and soiled operations; and

(c) a central, clean linen storage room(s);

(4) If a limited capacity facility processes its own laundry on-site, the following shall be provided:

(a) a room to store and process both clean and soiled linen;

(b) a washer and dryer; and

(c) a utility sink in the laundry room.

(5) Each facility shall provide a minimum of one washing machine, one clothes dryer, and ironing equipment in good working order for resident use.

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R432. Health, Family Health and Preparedness, Licensing.
R432-16. Hospice Inpatient Facility Construction.
R432-16-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 21.

R432-16-2. Purpose.

The purpose of this rule is to promote quality of life in a home-like setting through the establishment and enforcement of construction standards for hospice inpatient facilities.

R432-16-3. Definitions.

(1) "Hospice Inpatient Facility" means a freestanding licensed hospice facility or a licensed hospice unit in an existing health care facility.

(2) "Small Hospice Inpatient Facility" means a hospice facility capable of housing two to eight patients.

(3) "Large Hospice Inpatient Facility" means a hospice facility capable of housing nine or more patients.

R432-16-4. Hospice Unit.

(1) Each Hospice Unit is an area identified by the Licensee within a licensed health care facility and consists of at least two resident beds, resident care spaces, and service spaces.

(2) If licensed health care facilities share spaces and service areas, as permitted in this rule, the shared spaces and service areas shall be contiguous to each health care facility served.

(3) A hospice inpatient facility operated in conjunction with another licensed health care facility shall comply with all provisions of this section. Dietary, storage, pharmacy, maintenance, laundry, housekeeping, medical records, and laboratory functions may be shared by two or more health care facilities.

(4) Facility service areas shall be accessible from common areas without compromising resident privacy.

R432-16-5. General Design Requirements.

R432-4-1 through R432-4-22 apply with the following modifications.

(1) All public, common, and at least 10 percent of resident toilet rooms and bathrooms shall have fixtures that comply with Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines, (ADA/ABA-AG).

(2) These rooms shall be wheelchair accessible with wheelchair turning space within the rooms.

(3) "Room or Office" when used in this rule describes a specific, separate, enclosed space for the service. When room or office is not used, multiple services may be accommodated in one enclosed space.

R432-16-6. Administrative Areas.

(1) There shall be space and equipment for the administrative services as follows:

(a) In large hospice inpatient facilities, an administrative office of sufficient size to store records and equipment.

(b) In small hospice inpatient facilities, an area may be designated for administrative activities and record storage.

(2) Storage shall be provided for securing staff belongings.

(3) A large hospice inpatient facility shall provide a public reception or information area.

(4) A telephone shall be provided for private use by residents and visitors.

R432-16-7. Resident Rooms.

(1) Maximum room occupancy is two residents.

(2) Minimum room areas for new construction (exclusive of toilets, closets, lockers, wardrobes, alcoves or vestibules) shall be 120 square feet in single bed rooms and 100 square feet per bed in multiple-bed room. Existing buildings or spaces being licensed as a hospice shall have a minimum of 80 square feet of clear floor area per bed in multiple-bed areas and 100 square feet of clear floor area in single-bed rooms.

(3) In multiple-bed rooms, clearance shall allow for the movement of beds and equipment without disturbing residents. The dimensions and arrangement of rooms shall be such that there is a minimum of three feet clearance at least at one side, the foot, and between another bed.

(4) A nurse call system shall be provided. Each bed shall be provided with a call device. Two call devices serving adjacent beds may be served by one calling station. Calls in a large inpatient hospice facility shall also activate a visible signal in the corridor at the resident's door.

(5) A nurse emergency call device shall be provided at each inpatient toilet, bath, and shower room. The call device shall be accessible to a collapsed resident lying on the floor. Inclusion of a pull cord will satisfy this standard. The emergency call system shall be designed so that a signal activated at a resident's calling station will initiate a visible and audible signal distinct from the regular nurse call system and can be turned off only at the resident calling station. The signal shall activate an annunciator panel at the nurse station or other location appropriate to ensure immediate nurse notification. Emergency calls in a large hospice inpatient facility shall also activate a visible signal in the corridor at the resident's door.

(6) Each resident shall have access to a toilet room without having to enter the corridor area. One toilet room shall serve not more than four beds and no more than two resident rooms. The toilet room shall contain a water closet and a lavatory. The toilet room door shall swing outward.

(7) At least one single-bed room with a private toilet room containing a toilet, lavatory, and bathing facility shall be provided for each eight beds, or fraction thereof, in a hospice facility.

(a) In addition to the lavatory in the toilet room, in new construction and remodeling, a lavatory or hand washing sink shall be provided in the patient room.

(b) Ventilation shall be in accordance with Table 7-1 of Part 6 of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, which is adopted and incorporated by reference.

(8) Each resident room intended for 24-hour occupancy, shall have an operable window open to the building exterior or to a court which is open to the sky.

(9) Each resident closet shall be a minimum of 22 inches deep by 36 inches wide with a shelf to store clothing and a clothes rod positioned at 70 inches to hang full length garments.

(10) Visual privacy shall be provided for each resident in multiple-bed rooms. Design for privacy shall not restrict resident access to the toilet, lavatory, or room entrance.

R432-16-8. Service Requirements.

(1) A nurse station shall be provided and have space for charting, storage, medication security, and administrative activities.

(2) Toilet room(s) with hand washing facilities for staff shall be provided and may be unisex.

(3) Hand washing facilities shall be located immediately adjacent to the nursing station and the drug distribution station.

(4) Provisions shall be made for 24-hour distribution of

medications by providing a medicine preparation room or a self-contained medicine dispensing unit. If a medical cart is used it shall be under visual control of staff.

(5) A clean workroom or clean holding room shall be provided for resident care items.

(a) The clean work room shall contain a counter, hand washing facilities and storage facilities.

(b) The work counter and hand washing facilities may be omitted in rooms used only for storage and holding, as part of a larger system for distribution of clean and sterile supply materials.

(6) A soiled workroom shall be provided.

(a) The soiled workroom shall contain a clinical sink, a sink equipped for hand washing, a work counter, waste receptacles, and a linen receptacle.

(b) Hand washing sinks, clinical sinks, and work counters may be omitted in rooms used only for temporary holding of soiled, bagged material.

(c) In small hospice inpatient facilities, accommodations shall be available for cleaning and sanitizing patient service items.

(7) Clean linen shall be stored in a separate closet or room. If a closed cart is used for clean linen storage, it shall be stored in a room with a self closing door. Storage in an alcove in a corridor is prohibited. Clean linen may be stored in the clean work room or a clean holding room.

(8) Resident bathing facilities shall be provided in each hospice unit at a ratio of one bathing facility for each eight beds, or fraction thereof, not otherwise served by bathing facilities within individual resident rooms.

(a) Each resident bathtub or shower shall be in a separate room or enclosure large enough to ensure privacy and to allow staff to assist with bathing, drying, and dressing.

(b) A toilet and hand sink shall be provided at each common bathing area.

(9) An equipment storage room with a minimum area of five square feet for each licensed bed, but no less than 30 square feet, for portable equipment shall be provided.

(10) In small hospice inpatient facilities, accommodation shall be made for storage of portable equipment.

R432-16-9. Resident Support Areas.

(1) There shall be resident living areas equipped with tables, reading lamps, and comfortable chairs designed to be usable by all residents. The total area set aside for dining, resident lounges, and recreation area shall be at least 35 square feet per bed with a minimum total area of at least 225 square feet. At least 20 square feet per bed shall be available for dining.

(2) There shall be a general purpose room with a minimum area of 100 square feet. It shall accommodate family gatherings and shall be equipped with a table, comfortable chairs and incandescent lighting. In small hospice inpatient facilities, this room may be omitted if the required living area includes an enclosed lounge.

(3) A minimum area of ten square feet per bed shall be provided for outdoor recreation. This space shall be provided in addition to the setbacks on street frontages required by local zoning ordinances.

R432-16-10. General Services.

(1) Large inpatient hospice facilities shall have linen services that comply with R432-4-24(3).

(2) Small inpatient hospice facilities shall have space and equipment to store and process clean and soiled linen as required for patient care.

(3) There shall be one housekeeping room for each hospice unit. There shall be an exhaust for this room that exhausts air to the outside.

(4) Yard equipment and supply storage areas shall be located so that equipment may be moved directly to the exterior without passing through building rooms or corridors.

R432-16-11. Food Service.

(1) Food service facilities and equipment shall comply with R392-100, the Utah Department of Health Food Service Sanitation Rules.

(2) Food service space and equipment shall be provided as follows:

(a) Storage area for food supplies, including a cold storage area for a seven-day supply of staple foods and a three-day supply of perishable foods;

(b) Food preparation area;

(c) An area to serve and distribute resident meals;

(d) An area for receiving, scraping, sorting, and washing soiled dishes and tableware;

(e) A storage area for waste located next to an outside facility exit for direct pickup;

(f) An area for meal planning.

R432-16-12. Waste Storage and Disposal.

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 required by the Utah Department of Environmental Quality, and the local health department having jurisdiction.

R432-16-13. Details and Finishes.

Details and finishes shall comply with the following:

(1) Corridor handrails shall be provided. Handrail design shall comply with ADA/ABA-AG.

(2) Cubicle curtains and draperies shall be affixed to permanently mounted tracks or rods. Portable curtains or visual barriers are not permitted.

(3) Signs shall be provided as follows:

(a) general and circulation direction signs in corridors;

(b) identification at each door; and

(c) emergency directional signs;

(d) all signs in corridors shall comply with ADA/ABA-AG.

(4) All partition and all floor and ceiling construction in resident areas shall comply with the noise reduction criteria of Table 1 for sound control.

(5) Floor materials shall be easily cleanable.

(6) Floors in areas used for food preparation or food assembly shall be water-resistant. Floor surfaces, including tile joints, shall be resistant to food acids.

(7) In areas subject to frequent wet-cleaning, the floor materials shall be sealed to prevent contamination by germicidal cleaning solutions.

(8) Floors and wall bases of kitchens, toilet rooms, bath rooms, and housekeeping rooms shall be homogeneous or joints shall be tightly sealed. Bases shall be integrated with the floor and coved.

(9) Wall finishes shall be washable and, in the immediate vicinity of plumbing fixtures, smooth and moisture-resistant.

(10) Finish, trim, floor, and wall construction in food preparation areas shall be free of insect and rodent harboring spaces.

(11) Floor and wall openings for pipes, ducts, conduits, and joints of structural elements shall be tightly sealed to prevent entry of pests.

(12) Carpet and padding shall be stretched taut and be free of loose edges.

(13) Finishes of all exposed ceilings and ceiling

structures in resident rooms and staff work areas shall be cleanable.

(14) Finished ceilings are not required in mechanical and equipment spaces, shops, general storage areas, and similar spaces, unless required for fire resistive purposes.

(15) Finished ceilings shall be provided in areas where dust fallout might occur.

TABLE 1

Sound Transmission Limitations
in Hospice Care Facilities

Airborne Sound Transmissions
Class (STC)(a)

Class (IIC) (b) (Residents')	Partitions	Floors
room to resident's room	35	40
Public space to (residents) room (b)	40	40
Service areas to (residents') room (c)	45	45

(a) Sound transmissions (STC) shall be determined by tests in accordance with Standard E90 and ASTM Standard E413. Where partitions do not extend to the structure above, the designer shall consider sound transmissions through ceilings and composite STC performance.

(b) Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar space.

(c) Service areas include kitchens, elevators, elevator machine rooms, laundry rooms, garages, maintenance rooms, boilers and mechanical equipment rooms and similar spaces of high noise. Mechanical equipment located on the same floor or above patient rooms, offices, nurses' stations, and similarly occupied space shall be effectively isolated from the floor.

R432-16-14. Mechanical Standards.

(1) Mechanical tests shall be conducted prior to final Department construction inspection.

(2) Written test results shall be retained in facility maintenance files and available for Department review.

(3) Air conditioning, heating, and ventilating systems shall include:

(a) A heating system capable of maintaining a temperature of 80 degrees Fahrenheit in areas occupied by residents.

(b) A cooling system capable of maintaining a temperature of 72 degrees Fahrenheit in areas occupied by residents.

(c) Evaporative coolers may not be used.

(d) Supply and return systems must be within a duct. Common returns using corridor or attic spaces as return plenums are prohibited.

(e) Filtration shall be provided when mechanically circulated outside air is used.

(4) Plumbing and other Piping Systems shall include:

(a) Hand washing facilities that are arranged to provide sufficient clearance for single-lever operating handles.

(b) Dishwashers and other kitchen food storage or cooking appliances shall be National Sanitation Foundation (NSF) approved and have the NSF seal affixed.

(c) Kitchen grease trap location shall comply with local health department rules.

(d) Hot water provided in patient tubs, showers, whirlpools, and hand washing facilities shall be regulated by thermostatically controlled automatic mixing valves. These valves may be installed on the recirculating system or on individual inlets to appliances. The temperature of hot water for patient fixtures shall range between 105 and 115 degrees Fahrenheit.

R432-16-15. Electric Standards.

(1) The Licensee shall maintain written certification to the Department verifying that systems and grounding comply with NFPA 99 and NFPA 70.

(2) Approaches to buildings and all spaces within buildings occupied by people, machinery, or equipment shall have fixtures for lighting in accordance with the requirements of the Illuminating Engineering Society of North America (IESNA). Parking lots shall have fixtures for lighting to provide light levels as recommended in IES Recommended Practice RP-20-1998, Lighting for parking facilities by Illuminating Engineering Society of North America.

(3) Automatic emergency lighting shall be provided in accordance with NFPA 101.

(4) General lighting shall be provided as required in R432-6, table 4.

R432-16-16. Penalties.

The Department may assess a civil money penalty up to $10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

KEY: health care facilities
February 21, 2012 26-21-5
Notice of Continuation January 29, 2018 26-21-16

R432. Health, Family Health and Preparedness, Licensing.
R432-35. Background Screening -- Health Facilities.
R432-35-1. Authority.

This rule is adopted pursuant to Title 26 Chapter 21 Part 2.

R432-35-2. Purpose.

To outline the process required for individuals to be cleared to have direct patient access while employed by a covered provider, covered contractor or covered employer.

R432-35-3. Definitions.

Terms used in this rule are defined in Title 26, Chapter 21 Part 2.

In addition:

(1) "Aged" means an individual who is 60 years of age or older.

(2) "Clearance" means approval by the department under Section 26-21-203 for an individual to have direct patient access.

(3) "Covered body" means a covered provider, covered contractor, or covered employer.

(4) "Corporation" means a corporation that has business interest/connection to covered providers that employ individuals who provide consultative services which may result in direct patient access.

(5) "Covered contractor" means a person or corporation that supplies covered individuals, by contract, to:

(a) a covered employer, or

(b) a covered provider for services within the scope of the health facility license.

(6) "Covered employer" means an individual who:

(a) engages a covered individual to provide services in a private residence to:

(i) an aged individual, as defined by department rule; or

(ii) a disabled individual, as defined by department rule;

(b) is not a covered provider; and

(c) is not a licensed health care facility within the state.

(7) "Covered individual":

(a) means an individual:

(i) whom a covered body engages; and

(ii) who may have direct patient access;

(b) which may include:

(i) a nursing assistant;

(ii) a personal care aide;

(iii) an individual licensed to engage in the practice of nursing under Title 58, Chapter 31b, Nurse Practice Act;

(iv) a provider of medical, therapeutic, or social services, including a provider of laboratory and radiology services;

(v) an executive;

(vi) administrative staff, including a manager or other administrator;

(vii) dietary and food service staff;

(viii) housekeeping;

(ix) transportation staff;

(x) maintenance staff; and

(xi) volunteer as defined by department rule.

(c) does not include a student directly supervised by a member of the staff of the covered body or the student's instructor.

(8) "Covered provider" means:

(a) an end stage renal disease facility;

(b) a long-term care hospital;

(c) a nursing care facility;

(d) a small health care facility;

(e) an assisted living facility;

(f) a hospice;

(g) a home health agency; or

(h) a personal care agency.

(9) "Direct patient access" means for an individual to be in a position where the individual could, in relation to a patient or resident of the covered body who engages the individual:

(a) cause physical or mental harm;

(b) commit theft; or

(c) view medical or financial records.

(10) "Disabled individual" means an individual who has limitations with two or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and employment.

(11) "Engage" means to obtain one's services:

(a) by employment;

(b) by contract;

(c) as a volunteer; or

(d) by other arrangement.

(12) "Long-term care hospital":

(a) means a hospital that is certified to provide long-term care services under the provisions of 42 U.S.C. Sec. 1395tt; and

(b) does not include a critical access hospital, designated under 42 U.S.C. Sec. 1395i-4(c)(2).

(13) "Nursing Assistant" means an individual who performs duties under the supervision of a nurse, which may include a nurse aide, personal care aide or certified nurse aide.

(14) "Patient" means an individual who receives health care services from one of the following covered providers:

(a) an end stage renal disease facility;

(b) a long-term care hospital;

(c) a hospice;

(d) a home health agency; or

(e) a personal care agency.

(15) "Resident" means an individual who receives health care services from one of the following covered providers:

(a) a nursing care facility;

(b) a small health care facility;

(c) an assisted living facility; or

(d) a hospice that provides living quarters as part of its services.

(16) "Residential setting" means a place provided by a covered provider:

(a) for residents to live as part of the services provided by the covered provider; and

(b) where an individual who is not a resident also lives.

(17) "Volunteer" means an individual who may have unsupervised direct patient access who is not directly compensated for providing services.

The following groups or individuals are excluded as volunteers and are not required to complete the background clearance process as defined in R432-35:

(a) Clergy;

(b) Religious groups;

(c) Entertainment groups;

(d) Resident family members;

(e) Patient family members; and

(f) Individuals volunteering services for 20 hours per month or less.

R432-35-4. Covered Provider - Direct Access Clearance System Process.

(1) Utah Code, Title 26, Chapter 21, Part 2 requires that a covered provider enter required information into the Direct Access Clearance System to initiate a clearance for each covered individual prior to issuance of a provisional license,

license renewal or engagement as a covered individual.

(2) The covered provider must ensure that the engaged covered individual:

(a) Signs a criminal background screening authorization form which must be available for review by the department; and

(b) Submits fingerprints within 15 working days of engagement.

(3) The covered provider must ensure the Direct Access Clearance System reflects the current status of the covered individual within 5 working days of the engagement or termination.

(4) A covered provider may provisionally engage a covered individual while direct patient access clearance is pending.

(5) If the Department determines an individual is not eligible for direct patient access, based on information obtained through the Direct Access Clearance System, the Department shall send a Notice of Agency Action to the covered provider and the individual explaining the action and the individual's right of appeal as defined in R432-30.

(6) The Department may allow a covered individual direct patient access with conditions, during an appeal process, if the covered individual can demonstrate the work arrangement does not pose a threat to the safety and health of patients or residents.

(7) A covered provider that provides services in a residential setting must enter required information into the Direct Access Clearance System to initiate and obtain a clearance for all individuals 12 years of age and older, who are not residents, and reside in the residential setting. If the individual is not eligible for clearance as defined in R432-35-8, the Department may revoke an existing license or deny licensure for healthcare services in the residential setting.

(8) Covered individuals under the age of 18 are not required to submit fingerprints as part of the Direct Access Clearance process. Covered individuals, while engaged with a covered provider, are required to submit fingerprints within 15 working days of their 18th birthday.

(9) Covered providers requesting to renew a license as a health care facility must enter required information into the Direct Access Clearance System to initiate and obtain a clearance for each covered individual.

(10) Individuals or covered individuals requesting to be licensed as a covered provider must submit required information to the Department to initiate and obtain a clearance prior to the issuance of the provisional license. If the individuals are not eligible for clearance as defined in R432-35-8, the Department may revoke an existing license or deny licensure as a health care facility.

R432-35-5. Covered Contractor - Direct Access Clearance System Process.

(1) Utah Code, Title 26, Chapter 21, Part 2 requires that a covered contractor enter required information into the Direct Access Clearance System to initiate a clearance for each covered individual prior to being supplied by contract to a covered provider.

(2) A covered contractor must ensure that the covered individual, being supplied by contract to a covered provider:

(a) Signs a criminal background screening authorization form which must be available for review by the department; and

(b) Submits fingerprints within 15 working days of placement with a covered provider.

(3) The covered contractor must ensure the Direct Access Clearance System reflects the current status of the covered individual within 5 working days of placement or termination.

(4) A covered contractor may provisionally supply a covered individual to a covered provider while clearance is pending.

(5) If the Department determines an individual is not eligible for direct patient access, based on information obtained through the Direct Access Clearance System, the Department shall send a Notice of Agency Action to the covered contractor and the individual explaining the action and the individual's right of appeal as defined in R432-30.

(6) The Department may allow a covered individual direct patient access with conditions, during an appeal process, if the covered individual can demonstrate the work arrangement does not pose a threat to the safety and health of patients or residents.

(7) Covered individuals under the age of 18 are not required to submit fingerprints as part of the Direct Access Clearance process. Covered individuals, while engaged with a covered contractor, are required to submit fingerprints within 15 working days of their 18th birthday.

R432-35-6. Covered Employer - Direct Access Clearance System Process.

(1) Utah Code, Title 26, Chapter 21, Part 2 requires that a covered employer be allowed to enter required information into the Direct Access Clearance System to initiate and obtain a clearance for a covered individual.

(2) If the Department determines an individual is not eligible for direct patient access, based on information obtained through the Direct Access Clearance System, the Department shall send a Notice of Agency Action to the covered employer and the individual explaining the action and the individual's right of appeal as defined in R432-30.

R432-35-7. Sources for Background Review.

(1) As required in Utah Code 26-21-204 the department may review relevant information obtained from the following sources:

(a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files;

(b) juvenile court arrest, adjudication, and disposition records, as allowed under Section 78A-6-209;

(c) federal criminal background databases available to the state;

(d) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;

(e) child abuse or neglect findings described in Section 78A-6-323;

(f) the Department of Human Services' Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(g) registries of nurse aids described in Title 42 Code of Federal Regulations Section 483.156;

(h) licensing and certification records of individuals licensed or certified by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions; and

(i) the List of Excluded Individuals and Entities database maintained by the United States Department of Health and Human Services' Office of Inspector General.

(2) If the Department determines an individual is not eligible for direct patient access based upon the criminal background screening and the individual disagrees with the information provided by the Criminal Investigations and Technical Services Division or court record, the individual may challenge the information as provided in Utah Code Annotated Sections 77-18a.

(3) If the Department determines an individual is not eligible for direct patient access based upon the non-criminal background screening and the individual disagrees with the information provided, the individual may challenge the information through the appropriate agency.

R432-35-8. Exclusion from Direct Patient Access.

(1) Criminal Convictions or Pending Charges

(a) As required by Utah Code Subsection 26-21-204, if an individual or covered individual has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement, for the following offenses, they may not have direct patient access:

(i) any felony or class A conviction under Utah Criminal Code.

(ii) any felony or class A, B or C conviction under Title 76, Chapter 5 Offenses Against the Person, Utah Criminal Code;

(iii) any felony or class A conviction under Title 76, Chapter 6, Offenses Against Property, Utah Criminal Code;

(iv) any felony or class A conviction under Title 76, Chapter 6a, Pyramid Schemes, Utah Criminal Code;

(v) any felony or class A conviction under Title 76, Chapter 8, Offenses Against the Administration of Government, Utah Criminal Code;

(vi) any felony or class A conviction under Title 76, Chapter 9, Offenses Against Public Order and Decency, Utah Criminal Code;

(vii) any felony or class A, B or C conviction under the following Utah Criminal Codes:

(A) 76-9-301.8, Bestiality;

(B) 76-9-702, Lewdness - Sexual Battery - Public urination; and

(C) 76-9-702.5, Lewdness Involving Child.

(viii) any felony or class A conviction under Title 76, Chapter 10, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code;

(ix) any felony or class A, B or C conviction under the following Utah Criminal Codes:

(A) 76-10-1201 to 1229.5, Pornographic and Harmful Materials and Performances; and

(B) 76-10-1301 to 1314, Prostitution;

(x) any felony or class A conviction under Utah Criminal Code 76-10-2301, Contributing to the Delinquency of a Minor;

(b) As required by Utah Code Subsection 26-21-204, if an individual or covered individual has a warrant for arrest or an arrest for any of the identified offenses in R432-35-8(1)(a), the department may deny clearance based on:

(i) the type of offense;

(ii) the severity of offense; and

(iii) potential risk to patients or residents.

(2) Juvenile Records

(a) As required by Utah Code Subsection 26-21-204(4)(a)(ii)(E), juvenile court records shall be reviewed if an individual or covered individual is:

(i) under the age of 28; or

(ii) over the age of 28 and has convictions or pending charges identified in R432-35-8(1)(a).

(b) Adjudications by a juvenile court may exclude the individual from direct patient access if the adjudications refer to an act that, if committed by an adult, would be a felony or a misdemeanor.

(3) Non-Criminal Records

(a) As required by Utah Code Subsection 26-21-204(3), the Department may review findings from the following sources to determine whether an individual or covered individual should be granted or retain direct patient access:

(i) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;

(ii) child abuse or neglect findings described in Section 78A-6-323;

(iii) the Department of Human Services' Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(iv) registries of nurse aids described in Title 42 Code of Federal Regulations Section 483.156;

(v) licensing and certification records of individuals licensed or certified by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions; and

(vi) the List of Excluded Individuals and Entities database maintained by the United States Department of Health and Human Services' Office of Inspector General.

(4) Review of Relevant Information

(a) Results of background screening review, as listed above in R432-35-8(1), (2), and (3), may be reviewed to determine under what circumstance, if any, the covered individual may be granted or retain direct patient access. The following factors may be considered:

(i) types and number;

(ii) passage of time;

(iii) surrounding circumstances;

(vi) intervening circumstances; and

(v) steps taken to correct or improve.

(b) The department shall rely on relevant information identified in R432-35-8(1), (2), and (3) as conclusive evidence and may deny clearance based on that information.

R432-35-9. Covered Individuals with Arrests or Pending Criminal Charges.

(1) If the Department determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would be excluded under R432-35-8(1), the Department may act to protect the health and safety of patients or residents in covered providers.

(2) The Department may allow a covered individual direct patient access with conditions, until the arrest or criminal charges are resolved, if the covered individual can demonstrate the work arrangement does not pose a threat to the safety and health of patients or residents.

(3) If the Department denies or revokes a license, or denies direct patient access based upon arrest or criminal charges, the Department shall send a Notice of Agency Action to the covered provider and the covered individual notifying them of the right to appeal in accordance with R432-30.

R432-35-10. Penalties.

The department may impose civil monetary penalties in accordance with Title 26, Chapter 23, Utah Health Code Enforcement Provisions and Penalties, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter, as follows:

(1) if significant problems exist that are likely to lead to the harm of an individual resident, the department may impose a civil penalty of $50 to $1,000 per day; and

(2) if significant problems exist that result in actual harm to a resident, the department may impose a civil penalty of $1,050 to $10,000 per day.

KEY: health care facilities, background screening
January 27, 2015 26-21-9.5
Notice of Continuation January 29, 2018

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 required reports, including a monthly census report to the Division of Medicaid and Health Financing as required by R414-401-4, by the end of the succeeding month;

(i) The Department may issue sanctions, including civil money penalties, in accordance with R432-3-7, for failure to report the required census information.

(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.

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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 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.

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R438. Disease Control and Prevention.
R438-15. Newborn Screening.
R438-15-1. Purpose and Authority.

(1) The purpose of this rule is to facilitate early detection, prompt referral, early treatment, and prevention of disability and mental retardation in infants with certain genetic and endocrine disorders.

(2) Authority for the Newborn Screening program and promulgation of rules to implement the program are found in Sections 26-1-6, 26-1-30 and 26-10-6.

R438-15-2. Definitions.

(1) "Abnormal test result" means a result that is outside of the normal range for a given test.

(2) "Appropriate specimen" means a blood specimen submitted on the Utah Newborn Screening form that conforms with the criteria in R438-15-9.

(3) "Blood spot" means a clinical specimen(s) submitted on the filter paper (specially manufactured absorbent specimen collection paper) of the Newborn Screening form using the heel stick method.

(4) "Department" means the Utah Department of Health.

(5) "Follow up" means the tracking of all newborns with an abnormal result, inadequate or unsatisfactory specimen or a quantity not sufficient specimen through to a normal result or confirmed diagnosis and referral.

(6) "Inadequate specimen" means a specimen determined by the Newborn Screening Laboratory to be unacceptable for testing.

(7) "Indeterminate result" means a result that requires another specimen to determine normal or abnormal status.

(8) "Institution" means a hospital, alternate birthing facility, or midwife service in Utah that provides maternity or nursery services or both.

(9) "Medical home/practitioner" means a person licensed by the Department of Commerce, Division of Occupational and Professional Licensing to practice medicine, naturopathy, or chiropractic or to be a nurse practitioner, as well as the licensed or unlicensed midwife who takes responsibility for delivery or the on-going health care of a newborn.

(10) "Metabolic diseases" means those diseases screened by the Department which are caused by an inborn error of metabolism.

(11) "Newborn Screening form" means the Department's demographic form with attached Food and Drug Administration (FDA)-approved filter paper medical collection device.

(12) "Quantity not sufficient specimen" or "QNS specimen" means a specimen that has been partially tested but does not have enough blood available to complete the full testing.

(13) "Unsatisfactory specimen" means an inadequate specimen.

R438-15-3. Newborn Screening Advisory Committee.

(1) Newborn Screening Advisory Committee shall be composed of at least 9 members as follows:

(a) an individual with an advanced degree (MS/PhD/MD) in genetics or other relevant field, who will serve as Chair;

(b) a representative from the Utah Hospital Association;

(c) a community pediatrician;

(d) the Director of the Division of Disease Control and Prevention;

(e) an advocate or a consumer of a newborn screening services;

(f) clinical consultants for the Newborn Screening program;

(g) a representative from the Utah Public Health Laboratory

(h) a representative from the Newborn Screening Follow-up Program;

(i) a representative from the research community with knowledge about disorders considered for future addition to the newborn screening panel.

(2) The Department Executive Director shall approve committee membership with counsel from the advisory committee.

(3) The term of committee members shall be four years;

(a) members may serve up to three additional terms as requested;

(b) if a vacancy occurs in the committee membership for any reason, a replacement shall be appointed for the unexpired term in the same manner as the original appointment;

(c) a majority of the committee constitutes a quorum at any meeting. If a quorum is present, the action of the majority of members shall be the action of the advisory committee.

(4) The committee shall:

(a) advise the Department on policy issues related to newborn screening services;

(b) provide guidance to programs and functions within the Department having to do with newborn screening services and

(c) evaluate potential tests that could be added to newborn or population screening and make recommendations to the Department.

R438-15-4. Implementation.

(1) Each newborn in the state of Utah shall submit to the Newborn Screening testing, except as provided in Section R438-15-12.

(2) The Department of Health, after consulting with the Newborn Screening Advisory Committee, will determine the disorders on the Newborn Screening Panel, based on demonstrated effectiveness and available funding. Disorders for which the infant blood is screened are:

(a) Biotinidase Deficiency;

(b) Congenital Adrenal Hyperplasia;

(c) Congenital Hypothyroidism;

(d) Galactosemia;

(e) Hemoglobinopathy;

(f) Amino Acid Metabolism Disorders:

(i) Phenylketonuria (phenylalanine hydroxylase deficiency and variants);

(ii) Tyrosinemia type 1(fumarylacetoacetate hydrolase deficiency);

(iii) Tyrosinemia type 2 (tyrosine amino transferase deficiency);

(iv) Tyrosinemia type 3 (4-OH-phenylpyruvate dioxygenase deficiency);

(v) Maple Syrup Urine Disease (branched chain ketoacid dehydrogenase deficiency);

(vi) Homocystinuria (cystathionine beta synthase deficiency);

(vii) Citrullinemia (arginino succinic acid synthase deficiency);

(viii) Argininosuccinic aciduria (argininosuccinic acid lyase deficiency);

(ix) Argininemia (arginase deficiency);

(x) Hyperprolinemia type 2 (pyroline-5-carboxylate dehydrogenase deficiency);

(g) Fatty Acid Oxidation Disorders:

(i) Medium Chain Acyl CoA Dehydrogenase Deficiency;

(ii) Very Long Chain Acyl CoA Dehydrogenase Deficiency;

(iii) Short Chain Acyl CoA Dehydrogenase Deficiency;
(iv) Long Chain 3-OH Acyl CoA Dehydrogenase Deficiency;
(v) Short Chain 3-OH Acyl CoA Dehydrogenase Deficiency;
(vi) Primary carnitine deficiency (OCTN2 carnitine transporter defect);
(vii) Carnitine Palmitoyl Transferase I Deficiency;
(viii) Carnitine Palmitoyl Transferase 2 Deficiency;
(ix) Carnitine Acylcarnitine Translocase Deficiency;
(x) Multiple Acyl CoA Dehydrogenase Deficiency;
(h) Organic Acids Disorders:
(i) Propionic Acidemia (propionyl CoA carboxylase deficiency);
(ii) Methylmalonic acidemia (multiple enzymes);
(iii) Malonic Aciduria;
(iv) Isovaleric acidemia (isovaleryl CoA dehydrogenase deficiency);
(v) 2-Methylbutiryl CoA dehydrogenase deficiency;
(vi) Isobutyryl CoA dehydrogenase deficiency;
(vii) 2-Methyl-3-OH-butyryl-CoA dehydrogenase deficiency;
(viii) Glutaric acidemia type 1 (glutaryl CoA dehydrogenase deficiency);
(ix) 3-Methylcrotonyl CoA carboxylase deficiency;
(x) 3-Ketothiolase deficiency;
(xi) 3-Hydroxy-3-methyl glutaryl CoA lyase deficiency;
(xii) Holocarboxylase synthase (multiple carboxylases) deficiency;
(i) Cystic Fibrosis;
(j) Severe Combined Immunodeficiency syndrome; and
(k) Disorders of Creatine Metabolism and
(l) Spinal Muscular Atrophy

R438-15-5. Responsibility for Collection of the First Specimen.
(1) If the newborn is born in an institution, the institution must collect and submit an appropriate specimen, unless the newborn is transferred to another institution prior to 48 hours of age.
(2) If the newborn is born outside of an institution, the practitioner or other person primarily responsible for providing assistance to the mother at the birth must arrange for the collection and submission of an appropriate specimen.
(3) If there is no other person in attendance of the birth, the parent or legal guardian must arrange for the collection and submission of an appropriate specimen.
(4) If the newborn is transferred to another institution prior to 48 hours of age, the receiving health institution must collect and submit an appropriate specimen.

R438-15-6. Timing of Collection of First Specimen.
The first specimen shall be collected between 24 and 48 hours of the newborn's life. Except:
(1) If the newborn is discharged from an institution before 48 hours of age, an appropriate specimen must be collected within four hours of discharge.
(2) If the newborn is to receive a blood transfusion or dialysis, the appropriate specimen must be collected immediately before the procedure, except in emergency situations where time does not allow for collection of the specimen. If the newborn receives a blood transfusion or dialysis prior to collecting the appropriate specimen the following must be done:
(a) Repeat the collection and submission of an appropriate specimen 7-10 days after last transfusion or dialysis for a second screening specimen;
(b) Repeat the collection and submission of an appropriate specimen 120 days after last transfusion or dialysis for a first screening specimen.

R438-15-7. Parent Education.
The person who has responsibility under Section R438-15-5 shall inform the parent or legal guardian of the required collection and submission and the disorders screened. That person shall give the second half of the Newborn Screening form to the parent or legal guardian with instructions on how to arrange for collection and submission of the second specimen.

R438-15-8. Timing of Collection of the Second Specimen.
A second specimen shall be collected between 7 and 28 days of age.
(1) The parent or legal guardian shall arrange for the collection and submission of the appropriate second specimen through an institution, medical home/practitioner, or local health department.
(2) If the newborn's first specimen was obtained prior to 24 hours of age, the second specimen shall be collected by fourteen days of age.
(3) If the newborn is hospitalized beyond the seventh day of life, the institution shall arrange for the collection and submission of the appropriate second specimen.

R438-15-9. Criteria for Appropriate Specimen.
(1) The institution or medical home/practitioner collecting the appropriate specimen must:
(a) Use only a Newborn Screening form purchased from the Department. The fee for the Newborn Screening form is set by the Legislature in accordance with Section 26-1-6;
(b) Correctly store the Newborn Screening form;
(c) Not use the Newborn Screening form beyond the date of expiration;
(d) Not alter the Newborn Screening form in any way;
(e) Complete all information on the Newborn Screening form. If the infant is being adopted, the following may be omitted: infant's last name, birth mother's name, address, and telephone number. Infant must have an identifying name, and a contact person must be listed;
(f) Apply sufficient blood to the filter paper;
(g) Not contaminate the filter paper with any foreign substance;
(h) Not tear, perforate, scratch, or wrinkle the filter paper;
(i) Apply blood evenly to one side of the filter paper and be sure it soaks through to the other side;
(j) Apply blood to the filter paper in a manner that does not cause caking;
(k) Collect the blood in such a way as to not cause serum or tissue fluids to separate from the blood;
(l) Dry the specimen properly;
(m) Not remove the filter paper from the Newborn Screening form.
(2) Submit the completed Newborn Screening form to the Utah Department of Health, Newborn Screening Laboratory, 4431 South 2700 West, Taylorsville, Utah 84119.
(a) The Newborn Screening form shall be placed in an envelope large enough to accommodate it without folding the form.
(b) If mailed, the Newborn Screening form shall be placed in the U.S. Postal system within 24 hours of the time the appropriate specimen was collected.
(c) If hand-delivered, the Newborn Screening form shall be delivered within 48 hours of the time the appropriate specimen was collected.

R438-15-10. Abnormal Result.
(1)(a) If the Department finds an abnormal result

consistent with a disease state, the Department shall send written notice to the medical home/practitioner noted on the Newborn Screening form.

(b) If the Department finds an indeterminate result on the first screening, the Department shall determine whether to send a notice to the medical home/practitioner based on the results on the second screening specimen.

(2) The Department may require the medical home/practitioner to collect and submit additional specimens for screening or confirmatory testing. The Department shall pay for the initial confirmatory testing on the newborn requested by the Department. The Department may recommend additional diagnostic testing to the medical home/practitioner. The cost of additional testing recommended by the Department is not covered by the Department.

(3) The medical home/practitioner shall collect and submit specimens within the time frame and in the manner instructed by the Department.

(4) As instructed by the Department or the medical home/practitioner, the parent or legal guardian of a newborn identified with an abnormal test result shall promptly take the newborn to the Department or medical home/practitioner to have an appropriate specimen collected.

(5) The medical home/practitioner who makes the final diagnosis shall complete a diagnostic form and return it to the Department within 30 days of the notification letter from the Department.

R438-15-11. Inadequate or Unsatisfactory Specimen, or QNS Specimen.

If the Department finds an inadequate or unsatisfactory specimen, or QNS specimen, the Department shall inform the institution or medical home/practitioner noted on the Newborn Screening form.

(1) The institution or medical home/practitioner that submitted the inadequate or unsatisfactory, or QNS specimen shall submit an appropriate specimen in accordance with Section R438-15-9. The responsible institution or medical home/practitioner shall collect and submit the new specimen within two days of notice, and the responsible institution or medical home/practitioner shall label the form for testing as directed by the Department.

(2) The parent or legal guardian of a newborn identified with an inadequate or unsatisfactory specimen or QNS specimen shall promptly take the newborn to the institution or medical home/practitioner to have an appropriate specimen collected.

R438-15-12. Testing Refusal.

A parent or legal guardian may refuse to allow the required testing for religious reasons only. The medical home/practitioner or institution shall file in the newborn's record documentation of refusal, reason, education of family about the disorders, and a signed waiver by both parents or legal guardian. The practitioner or institution shall submit a copy of the refusal to the Utah Department of Health, Newborn Screening Program, P.O. Box 144710, Salt Lake City, UT 84114-4710.

R438-15-13. Access to Medical Records.

(1) The Department shall have access to the medical records of a newborn in order to identify medical home/practitioner, reason appropriate specimen was not collected, or to collect missing demographic information.

(2) The institution shall enter the Newborn Screening form number, also known as the Birth Record Number, into the Vital Records database and the Newborn Hearing Screening database.

R438-15-14. Noncompliance by Parent or Legal Guardian.

If the medical home/practitioner or institution has information that leads it to believe that the parent or legal guardian is not complying with this rule, the medical home/practitioner or institution shall report such noncompliance as medical neglect to the Department.

R438-15-15. Confidentiality and Related Information.

(1) The Department initially releases test results to the institution of birth for first specimens and to the medical home/practitioner, as noted on the Newborn Screening form, for the second specimen.

(2) The Department notifies the medical home/practitioner noted on the Newborn Screening form as provided in Section R438-15-10(1) of any results that require follow up.

(3) The Department releases information to a medical home/practitioner or other health practitioner on a need to know basis. Release may be orally, by a hard copy of results or available electronically by authorized access.

(4) Upon request of the parent or guardian, the Department may release results as directed in the release.

(5) All requests for test results or records are governed by Utah Code Title 26, Chapter 3.

(6) The Department may release information in summary, statistical, or other forms that do not identify particular individuals.

(7) A testing laboratory that analyzes newborn screening samples for the Department may not release information or samples without the Department's express written direction.

R438-15-16. Blood Spots.

(1) Blood spots become the property of the Department.

(2) The Department includes in parent education materials information about the Department's policy on the retention and use of residual newborn blood spots.

(3) The Department may use residual blood spots for newborn screening quality assessment activities.

(4) The Department may release blood spots for research upon the following:

(a) The person proposing to conduct the research applies in writing to the Department for approval to perform the research. The application shall include a written protocol for the proposed research, the person's professional qualifications to perform the proposed research, and other information if needed and requested by the Department. When appropriate, the proposal will then be submitted to the Department's Internal Review Board for approval.

(b) The Department shall de-identify blood spots it releases unless it obtains informed consent of a parent or guardian to release identifiable samples.

(c) All research must be first approved by the Department's Internal Review Board.

R438-15-17. Retention of Blood Spots.

(1) The Department retains blood spots for a minimum of 90 days.

(2) Prior to disposal, the Department shall de-identify and autoclave the blood spots.

R438-15-18. Reporting of Disorders.

If a diagnosis is made for one of the disorders screened by the Department that was not identified by the Department, the medical home/practitioner shall report it to the Department.

R438-15-19. Statutory Penalties.

As required by Subsection 63G-3-201(5): Any medical

home/practitioner or institution responsible for submission of a newborn screen that violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

KEY: health care, newborn screening
January 29, 2018 **26-1-6**
26-1-30
26-10-6

R510. Human Services, Aging and Adult Services.
R510-105. "Out and About" Homebound Transportation Assistance Fund Rules.
R510-105-1. Authority and Purpose.

(1) The purpose of this rule is to provide guidelines for the equitable distribution of funds collected as a result of the special revenue fund created in Section 62A-3-110 to provide public transportation assistance for seniors or people with disabilities.

R510-105-2. Definitions.

(1) Qualified Organization means an organization that facilitates the provision of public transportation to aging persons, high risk adults or people with disabilities.

(2) Public Transportation means agencies or organizations that directly provide or reimburse for public transit; the transportation of passengers only, and their incidental baggage by means other than chartered bus, sightseeing bus, taxi, or other vehicle not on an individual passenger-fare-paying basis (defined in Section 17A-2-1004).

(3) Aging Persons means adults 60 years of age or older.

(4) High Risk Adults means adults from 18 to 60 years of age, not disabled as defined in Section 62-A-5-101, but requiring transportation assistance due to a demonstrated inability to provide private transportation or utilize available public transportation.

(5) People with disabilities means disabled persons as defined in Section 62A-5-101.

R510-105-3. Eligibility.

(1) Eligible grantees shall be limited to organizations that provide public transport and may be local or state government or incorporated profit or non-profit entities engaged in providing public transportation to aging persons, high risk adults or people with disabilities.

R510-105-4. Funding Sources.

(1) The fund will consist of:

(a) Private contributions.

(b) Donations or grants from public or private entities.

(c) Voluntary contributions collected under Section 53-3-214.8, less actual administrative costs associated with collecting and transferring the contributions.

(d) Interest and earnings on account monies.

R510-105-5. Administrative Costs.

(1) Administrative costs incurred by the Division in the administration of this program shall be paid from monies in the fund.

R510-105-6. Contract Implementation.

(1) In accordance with Title 62A, Chapter 3 awards shall be implemented by contracts between the Department of Human Services, Division of Aging and Adult Services and the contractor.

(2) Contract awards will be on an annual basis, to be effective on July 1 of the beginning of the fiscal year and must be used by June 30 of the following year.

(3) All applications for the funds will be reviewed by the State Board on Aging and Adult Services.

(4) The Board shall approve all awards.

(5) The Board reserves the right to decline to award any contracts during any fiscal year in which it deems that insufficient funds are available to reasonably fund a viable contract.

(6) Funds not awarded during one year will be available for award in subsequent years.

R510-105-7. Grant Application Evaluation.

(1) Grant applications will be evaluated by the State Board of Aging and Adult Services based upon the following criteria:

(a) The amount of matching funding committed by the applicant as a percentage of the funds available.

(b) The projected number of individuals the applicant estimates can be assisted by the funding as an estimated percentage of the eligible persons in the geographic area to be served.

(c) The degree to which the applicant's proposal develops a new, ongoing source of transportation assistance not already in existence.

(d) The application shall not presume ongoing financial support from this fund, beyond the initial grant, to support the applicant's proposal.

R510-105-8. Reporting and Audit.

(1) The grantee shall collect data and maintain records relating to the project in the format specified by the Division, such data and records to be provided to the Division as specified.

(2) The grantee shall maintain sufficient financial records to support the appropriate disbursement of grant funds, and shall agree to periodic program and fiscal audits by the Division as may be deemed necessary by the Board.

KEY: transportation, seniors, disabled
March 14, 2003 62A-3-110
Notice of Continuation January 17, 2018

R525. Human Services, Substance Abuse and Mental Health, State Hospital.
R525-2. Patient Rights.
R525-2-1. Authority and Purpose.

(1) This rule is adopted under the authority of Section 62A-15-105.

(2) The purpose of this rule is to explain patient rights for patients at the Utah State Hospital.

R525-2-2. Patients and Family Are Informed of Rights.

Patients, and when appropriate, family members are informed of their rights and the means by which these rights are protected and exercised.

R525-2-3. Admission Status.

Patients, and when appropriate, family members have their admission status explained to them and to have the provisions of the law pertaining to their admission.

R525-2-4. Consent Forms.

A written, dated, and signed consent form is obtained from the patient, and when appropriate, the patient's family or legal guardian for participation in research projects and for use or performance of:

(1) electroconvulsive therapy;
(2) unusual medications;
(3) audiovisual equipment;
(4) other procedures where consent is required by law.

R525-2-5. Patient Advocate.

A Hospital Patient Advocate is provided to assist patients and, when appropriate family members, and direct their concerns to the appropriate person/agency.

R525-2-6. Patient May Deny Family Members Access to Treatment Information.

Adult patients, who do not have a court-appointed legal guardian, may exclude family members from their treatment information.

KEY: patient rights
February 21, 2012 **62A-15-105**
Notice of Continuation January 16, 2018

R525. Human Services, Substance Abuse and Mental Health, State Hospital.
R525-3. Medication Treatment of Patients.
R525-3-1. Authority and Purpose.

(1) This rule is adopted under the authority of Section 62A-15-105.

(2) The purpose of this rule is to provide guidance on the medication treatment of patients as required by 62A-15-704(3).

R525-3-2. Medication as Part of Treatment.

Utah State Hospital (USH) offers medication as part of treatment for patients.

R525-3-3. Patients May Refuse Medication Treatment.

Patients have the right to refuse medication treatment.

R525-3-4. Clinical Medication Review.

In the event that a patient refuses medication treatment, USH staff shall hold a clinical medication review to determine if medication treatment is required as part of the patient's treatment.

R525-3-5. Patient/Legal Guardian Shall Attend Review.

The patient/legal guardian shall be afforded the opportunity to attend the review and address the issue of medication treatment.

R525-3-6. Medication Review Committee to Render a Decision.

The medication review committee shall render a decision with respect to whether medication is a requirement of treatment and shall inform the patient/legal guardian of that decision.

R525-3-7. The Patient May Appeal the Decision.

The patient/legal guardian shall be afforded the opportunity to appeal any decision and have the case reviewed by the Hospital Clinical Director/designee.

R525-3-8. Hospital Clinical Director/Designee Shall Review the Case.

The Hospital Clinical Director/designee shall review the appeal and render a decision with respect to whether or not the patient is required to take medication as part of their treatment.

R525-3-9. Periodic Reviews.

Patients medicated pursuant to a medication review are periodically evaluated to determine if medication treatment continues to be a requirement of their treatment.

R525-3-10. Medication Treatment of Minors.

Medication treatment of minor children is conducted only in agreement with the child and the parent/legal guardian.

R525-3-11. Electroconvulsive Therapy.

Electroconvulsive therapy is provided upon consent of the patient/legal guardian and may be provided by other hospitals that are equipped and staffed to provide safe and effective electroconvulsive therapy and recovery.

KEY: medication treatment
February 21, 2012 62A-15-606
Notice of Continuation January 16, 2018 62A-15-704(3)

R525. Human Services, Substance Abuse and Mental Health, State Hospital.
R525-4. Visitors.
R525-4-1. Authority and Purpose.

(1) This rule is adopted under the authority of Section 62A-15-105.

(2) The purpose of this rule is to provide guidance on the visitation of patients at the Utah State Hospital.

R525-4-2. Patients May Have Visitors.

With the approval of the patients and their clinical treatment team, the patient's family, friends, and others may visit patients at the Utah State Hospital (USH).

R525-4-3. Clergy and Legal Counsel.

With respect to clergy and/or legal counsel visiting patients, the hospital abides by Subsection 62A-15-641(3).

R525-4-4. Visits May Be Denied or Limited.

A physician may deny or limit a visit for safety, security, and/or therapeutic reasons.

R525-4-5. Visiting Minors.

Persons desiring to visit minors must obtain approval from the parent/legal guardian and the unit clinical staff.

R525-4-6. Visiting Hours Are Posted.

Each treatment unit shall post their visiting hours in an area that is accessible by the public.

R525-4-7. Visitor Slip.

Upon arrival at USH, visitors must obtain a "visitor slip" from the switchboard located in the Heninger Administration Building.

R525-4-8. Visitor Slips Are Presented Upon Arrival at Unit.

The visitor presents the visitor slip and proper identification upon arrival to the unit.

R525-4-9. Visitors Bringing Gifts.

Visitors desiring to bring gift/items are required to obtain clearance from the patient's treatment team prior to bringing the gift/item on the unit.

KEY: visitors
November 7, 2013 62A-15-105
Notice of Continuation January 16, 2018 62A-15-641(3)

R525. Human Services, Substance Abuse and Mental Health, State Hospital.
R525-5. Background Checks.
R525-5-1. Authority and Purpose.

(1) This rule is adopted under the authority of Section 62A-15-105.

(2) The purpose of this rule is to explain the use of background checks for new employees and volunteers at the Utah State Hospital.

R525-5-2. Background Checks Are Completed on All New Employees and Volunteers.

Background checks, which may include fingerprinting and BCI inquiries, are completed on all newly hired employees and volunteers who will be performing volunteer services for an extended period of time.

R525-5-3. Information Is Used for Employment/Volunteer Service Placement.

Background information shall be used to determine appropriateness for employment or volunteer services.

KEY: background checks
February 21, 2012 62A-15-105
Notice of Continuation January 16, 2018

R525. Human Services, Substance Abuse and Mental Health, State Hospital.
R525-6. Prohibited Items and Devices.
R525-6-1. Authority.

(1) This rule establishes secure areas on the Utah State Hospital campus and procedures for securing prohibited items and devices as authorized by Subsection 76-8-311.3(2).

(2) This rule is promulgated under authority of section 62A-15-105.

R525-6-2. Establishment of Secure Areas.

(1) Pursuant to Subsections 62A-15-603(3) and 76-8-311.3(2), the following buildings of the Utah State Hospital are established as secure areas:

(a) Forensic Mental Health Facility;
(b) Lucy Beth Rampton Building;
(c) Beesley Building;
(d) MS Building;
(e) Youth Center; and
(f) any building constructed on the Utah State Hospital campus to replace or expand these buildings that perform similar functions of the above listed buildings.

R525-6-3. Items and Devices Prohibited from Secure Areas.

(1) Pursuant to Subsections 76-8-311.1(2)(a) and 76-8-311.3(2), all weapons, contraband, controlled substances, ammunition, items that implement escape, explosives, spirituous or fermented liquors, firearms, or any devices that are normally considered to be weapons are prohibited from entry beyond the secure storage lockers in the foyers of each building listed above.

R525-6-4. Storage of Prohibited Items and Devices.

(1) The public is notified of the availability of secure storage lockers at the entrance of the Utah State Hospital campus. Directions for use of the storage lockers are provided at or near the entrance of each of the above listed buildings.

KEY: weapons, state hospital, secure areas, prohibited items and devices

February 21, 2012	**62A-15-603(3)**
Notice of Continuation January 16, 2018	**62A-15-105**
	76-8-311.1(2)(a)
	76-8-311.3(2)

R525. Human Services, Substance Abuse and Mental Health, State Hospital.
R525-7. Complaints/Suggestions/Concerns.
R525-7-1. Authority and Purpose.

(1) This rule is promulgated under the authority of Section 62A-15-105.

(2) The purpose of this rule is to explain the process for patients and their family members to register complaints, suggestions and concerns.

R525-7-2. Patient and Family Members May Register Complaints.

Patients and/or their family members may register a complaint/suggestion/concern about the hospital to any hospital staff member.

R525-7-3. Complaints/Suggestions/Concerns Are Reviewed.

Complaints/suggestions/concerns are reviewed by the Hospital Suggestion Committee and forwarded to the appropriate person/agency for response.

R525-7-4. The Suggestion Committee Shall Respond.

The person submitting the complaint/suggestion/concern shall receive a response from the Suggestion Committee.

R525-7-5. No Reprisal to Person Making Complaint.

Patients, family members, and members of the public may pursue complaints against the hospital without reprisal.

KEY: complaints, suggestions, concerns
February 21, 2012 62A-15-105
Notice of Continuation January 16, 2018

R590. Insurance, Administration.
R590-157. Surplus Lines Insurance Premium Tax and Stamping Fee.
R590-157-1. Authority.

This rule is promulgated by the commissioner pursuant to Subsections:

(1) 31A-3-303(2) which requires the commissioner by rule to prescribe accounting and reporting forms and procedures to be used in calculating and paying the surplus lines premium tax; and

(2) 31A-15-103(11)(d) which requires the commissioner by rule to specify the stamping fee amount and how it is to be collected.

R590-157-2. Purpose and Scope.

A. The purposes of this rule are to prescribe:

(1) the amount of the stamping fee and;

(2) the accounting and reporting forms and procedures to be used in calculating surplus lines premium taxes and stamping fees; and.

(3) the authorized entities to examine the transaction and collect and receive the tax and fee.

B. This rule applies to:

(1) insurers, surplus lines producers, and policyholders who are jointly and severally liable for the payment of the premium taxes and stamping fee;

(2) the advisory organization authorized to examine surplus transactions; and

(3) the commissioner's authorized agent to collect the stamping fee and premium tax and remit the premium tax to the commissioner.

R590-157-3. Definitions.

For the purpose of this rule the commissioner adopts the definitions set forth in Section 31A-1-301, and the following:

A. "Courtesy filing" means a surplus lines policy filing done by a resident surplus lines producer on behalf of a resident or non-resident producer whose licensure does not include a surplus lines line of authority.

B. "Courtesy filing fee" means a fee charged by the resident surplus lines producer for doing a courtesy filing for a resident or non-resident producer whose licensure does not include a surplus lines line of authority.

C. "Stamping fee" means a percentage of policy premium payable for the examination of a surplus lines transaction as required in Subsection 31A-15-103(11).

D. "Surplus Line Association" or "Association" means the Surplus Lines Association of Utah.

E. "Surplus lines producer" means a person licensed under Subsection 31A-23a-106(1)(i) to place insurance with eligible unauthorized insurers in accordance with Section 31A-15-103.

F. "Surplus lines insurer" means an unauthorized foreign or alien insurer subject to the limitations and requirements of Section 31A-15-103, doing business in this state through surplus lines producers, and included on the commissioner's "recognized" list.

G. "Surplus lines premium" means the monetary consideration for an insurance policy procured from an unauthorized insurer, and includes policy fees, membership fees, required contributions, or monetary consideration, however designated.

H. "Surplus lines premium tax" means, as prescribed by Section 31A-3-301, a tax of 4-1/4% of gross surplus lines premiums, less 4-1/4% of return premiums paid to insureds by reason of policy cancellations or premium reductions.

I. "Surplus lines transaction" means the placement with a surplus lines insurer of an insurance policy or certificate of insurance. It also means any cancellation, endorsement, audit, or other adjustment to the insurance policy that affects the premium.

R590-157-4. Stamping Fee Amounts.

A. The surplus lines stamping fee is .18 of 1% of the policy premium payable for the examination of a surplus lines transaction as required in Subsection 31A-15-103(11)(d).

B. Late surplus lines stamping fee payments may be subject to late fees of 25% of the stamping fee due plus 1 1/2% per month from the time of default until full payment of the fee.

C. A courtesy filing fee is not included as surplus lines premium for the purpose of computing taxes and stamping fees.

R590-157-5. Authorized Agency.

A. The commissioner hereby authorizes the Surplus Line Association of Utah to act as his agent for:

(1) collecting and remitting the premium tax imposed by Section 31A-3-301 on insurance transactions described in Sections 31A-15-103, 31A-15-104, and 31A-15-106;

(2) examining surplus lines transactions under Section 31A-15-111; and

(3) collecting the stamping fee authorized under Section 31A-15-103(11).

B. The Surplus Line Association shall remit all premium taxes it collects in accordance with the procedures of Section 6.

R590-157-6. Accounting Procedures.

A. Within 60 days of the effective date of a surplus lines transaction, the surplus lines producer must file with the Surplus Line Association a copy of the policy, binder, certificate, endorsement, or other documentation sufficient to identify the subject of the insurance; the coverage, conditions, and term of insurance; the type of transaction; the effective date; the premium charged; the premium taxes payable; the name and address of the policyholder and the insurer.

B. The Surplus Line Association may prescribe the forms and procedures to be used by surplus lines producers in fulfilling Section R590-157-5.

C. The Surplus Line Association shall prepare a monthly statement of surplus lines transactions reported during the preceding 30 days for each surplus lines producer. This statement shall list the transactions and premium amounts reported, the surplus lines premium taxes due under 31A-3-301, and the stamping fee due under Subsection 31A-15-103(11)(d).

D. The monthly statement shall be mailed to the surplus lines producers by the 5th day of each month.

E. By the 25th day of each month the surplus lines producer shall remit payment in full to the Surplus Line Association amounts due shown on the monthly statement. Premium taxes and stamping fees shall be held in trust by the surplus lines producer until remitted to the Surplus Lines Association.

F. Within three days of the date received, the Surplus Line Association shall deposit in a qualified depository approved by the Office of the State Treasurer, for the credit of the Utah Insurance Department, all funds received as payment of the surplus lines premium tax.

G. For tax credits for return premiums, which are not offset by charges in the monthly statement, the Surplus Line Association shall submit a request for payment to the Insurance Department. A reimbursement will be issued to the designated person by the Insurance Department pursuant to the Division of Finance's policies and procedures.

H. The Surplus Line Association shall prepare the following reports for the benefit of the commissioner.

(1) A monthly report shall be prepared listing the surplus lines producers reporting premiums written during the month and the amount of the premiums, taxes and fees reported. The report shall also list the names of surplus lines insurers and the amount of written premium attributed to them for the month. This report shall be submitted by the 15th of the subsequent month.

(2) An annual report shall be prepared on the basis of both surplus lines producers and surplus lines insurers and shall list all premiums reported and taxes paid during the previous calendar year. This report shall be submitted to the commissioner by January 31 of each year.

(3) An annual financial report including income and expense and balance sheet for the Surplus Lines Association shall be submitted to the commissioner within 30 days of the end of the Association's fiscal year.

R590-157-7. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.

R590-157-8. Enforcement Date.

The commissioner will begin enforcing the revised provision of this rule effective January 1, 2009.

R590-157-9. 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 the provision to other persons or circumstances shall not be affected thereby.

KEY: insurance fee, taxes

January 1, 2018	**31A-2-201**
Notice of Continuation January 4, 2018	**31A-3-303**
	31A-15-103

R590. Insurance, Administration.
R590-218. Permitted Language for Reservation of Discretion Clauses.
R590-218-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. Further authority to regulate the use of reservation of discretion clauses in forms filed by insurers with the department is found in Subsections 31A-21-201(3) and 31A-21-314(2).

R590-218-2. Purpose.

This rule prohibits the use of reservation of discretion clauses in forms that are not associated with ERISA employee benefit plans. It creates a safe harbor for insurance companies that provide insurance to ERISA employee benefit plans sponsored by employers, allowing insurers to know what language in insurance forms is acceptable to the department.

R590-218-3. Applicability.

This rule applies to all forms filed with the department, regardless of the insurance line or type of form.

R590-218-4. Definitions.

For the purpose of this rule the commissioner adopts the definitions set forth in Section 31A-1-301 and the following:

(1) "Employee benefit plan" means an employee welfare benefit plan as defined in 29 U.S.C. 1002(1) or an employee pension benefit plan as defined in 29 U.S.C. 1002(2) or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

(2) "ERISA" means the Employee Retirement Income Security Act of 1974.

(3) "ERISA employee benefit plan" means an employee benefit plan subject to ERISA.

(4) "Form" is used as defined in Section 31A-1-301.

(5) "Reservation of discretion clause" means language in a form that purports to reserve discretion to interpret the terms of the contract, to determine eligibility for benefits under the plan, or to establish a scope of judicial review or standards of interpretation, to the plan administrator, the insurance company acting in the capacity of a plan administrator in an employee benefit plan, or the insurance company acting as the insurer.

R590-218-5. Reservation of Discretion Clauses Prohibited - Exception - Safe Harbor Language.

(1) The commissioner finds reservation of discretion clauses in forms to be in violation of Subsections 31A-21-201(3) and 31A-21-314(2). Accordingly, such clauses are not permitted in a form unless provided otherwise by this rule. Any reservation of discretion language previously accepted or approved by the department is hereby prohibited. Any use of reservation of discretion clause in a form required to be filed with the department is a violation of Subsections 31A-21-201(3) and 31A-21-314(2) and is prohibited, regardless of whether the form has been filed with or prohibited by the department.

(2) Notwithstanding Subsection (1), a reservation of discretion clause may be included in a form if the form is used only in ERISA employee benefit plans and the reservation of discretion clause has language that is the same as, or substantially similar to, the language in Subsection (3).

(3) The following language may be used in a reservation of discretion clause in forms filed for use in ERISA employee benefit plans (Parenthesis indicate that the company filing the form may use a name or pronouns as applicable):

"Benefits under this plan will be paid only if (the plan administrator) decides in its discretion that (the claimant) is entitled to them. (The plan administrator) also has discretion to determine eligibility for benefits and to interpret the terms and conditions of the benefit plan. Determinations made by (the plan administrator) pursuant to this reservation of discretion do not prohibit or prevent a claimant from seeking judicial review in federal court of (the plan administrator's) determinations.

The reservation of discretion made under this provision only establishes the scope of review that a federal court will apply when (a claimant) seeks judicial review of (the plan administrator's) determination of eligibility for benefits, the payment of benefits, or interpretation of the terms and conditions applicable to the benefit plan.

(The plan administrator) is an insurance company that provides insurance to this benefit plan and the federal court will determine the level of discretion that it will accord (the plan administrator's) determinations."

(4) A reservation of discretion clause in a form that is used in an ERISA employee benefit plan must be highlighted in the form by use of a bold font that is not less than 12 point type.

R590-218-6. Filing Procedures.

Rather than filing multiple forms for ERISA employee benefit plans and benefit plans not subject to ERISA, an insurer may elect to file one form with the department that has the reservation of discretion language included as a variable element, between brackets, with an accompanying notation stating that the reservation of discretion language will only be included in forms used for ERISA employee benefit plans.

R590-218-7. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable

KEY: insurance, discretion clauses

March 21, 2003	**31A-2-201**
Notice of Continuation January 4, 2018	**31A-21-201**
	31A-21-314

R590. Insurance, Administration.
R590-243. Commercial Motor Vehicle Insurance Coverage.
R590-243-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-22-315(1)(b)

R590-243-2. Purpose and Scope.

The purpose of this rule is to define commercial motor vehicle insurance coverage as it applies to motor vehicle insurance reporting.

R590-243-3. Definitions.

Commercial Motor Vehicle Insurance Coverage means any coverage provided under a commercial automobile, garage or truckers policy form, regardless of the number of vehicles or entity covered and rated from either a commercial manual or rating rule as filed with the Utah Insurance Department.

R590-243-4. Rule.

All persons must use the above definition of commercial motor vehicle insurance to identify those vehicles within this classification, when reporting as required by 31A-22-315(2)(b).

R590-243-5. 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.

R590-243-6. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 45 days from the effective date of the rule.

R590-243-7. Severability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected by it.

KEY: commercial motor vehicle insurance
January 11, 2008 31A-22-315
Notice of Continuation January 4, 2018

R590. Insurance, Administration.
R590-266. Utah Essential Health Benefits Package.
R590-266-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201(3)(a) and 31A-2-212(5) 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
January 10, 2018 31A-30-201(3)(a)
Notice of Continuation October 16, 2017 31A-2-212(5)

R597. Judicial Performance Evaluation Commission, Administration.
R597-5. Electronic Meetings.
R597-5-1. Authority and Purpose.

(1) This rule is authorized by Section 52-4-207(2)(a) which requires any public body that convenes or conducts an electronic meeting to adopt a rule governing the use of electronic meetings.

(2) The purpose of this rule is to establish procedures for the public bodies created in Title 63M, Chapter 7 and Title 77, Chapter 32 to hold open meetings by electronic means.

R597-5-2. Procedures.

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

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

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

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

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

(e) The anchor location, unless otherwise designated in the notice, shall be at the Commission on Criminal and Juvenile Justice, located in the Utah State Capitol Complex, in suite 330 of the Senate Building, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

KEY: electronic meetings, procedures
January 2, 2018 **52-4-207**

R642. Natural Resources; Oil, Gas and Mining; Administration.
R642-200. Applicability.
R642-200-100. Applicability.

If access to any record under the control of the Division is governed by another authority, such as a court rule, another state statute, federal statute, or federal regulation, the provisions of Title R642 will not apply. In each of these cases where Title R642 does not apply, access will be controlled by the provisions of the specifically-applicable statute, rule, or regulation.

KEY: public records
1994 63G-2-101 et seq.
Notice of Continuation January 24, 2018

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-101. Restrictions on State Employees.
R645-101-100. Responsibility.

110. The Director will:

111. Provide advice, assistance, and guidance to Board members and all state employees required to file statements pursuant to R645-101-310;

112. Promptly review the statement of employment and financial interests and supplements, if any, filed by each employee, to determine if the employee has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in a coal mining or reclamation operation;

113. Resolve prohibited financial interest situations by ordering or initiating remedial action;

114. Certify on each statement that review has been made, that prohibited financial interests, if any, have been resolved, and that no other prohibited interests have been identified from the statement;

115. Submit to the Director of the Office such statistics and information, as he or she may request, to enable preparation of the annual report to Congress;

116. Submit to the Director of the Office the initial listing and the subsequent annual listings of positions as required by R645-101-312 and R645-101-313.

117. Furnish a blank statement 45 days in advance of the filing date established by R645-101-321 to each Board member and state employee required to file a statement; and

118. Inform, annually, each Board member and state employee required to file a statement with the Director or such other official designated by Utah law or rule, or the name, address, and telephone number of the person whom they may contact for advice and counseling.

120. Division employees performing any duties or functions under the Act will:

121. Have no direct or indirect financial interest in coal mining and reclamation operations;

122. File a fully completed statement of employment and financial interest upon entrance to duty, and annually thereafter on the specified filing date; and

123. Comply with directives issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action.

130. Members of the Board will recuse themselves from proceedings which may affect their direct or indirect financial interests.

R645-101-200. Penalties.

210. Criminal Penalties. Criminal penalties are imposed by Section 40-10-7 of the Act which prohibits each employee of the Division who performs any function or duty under the Act from having a direct or indirect financial interest in any coal mining or reclamation operation. The Act provides that whoever knowingly violates the provisions of Section 40-10-7 of the Act will, upon conviction, be punished by a fine of not more than $2,500, or by imprisonment of not more than one year or by both.

220. Failure to File Financial Statement. Any employee who fails to file the required statement will be considered in violation of the intended employment provisions of Section 40-10-7 of the Act and will be subject to removal from his or her position.

R645-101-300. Filing and Contents of Financial Reports.

310. Who will File:

311. Each Board member and any employee who performs any function or duty under the Act is required to file a statement of employment and financial interests. An employee who occupies a position which has been determined by the Director not to involve performance of any function or duty under the Act, or who is no longer employed by the Division at the time a filing is due, is not required to file a statement;

312. The Director will prepare a list of those positions within the Division that do not involve performance of any functions or duties under the Act. Only those employees who are employed in a listed organizational unit, or who occupy a listed position, will be exempted from the filing requirements of Section 40-10-7 of the Act;

313. The Director will annually review and update this position listing. For monitoring and reporting reasons, the listing must be submitted to the Director of the Office and must contain a written justification for inclusion of the positions listed. Proposed revisions or a certification that revision is not required will be submitted to the Director of the Office no later than September 30 of each year. The Director may revise the listing by the addition or deletion of positions at any time he or she determines such revisions are required to carry out the purpose of the State Program. Additions to, and deletions from, the listing of positions are effective upon notification to the incumbents of the positions added or deleted.

320. When to File:

321. Board members and employees performing functions or duties under the Act will file annually on February 1 of each year, or at such other date as may be agreed to by the Director of the Office;

322. New employees hired, appointed, or transferred to perform functions or duties under the Act and any new Board members will be required to file at the time of entrance to duty;

323. New employees and new Board members are not required to file an annual statement on the subsequent annual filing date if this date occurs within two months after their initial statement was filed. For example, an employee or Board member entrance date of December 1, 1978, would file a statement on that date. Because December 1 is within two months of February 1, the employee would not be required to file his or her next annual statement until February 1, 1980.

330. Where to File: The Director will file his or her statement with the Director of the Office. All other employees and Board members, as provided in R645-101-310, will file their statement with the Director or such other official as may be designated by Utah law or rule.

340. What to Report:

341. Each board member and employee will report all information required on the statement of employment and financial interests of the employee, his or her spouse, minor children, or other relatives who are full-time residents of the employee's home. The report will be on Office Form 705-1 as provided by the Division. The statement consists of three major parts:

341.100. A listing of all financial interests, including employment, security, real property, creditor, and other financial interests held during the course of the preceding year;

341.200. A certification that none of the listed financial interests represent a direct or indirect financial interest in a coal mining and reclamation operation except as specifically identified and described by the employee as part of the certificate; and

341.300. A certification by the reviewer that the form was reviewed, that prohibited interests have been resolved, and that no other prohibited interests have been identified from the statement.

342. Listing of all financial interests. The statement will set forth the following information regarding any financial

interest:

342.100. Employment: Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary, or other income arrangement as a result of prior or current employment. The board member or employee, his or her spouse, or other resident relative is not required to report a retirement plan from which he or she will receive a guaranteed income. A guaranteed income is one which is unlikely to be changed as a result of actions taken by the Division;

342.200. Securities: Any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities, or other arrangements including trusts. A board member or employee is not required to report mutual funds, investment clubs, or regulated investment companies not specializing in coal mining and reclamation operations;

342.300. Real Property: Ownership, lease, royalty, or other interests or rights in lands or minerals. Board members or employees are not required to report lands developed and occupied for a personal residence; and

342.400. Creditors: Debts owed to business entities and nonprofit organizations. Board members or employees are not required to report debts owed to financial institutions (banks, savings and loan associations, credit unions, and the like) which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short-term debts for current and ordinary household and living expenses.

343. Board member or employee certification, and, if applicable, a listing of exceptions.

343.100. The statement will provide for a signed certification by the board member or employee that to the best of his or her knowledge:

343.110. None of the listed financial interests represent an interest in a coal mining and reclamation operation except as specifically identified and described as exceptions by the board member or employee as part of the certificate; and

343.120. The information shown on the statement is true, correct, and complete.

343.200. A board member or employee is expected to:

343.210. Have complete knowledge of his or her personal involvement in business enterprises such as a sole proprietorship and partnership, his or her outside employment and the outside employment of the spouse and other covered relatives; and

343.220. Be aware of the information contained in the annual financial statement or other corporate or business reports routinely circulated to investors or routinely made available to the public.

343.300. The exceptions shown in the board member or employee certification of the form must provide enough information for the Director to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:

343.310. List the financial interests;

343.320. Show the number of shares, estimated value or annual income of the financial interests; and

343.330. Include any other information which the employee believes should be considered in determining whether or not the interest represents a prohibited interest.

343.400. Board members and employees are cautioned to give serious consideration to their direct and indirect financial interests before signing the statement of certification. Signing the certification without listing known prohibited financial interests may be cause for imposing the penalties prescribed in R645-101-210.

R645-101-400. Gifts and Gratuities.

410. Except as provided in R645-101-420, board members and employees will not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a coal company which:

411. Conducts, or is seeking to conduct, operations that are regulated by the Division; or

412. Has interests that may be substantially affected by the performance or nonperformance of the board member's or employee's official duty.

420. The prohibitions in R645-101-410 do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the board member or employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. A board member or employee may accept:

421. Food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where a board member or employee may properly be in attendance; and

422. Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal value;

430. Board members or employees found guilty of violating the provisions of R645-101-400 will be subject to administrative remedies in accordance with existing or adopted Utah rules or policies.

R645-101-500. Resolving Prohibited Interests.

510. Actions to be taken by the Director:

511. Remedial action to effect resolution. If an employee has a prohibited financial interest, the Director will promptly advise the employee that remedial action which will resolve the prohibited interest is required within 90 days;

512. Remedial action may include:

512.100. Reassignment of the employee to a position which performs no function or duty under the Act; or

512.200. Divestiture of the prohibited financial interest; or

512.300. Other appropriate action which either eliminates the prohibited interest or eliminates the situation which creates the conflict.

513. Reports of noncompliance. If 90 days after an employee is notified to take remedial action that the employee is not in compliance with the requirements of the State Program, the Director will report the facts of the situation to the Director of the Office who will determine whether action to impose the penalties prescribed by the Federal Act should be initiated. The report to the Director of the Office will include the original or a certified true copy of the employee's statement and any other information pertinent to the determination by the Director of the Office, including a statement of actions being taken at the time the report is made.

520. Actions to be taken by the Director of the Office:

521. Remedial action to effect resolution. Violations of rules under R645-101 by the Director will be cause for remedial action by the Governor of Utah, or other appropriate state official, based on recommendations from the Director of the Office on behalf of the Secretary of the U.S. Department of the Interior. The Governor, or other appropriate state official, based on recommendations from the Director of the Office on behalf of the Secretary of the U.S. Department of the Interior. The Governor, or other appropriate state official, will promptly advise the Director that remedial action which will resolve the prohibited interest is required within 90 days;

522. Remedial action should be consistent with the

procedures prescribed for other Division employees in R645-101-512.

R645-101-600. Appeals Procedures.

Employees have the right to appeal an order for remedial action under R645-101-500, and will have 30 days to exercise this right before disciplinary action is initiated or the matter is referred to the Utah Attorney General for criminal prosecution.

610. Employees, other than the Director, may file their appeal, in writing, pursuant to the provision of the State Personnel Management Act (Section 67-19-1 et seq.).

620. The Director may file his or her appeal, in writing, with the Director of the Office who will refer it to the Conflict of Interest Appeals Board within the U.S. Department of the Interior.

KEY: reclamation, coal mines
1989 40-10-1 et seq
Notice of Continuation January 24, 2018

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-102. Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction.
R645-102-100. Scope and Responsibility.

110. Scope.

111. R645-102 establishes the procedures for determining those coal mining and reclamation operations which are exempt from the Act and the R645 Rules because the extraction of coal is an incidental part of federal, state, or local government-financed highway or other construction.

112. R645-102 exempts the extraction of coal which is incidental to government-financed construction from the requirements of the Act and the R645 Rules, if that extraction meets specified criteria which ensure that the construction is government-financed and that the extraction of coal is incidental to it.

120. Responsibility.

121. The Division is responsible for enforcing the requirements of R645-102.

122. Any person conducting coal extraction as an incidental part of government-financed construction is responsible for possessing, on the site of the extraction activity, the documentation required by R645-102-300.

R645-102-200. Applicability.

210. Coal extraction which is an incidental part of government-financed construction is exempt from the Act and the R645 Rules.

220. Any person who conducts or intends to conduct coal extraction which does not satisfy R645-102-210 will not proceed until a permit has been obtained from the Division, pursuant to the State Program.

R645-102-300. Information to be Maintained on Site.

Any person extracting coal incident to government-financed highway or other construction who extracts more than 250 tons of coal or affects more than two acres will maintain, on the site of the extraction operation and available for inspection, documents which show:

310. A description of the construction project;

320. The exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction; and

330. The government agency which is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

KEY: reclamation, coal mines
1988 40-10-1 et seq.
Notice of Continuation January 24, 2018

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-104. Protection of Employees.
R645-104-100. Protected Activity.

110. No person will discharge or in any other way discriminate against, cause to be fired, or discriminate against any employee because that employee or his or her authorized representative has:

111. Filed, instituted, or caused to be filed or instituted any proceedings under the State Program by:

111.100. Reporting alleged violations or dangers to the Secretary, the Board, the Division, the employer or his or her authorized representative;

111.200. Requesting an inspection or investigation; or

111.300. Taking any other action which may result in a proceeding under the State Program;

112. Made statements, testified, or is about to do so:

112.100. In any informal or formal adjudicatory proceeding;

112.200. In any informal conference proceeding;

112.300. In any rulemaking proceeding;

112.400. In any investigation, inspection, or other proceeding under the State Program; or

112.500. In any judicial proceeding under the State Program; and

113. Has exercised on his or her own behalf, or on behalf of others, any right granted by the Act.

120. Each employer conducting operations which are regulated under this Act will, within 30 days from the effective day of these rules, provide a copy of R645-104 to all current employees and to all new employees at the time of their hiring.

R645-104-200. Procedures for Filing an Application for Review of Discrimination.

210. Who May File. Any employee, or his or her authorized representative, who believes that he or she has been discriminated against by any person in violation of R645-104-110 may file an application for review. For the purpose of the R645 Rules, an application for review means the presentation of a written report of discrimination stating the reasons why the person believes he or she has been discriminated against and the facts surrounding the alleged discrimination.

220. Where to File. The employee, or authorized representative, may file the application for review with the Division. The Division will maintain a log of all filings.

230. Time for Filing. The employee, or his or her authorized representative, will file an application for review within 30 days after the alleged discrimination occurs. An application is considered filed:

231. On the date delivered, if delivered in person, to the Division; or

232. On the date mailed to the Division.

240. Running of the Time for Filing. The time for filing begins when the employee knows, or has reason to know, of the alleged discriminatory activity.

R645-104-300. Investigation and Conference.

310. Within seven days after receipt of any application for review, the Division will mail a copy of the application for review to the person alleged to have caused the discrimination, will file the application for review with the Board, and will notify the employee and the alleged discriminating person that the Division will investigate the complaint. The alleged discriminating person may file a response to the application for review within ten days after he or she receives the copy of the application for review. The response will specifically admit, deny, or explain each of the facts alleged in the application unless the alleged discriminating person is without knowledge, in which case, he or she will so state.

320. The Division will initiate an investigation of the alleged discrimination within 30 days after receipt of the application for review. The Division will complete the investigation within 60 days of the date of the receipt of the application for review. If circumstances surrounding the investigation prevent completion within the 60-day period, the Division will notify the person who filed the application for review and the alleged discriminating person of the delay, the reason for the delay, and the expected completion date for the investigation.

330. Within seven days after completion of the investigation, the Division will invite the parties to an informal conference to discuss the findings and preliminary conclusions of the investigation. The purpose of the informal conference is to attempt to conciliate the matter. If a complaint is resolved at an informal conference, the terms of the agreement will be recorded in a written document that will be signed by the alleged discriminating person, the employee, and the representative of the Division. If the Division concludes, on the basis of a subsequent investigation, that any party to the agreement has failed in any material respect to comply with the terms of any agreement reached during an informal conference, the Division will take appropriate action to obtain compliance with the agreement.

340. Following the investigation, and any informal conference held, the Division will complete a report of investigation which will include a summary of the results of the conference. Copies of this report will be available to the parties in the case.

R645-104-400. Request for Hearing.

410. If the Division determines that a violation of R645-104 has probably occurred and was not resolved at an informal conference, the Director will request a hearing on the employee's behalf before the Board within ten days of the scheduled informal hearing. The parties will be notified of the determination. If the Director declines to request a hearing, the employee will be notified within ten days of the scheduled informal conference and informed of his or her right to request a hearing on their own behalf.

420. The employee may request a hearing with the Board after 60 days have elapsed from the filing of his or her application.

R645-104-500. Formal Adjudicatory Proceedings.

510. Formal adjudication of a complaint filed under R645-104 will be conducted before the Board under R641 Rules.

520. A hearing will be held as promptly as possible, consistent with the opportunity for discovery provided for under the R641 Rules.

530. Upon a finding of violation of R645-104-100, the Board will order the appropriate affirmative relief including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his or her former position with compensation. At the request of the employee, a sum equal to the aggregate amount of all costs and expenses including attorneys' fees which have been reasonably incurred by the employee for, or in connection with, the institution and prosecution of the proceedings will be assessed against the person committing the violation.

540. On or after ten days after filing an application for review under R645-104, the employee may seek temporary relief from the Board under the R641 Rules.

KEY: reclamation, coal mines
1989 **40-10-1 et seq.**

Notice of Continuation January 24, 2018

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-401. Inspection and Enforcement: Civil Penalties.
R645-401-100. Information on Civil Penalties.

110. Objectives. Civil penalties are assessed under UCA 40-10-20 of the State Program and R645-401 to deter violations and to ensure maximum compliance with the terms and purposes of the State Program on the part of the coal mining industry.

120. How Assessments Are Made. The Division will appoint an assessment officer to review each notice of violation and cessation order in accordance with the assessment procedures described in R645-401 to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

R645-401-200. When Penalty Will Be Assessed.

210. The assessment officer will assess a penalty for each cessation order.

220. The assessment officer will assess a penalty for each notice of violation, if the violation is assigned 51 points or more under the point system described in R645-401-300 and R645-401-400.

230. The assessment officer may assess a penalty for each notice of violation assigned 50 points or less under the point system described in R645-401-300 and R645-401-400. In determining whether to assess a penalty, the assessment officer will consider the factors listed in R645-401-310.

R645-401-300. Point System for Penalties.

310. Amount of Penalty. In determining the amount of the penalty, if any, to be assessed, consideration will be given to:

311. The operator's history of previous violations at the particular coal mining and reclamation operation, regardless of whether any led to a civil penalty assessment. Special consideration will be given to violations contained in or leading to a cessation order. However, a violation will not be considered if the notice or order containing the violation meets the conditions described in R645-401-321.100 or R645-401-321.200.

312. The seriousness of the violation based on the likelihood and extent of the potential or actual impact on the public or environment, both within and outside the permit or exploration area.

313. The degree of fault of the operator in causing or failing to correct the violation, either through act or omission. Such degree will range from inadvertent action causing an event which was unavoidable by the exercise of reasonable care to reckless, knowing or intentional conduct.

314. The operator's demonstrated good faith, by considering whether he took extraordinary measures to abate the violation in the shortest possible time, or merely abated the violation within the time given for abatement. Consideration will also be given to whether the operator gained any economic benefit as a result of a failure to comply.

320. Assessment of Points.

321. History of Previous Violations. The assessment officer will assign up to 25 points based on the history of previous violations. One point will be assigned for each past violation contained in a notice of violation. Five points may be assigned for each violation contained in a cessation order. The history of previous violations, for the purpose of assigning points, will be determined and the points assigned with respect to the particular coal exploration or coal mining and reclamation operation. Points will be assigned as follows:

321.100. A violation will not be counted, if the notice or order is the subject of pending administrative or judicial review, or if the time to request such review, or to appeal any administrative or judicial decision has not expired, and thereafter, it will be counted for only one year;

321.200. No violation for which the notice or order has been vacated will be counted; and

321.300. Each violation will be counted without regard to whether it led to a civil penalty assessment.

322. Seriousness. The assessment officer will assign up to 45 points based on the seriousness of the violation as follows:

322.100. Probability of occurrence. The assessment officer will assign up to 20 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points will be assessed according to the following schedule:

TABLE

PROBABILITY OF OCCURRENCE	POINTS
None	0
Insignificant	1 - 4
Unlikely	5 - 9
Likely	10 - 19
Occurred	20

322.200. Extent of potential or actual damage. The assessment officer will assign up to 25 points, based on the extent of the potential or actual damage to the public health and safety or the environment, in terms of duration, area and impact of such damage.

322.300. Alternative to R645-401-322.100 and R645-401-322.200 for an Administrative Hindrance Violation. In the case of a violation of an administrative requirement, such as a requirement to keep records, the assessment officer will, in lieu of R645-401-322.100 and R645-401-322.200, assign up to 25 points for seriousness, based upon the extent to which enforcement is hindered by the violation.

323. Degree of Fault.

323.100. The assessment officer will assign up to 30 points based on the degree of fault of the permittee in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points will be assessed as follows:

323.110. A violation which occurs through no fault of the operator, or by inadvertence which was unavoidable by the exercise of reasonable care, will be assigned no penalty points for degree of fault;

323.120. A violation which is caused by fault of the operator will be assigned 15 points or less, depending on the degree of fault; Fault means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the State Program due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the State Program due to indifference, lack of diligence, or lack of reasonable care; and

323.130. A violation which occurs through a greater degree of fault, meaning reckless, knowing or intentional conduct will be assigned 16 to 30 points, depending on the degree of fault.

323.200. In calculating points to be assigned for degree of fault, the acts of all persons working on the coal exploration or coal mining and reclamation operation site will be attributed to the permittee, unless that permittee establishes that they were acts of deliberate sabotage.

324. Good Faith in Attempting to Achieve Compliance. The assessment officer will subtract points based on the degree of good faith of the permittee. Points will be assigned as follows:

324.100. Easy Abatement Situation. An easy abatement

situation is one in which the operator has on-site the resources necessary to achieve compliance of the violated standard within the permit area.

TABLE

DEGREE OF GOOD FAITH	POINTS
Immediate Compliance	-11 to -20
Rapid Compliance	- 1 to -10
Normal Compliance	0

324.200. Difficult Abatement Situation. A difficult abatement situation is one which requires submission of plans prior to physical activity to achieve compliance, or the permittee does not have the resources at hand to achieve compliance of the violated standard.

TABLE

DEGREE OF GOOD FAITH	POINTS
Rapid Compliance	-11 to -20
Normal Compliance	- 1 to -10
Extended Compliance	0

325. Definition of Compliance.

325.100 Immediate Compliance requires evidence that the violation has been abated immediately (which is a question of fact) following issuance of the notice of violation.

325.200. Rapid Compliance requires evidence that the permittee used diligence to abate the violation.

325.300. Normal Compliance means that the operator complied within the abatement period required under the notice of violation or by the violated standards.

325.400. Extended Compliance means that the permittee took minimal actions for abatement to stay within the limits of the notice of violation or the violated standard; or that the plan submitted for abatement was incomplete.

326. The Effect on the Operator's Ability to Continue in Business. Initially, it will be presumed that the operator's ability to continue in business will not be affected by the order of assessment. The operator may submit to the assessment officer information concerning the operator's financial status to show that payment of the civil penalty will affect the permittee's ability to continue in business. A reduction of the penalty or a special payment plan may be ordered if the information provided by the operator demonstrates that the civil penalty will substantially reduce the likelihood of the permittee's ability to continue in business or will create undue hardship on the permittee's operation.

330. Determination of Amount of Penalty. The assessment officer will determine the amount of any civil penalty converting the total number of points assigned under R645-401-320 to a dollar amount, according to the following schedule:

TABLE

Points	Dollars
1	22
2	44
3	66
4	88
5	110
6	132
7	154
8	176
9	198
10	220
11	242
12	264
13	286
14	308
15	330
16	352
17	374
18	396
19	418
20	440
21	462
22	484
23	506
24	528
25	550
26	660
27	770
28	880
29	990
30	1,100
31	1,210
32	1,320
33	1,430
34	1,540
35	1,650
36	1,760
37	1,870
38	1,980
39	2,090
40	2,200
41	2,310
42	2,420
43	2,530
44	2,640
45	2,750
46	2,860
47	2,970
48	3,080
49	3,190
50	3,300
51	3,410
52	3,520
53	3,630
54	3,740
55	3,850
56	3,960
57	4,070
58	4,180
59	4,290
60	4,400
61	4,510
62	4,620
63	4,730
64	4,840

R645-401-400. Assessment of Separate Violations for Each Day.

410. The assessment officer may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the assessment officer will consider the factors listed in R645-401-300 and may consider the extent to which the permittee gained any economic benefit as a result of a failure to comply. For any violation which continues for two or more days, and which is assigned more than 64 points under R645-401-320, the assessment officer will assess a civil penalty for a minimum of two separate days.

420. Whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order, a civil penalty of not less than $750.00 will be assessed for each day during which such failure continues, except that, if the permittee initiates review proceedings with respect to the violation, the abatement period will be extended as follows:

421. If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under the State Program, after determination that the permittee will suffer irreparable loss or damage from the application of the requirements, the extended period permitted for abatement will not end until the date on which the board issues a final order; and

422. If the permittee initiates review proceedings under the State Program with respect to the violation, in which the obligations to abate are suspended by the court pursuant to the State Program, the daily assessment of a penalty will not be made for any period before entry of a final order by the

court.

430. Such penalty for the failure to abate the violation will not be assessed for more than 30 days for each violation. If the permittee has not abated the violation within the 30-day period, the Division will within 30 days appeal such noncompliance to the Board for resolution under Subsections 40-10-20(5), 40-10-20(6), 40-10-22(1)(d), or 40-10-22(2) of the Act, or by other appropriate means.

R645-401-500. Waiver of Use of Formula to Determine Civil Penalty.

510. The assessment officer upon his or her own initiative or upon written request received by the Division within 15 days of receipt of a notice of violation or a cessation order, may waive the use of the formula contained in R645-401-330 to set the civil penalty, if they determine that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the assessment officer will not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the State Program or any condition of any permit or exploration approval. The basis for every waiver will be fully explained and documented in the records of the case.

520. If the assessment officer waives the use of the formula, he or she will use the criteria set forth in R645-401-320 to determine the appropriate penalty. When the assessment officer has elected to waive the use of the formula, he or she will give a written explanation of the basis for the assessment made to the permittee.

R645-401-600. Procedures for Assessment of Civil Penalties - Proposed Assessment.

610. Within 15 days of service of a notice or order, the permittee may submit written information about the violation to the assessment officer at the Division offices. The assessment officer will consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

620. The assessment officer will serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the permittee, by certified mail, within 30 days of the issuance of the notice or order.

621. If the mail is tendered at the address of that permittee set forth in the sign required under R645-301-521.200 or at any address at which that permittee is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of R645-401-620 will be deemed to have been complied with upon such tender.

622. Failure by the Division to serve any proposed assessment within 30 days will not be grounds for dismissal of all or any part of such assessment unless the permittee:

622.100. Proves actual prejudice as a result of the delay; and

622.200. Makes a timely objection to the delay.

630. Unless an assessment conference has been requested, the assessment officer will review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The assessment officer will serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in R645-401-620, within 30 days after the date the violation is abated.

R645-401-700. Procedures for Informal Assessment Conference.

710. The Division will arrange for a conference to review the fact of the violation and/or the proposed assessment or reassessment, upon written request of the permittee, if the request is received within 30 days from the date the proposed assessment or reassessment is received by the violator.

720. Informal Assessment Conference Scheduling and Findings.

721. The Division will assign an assessment conference officer to hold assessment conferences. The assessment conference will be informal. The assessment conference will be held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later. PROVIDED: That a failure by the Division to hold such a conference within 60 days will not be grounds for dismissal of all or part of an assessment unless the permittee proves actual prejudice as a result of the delay.

722. The Division will post notice of the time and place of the conference at all Division offices at least five days before the conference. Any person will have a right to attend and participate in the conference.

723. The assessment conference officer will consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer will either:

723.100. Settle the issues, in which case a settlement agreement will be prepared and signed by the assessment conference officer on behalf of the Division and by the permittee; or

723.200. Affirm, raise, lower, or vacate the penalty.

730. The assessment conference officer will promptly serve the permittee with a notice of his or her action in the manner provided in R645-401-620, and will include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action will be fully documented in the file.

740. Informal Conference Settlement Agreement.

741. If a settlement agreement is entered into, the permittee will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement will contain a clause to this effect.

742. If full payment of the amount specified in the settlement agreement is not received by the Division within 30 days after the date of signing, the Division may enforce the agreement or rescind it and proceed according to R645-401-723.200 within 30 days from the date of the rescission.

750. The assessment conference officer may terminate the conference when he or she determines that the issues cannot be resolved or that the permittee is not diligently working toward resolution of the issues.

760. At formal review proceedings before the Board, no evidence as to statements made or evidence produced by one party at an assessment conference will be introduced as evidence by another party or to impeach a witness.

R645-401-800. Requests for Formal Hearing.

810. A permittee charged with a violation may contest the proposed penalty or the fact of the violation by submitting (a) a petition to the Board and (b) an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Division (to be held in escrow as provided in R645-401-820) within 30 days of receipt of the proposed assessment or reassessment, or 30 days from the date of service of the conference officer's action, whichever is later, but in every case, the penalty must be escrowed prior to commencement of the formal hearing.

820. The Division will transfer all funds submitted under R645-401-810 to an escrow fund pending completion of the administrative and judicial review process, at which

time it will disburse them as provided in R645-401-920 or R645-401-930.

830. Formal review of the violation fact or penalty will be conducted by the Board under the provisions of the procedural rules of the Board (R641 Rules). The fact of the violation may not be contested if the fact has been finally decided before the Board under R645-400-360.

R645-401-900. Final Assessment and Payment of Penalty.

910. If the permittee fails to request a hearing as provided in R645-401-810, the proposed assessment will become a final order of the Division and the penalty assessed will become due and payable upon expiration of the time allowed to request a hearing and upon the Division fulfilling its responsibilities under UCA 40-10-20(3)(e).

920. If any party requests judicial review of a final order of the Board the proposed penalty will be held in escrow until completion of the review. Otherwise, subject to R645-401-930, the escrowed funds will be transferred to the Division in payment of the penalty, and the escrow will end.

930. If the final decision of the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under R645-401, the Division will within 30 days of receipt of the order refund to the permittee all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund at the legal rate applicable as provided in section 15-1-1, UCA.

940. If the review results in an order increasing the penalty, the permittee will pay the difference to the Division within 15 days after the order is received by such permittee.

KEY: reclamation, coal mines
February 6, 2004 40-10-1 et seq.
Notice of Continuation January 24, 2018

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-1. Minerals Regulatory Program.
R647-1-101. Preamble.

These Rules and all subsequent revisions as approved and promulgated by the Board of Oil, Gas, and Mining (Board) of the State of Utah, are developed pursuant to the requirements of the Utah Mined Land Reclamation Act of 1975, Title 40, Chapter 8 of the Utah Code Annotated as amended (the Act). Section 40-8-2 of the Act states the findings of the Legislature.

In accordance with this legislative direction, these Rules recognize the necessity to balance the reclamation objectives of the Act with the physical, biological and economical constraints which may exist on successful reclamation. The Act and its revisions are hereby expressly incorporated herein by reference and made a part of these Rules.

There is intentional duplication in these rules. For example, the rule on hole plugging requirements is repeated in the section on Exploration, Small Mining Operations, and Large Mining Operations. This repetition is intended to benefit the Operator by putting all the rules relevant to a type of operation in the introductory section and in the section on that type of operation.

R647-1-102. Introduction.

1. Effective Dates, Applicability, Type of Operations Affected:

1.11. Effective November 1, 1988, the following rules apply to all previously exempted mining operations and to mining operations planning to commence, or resume operations within the state of Utah. These rules will not apply to existing mining operations approved prior to the effective date of these rules, or to notices of intention or amendments filed prior to these rules. However, these rules will apply to any revisions to an approved notice of intention filed subsequent to the effective date of these rules.

1.12. Operators should refer to the section of these rules which applies to the type of mining operation (e.g., exploration, small mining operation, or large mining operation) being conducted or proposed.

1.13. These rules apply to all lands within the state of Utah lawfully subject to its police power, regardless of surface or mineral ownership, and regardless of the type of mining operation conducted.

2. Cooperative Agreements/Memoranda of Understanding:

The Division of Oil, Gas and Mining (Division) will cooperate with other state agencies, local governmental bodies, agencies of the federal government, and private interests in the furtherance of the purposes of the Utah Mined Land Reclamation Act. The Division is authorized to enter into cooperative agreements and develop memoranda of understanding with agencies in furtherance of the purposes of the Act. The objective is to minimize the need for operators to undertake duplicative, overlapping, excessive, or conflicting procedures.

3. Operator Responsibilities, Compliance with other Local, State and Federal Laws:

The approval or acceptance of a complete notice of intention shall not relieve an operator from his responsibility to comply with the applicable statutes, rules, regulations, and ordinances of all local, state and federal agencies with jurisdiction over any aspect of the operator's mining operations, including, but not limited to: Utah State Division of Water Rights, the Utah Department of Business Regulation, the Utah State Industrial Commission, the Utah Department of Environmental Quality, the Utah Division of State History, the Division of Forestry, Fire and State Lands, The School and Institutional Trust Lands Administration, the Utah Division of Wildlife Resources, the U. S. Fish and Wildlife Service, the United States Bureau of Land Management, the United States Forest Service, the United States Environmental Protection Agency, and local county or municipal governments.

4. Division Guidelines, Operator Assistance in Application Preparation:

Each operator who conducts mining operations on any lands within the state of Utah is responsible for compliance with the following rules. The Division shall provide guidelines to aid the operator in complying with the rules.

R647-1-103. General Rules.

The following are general rules for statewide application.

R647-1-104. Violations and Enforcement.

If after notice and hearing, the Board finds that a violation of the Act, these rules, a notice of intention, or a Board or Division order has occurred, the Board may take any enforcement action authorized by law including requiring: compliance, abatement, mitigation, cessation of operations, a civil suit, forfeiture of surety, reclamation, or any other lawful action.

R647-1-105. Forms.

The attached forms are intended for the convenience of the operator and the Division, and may be changed from time to time. The forms are not part of these rules and use of a particular form, though encouraged, is not required, as long as all of the necessary information is provided in a reasonable manner.

R647-1-106. Definitions.

"Act" means the Utah Mined Land Reclamation Act, enacted in 1975, as amended. (Section 40-8-1, et seq., UCA).

"Adjudicative proceeding" means an agency action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all agency actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and judicial review of all of such actions. Those matters not governed by Title 63G, Chapter 4, Administrative Procedures Act, of the Utah Code annotated (1953, as amended) shall not be included within this definition.

"Agency" means a board, commission, department, division, officer, council, office, committee, commission, bureau, or other administrative unit of this state, including the agency head, agency employees, or other persons acting on behalf of or under the authority of the agency head, but does not mean the Legislature, the courts, the governor, any political subdivision of the state, or any administrative unit of a political subdivision of the state.

"Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by statute.

"Amendment" is an insignificant change in the approved notice of intention.

"Approved Notice of Intention" means a formally filed notice of intention to commence mining operations, including any amendments or revisions thereto that is determined to be complete and contains a mining and reclamation plan, which has been approved by the Division. A notice of intention for exploration having a disturbed area of five acres or less, or a small mining operation must be determined complete in writing by the Division, but does not require a mining and reclamation plan.

"Board" means the Utah Board of Oil, Gas and Mining.

The Board shall hear all appeals of adjudicative proceedings which commenced before the Division as well as all adjudicative proceedings and other proceedings which commence before the Board. The Board may appoint a Hearing Examiner for its hearings in accordance with the Rules of Practice and Procedure before the Board of Oil, Gas and Mining.

"Deleterious Materials" means earth, waste or introduced materials exposed by mining operations to air, water, weather or microbiological processes, which would likely produce chemical or physical conditions in the soils or water that are detrimental to the biota or hydrologic systems.

"Deposit" or "mineral deposit" means an accumulation of mineral matter in the form of consolidated rock, unconsolidated materials, solutions, or otherwise occurring on the surface, beneath the surface, or in the waters of the land from which any useful product may be produced, extracted or obtained, or which is extracted by underground mining methods for underground storage. "Deposit" or "mineral deposit" excludes sand, gravel, rock aggregate, water, geothermal steam, and oil and gas, but includes oil shale and bituminous sands extracted by mining operations.

"Development" means the work performed in relation to a deposit following its discovery, but prior to and in contemplation of production mining operations. Development includes, but is not limited to, preparing the site for mining operations; further defining the ore deposit by drilling or other means; conducting pilot plant operations; and constructing roads or ancillary facilities.

"Disturbed Area" means the surface land disturbed by mining operations. The disturbed area for small mining operations shall not exceed five acres in an incorporated area of a county or ten acres in an unincorporated area of a county. The disturbed area for large mining operations shall not exceed the acreage described in the approved notice of intention.

"Division" means the Utah Division of Oil, Gas and Mining. The Division Director or designee is the Presiding Officer for all informal adjudicative proceedings which commence before the Division in accordance with Rule R647-5.

"Exempt Mining Operations" means those mining operations which were previously exempt from the Act because less than 500 tons of material was mined in a period of twelve consecutive months or less than two acres of land was excavated or used as a disposal site in a period of twelve consecutive months. These exemptions were eliminated by statutory amendments in 1986 and are no longer available.

"Exploration" means surface disturbing activities conducted for the purpose of discovering a deposit or mineral deposit, delineating the boundaries of a deposit or mineral deposit, and identifying regions or specific areas in which deposits or mineral deposits are most likely to exist. "Exploration" includes, but is not limited to: sinking shafts; tunneling; drilling holes; digging pits or cuts; building roads and other access ways.

"Gravel" means a naturally occurring unconsolidated to moderately consolidated accumulation of rock and mineral particles, the dominant size range being between 2mm and 10mm, which has been deposited by sedimentary processes.

"Land affected" means the surface and subsurface of an area within the state where mining operations are being or will be conducted, including, but not limited to: (a) on-site private ways, roads, and railroads; (b) land excavations; (c) exploration sites; (d) drill sites or workings; (e) refuse banks or spoil piles; (f) evaporation or settling ponds; (g) stockpiles; (h) leaching dumps; (i) placer areas; (j) tailings ponds or dumps; (k) work, parking, storage, or waste discharge areas, structures, and facilities. Land affected does not include: (x) lands which have been reclaimed in accordance with an approved plan or as otherwise approved by the Board, (y) lands on which mining operations ceased prior to July 1, 1977, or (z) lands on which previously exempt mining operations ceased prior to April 29, 1989.

"Large Mining Operations" means mining operations which have a disturbed area of more than five surface acres at any time in an incorporated area of a county or more than ten surface acres at any time in an unincorporated area of a county.

"License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by statute.

"Mining operations" means those activities conducted on the surface of the land for the exploration for, development of, or extraction of a mineral deposit, including, but not limited to, surface mining and the surface effects of underground and in situ mining; on-site transportation, concentrating, milling, evaporation, and other primary processing. "Mining operation" does not include: the extraction of sand, gravel, and rock aggregate; the extraction of oil and gas; the extraction of geothermal steam; smelting or refining operations; off-site operations and transportation; reconnaissance activities; or activities which will not cause significant surface resource disturbance and do not involve the use of mechanized earth-moving equipment, such as bulldozers or backhoes.

"Notice of Intention" means a notice of intention to commence mining operations, that provide the complete information required for authorization to conduct mining operations, and includes any amendments or revisions thereto.

"Off-site" means the land areas that are outside of or beyond the on-site land.

"On-site" means the surface lands on or under which surface or underground mining operations are conducted. A series of related properties under the control of a single operator but separated by small parcels of land controlled by others will be considered a single site unless excepted by the Division.

"Operator" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind, either public or private, owning, controlling, conducting, or managing a mining operation or proposed mining operation.

"Owner" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind, either public or private, owning, controlling, conducting, or managing a mineral deposit or the surface of lands employed in mining operations.

"Party" means the Board, Division or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the Board to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

"Permit" means a notice to conduct mining operations issued by the Division. A notice to conduct mining operations is issued by the Division when either a notice of intention for a small mining operation or exploration is determined to be complete and includes a surety approved by the Division, or a notice of intention for a large mining operation or exploration with a plan of operations and surety approved by the Division.

"Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another

agency.

"Presiding Officer" means an agency head, or an individual or body of individuals designated by the agency head, by the agency's rules, or by statute to conduct an adjudicative proceeding. For the purpose of these rules, the Board, or its appointed Hearing Examiner, shall be considered the Presiding Officer of all appeals of informal adjudicative proceedings which commenced before the Division as well as all adjudicative proceedings which commence before the Board. The Division Director or his/her designee shall be considered a Presiding Officer for all informal adjudicative proceedings which commence before the Division in accordance with this Rule R647-5. If fairness to the parties is not compromised, an agency may substitute one Presiding Officer for another during any proceeding.

"Reclamation" means actions performed during or after mining operations to shape, stabilize, revegetate, or otherwise treat the land affected in order to achieve a safe and ecologically stable condition and use which will be consistent with local environmental conditions and land management practices.

"Regrade or Grade" means to physically alter the topography of any land surface.

"Respondent" means any person against whom an adjudicative proceeding is initiated, whether by an agency or any other person.

"Revision" means a change to an approved Notice of Intention to Conduct Mining Operations, which will increase or decrease the amount of land affected, or alter the location and type of on-site surface facilities, such that the nature of the reclamation plan will differ substantially from that in the approved Notice of Intention.

"Rock Aggregate" means those consolidated rock materials associated with a sand deposit, a gravel deposit, or a sand and gravel deposit, that were created by alluvial sedimentary processes. The definition of rock aggregate specifically excludes any solid rock in the form of bedrock which is exposed at the surface of the earth or overlain by unconsolidated material.

"Sand" means a naturally occurring unconsolidated to moderately consolidated accumulation of rock and mineral particles, the dominant size range being between 1/16mm to 2mm, which has been deposited by sedimentary processes.

"Small Mining Operations" means mining operations which have a disturbed area of five or less surface acres at any time in an incorporated area of a county or ten or less surface acres at any time in an unincorporated area of a county.

"Surface Mining" means mining conducted on the surface of the land including open pit, strip, or auger mining; dredging; quarrying; leaching; surface evaporation operations; reworking abandoned dumps and tailings and activities related thereto.

"Underground Mining" means mining carried out beneath the surface by means of shafts, tunnels or other underground mine openings.

KEY: minerals reclamation
October 26, 2011 40-8-1 et seq.
Notice of Continuation Januar 24, 2018

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-2. Exploration.
R647-2-101. Filing Requirements and Review Procedures.

1. Prior to the commencement of exploration, a Notice of Intention to Conduct Exploration (FORM MR-EXP) containing all the required information must be filed with and determined complete by the Division and the Division shall have approved the form and amount of reclamation surety. It is recommended that the notice of intention be filed with the Division at least 30 days prior to the planned commencement of exploration.

2. Within 15 days after receipt of a Notice of Intention to Conduct Exploration (FORM MR-EXP), the Division will review the proposal and notify the operator in writing that the notice of intention is:

2.11. Complete and all required information has been submitted; or

2.12. Incomplete, and additional information as identified by the Division will be required.

The Division will review and respond to any subsequent filings of information within 10 working days of receipt.

3. If more than five acres of disturbance are planned, a detailed exploration development and reclamation plan must be included in the notice of intention and approved by the Division.

4. The Division will review and approve or disapprove:

4.11. The form and amount of reclamation surety, and;

4.12. Any variances requested under R647-2-107, 108, or 109, regardless of the number of surface acres of disturbance planned.

5. Developmental drilling conducted within an already approved disturbed area with approved surety does not require submittal of a Notice of Intention to Conduct Exploration (FORM MR-EXP).

6. A permittee's retention of a notice of intention shall require the paying of permit fees as authorized by the Utah Legislature. The procedures for paying the permit fees are as follows:

6.11. The Division shall notify the operators of record annually of the amount of permit fees authorized by the Utah Legislature for Exploration.

6.12. Fees are due annually by the deadline in R647-2-115 for reports.

6.13. A permittee may avoid payment of the fee by complying with the following requirements:

6.13.11. A permittee will notify the Division of a desire to close out a notice of intention by checking the appropriate box of the permit fees billing form.

6.13.12. The permittee will then arrange with the Division for an onsite inspection of the site to assure that all required reclamation has been performed. If an inspection reveals that an area is not yet suitably reclaimed, then a new billing notice will be issued and the permittee will be given 30 days from the date of the onsite inspection to pay the fee.

R647-2-102. Duration of the Notice of Intention.

1. A Notice of Intention to Conduct Exploration that has been determined complete or, for operations of more than 5 acres has been approved, shall be valid until November 30th of the year following the year of submittal. All exploration and reclamation activities should be completed within this time frame. An operator desiring to extend the duration of a notice of intention, must notify the Division in writing, prior to expiration of the notice of intention, specifying the reasons an extension is required, and the anticipated length of time required to complete exploration and reclamation.

2. The Division will review and approve the extension and adjust if necessary, the amount of reclamation surety.

3. Authorization to operate under a Notice of Intention to Conduct Exploration may be withdrawn in the event of failure by the operator to pay permit fees required by R647-2-101.6, or to maintain and update reclamation surety as required, after notice and opportunity for Board hearing.

R647-2-103. Notice of Intention to Conduct Exploration.

The notice of intention shall address the requirements of the following rules:

TABLE

RULE #	SUBJECT
R647-2-104	Operator(s), Surface and Mineral Owner(s)
R647-2-105	Maps and Drawings
R647-2-106	Project Description
R647-2-107	Operation Practices
R647-2-108	Hole Plugging Requirements
R647-2-109	Reclamation Practices
R647-2-110	Variance

R647-2-104. Operator(s), Surface and Mineral Owner(s).

The notice of intention shall include the following general information:

1. The name, permanent mailing address, and telephone number of the operator responsible for exploration.

2. The name and permanent mailing address of the surface land owner(s) and mineral owner(s) of all land to be affected by the operations.

3. The federal mining claim number(s), lease number(s), or permit number(s) of any mining claims, federal or state leases or permits included in the land affected.

4. A statement that the operator will conduct reclamation as required by these rules.

R647-2-105. Maps and Drawings.

The notice of intention shall include a location map and an operations map. Each map shall be plotted at a scale to accurately identify locational landmarks and operation details.

1. The general location map shall be the scale of a USGS 7.5-minute series map or equivalent (1"=2000') and identify new or existing access roads.

2. The operations map (1"=200' or other scale as determined necessary by the Division) shall identify:

2.11 The area to be disturbed;

2.12 The location of any existing or proposed operations including access roads, drill holes, trenches, pits, shafts, cuts, or other planned exploration activities; and

2.13 Any adjacent previous disturbance for which the operator is not responsible.

R647-2-106. Project Description.

The notice of intention should include the following information:

1. A statement giving general details of the type or method of exploration proposed, including the proposed dates during which exploration will be conducted;

2. The type of minerals to be explored for;

3. The general dimensions of all drill holes, including total depth and diameter;

4. The general dimensions of all trenches, pits, shafts, cuts, or other types of disturbances;

5. The width and length of any new roads constructed;

6. An estimate of the total number of surface acres to be disturbed.

7. The amount of material (including mineral deposit, topsoil, subsoil, overburden, waste rock, or core hole material) extracted, moved, or proposed to be moved during the exploration operation.

R647-2-107. Operation Practices.

The operator shall conform to the following practices while conducting exploration unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare during operations. Methods to minimize hazards shall include but not be limited to:

1.11. The closing or guarding of shafts and tunnels to prevent unauthorized or accidental entry in accordance with MSHA regulations;

1.12. The disposal of trash, scrap metal and wood, and extraneous debris;

1.13. The plugging or capping of drill, core, or other exploratory holes as set forth in Rule R647-2-108;

1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels are to be affected by exploration, then the operator shall take appropriate measures to avoid or minimize environmental damage.

3. Erosion Control - Operations shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material, shall be safely removed from the site or kept in an isolated condition such that adverse environmental effects are eliminated or controlled.

5. Soils - Suitable soil material shall be removed and stored in a stable condition where practical so as to be available for reclamation.

6. Concurrent Reclamation - During operations, disturbed areas shall be reclaimed when no longer needed, except to the extent necessary to preserve evidence of mineralization for proof of discovery. Areas which have been disturbed but are not routinely or currently utilized shall be kept in a safe, environmentally stable condition.

R647-2-108. Hole Plugging Requirements.

Drill holes shall be properly plugged as soon as practical and not be left unplugged for more than 30 days without approval of the Division. The procedures outlined below are required for the surface and subsurface plugging of drill holes. The Division may approve an alternate plan, if the operator can prove to the satisfaction of the Division that another method will provide adequate protection to the groundwater resources and long term stability of the land. Dry holes and nonartesian holes which do not produce significant amounts of water may be temporarily plugged with a surface cap to permit the operator to re-enter the hole for the duration of operations.

1. Surface plugging of drill holes shall be accomplished by:

1.11. Setting a nonmetallic permaplug at a minimum of five (5) feet below the surface, or returning the cuttings to the hole and tamping the returned cuttings to within five (5) feet of ground level. The hole above the permaplug or tamped cuttings will be filled with a cement plug. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing.

1.12. If the area is tilled farmland, a five (5) foot cement plug must be placed above a permaplug or tamped cuttings so that the top of the cement plug is a minimum of three (3) feet below the ground surface. The hole above the cement plug is to be filled with soil. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing. The top of the casing and cap must be a minimum of three (3) feet below the ground surface.

2. Drill holes that encounter water, oil, gas or other potential migratory substances and are 2-1/2 inches or greater in surface diameter shall be plugged in the subsurface to prevent the migration of fluid from one strata to another. If water is encountered, plugging shall be accomplished as outlined below:

2.11. If artesian flow (i.e., water flowing to the surface from the hole) is encountered during or upon cessation of drilling, a cement plug shall be placed to prevent water from flowing between geologic formations and at the surface. The cement mix should consist of API Class A or H cement with additives as needed. It should weigh at least 13.5 lbs./gal., and be placed under the supervision of a person qualified in proper drill hole cementing of artesian flow. Artesian bore holes must be plugged in the described manner, prior to removal of the drilling equipment from the well site. If the surface owner of the land affected desires to convert an artesian drill hole to a water well, the owner must notify the Division in writing accepting responsibility for the ultimate plugging of the drill hole.

2.12. Holes that encounter significant amounts of nonartesian water shall be plugged by:

2.12.111 Placing a 50 foot cement plug immediately above and below the aquifer(s); or

2.12.112 Filling from the bottom up (through the drill stem) with a high grade bentonite/water slurry mixture. The slurry shall have a Marsh funnel viscosity of at least 50 seconds per quart prior to the adding of any cuttings.

R647-2-109. Reclamation Practices.

The operator shall conform to the following practices while conducting reclamation unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare following completion of operations. Methods to minimize hazards shall include but not be limited to:

1.11. The permanent sealing of shafts and tunnels;

1.12. Appropriate disposal of trash, scrap metal and wood, buildings, extraneous debris, and other materials incident to mining;

1.13. The plugging of drill, core, or other exploratory holes as set forth in Rule R647-2-108;

1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels have been affected by exploration, then reclamation must be performed such that the channels will be left in a stable condition with respect to actual and reasonably expected water flow so as to avoid or minimize future damage to the hydrologic system.

3. Erosion Control - Reclamation shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.

5. Land Use - The operator shall leave the on-site area

in a condition which is capable of supporting the postmining land use.

6. Slopes - Waste piles, spoil piles and fills shall be regraded to a stable configuration and shall be sloped to minimize safety hazards and erosion while providing for successful revegetation.

7. Highwalls - In surface mining and in open cuts for pads or roadways, highwalls shall be reclaimed and stabilized by backfilling against them or by cutting the wall back to achieve a slope angle of 45 degrees or less.

8. Roads and Pads - On-site roads and pads shall be reclaimed when they are no longer needed for operations. When a road or pad is to be turned over to the property owner or managing agency for continuing use, the operator shall turn over the property with adequate surface drainage structures and in a condition suitable for continued use.

9. Dams and Impoundments - Water impounding structures shall be reclaimed so as to be self-draining and mechanically stable unless shown to have sound hydrologic design and to be beneficial to the postmining land use.

10. Trenches and Pits - Trenches and small pits shall be reclaimed.

11. Structures and Equipment - Structures, rail lines, utility connections, equipment, and debris shall be buried or removed.

12. Topsoil Redistribution - After final grading, soil materials shall be redistributed on a stable surface so as to minimize erosion, prevent undue compaction and promote revegetation.

13. Revegetation - The species seeded shall include adaptable perennial species that will grow on the site, provide basic soil and watershed protection, and support the postmining land use.

Revegetation shall be considered accomplished when:

13.11. The revegetation has achieved 70 percent of the premining vegetative ground cover. If the premining vegetative ground cover is unknown, the ground cover of an adjacent undisturbed area that is representative of the premining ground cover will be used as a standard. Also, the vegetation has survived three growing seasons following the last seeding, fertilization or irrigation, unless such practices are to continue as part of the postmining land use; or

13.12. the Division determines that the revegetation work has been satisfactorily completed within practical limits; where reseeding has occurred and the vegetation has survived one growing season, the reseeded area shall not be included for purposes of determining whether future exploration or mining operations involve a disturbed area of five acres or less.

R647-2-110. Variance.

1. The operator may request a variance from Rule R647-2-107, 108, or 109, by submitting the following information, which shall be considered by the Division on a site-specific basis:

1.11. The rule(s) as to which a variance is requested;

1.12. The variance requested and description of the area that would be affected by the variance;

1.13. Justification for the variance;

1.14. Alternate methods or measures to be utilized.

2. A variance shall be granted if the alternative method or measure proposed will be consistent with the Act.

3. Any variance must be specifically approved by the Division in writing.

R647-2-111. Surety.

1. After receiving notification that the notice of intention is approved or complete, but prior to commencement of operations, the operator must post a reclamation surety with the Division.

1.11. Failure to furnish and maintain reclamation surety may, after notice and opportunity for a Board hearing, result in a withdrawal of the notice of intention as provided for in Section 40-8-16.

2. The Division will not require a separate surety where a reclamation surety in a form and amount acceptable to the Division is held by other governmental entities, provided that the cost estimate is accurate and the Division is named as co-beneficiary. Cooperative Agreements may be developed and entered into according to Section 40-8-22.

3. As part of the review of the notice of intention, the Division shall determine the required surety amount based on:

3.11. Site-specific calculations or estimates by the Division reflecting the cost the Division or a third party would incur to reclaim the site;

3.12. Site-specific calculations or estimates by the operator reflecting the cost the Division or a third party would incur to reclaim the site, if accurate and verifiable by the Division; or

3.13. The average dollars per acre costs for reclamation for similar operations, as determined by the Division, based upon approved surety amounts for current large mining operations.

3.14. In determining or verifying the amount of surety under Subsections 3.11 or 3.12, the Division shall use cost data from current sureties for large mining operations, adjusted as necessary to reflect the nature and scope of operations and reclamation under the notice of intention.

3.15. For the average dollars per acre in Subsection 3.13, the Board will annually approve the figure after a formal presentation from the Division and an opportunity for public comment.

4. The operator shall submit a completed Reclamation Contract (FORM MR-RC) with the required surety. The form and amount of the reclamation surety must be approved by the Division. Acceptable forms may include:

4.11. A corporate surety bond from a surety company that is licensed to do business in Utah, that is listed in "A.M. Best's Key Rating Guide" at a rating of A- or better or a Financial Performance Rating (FPR) of 8 or better, according to the "A.M. Best's Guide". All surety companies also will be continuously listed in the current issue of the U.S. Department of the Treasury Circular 570. Operators who do not have a surety bond with a company that meets the standards of subsection 4.11 will have 120 days from the date of Division notification after enactment of the changes to subsection 4.11 to achieve compliance or face enforcement action. When the Division in the course of examining surety bonds, notifies an operator that a surety company guaranteeing its performance does not meet the standards of subsection 4.11., the operator has 120 days after notice from the Division by mail to correct the deficiency, or face enforcement action;

4.12. Federally-insured certificate of deposit payable to the State of Utah, Division of Oil, Gas and Mining;

4.13. Cash;

4.14. An irrevocable letter of credit issued by a bank organized to do business in the United States;

4.15. Escrow accounts; and

4.16. The Board may accept a written self-bonding agreement in the case of operators showing sufficient financial strength.

5. Surety shall be required until such time as reclamation is deemed complete by the Division. The Division shall promptly conduct an inspection when notified by the operator that reclamation is complete. The full release of surety shall be evidence that the operator has reclaimed as required by the Act.

5.11. A partial release of surety can be made by the Division if it determines that a substantial phase or segment of reclamation such as demolition, backfilling or regrading has been successfully performed and the residual amount of retained surety is determined to be adequate to insure completion of reclamation.

R647-2-112. Failure to Reclaim.

If the operator fails or refuses to conduct reclamation as outlined in the complete notice of intention, and comply with the requirements of R647-2-107, R647-2-108, or R647-2-109 the Board may, after notice and hearing, order that:

1. Reclamation be conducted by the Division,

2. The costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court; and

3. Any surety filed for this purpose be forfeited. With respect to the surety filed with the Division, the Board shall request the Attorney General to take the necessary legal action to enforce and collect the amount of liability. Where a reclamation surety has been filed with other governmental agencies, the Board shall notify such agency of the hearing findings and seek forfeiture concurrence as necessary.

3.11. The forfeited surety shall be used only for the reclamation of land to which it relates, and any residual amount returned.

R647-2-113. Confidential Information.

Information provided in the notice of intention and in the Mineral Exploration Progress Report (FORM MR-EPR) that relates to the location, size, and nature of the mineral deposit, shall be protected as confidential information by the Board and the Division. The information will not be a matter of public record until a written release is received from the operator.

R647-2-114. Revised Notice.

1. Minor additions or changes in the location of exploration operations do not require the submittal of a revised notice of intention. A new or revised Notice of Intention to Conduct Exploration (FORM MR-EXP) letter must be submitted when:

1.1. The proposed additions or changes will occur outside the originally designated legal subdivision; or

1.2. For exploration operations under 5 acres the proposed additions will cause the total unreclaimed surface disturbance to increase by more than 1 acre or exceed 5 acres; or

1.3. For exploration operations over 5 acres, the proposed additions or changes will cause an increase in the area of disturbance previously approved.

2. In the event the Division or the operator determine at the time a revision is submitted that the amount of the current surety does not accurately reflect the potential cost to complete reclamation at any particular point in time during the revised exploration operations, the Division may undertake a recalculation of the surety amount as provided in R647-2-111.3. If the recalculated amount is greater than the amount of the existing surety, the revised operations may not be implemented until a revised surety is filed with the Division.

R647-2-115. Reports.

On or before January 31st of each year, the operator conducting exploration must submit a Mineral Exploration Progress Report (FORM MR-EPR), which describes any unusual drilling conditions, water encountered, hole plugging measures, and reclamation activities conducted.

R647-2-116. Practices and Procedures; Appeals.

The Administrative Procedures, as outlined in R647-5, shall be applicable to minerals regulatory proceedings.

KEY: minerals reclamation
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Notice of Continuation January 24, 2018

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-3. Small Mining Operations.
R647-3-101. Filing Requirements and Review Procedures.

1. Prior to commencement of operations, a Notice of Intention to Commence Small Mining Operations (FORM MR-SMO) containing all the required information must be filed with and determined complete by the Division and the Division shall have approved the form and amount of reclamation surety. It is recommended that the notice of intention be filed with the Division at least thirty (30) days prior to the planned commencement of operations.

2. Within 15 days after receipt of a Notice of Intention, the Division will review the proposal and notify the operator in writing;

2.11. That the notice of intention is complete and all required information has been submitted; or,

2.12. That the notice of intention is incomplete, and additional information as identified by the Division will be required.

2.12.111. The Division will review and respond to any subsequent filings of information within 10 working days of receipt.

3. The Division will review and approve or disapprove:

3.11. The form and amount of reclamation surety (R647-3-111), and

3.12. All variances requested from Rules R647-3-107, 108, and 109, regardless of the number of surface acres of disturbance planned.

4. The operator must notify the Division no later than 30 days after beginning small mining operations.

5. A permittee's authorization under a notice of intention to conduct small mining operations shall require the paying of permit fees as authorized by the Utah Legislature. The procedures for paying the permit fees are as follows:

5.11. The Division shall notify the operators of record annually of the amount of permit fees authorized by the Utah Legislature for

5.11.11. Small Mining Operations (less than 5 disturbed acres)

5.12. Fees are due annually by the deadline in R647-3-117 for reports.

6. A permittee may avoid payment of the fee by complying with the following requirements:

6.11. A permittee will notify the Division of a desire to close out a notice of intention by checking the appropriate box of the permit fees billing form.

6.12. The permittee will then arrange with the Division for an onsite inspection of the site to assure that all required reclamation has been performed. If an inspection reveals that an area is not yet suitably reclaimed, then a new billing notice will be issued and the permittee will be given 30 days from the date of the onsite inspection to pay the fee.

R647-3-102. Duration of the Notice of Intention.

The notice of intention, including any subsequent amendments or revisions, shall remain in effect for the life of the small mining operation. However, the notice of intention may be withdrawn, after notice and opportunity for Board hearing, in the event of failure by the operator to pay permit fees required by R647-3-101 or to maintain and update adequate reclamation surety as required in R647-3-111.

R647-3-103. Notice of Intention to Commence Small Mining Operations.

The notice of intention shall address the requirements of the following rules:

TABLE

RULE #	SUBJECT
R647-3-104	Operator(s), Surface and Mineral Owner(s)
R647-3-105	Map
R647-3-106	Operation Plan
R647-3-107	Operation Practices
R647-3-109	Reclamation Practices
R647-3-110	Variance

R647-3-104. Operator(s), Surface and Mineral Owner(s).

The notice of intention shall include the following general information:

1. The name, permanent mailing address, and telephone number of the operator responsible for the small mining operation and reclamation of the site.

2. The name, and permanent mailing address of the surface landowner(s) and mineral owner(s) of all land to be affected by the mining operation.

3. The federal mining claim number(s), lease number(s) or permit number(s) of all mining claims, federal or state leases or permits included in the land affected.

4. A statement that the operator will conduct reclamation as required by these rules.

R647-3-105. Project Location and Map.

The notice of intention shall include a location map and an operations map. Each map shall be plotted at a scale to accurately identify locational landmarks and operations details.

1. The general location map shall be the scale of a USGS 7.5 minute series map or equivalent (1" = 2000') and identify new or existing access roads.

2. The operations map (1" = 200' or other scale as determined necessary by the Division) shall identify:

2.11. The area to be disturbed;

2.12. The location of any existing or proposed operations including access roads, drill holes, trenches, pits, shafts, cuts, or other planned small mining activities; and

2.13. Any adjacent previous disturbance for which the operator is not responsible.

R647-3-106. Operation Plan.

The operator shall provide a brief narrative description of the proposed mining operation as part of the notice of intention. The description should include the following information:

1. A statement giving general details of the type or method of mining operations proposed, and the type of minerals to be mined;

2. Estimated width and length of any new roads to be constructed;

3. An estimate of the total number of surface acres to be disturbed by the mining operation.

4. The amount of material (including mineral deposit, topsoil, subsoil, overburden, waste rock, or core hole material) to be extracted, moved, or proposed to be moved, relating to the mining operation.

R647-3-107. Operation Practices.

During operations, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare during operations. Methods to minimize hazards shall include but not be limited to:

1.11. The closing or guarding of shafts and tunnels to prevent unauthorized or accidental entry in accordance with MSHA regulations;

1.12. The disposal of trash, scrap metal and wood, and extraneous debris;

1.13. The plugging or capping of drill, core, or other exploratory holes as set forth in Rule R647-3-108.;

1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels are to be affected by the mining operation, then the operator shall take appropriate measures to avoid or minimize environmental damage.

3. Erosion Control - Operations shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.

5. Soils - Suitable soil material shall be removed and stored in a stable condition where practical so as to be available for reclamation.

6. Concurrent Reclamation - During operations, disturbed areas shall be reclaimed when no longer needed, except to the extent necessary to preserve evidence of mineralization for proof of discovery. Areas which have been disturbed but are not routinely or currently utilized shall be kept in a safe, environmentally stable condition.

R647-3-108. Hole Plugging Requirements.

Drill holes shall be properly plugged as soon as practical and shall not be left unplugged for more than 30 days without approval of the Division. The procedures outlined below are required for the surface and subsurface plugging of drill holes. The Division may approve an alternate plan, if the operator can prove to the satisfaction of the Division that another method will provide adequate protection to the groundwater resources and long term stability of the land. Dry holes and nonartesian holes which do not produce significant amounts of water may be temporarily plugged with a surface cap to permit the operator to re-enter the hole for the duration of the operations.

1. Surface plugging of drill holes shall be accomplished by:

1.11. Setting a nonmetallic permaplug at a minimum of five (5) feet below the surface, or returning the cuttings to the hole and tamping the returned cuttings to within five (5) feet of ground level. The hole above the permaplug or tamped cuttings will be filled with a cement plug. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing.

1.12. If the area is tilled farmland, a five (5) foot cement plug must be placed above a permaplug or tamped cuttings so that the top of the cement plug is a minimum of three (3) feet below the ground surface. The hole above the cement plug is to be filled with soil. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing. The top of the casing and cap must be a minimum of three (3) feet below the ground surface.

2. Drill holes that encounter water, oil, gas or other potential migratory substances and are 2-1/2 inches or greater in surface diameter shall be plugged in the subsurface to prevent the migration of fluid from one strata to another. If water is encountered, plugging shall be accomplished as outlined below:

2.11. If artesian flow (i.e., water flowing to the surface from the hole) is encountered during or upon cessation of drilling, a cement plug shall be placed to prevent water from flowing between geologic formations and at the surface. The cement mix should consist of API Class A or H cement with additives as needed. It should weigh at least 13.5 lbs./gal., and be placed under the supervision of a person qualified in proper drill hole cementing of artesian flow. Artesian bore holes must be plugged in the described manner, prior to removal of the drilling equipment from the well site. If the surface owner of the land affected desires to convert an artesian drill hole to a water well, he must notify the Division in writing that he accepts responsibility for the ultimate plugging of the drill hole.

2.12. Holes that encounter significant amounts of nonartesian water shall be plugged by:

2.12.111. Placing a 50 foot cement plug immediately above and below the aquifer(s); or

2.12.112. Filling from the bottom up (through the drill stem) with a high grade bentonite/water slurry mixture. The slurry shall have a Marsh funnel viscosity of at least 50 seconds per quart prior to the adding of any cuttings.

R647-3-109. Reclamation Practices.

During reclamation, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare following completion of operations. Methods to minimize hazards shall include but not be limited to:

1.11. The permanent sealing of shafts and tunnels;

1.12. The disposal of trash, scrap metal and wood, buildings, extraneous debris, and other materials incident to mining;

1.13. The plugging of drill, core, or other exploratory holes as set forth in Rule R647-3-108;

1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels have been affected by mining operations, then reclamation must be performed such that the channels will be left in a stable condition with respect to actual and reasonably expected water flow so as to avoid or minimize future damage to the hydrologic system.

3. Erosion Control - Reclamation shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.

5. Land Use - The operator shall leave the on-site area in a condition which is capable of supporting the postmining land use.

6. Slopes - Waste piles, spoil piles and fills shall be regraded to a stable configuration and shall be sloped to minimize safety hazards and erosion while providing for successful revegetation.

7. Highwalls - In surface mining and in open cuts for pads or roadways, highwalls shall be reclaimed and stabilized by backfilling against them or by cutting the wall back to achieve a slope angle of 45 degrees or less.

8. Roads and Pads - On-site roads and pads shall be reclaimed when they are no longer needed for operations.

When a road or pad is to be turned over to the property owner or managing agency for continuing use, the operator shall turn over the property with adequate surface drainage structures and in a condition suitable for continued use.

9. Dams and Impoundments - Water impounding structures shall be reclaimed so as to be self-draining and mechanically stable unless shown to have sound hydrologic design and to be beneficial to the postmining land use.

10. Trenches and Pits - Trenches and small pits shall be reclaimed.

11. Structures and Equipment - Structures, rail lines, utility connections, equipment, and debris shall be buried or removed.

12. Topsoil Redistribution - After final grading, soil materials shall be redistributed on a stable surface, so as to minimize erosion, prevent undue compaction and promote revegetation.

13. Revegetation - The species seeded shall include adaptable perennial species that will grow on the site, provide basic soil and watershed protection, and support the postmining land use.

Revegetation shall be considered accomplished when:

13.11. The revegetation has achieved 70 percent of the premining vegetative ground cover. If the premining vegetative ground cover of the disturbed area is unknown, then the ground cover of an adjacent undisturbed area that is representative of the premining conditions will be used as a standard. Also, the vegetation has survived three growing seasons following the last seeding, fertilization or irrigation, unless such practices are to continue as part of the postmining land use; or

13.12. The Division determines that the revegetation work has been satisfactorily completed within practical limits.

14. Where reseeding has occurred and the vegetation has survived one growing season, the reseeded area shall not be included for purposes of determining whether a mining operation is a small mining operation.

R647-3-110. Variance.

1. The operator may request a variance from Rule R647-3-107, 108, or 109 by submitting the following information which shall be considered by the Division on a site-specific basis:

1.11. The rule(s) as to where a variance is requested;

1.12. The variance requested and a description of the area that would be affected by the variance;

1.13. Justification for the variance;

1.14. Alternate methods or measures to be utilized.

2. A variance shall be granted if the alternative method or measure proposed will be consistent with the Act.

3. Any variance must be specifically approved by the Division in writing.

R647-3-111. Surety.

1. After receiving notification that the notice of intention is complete, but prior to commencement of operations, the operator must post a reclamation surety with the Division.

1.11. Failure to furnish and maintain reclamation surety may, after notice and opportunity for Board hearing, result in a withdrawal of the notice of intention as provided for in Section 40-8-16.

2. The Division will not require a separate surety where a reclamation surety in a form and amount acceptable to the Division is held by other governmental entities, provided that the cost estimate is accurate and the Division is named as co-beneficiary. Cooperative Agreements may be developed and entered into according to Section 40-8-22.

3. As part of the review of the notice of intention, the Division shall determine the required surety amount based on:

3.11. Site-specific calculations or estimates by the Division reflecting the cost the Division or a third party would incur to reclaim the site;

3.12. Site-specific calculations or estimates by the operator reflecting the cost the Division or a third party would incur to reclaim the site, if accurate and verifiable by the Division; or

3.13. The average dollars per acre costs for reclamation of similar operations, as determined by the Division, based upon approved surety amounts for current large mining operations.

3.14. In determining or verifying the amount of surety under Subsections 3.11 or 3.12, the Division shall use cost data from current sureties for large mining operations, adjusted as necessary to reflect the nature and scope of operations and reclamation under the notice of intention.

3.15. For the average dollars per acre in Subsection 3.13, the Board will annually approve the figure after a formal presentation from the Division and an opportunity for public comment.

4. The operator shall submit a completed Reclamation Contract (FORM MR-RC) with the required surety. The form and amount of the surety must be approved by the Division, except as provided in subpart 4.16. Acceptable forms may include:

4.11. A corporate surety bond from a surety company that is licensed to do business in Utah, that is listed in "A.M. Best's Key Rating Guide" at a rating of A- or better or a Financial Performance Rating (FPR) of 8 or better, according to the "A.M. Best's Guide". All surety companies also will be continuously listed in the current issue of the U.S. Department of the Treasury Circular 570. Operators who do not have a surety bond with a company that meets the standards of subsection 4.11 will have 120 days from the date of Division notification after enactment of the changes to subsection 4.11 to achieve compliance or face enforcement action. When the Division in the course of examining surety bonds, notifies an operator that a surety company guaranteeing its performance does not meet the standards of subsection 4.11, the operator has 120 days after notice from the Division by mail to correct the deficiency, or face enforcement action;

4.12. Federally-insured certificate of deposit payable to the State of Utah, Division of Oil, Gas and Mining;

4.13. Cash;

4.14. An irrevocable letter of credit issued by a bank organized to do business in the United States;

4.15. Escrow accounts; and

4.16. The Board may approve a written self-bonding agreement in the case of operators showing sufficient financial strength.

5. Surety shall be required until such time as the Division deems reclamation complete. The Division will promptly conduct an inspection when notified by the operator that reclamation is complete. The full release of surety shall be evidence that the operator has reclaimed as required by the Act.

5.11. A partial release of surety can be made by the Division if it determines that a substantial phase or segment of reclamation such as demolition, backfilling, regrading, or vegetation establishment has been successfully performed and the residual amount of retained surety is determined adequate to insure completion.

6. The amount of reclamation surety may be adjusted:

6.11. As required by a revision in the Notice of Intention under R647-3-115;

6.12. As a result of a periodic review by the Division conducted no more frequently than at 3 year intervals unless

agreed to by the operator, which shall take into account inflation/deflation based upon an acceptable Costs Index; or

6.13. At the request of the operator.

7. Notwithstanding any other provision of these rules, for operations where the surety is in the form of a Board-approved agreement under Section 40-8-14(3), the Board shall retain the sole authority over the release, partial release, revision or adjustment of the surety amount, if any, which shall be in accordance with the agreement and the Act.

R647-3-112. Failure to Reclaim.

If the operator of a small mining operation fails or refuses to conduct reclamation as required by the complete notice of intention, and fails or refuses to comply with R647-3-107, R647-3-108, or R647-3-109, the Board may, after notice and hearing, order that:

1. Reclamation be conducted by the Division; and

2. The costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court; and

3. Any surety filed for this purpose be forfeited. With respect to the surety filed with the Division, the Board shall request the Attorney General to take the necessary legal action to enforce and collect the amount of liability. Where reclamation surety has been filed with another governmental agency, the Board shall notify such agency of the hearing findings, and seek forfeiture concurrence as necessary.

3.11. The forfeited surety shall be used only for the reclamation of the land to which is relates, and any residual amount returned.

R647-3-113. Suspension or Termination of Operations.

1. All mine operations are required to be maintained in a safe, clean, and environmentally stable condition. Active and inactive operations must continue to submit annual reports unless waived in writing by the Division.

2. The operator need not notify the Division of the temporary suspension of small mining operations.

3. In the case of a termination or a suspension of mining operations that has exceeded, or is expected to exceed two (2) years, the operator shall, upon request, furnish the Division with such data as it may require to evaluate the status of the small mining operation, the status of compliance with these rules, and the probable future status of the land affected. Upon review of such data, the Division will take such action as may be appropriate. The Division may grant an extended suspension period if warranted.

4. The operator shall give the Division prompt written notice of a termination or suspension of small mining operations expected to exceed five (5) years. Upon receipt of notification the Division shall, within 30 days, make an inspection of the property.

5. Small mining operations that have been approved for an extended suspension period will be reevaluated on a regular basis. Additional interim reclamation or stabilization measures may be required in order for a small mining operation to remain in a continued state of suspension. Reclamation of a small mining operation may be required after five (5) years of continued suspension. The Division will require complete reclamation of the mine site when the suspension period exceeds 10 years, unless the operator appeals to the Board prior to the expiration of the 10-year period and shows good cause for a longer suspension period.

R647-3-114. Mine Enlargement.

Before enlarging a small mining operation beyond five acres of surface disturbance in an incorporated area of a county or ten acres in an unincorporated area of a county, the operator must file a Notice of Intention to Commence Large Mining Operations (FORM MR-LMO) and receive Division approval.

R647-3-115. Revisions.

1. Small mining operators are required to submit a revision to the complete notice of intention when a significant change(s) in the small mining operation occurs. A revision can be made by submitting a revised FORM MR-SMO (or similar form) and indicating the portion(s) of the operation which is being revised.

2. Division approval of a revision of small mining operations is not required but the operational change may not be implemented until the Division determines that the revised NOI is complete.

3. In the event the Division or the operator determine at the time a revision is submitted that the amount of the current surety does not accurately reflect the potential cost to complete reclamation at any point in time during the revised small mining operations, the Division may undertake a recalculation of the surety amount as provided in R647-3-111.3. If the recalculated amount is greater than the amount of the existing surety, the revised operations may not be implemented until a revised surety is approved by the Division.

4. If the acreage within an approved small mining operation is later annexed into an incorporated area of a county, the permit may continue as a small mining operation. If the operator of such small mining operation subsequently proposes an increase of the disturbed acres, the current definitions for small or large mining operations would apply as appropriate.

R647-3-116. Transfer of a Notice of Intention.

If an operator wishes to transfer a small mining operation to another party, an application form entitled, Transfer of Notice of Intention - Small Mining Operations (FORM MR-TRS) must be completed and filed with the Division. The new mine operator must post adequate reclamation surety and assume full responsibility for all disturbances of the permitted operation. The form and amount of surety must be approved by the Division for the transfer to be complete.

R647-3-117. Reports.

1. On or before January 31 of each year, unless waived in writing by the Division, each operator conducting small mining operations must file an operations and progress report (FORM MR-AR) describing its operations during the preceding calendar year, including:

1.11. The location of the operation and the number and date of the applicable Notice of Intention;

1.12. The gross amounts of ore and waste materials moved during the year, as well as the disposition of such materials;

1.13. New surface disturbances created during the year;

1.14. The reclamation work performed during the year.

2. The operator shall keep and maintain timely records relating to his performance under the Act and still make these records available to the Division upon request.

R647-3-118. Practices and Procedures; Appeals.

The Administrative Procedures, as outlined in the R647-5 Rules, shall be applicable to minerals regulatory proceedings.

R647-3-119. Confidential Information.

Information provided in the notice of intention relating to the location, size, and nature of the mineral deposit, and

marked confidential by the operator, shall be protected as confidential information by the Board and the Division. The information will not be a matter of public record until a written release is received from the operator, or until the notice of intention is terminated.

KEY: minerals reclamation
October 26, 2011 40-8-1 et seq.
Notice of Continuation January 24, 2018

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.

R647-4. Large Mining Operations.

R647-4-101. Filing Requirements and Review Procedures.

Prior to commencement of operations, a Notice of Intention to Commence Large Mining Operations (FORM MR-LMO) containing all the required information must be filed with and approved by the Division and the Division shall have approved the form and amount of reclamation surety.

1. Within 30 days after receipt of a Notice of Intention, or within 30 days after receipt of any subsequent submittal, the Division will complete its review and notify the operator in writing:

1.11. That the notice of intention is complete; or

1.12. That the notice of intention is incomplete, and that additional information as identified by the Division will be required.

2. Within 30 days after receipt of the notice of intention or within 30 days following the last action of the operator or Division on the notice of intention, the Division shall reach a tentative decision with respect to the approval or denial of the notice of intention.

Notice of the tentative decision will then be published in accordance with Rule R647-4-116.

3. Division approval of the notice of intention and execution of the Reclamation Contract (FORM MR-RC) by the operator shall bind the Division and the operator in accordance with the Act and implementing regulations; and, shall enable the operator to conduct mining and reclamation activities in accordance therewith.

4. The operator must notify the Division within 30 days of beginning mining operations.

5. A permittee's retention of an approved notice of intention shall require the paying of permit fees as authorized by the Utah Legislature. The procedures for paying the permit fees are as follows:

5.11. The Division shall notify the operators of record annually of the amount of permit fees authorized by the Utah Legislature for the following notices of intention.

5.11.11. Large Mining Operations (less than 50 acres) (fees calculated on the disturbed acreage permitted/bonded).

5.11.12. Large Mining Operations (greater than 50 acres) (fees calculated on the disturbed acreage permitted/bonded).

5.12. Fees are due annually by the deadline in R647-4-121 for reports.

5.13. A permittee may avoid payment of the fee by complying with the following requirements:

5.13.11. A permittee will notify the Division of a desire to close out a notice of intention by checking the appropriate box of the permit fees billing form.

5.13.12. The permittee will then arrange with the Division for an onsite inspection of the site to assure that all required reclamation has been performed. If an inspection reveals that an area is not yet suitably reclaimed, then a new billing notice will be issued and the permittee will be given 30 days from the date of the onsite inspection to pay the fee.

R647-4-102. Duration of the Notice of Intention.

The approved notice of intention, including any subsequently approved amendments or revisions, shall remain in effect for the life of the mine. However, the Division may review the permit and require updated information and modifications when warranted. Additionally, failure by the operator to pay permit fees required by R647-4-101(5) or maintain and update reclamation surety as required may, after notice and opportunity for Board hearing result in a withdrawal of the approved notice of intention.

R647-4-103. Notice of Intention to Commence Large Mining Operations.

The notice of intention shall address the requirements of the following rules:

TABLE

RULE #	SUBJECT
R647-4-104	Operator(s), Surface and Mineral Owner(s)
R647-4-105	Maps, Drawings and Photographs
R647-4-106	Operation Plan
R647-4-108	Hole Plugging Requirements
R647-4-109	Impact Assessment
R647-4-110	Reclamation Plan
R647-4-112	Variance

R647-4-104. Operator(s), Surface and Mineral Owner(s).

1. The name, permanent mailing address, and telephone number of the operator responsible for the mining operations and reclamation of the site.

2. The name, permanent mailing address, and telephone number of the surface landowner(s) and mineral owner(s) of all land to be affected by the operations.

3. The federal mining claim number(s), lease number(s), or permit number(s) of any mining claims, or federal or state leases or permits included in the lands affected.

R647-4-105. Maps, Drawings and Photographs.

1. A topographic base map must be submitted with the notice of intention. The scale should be approximately 1 inch = 2,000 feet, preferably a USGS 7.5 minute series or equivalent topographic map where available. The following information shall be included on the map:

1.11. Property boundaries of surface ownership of all lands which are to be affected by the mining operations;

1.12. Perennial streams, springs and other bodies of water, roads, buildings, landing strips, electrical transmission lines, water wells, oil and gas pipelines, existing wells, boreholes, or other existing surface or subsurface facilities within 500 feet of the proposed mining operations;

1.13. Proposed route of access to the mining operations from nearest publicly maintained highway. The map scale will be appropriate to show access.

1.14. Known areas which have been previously impacted by mining or exploration activities within the proposed disturbed area.

2. A surface facilities map shall be provided at a scale of approximately 1" = 200' or other scale as determined necessary by the Division. The following information shall be included on the surface facilities map:

2.11. Proposed surface facilities, including but not limited to buildings, stationary mining/processing equipment, roads, utilities, power lines, proposed drainage control structures, and, the location of topsoil storage areas, tailings or processed waste facilities, disposal areas for overburden, solid and liquid wastes and wastewater discharge treatment and containment facilities;

2.12. A border clearly outlining the acreage proposed to be disturbed by mining operations.

3. The following maps, drawings or cross sections may be required by the Division:

3.11. Regraded Slopes to be left at steeper than 2h:1v;

3.12. Plans, profiles and cross sections of roads, pads or other earthen structures to be left as part of the postmining land use;

3.13. Water impounding structures with embankments greater than 20 feet in height from the upstream toe of the embankment or greater than 20 acre feet in storage capacity;

3.14. Maps identifying surface areas which will be disturbed by the operator but will not be reclaimed, such as solid rock slopes, cuts, roads, or sites of buildings or surface

facilities to be left as part of the postmining land use;

3.15. Sediment ponds, diversion channels, culvert size and locations, and other hydrologic designs and features to be incorporated into the mining and reclamation plan;

3.16. Baseline information maps and drawings including soils, vegetation, watershed(s), geologic formations and structure, contour and other such maps which may be required for determination of existing conditions, operations, reclamation and postmining land use;

3.17. A reclamation activities and treatment map to identify the location and the extent of the reclamation work to be accomplished by the operator upon cessation of mining operations. This drawing shall be utilized to determine adequate bonding and reclamation practices for the site;

3.18. Other maps, plans, or cross sections as may reasonably be required by the Division.

4. The operator may submit photographs (prints) of the site sufficient to show existing vegetation and surface conditions. These photographs should show the general appearance and condition of the land to be affected and should be clearly marked as to the location, orientation and the date that the pictures were taken.

5. Copies of the underground and surface mine development maps.

R647-4-106. Operation Plan.

The operator shall provide a narrative description referencing maps or drawings as necessary, of the proposed operations including:

1. Type of mineral(s) to be mined;

2. Type of operations to be conducted, including the mining/processing methods to be used on-site, and the identification of any deleterious or acid forming materials present or to be left on the site as a result of mining or mineral processing;

3. Estimated acreages proposed to be disturbed and/or reclaimed annually or sequentially;

4. A description of the nature of the materials to be mined or processed including waste/overburden materials and the estimated annual tonnages of ore and waste materials to be mined;

5. A description of existing soil types, including the location and extent of topsoil or suitable plant growth material. If no suitable soil material exists, an explanation of the conditions shall be given;

6. A description of the plan for protecting and redepositing existing soils;

7. A description of existing vegetative communities and cover levels, sufficient to establish revegetation success standards in accordance with Rule R647-4-111;

8. Depth to groundwater, extent of overburden material and geologic setting;

9. Proposed location and size of ore and waste stockpiles, tailings facilities and water storage/treatment ponds.

10. Information regarding the amount of material (including mineral deposit, topsoil, subsoil, overburden, waste rock, or core hole material) extracted, moved or proposed to be moved.

R647-4-107. Operation Practices.

During operations, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare during operations. Methods to minimize hazards shall include but not be limited to:

1.11. The closing or guarding of shafts and tunnels to prevent unauthorized or accidental entry in accordance with MSHA regulations;

1.12. The disposal of trash, scrap metal and wood, and extraneous debris;

1.13. The plugging or capping of drill, core, or other exploratory holes as set forth in Rule R647-4-108;

1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels are to be affected by the mining operation, then the operator shall take appropriate measures to avoid or minimize environmental damage.

3. Erosion Control - Operations shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or kept in an isolated condition such that adverse environmental effects are eliminated or controlled.

5. Soils - Suitable soil material shall be removed and stored in a stable condition where practical so as to be available for reclamation.

6. Concurrent Reclamation - During operations, disturbed areas shall be reclaimed when no longer needed, except to the extent necessary to preserve evidence of mineralization for proof of discovery. Areas which have been disturbed but are not routinely or currently utilized shall be kept in a safe, environmentally stable condition.

R647-4-108. Hole Plugging Requirements.

Drill holes shall be properly plugged as soon as practical and shall not be left unplugged for more than 30 days without approval of the Division. The procedures outlined below are required for the surface and subsurface plugging of drill holes. The Division may approve an alternate plan, if the operator can prove to the satisfaction of the Division that another method will provide adequate protection to the groundwater resources and long term stability of the land. Dry holes and nonartesian holes which do not produce significant amounts of water may be temporarily plugged with a surface cap to permit the operator to re-enter the hole for the duration of operations.

1. Surface plugging of drill holes shall be accomplished by:

1.11. Setting a nonmetallic permaplug at a minimum of five (5) feet below the surface, or returning the cuttings to the hole and tamping the returned cuttings to within five (5) feet of ground level. The hole above the permaplug or tamped cuttings will be filled with a cement plug. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing.

1.12. If the area is tilled farmland, a five (5) foot cement plug must be placed above a permaplug or tamped cuttings so that the top of the cement plug is a minimum of three (3) feet below the ground surface. The hole above the cement plug is to be filled with soil. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing. The top of the casing and cap must be a minimum of three (3) feet below the ground surface.

2. Drill holes that encounter water, oil, gas or other potential migratory substances and are 2-1/2 inches or greater in surface diameter shall be plugged in the subsurface to prevent the migration of fluid from one strata to another. If

water is encountered, plugging shall be accomplished as outlined below:

2.11. If artesian flow (i.e., water flowing to the surface from the hole) is encountered during or upon cessation of drilling, a cement plug shall be placed to prevent water from flowing between geologic formations and at the surface. The cement mix should consist of API Class A or H cement with additives as needed. It should weigh at least 13.5 lbs./gal., and be placed under the supervision of a person qualified in proper drill hole cementing of artesian flow. Artesian bore holes must be plugged in the described manner, prior to removal of the drilling equipment from the well site. If the surface owner of the land affected desires to convert an artesian drill hole to a water well, he must notify the Division in writing that he accepts responsibility for the ultimate plugging of the drill hole.

2.12. Holes that encounter significant amounts of nonartesian water shall be plugged by:

2.12.111 Placing a 50 foot cement plug immediately above and below the aquifer(s); or

2.12.112 Filling from the bottom up (through the drill stem) with a high grade bentonite/water slurry mixture. The slurry shall have a Marsh funnel viscosity of at least 50 seconds per quart prior to the adding of any cuttings.

R647-4-109. Impact Assessment.

The operator shall provide a general narrative description identifying potential surface and/or subsurface impacts. This description will include, at a minimum:

1. Projected impacts to surface and groundwater systems;

2. Potential impacts to state and federal threatened and endangered species or their critical habitats;

3. Projected impacts of the mining operation on existing soil resources;

4. Projected impacts of mining operations on slope stability, erosion control, air quality, and public health and safety;

5. Actions which are proposed to mitigate any of the above referenced impacts.

R647-4-110. Reclamation Plan.

Each notice of intention shall include a reclamation plan, including maps or drawings as necessary, consisting of a narrative description of the proposed reclamation including, but not limited to:

1. A statement of the current land use and the proposed postmining land use for the disturbed area;

2. A description of the manner and the extent to which roads, highwalls, slopes, impoundments, drainages, pits and ponds, piles, shafts and adits, drill holes, and similar structures will be reclaimed;

3. A detailed description of any surface facilities to be left as part of the postmining land use, including but not limited to buildings, utilities, roads, pads, ponds, pits and surface equipment;

4. A description of the treatment, location and disposition of any deleterious or acid-forming materials generated and left on-site, including a map showing the location of such materials upon the completion of reclamation;

5. A planting program as best calculated to revegetate the disturbed area.

5.11. Plans shall include, at a minimum, grading and/or stabilization procedures, topsoil replacement, seed bed preparation, seed mixture(s) and rate(s), and timing of seeding (fall seeding is preferred timing);

5.12. Where there is no original protective cover, an alternate practical procedure must be proposed to minimize or control erosion or siltation.

6. A statement that the operator will conduct reclamation as required by these rules.

R647-4-111. Reclamation Practices.

During reclamation, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare following completion of operations. Methods to minimize hazards shall include but not be limited to:

1.11. The permanent sealing of shafts and tunnels;

1.12. The disposal of trash, scrap metal and wood, buildings, extraneous debris, and other materials incident to mining;

1.13. The plugging of drill, core, or other exploratory holes as set forth in Rule R647-4-108;

1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

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2. Drainages - If natural channels have been affected by mining operations, then reclamation must be performed such that the channels will be left in a stable condition with respect to actual and reasonably expected water flow so as to avoid or minimize future damage to the hydrologic system.

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4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.

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6. Slopes - Waste piles, spoil piles and fills shall be regraded to a stable configuration and shall be sloped to minimize safety hazards and erosion while providing for successful revegetation.

7. Highwalls - In surface mining and in open cuts for pads or roadways, highwalls shall be reclaimed and stabilized by backfilling against them or by cutting the wall back to achieve a slope angle of 45 degrees or less.

8. Roads and Pads - On-site roads and pads shall be reclaimed when they are no longer needed for operations. When a road or pad is to be turned over to the property owner or managing agency for continuing use, the operator shall turn over the property with adequate surface drainage structures and in a condition suitable for continued use.

9. Dams and Impoundments - Water impounding structures shall be reclaimed so as to be self-draining and mechanically stable unless shown to have sound hydrologic design and to be beneficial to the postmining land use.

10. Trenches and Pits - Trenches and small pits shall be reclaimed.

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13. Revegetation - The species seeded shall include adaptable perennial species that will grow on the site, provide basic soil and watershed protection, and support the postmining land use.

Revegetation shall be considered accomplished when:

13.11. The revegetation has achieved 70 percent of the premining vegetative ground cover. If the premining vegetative ground cover is unknown, the ground cover of an adjacent undisturbed area that is representative of the premining ground cover will be used as a standard. Also, the vegetation has survived three growing seasons following the last seeding, fertilization or irrigation, unless such practices are to continue as part of the postmining land use; or

13.12. The Division determines that the revegetation work has been satisfactorily completed within practical limits.

R647-4-112. Variance.

1. The operator may request a variance from Rule R647-4-107, 108, or 111, by submitting the following information which will be considered by the Division on a site-specific basis:

1.11. The rule(s) as to which a variance is requested;

1.12. The variance requested and a description of the area that would be affected by the variance;

1.13. Justification for the variance;

1.14. Alternate methods or measures to be utilized.

2. A variance shall be granted if the alternative method or measure proposed will be consistent with the Act.

3. Any variance must be specifically approved by the Division in writing.

R647-4-113. Surety.

1. After receiving notification that the notice of intention has been approved, but prior to commencement of operations, the operator shall provide the reclamation surety to the Division. Failure to furnish and maintain reclamation surety may, after notice and opportunity for Board hearing, result in a withdrawal of the approved notice of intention as provided for in Section 40-8-16.

2. The Division will not require a separate surety when a reclamation surety in a form and amount acceptable to the Division is held by other governmental entities, provided that the cost estimate is accurate and the Division is named as co-beneficiary. Cooperative Agreements will be developed and entered into according to Section 40-8-22.

3. As part of the review of the notice of intention, the Division shall determine the final amount of surety required to reclaim the mine site. The surety amount will be based upon (a) the technical details of the approved mining and reclamation plan, (b) the proposed post mining land use, and (c) projected third party engineering and administrative costs to cover Division expenses incurred under a bond forfeiture circumstance. An operator's surety estimate will be accepted if it is accurate and verifiable. The Division may accept surety estimates based upon the Minerals Reclamation Program's average dollars per acre reclamation costs, if comparable to site specific cost estimates for similar operations.

4. The operator shall submit a completed Reclamation Contract (FORM MR-RC) with the required surety. The form and amount of the surety must be approved by the Division, except as provided in subpart 4.16. Acceptable forms may include:

4.11. A corporate surety bond from a surety company that is licensed to do business in Utah, that is listed in "A.M. Best's Key Rating Guide" at a rating of A- or better or a Financial Performance Rating (FPR) of 8 or better, according to the "A.M. Best's Guide". All surety companies also will be continuously listed in the current issue of the U.S. Department of the Treasury Circular 570. Operators who do not have a surety bond with a company that meets the standards of subsection 4.11 will have 120 days from the date of Division notification after enactment of the changes to subsection 4.11 to achieve compliance or face enforcement action. When the Division in the course of examining surety bonds, notifies an operator that a surety company guaranteeing its performance does not meet the standards of subsection 4.11., the operator has 120 days after notice from the Division by mail to correct the deficiency, or face enforcement action;

4.12. Federally-insured certificate of deposit payable to the State of Utah, Division of Oil, Gas and Mining;

4.13. Cash;

4.14. An irrevocable letter of credit issued by a bank organized to do business in the United States;

4.15. Escrow accounts.

4.16. The Board may approve a written self-bonding agreement in the case of operators showing sufficient financial strength.

5. Surety shall be required until such time as reclamation is deemed complete by the Division. The Division shall promptly conduct an inspection when notified by the operator that reclamation is complete. The full release of surety shall be evidence that the operator has reclaimed as required by the Act.

5.11. A partial release of surety can be made by the Division if it determines that a substantial phase or segment of reclamation such as demolition, backfilling, regrading or vegetation establishment has been successfully performed and the residual amount of retained surety is determined adequate to insure completion of reclamation.

6. The amount of reclamation surety may be adjusted:

6.11. If required to address changes in the reclamation plan due to an amendment or revision to the Notice of Intention under R647-4-118 and R647-4-119;

6.12. As the result of a periodic review by the Division conducted no more frequently than at 5 year intervals unless agreed to by the operator; which shall take into account inflation/deflation based upon an acceptable Costs Index; or

6.13. At the request of the operator.

7. Notwithstanding any other provision of these rules, for operations where the surety is in the form of a Board-approved agreement under Section 40-8-14(3), the Board shall retain the sole authority over the release, partial release, revision or adjustment of the surety amount, if any, which shall be in accordance with the agreement and the Act.

R647-4-114. Failure to Reclaim.

If the operator fails or refuses to conduct reclamation as outlined in the approved notice of intention, the Board may, after notice and hearing, order that reclamation be conducted by the Division and that:

1. The costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court; or

2. Any surety filed for this purpose be forfeited. With respect to the surety filed with the Division, the Board shall request the Attorney General to take the necessary legal action to enforce and collect the amount of liability. Where surety or a bond has been filed with other governmental agencies, the Board shall notify such agency of the hearing findings, and seek forfeiture concurrence as necessary.

R647-4-115. Confidential Information.

Information provided in the notice of intention relating to the location, size, and nature of the mineral deposit, and marked confidential by the operator, shall be protected as

confidential information by the Board and the Division. The information will not be a matter of public record until a written release is received from the operator, or until the notice of intention is terminated.

R647-4-116. Public Notice and Appeals.

1. Public notice will be deemed complete when the following actions have been taken:

(1.) A description of the disturbed area and the tentative decision to approve or disapprove the notice of intention shall be published by the Division in abbreviated form, one time only, in all newspapers of general circulation published in the county or counties where the land affected is situated, and in a daily newspaper of general circulation in Salt Lake City, Utah.

(2.) A copy of the abbreviated information and tentative decision shall also be mailed by the Division to the zoning authority of the county or counties in which the land affected is situated and to the owner or owners of record of the land affected, as described in the notice of intention.

2. Any person or agency aggrieved by the tentative decision may file a written protest with the Division, during the public comment period identified in the notice, setting forth factual reasons for the complaint.

3. If no responsive written protests are received by the Division within 30 days after the last date of publication, the tentative decision of the Division on the notice of intention shall be final and the operator will be so notified.

4. If written objections of substance are received by the Division during the public comment period, a hearing shall be held before the Division in accordance with UCA 40-8-13, following which hearing the Division shall issue its decision.

R647-4-117. Notification of Suspension or Termination of Operations.

1. The operator need not notify the Division of the temporary suspension of mining operations.

2. In the case of a termination or a suspension of mining operations that has exceeded, or is expected to exceed two (2) years, the operator shall, upon request, furnish the Division with such data as it may require to evaluate the status of the mining operation, the status of compliance with these rules, and the probable future status of the land affected. Upon review of such data, the Division will take such action as may be appropriate. The Division may grant an extended suspension period if warranted by a showing of good cause by the operator.

3. The operator shall give the Division prompt written notice of a termination or suspension of large mining operations expected to exceed five (5) years. Upon receipt of notification, the Division shall, within 30 days, make an inspection of the property.

4. Large mining operations that have been approved for an extended suspension period will be reevaluated on a regular basis. Additional interim reclamation or stabilization measures may be required in order for a large mining operation to remain in a continued state of suspension. Reclamation of a large mining operation may be required after five (5) years of continued suspension. The Division will require complete reclamation of the mine site when the suspension period exceeds 10 years, unless the operator appeals to the Board prior to the expiration of the 10-year period and shows good cause for a longer suspension period.

R647-4-118. Revisions.

1. In order to revise a notice of intention, an operator shall file a Notice of Intention to Revise Large Mining Operations (FORM MR-REV). This notice of intention will include all information concerning the revision that would have been required in the original notice of intention.

2. A Notice of Intention to Revise Large Mining Operations (FORM MR-REV) will be processed and considered for approval by the Division in the same manner as an original notice of intention. The operator will be authorized and bound by the requirements of the existing approved notice until the revision is acted upon and any revised surety requirements are satisfied. Those portions of the approved notice of intention not subject to the revision will not be subject to review under this provision.

3. Large mining operations which have a disturbed area of five acres or less in an incorporated area of a county or ten acres or less in an unincorporated area of a county may refile as a small mining operation. Reclaimed areas must meet full bond release requirements before they can be excluded from the disturbed acreage.

R647-4-119. Amendments.

1. An amendment is an insignificant change to the approved notice of intention. The Division will review the change and make the determination of significance on a case-by-case basis.

2. A request for an amendment should be filed on the Notice of Intention to Revise Large Mining Operations (FORM MR-REV). An amendment of a large mining operation requires Division approval but does not require public notice.

R647-4-120. Transfer of Notice of Intention.

If an operator wishes to transfer a mining operation to another party, an application for Transfer of Notice of Intention - Large Mining Operations (FORM MR-TRL), must be completed and filed with the Division. The new mine operator will be required to post a new reclamation surety and must assume full responsibility for continued mining operations and reclamation.

R647-4-121. Reports.

1. On or before January 31 of each year, unless waived in writing by the Division, each operator conducting large mining operations must file an Annual Report of Mining Operations (FORM MR-AR) describing its operations during the preceding calendar year. Form MR-AR, includes:

1.11. The location of the operation and file number of the approved notice of intention;

1.12. The gross amounts of ore and waste materials moved during the year, as well as the disposition of such materials;

1.13. The reclamation work performed during the year and new surface disturbances created during the year.

2. The operator shall include an updated map depicting surface disturbance and reclamation performed during the year, prepared in accordance with Rule R647-4-105.

3. The operator shall keep and maintain timely records relating to his performance under the Act, and shall make these records available to the Division upon request.

R647-4-122. Practices and Procedures; Appeals.

The Administrative Procedures, as outlined in the R647-5 Rules, shall be applicable to minerals regulatory proceedings.

KEY: minerals reclamation
October 26, 2011 **40-8-1 et seq.**
Notice of Continuation January 24, 2018

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-5. Administrative Procedures.
R647-5-101. Formal and Informal Proceeding.

1. Adjudicative proceedings which shall commence formally before the Board in accordance with the "Rules of Practice and Procedure Before the Board of Oil, Gas and Mining", the R641 rules, include the following: R647-2-112, Failure to Reclaim, Forfeiture of Surety; R647-3-112, Failure to Reclaim, Forfeiture of Surety; R647-3-113.5, Over 10-Year Suspension; R647-4-114, Failure to Reclaim, Forfeiture of Surety; R647-4-117.4, Over 10-Year Suspension.

2. Adjudicative proceedings which shall commence informally before the Division in accordance with this Rule R647-5 include the following: R647-2-101, Notice of Intent to Commence Mining Operations; R647-2-102, Extension; R647-2-107, Operation Practices; R647-2-108, Unplugged Over 30 Days/Alternative Plan; R647-2-109, Reclamation Practices Variance; R647-2-109.13, Revegetation Approval; R647-2-110, Variance, Revocation or Adjustment of Variance; R647-2-111, Release of Surety; R647-2-114, New or Revised Notice of Intention; R647-3-101, Notice of Intention to Commence Small Mining Operations; R647-3-107, Operation Practices; R647-3-108, Unplugged over 30 Days/Alternate Plan; R647-3-109, Reclamation Practices Variance; R647-3-109.13, Revegetation Approval; R647-3-110, Variance, Revocation, or Adjustment of Variance; R647-3-111, Release of Surety; R647-3-113.1, Waiver, Annual Report; R647-3-113.3 and R647-3-113.4, Termination or Suspension; R647-3-113.5, Reevaluations, Reclamation; R647-3-114, Mine Enlargement; R647-3-115, Revisions; R647-3-117, Report Waiver; R647-4-101, Notice of Intention to Commence Large Mining Operation; R647-4-102, Updated Information or Modifications; R647-4-107, Operation Practices; R647-4-108, Unplugged over 30 Days/Alternate Plan; R647-4-111, Reclamation Practice, Variance; R647-4-111.13, Revegetation Approval; R647-4-112, Variances, Revocation or Adjustment; R647-4-113, Release of Surety; R647-4-117.3 and R647-4-117.4, Termination or Suspension; R647-4-118, Revisions; R647-4-119, Amendments; R647-4-121, Annual Report, Waiver.

3. Adjudicative proceedings which shall commence before the Board but follow the procedures for the informal process in this Rule R647-5 include the following:

R647-2-111, Surety, Form and Amount; R647-3-111, Surety, Form and Amount; and R647-4-113, Surety, Form and Amount.

R647-5-102. Informal Process.

Adjudicative proceedings declared by these rules hereinabove to commence in the informal phase shall be processed according to Rule R647-5 et seq. below. All other requirements of the Mineral Rules shall apply when they supplement these rules governing the informal phase and when not in conflict with any of the rules of R647-5. Notwithstanding this, any longer time periods provided for in the Mineral Rules shall apply.

R647-5-103. Definitions.

Definitions as used in these rules may be found under R647-1-106.

R647-5-104. Commencement of Adjudicative Proceedings.

1. Except for emergency orders described further in these rules, all adjudicative proceedings that commence in the informal phase shall be commenced by either:

1.11. A Notice of Agency Action, if proceedings are commenced by the Board or Division; or

1.12. A Request for Agency Action, if proceedings are commenced by persons other than the Board or Division.

2. A Notice of Agency Action shall be filed and served according to the following requirements:

2.11. The Notice of Agency Action shall be in writing and shall be signed on behalf of the Board if the proceedings are commenced by the Board, or by or on behalf of the Division Director if the proceedings are commenced by the Division. A Notice shall include:

2.11.111 The names and mailing addresses of all persons to whom notice is being given by the Board or Division, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the Board or Division;

2.11.112 The Division's file number or other reference number;

2.11.113 The name of the adjudicative proceeding;

2.11.114 The date that the Notice of Agency Action was mailed;

2.11.115 A statement that the adjudicative proceeding is to be conducted informally according to the provisions of these Rules and Sections 63G-4-202 and 63G-4-203 of the Utah Code Annotated (1953, as amended), if applicable;

2.11.116 A statement that the parties may request an informal hearing before the Division within ten (10) days of the date of mailing or publication and that failure to make such a request for hearing may preclude that party from any further participation, appeal or judicial review in regard to the subject adjudicative proceeding;

2.11.117 A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

2.11.118 The name, title, mailing address, and telephone number of the Division Director; and

2.11.119 A statement of the purpose of the adjudicative proceeding and, to the extent known by the Division Director, the questions to be decided.

2.12. Unless waived, the Division shall:

2.12.111 Mail the Notice of Agency Action to each party and any other person who has a right to notice under statute or rule; and

2.12.112 Publish the Notice of Agency Action if required by statute or by the Mineral Rules.

2.13. All the listed adjudicative processes that commence informally may be petitioned for by a person other than the Division or Board. That person's Request for Agency Action shall be in writing and signed by the person invoking the jurisdiction of the Division or by his or her attorney, and shall include:

2.13.111 The names and addresses of all persons to whom a copy of the Request for Agency Action is being sent;

2.13.112 A space for the Division's file number or other reference number;

2.13.113 Certificate of mailing of the Request for Agency Action;

2.13.114 A statement of the legal authority and jurisdiction under which Division action is requested;

2.13.115 A statement of the relief or action sought from the Division; and

2.13.116 A statement of the facts and reasons forming the basis for relief or action.

2.14. The person requesting the Division action shall use the forms of the Division with the additional information required by Rule R647-5-104.2.13 above. The Division is hereby authorized to codify said forms in conformance with this rule. Said forms shall be deemed a Request for Agency Action. The person requesting agency action shall file the request with the Division and shall, unless waived, send a copy by mail to each person known to have a direct interest in the requested agency action.

2.15. In the case of a Request for Agency Action, the Division shall, unless waived, ensure that notice by mail has been promptly given to all parties, or by publication when required by statute or the Mineral Rules. The written notice shall:

2.15.111 Give the Division's file number or other reference number;

2.15.112 Give the name of the proceeding;

2.15.113 Designate that the proceeding is to be conducted informally according to the provisions of these Rules and Section 63G-4-202 and 63G-4-203 of Utah Code Annotated (1953, as amended), if applicable;

2.15.114 A statement that the parties may request an informal hearing before the Division within ten (10) days of the date of mailing or publication and that failure to make such a request may preclude that party from any further participation, appeal or judicial review in regard to the subject adjudicative proceeding;

2.15.115 Give the name, title, mailing address, and telephone number of the Division Director; and

2.15.116 If the purpose of the adjudicative proceeding is to award a license or other privilege as to which there are multiple competing applicants, the Division may, by rule or order, conduct a single adjudicative proceeding to determine the award of that license or privilege.

R647-5-105. Conversion of Informal to Formal Phase.

1. Any time before a final order is issued in any adjudicative proceeding before the Division, the Division Director may convert an informal adjudicative proceeding to a formal adjudicative proceeding if:

1.11. Conversion of the proceeding is in the public interest; and

1.12. Conversion of the proceeding does not unfairly prejudice the rights of any party.

2. An adjudicative proceeding which commences informally shall also be processed formally if an appeal to the Board is filed under the rules hereinbelow. Such an appeal changes the character of the adjudicative process to a contested case which requires a formal hearing process before the Board or its designated Hearing Examiner to best protect the interests of the public as well as the parties involved.

R647-5-106. Procedures for Informal Phase.

1. A Request for Agency Action or Notice of Agency Action shall be the method of commencement of an adjudicative process as previously discussed in these rules.

2. The mailing requirements of Rule R647-5-104.2.12.111 and R647-5-104.2.14, whichever is applicable, shall be met.

3. The Notice of Agency Action shall be published in a newspaper of general circulation likely to give notice to interested persons when required by statute or by these Mineral Rules.

4. All notices required herein shall indicate the date of publication or mailing and specify that any affected person may file with the Division within ten (10) days of said date, a written objection and request for informal hearing before the Division and that failure to make such a request may preclude that person from further participation, appeal or judicial review in regard to the subject adjudicative proceeding. Said ten (10) day period shall be waived if the Division receives a waiver signed by those entitled to notice under these rules.

5. In any hearing, the parties named in the Notice of Agency Action or in the Request for Agency action shall be permitted to testify, present evidence, and comment on the issues.

6. Hearings will be held only after timely notice to all parties.

7. Discovery is prohibited, but the Division Director may issue subpoenas or other orders to compel production of necessary evidence.

8. All parties shall have access to information contained in the Division's files and to all materials and information gathered in by investigation, or to the extent permitted by law.

9. Intervention is prohibited, except where required by federal statute or rule.

10. All hearings shall be open to all parties.

11. Within a reasonable time after the close of the hearing, or after the parties' failure to request a hearing within said ten (10) day period, the Division Director shall issue a written, signed order that states the following:

11.11 The decision;

11.12 The reasons for the decision;

11.13 A notice of the right to appeal to the Board;

11.14 The time limits for filing an appeal.

12. The Division Director's order shall be based on the facts appearing in the Division's files and on the facts presented in evidence at any hearings.

13. Unless waived by the intended recipient of the order, a copy of the Division Director's order shall be promptly mailed to each of the parties.

14. The Division may record any hearing. Any party, at his or her own expense, may have a reporter approved by the Division prepare a transcript from the Division's record of the hearing.

15. Nothing in this section restricts or precludes any investigative right or power given to the Division by another statute.

16. Default. The Division Director may enter an order of default against a party if the party fails to participate in the adjudicative proceeding. The order of default shall include a statement of the grounds for default and shall be mailed to all parties. A defaulted party may seek to have the Division Director set aside the default order and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure. After issuing the order of default, the Division shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party. Notwithstanding this, in an adjudicative proceeding that has no parties other than the Division and the party in default, the Division Director shall, after issuing the order of default, dismiss the proceeding.

17. Appeal of Division Order. Any aggrieved party that participated at a hearing before the Division or an applicant who is aggrieved by a denial or approval with conditions, may file a written appeal to the Board within ten (10) days of the issuance of the order. The written appeal shall be in the form of a Request for Agency Action for a formal hearing before the Board or its designated Hearing Examiner in conformance with the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, and shall also state the grounds for the appeal and the relief requested.

18. Emergency Orders. Notwithstanding the other provisions of these rules, the Division Director or any member of the Board is authorized to issue an emergency order without notice and hearing in accordance with Section 40-8-6. The emergency order shall remain in effect no longer than until the next regular meeting of the Board, or such shorter period of time as shall be prescribed by statute.

18.11. Prerequisites for Emergency Order. The following must exist to allow an emergency order:

18.11.111 The facts known to the Division Director or Board member or presented to the Division Director or Board member show that an immediate and significant danger of

waste or other danger to the public health, safety, or welfare exists; and

18.11.112 The threat requires immediate action by the Division Director or Board member.

18.12. Limitations. In issuing its Emergency Order, the Division Director or Board member shall:

18.12.111 Limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

18.12.112 Issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the Division Director's or Board member's utilization of emergency adjudicative proceedings;

18.12.113 Give immediate notice to the persons who are required to comply with the order;

18.12.114 If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the Division shall commence a formal adjudicative proceeding before the Board of Oil, Gas and Mining.

R647-5-107. Exhaustion of Administrative Remedies.

1. Persons must exhaust their administrative remedies in accordance with Section 63G-4-401, Utah Code Annotated (1953, as amended), prior to seeking judicial review.

2. In any informal proceeding before the Division, there is an opportunity given to request an informal hearing before the Division. If a timely request is made, the Division will conduct an informal hearing and issue a decision thereafter. Only those aggrieved parties that participated in any hearing or an applicant who is aggrieved by a denial or an approval with conditions will then be entitled to appeal such Division decision to the Board within ten (10) days of issuance of the Division order. Such appeal shall be treated as a contested case which is processed as a formal proceeding under the Rules of Practice and Procedure before the Board of Oil, Gas and Mining. Such rights to request an informal hearing before the Division or to appeal the Division order and have the matter be contested and processed formally are available and adequate administrative remedies and should be exercised prior to seeking judicial review.

R647-5-108. Waivers.

Notwithstanding any other provision of these rules, any procedural matter, including any right to notice or hearing, may be waived by the affected person(s) by a signed, written waiver in a form acceptable to the Division.

R647-5-109. Severability.

In the event that any provision, section, subsection or phrase of these rules is determined by a court or body of competent jurisdiction to be invalid, unconstitutional, or unenforceable, other remaining provisions, sections, subsections or phrases shall remain in full force and effect.

R647-5-110. Construction.

The Utah Administrative Procedures Act described in Title 63G, Chapter 4 of the Utah Code Annotated (1953, as amended) shall supersede any conflicting provision of these rules. These rules should be construed to be in compliance with said Act.

R647-5-111. Time Periods.

Nothing in these rules may be interpreted to restrict the Division Director, for good cause shown, from lengthening or shortening any time period prescribed herein.

KEY: minerals reclamation

February 23, 2006 **40-8-1 et seq.**
Notice of Continuation January 24, 2018

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-6. Inspection and Enforcement: Division Authority and Procedures.
R647-6-101. General Information on Authority and Procedures.

(1) Enforcement Authority. Nothing in the Utah Mined Land Reclamation Act will be construed as eliminating any additional enforcement rights or procedures which are available under State law to the Division, but which are not specifically enumerated in Sections 40-8-8, 40-8-9 and 40-8-9.1 of the Utah Mined Land Reclamation Act.

(2) Inspection Program. The Division will conduct inspections of each mining operation and reclamation under its jurisdiction for the purpose of enforcing the provisions of Title 40, Chapter 8.

2.11. Division representatives shall be allowed to enter upon and through any minerals mining operation and reclamation without advance notice. Division Representatives need to check in on site or make an attempt to contact the permittee or operator, if available, prior to proceeding through the site.

2.12. Division representatives shall be allowed to inspect any monitoring equipment or method of exploration, operation or reclamation and have access to and may copy any records required under the Utah Mined Land Reclamation Act.

(3) Compliance Conference.

3.11. A permittee or operator may request an on-site compliance conference with an authorized representative of the Division to review the compliance status of any condition or practice at any mining operation and reclamation. Any such conference will not constitute an inspection within the meaning of Section 40-8-9 and R647-6-101.2.

3.12. The Division may accept or refuse any request to conduct a compliance conference under R647-6-101.3.11. A conference will be considered an inspection if a condition or practice exists which is described in R647-6-102.1.11.111 or 1.11.112.

3.13. The authorized representative at any compliance conference will review such conditions and practices in order to advise whether any such condition or practice is, or may become a violation of any requirement of the Utah Mined Land Reclamation Act or any applicable permit or exploration approval.

3.14. Neither the holding of a compliance conference under this section nor any statement given by the authorized representative at such a conference will affect:

3.14.111. Any rights or obligations of the Division or of the permittee or operator with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such compliance conference; or

3.14.112. The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

R647-6-102. Provisions of State Enforcement.

1. Cessation Orders.

1.11. The Division will immediately order a cessation of mining operations and reclamation or of the relevant portion thereof, if it finds, on the basis of any Division inspection, any violation of the Utah Mined Land Reclamation Act, or any condition of a permit under the Utah Mined Land Reclamation Act, which:

1.11.111. Creates an imminent danger to the health or safety of the public; or

1.11.112. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

1.12. Mining operations and reclamation conducted by any person without a valid permit constitute a condition or practice described in R647-6-102.1.111 or 1.11.112.

1.13. If the cessation ordered under R647-6-102.1.11 will not completely abate the conditions described in R647-6-102.1.11.111 or 1.11.112 in the most expeditious manner physically possible, the Division will impose affirmative obligations on the permittee or operator to abate the violation. The order will specify the time by which abatement will be accomplished.

1.14. When a notice of violation has been issued under R647-6-102.2 and the permittee or operator fails to abate the violation within the abatement period fixed or subsequently extended by the Division then the Division will immediately order a cessation of mining operations and reclamation, or of the portion relevant to the violation. A cessation order issued under R647-6-102.1.14 will require the permittee or operator to take all steps the Division deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

1.15. A cessation order issued under R647-6-102.1.11 or R647-6-102.1.14 will be in writing, signed by the authorized representative of the Division who issued it, and will set forth with reasonable specificity:

1.15.111. The nature of the violation;

1.15.112. The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;

1.15.113. The time established for abatement, if appropriate, including the time for meeting any interim steps;

1.15.114. A reasonable description of the portion of the mining operation and reclamation to which it applies; and

1.15.115. That the order will remain in effect until the violation has been abated or until vacated, modified or terminated in writing by the Division.

1.16. Reclamation and other activities intended to protect public health and safety and the environment will continue during the period of any order unless otherwise provided.

1.17. The Division may modify, terminate or vacate a cessation order for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee or operator.

1.18. The Division will terminate a cessation order by written notice to the permittee or operator, when it is determined that all conditions, practices or violations listed in the order have been abated. Termination will not affect the right of the Division to assess civil penalties for those violations under R647-7.

2. Notices of Violation.

2.11. When on the basis of any Division inspection the Division determines that there exists a violation of the Utah Mined Land Reclamation Act or any condition of a permit required by the Utah Mined Land Reclamation Act, which does not create an imminent danger or harm for which a cessation order must be issued under R647-6-102.1, the Division will issue a notice of violation to the permittee or operator fixing a reasonable time not to exceed 90 days for the abatement of the violation and providing opportunity for a conference before the Division.

2.12. A notice of violation issued under R647-6-102.2 will be in writing, signed by the authorized representative of the Division, and will set forth with reasonable specificity:

2.12.111. The nature of the violation;

2.12.112. The remedial action required, which may include interim steps;

2.12.113. A reasonable time for abatement, which may include time for accomplishment of interim steps; and

2.12.114. A reasonable description of the portion of the

mining operation or reclamation to which it applies.

2.13. The Division may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee or operator. The total time for abatement under a notice of violation, including all extensions, will not exceed 90 days from the date of issuance except upon a showing by the permittee or operator that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in R647-6-102.2.16. An extended abatement date pursuant to this section will not be granted when the permittee or operator's failure to abate within 90 days has been caused by lack of diligence or intentional delay by the permittee or operator in completing the remedial action required.

2.14. If the permittee or operator fails to meet any time set for abatement or for accomplishment of an interim step, the Division will issue a cessation order under R647-6-102.1.14.

2.15. The Division will terminate a notice of violation by written notice to the permittee or operator, when the Division determines that all violations listed in the notice of violation have been abated. Termination will not affect the right of the Division to assess civil penalties for those violations which have been abated, nor will termination affect the right of the Division to assess civil penalties for those violations under R647-7.

2.16. Circumstances which may qualify a mining operation and reclamation for an abatement period of more than 90 days are:

2.16.111. Where good cause is shown by the permittee or operator;

2.16.112. Where climatic conditions preclude complete abatement within 90 days;

2.16.113. Where due to climatic conditions, abatement within 90 days would clearly cause more environmental harm than it would prevent; or

2.16.114. Where the permittee's or operator's action to abate the violation within 90 days would violate safety standards established by the Mine Safety and Health Act of 1977.

2.17. Other requirements on abatement times extended beyond 90 days.

2.17.111. Whenever an abatement time in excess of 90 days is permitted, interim abatement measures will be imposed to the extent necessary to minimize harm to the public or the environment.

2.17.112. The permittee or operator will have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under R647-6-102.2.16 and R647-6-102.2.17.

2.17.113. Any determination made under R647-6-102.2.13 will contain a right of appeal pursuant to R647-5.

3. Service of Notices of Violation, Cessation Orders and Show Cause Orders.

3.11. A notice of violation, cessation order, or order to show cause will be served on the permittee or operator promptly after issuance by one of the following methods:

3.11.111. Personal service, in accordance with the Utah Rules of Civil Procedure. Service shall be effective on the date of personal service.

3.11.112. Delivery by United States mail or by courier service, provided the person being served signs a document indicating receipt. Service shall be complete on the date the receipt is signed.

3.11.113. First posting a copy of the notice at a conspicuous location at the mine site or offices of the place of violation, and thereafter by personally delivering or mailing a copy by certified mail to the permittee or operator at the last address provided to the Division. Service shall be complete upon personal delivery or three days after the date of mailing.

3.12. Service on the permittee or operator shall be sufficient if service is made upon:

3.12.111. an officer of a corporation,

3.12.112. the person designated by law for service of process, or the registered agent for the corporation,

3.12.113. an owner, or partner of an entity other than a corporation, or

3.12.114. a person designated in writing by the permittee or operator as a person authorized to receive notice from the Division for matters pertaining to the mining operation and reclamation.

3.13. Proof of Service.

3.13.111. Proof of personal service shall be made in accordance with the provisions of the Utah Rules of Civil Procedure,

3.13.112. Proof of service by certified mail or courier shall be made by obtaining a copy of the receipt signed by the recipient.

3.13.113. Proof of posting, or personal delivery may be made by a signed written statement of the person effecting posting, or personal delivery stating the date, time, and place of posting. In addition, if personal delivery, the person to whom the notice was delivered.

4. Stop Work Conference.

4.11. Except as provided in R647-6-102.4.12 a notice of violation or cessation order which requires cessation of mining, will expire within 30 days after it is served unless a Stop Work Conference, under the rules of informal process (R645-5), has been held within that time. The Stop Work Conference will be held within 5 days of request, at or reasonably close to the mine site so that the site may be viewed during the conference or at any other location acceptable to the Division and the permittee or operator. The Division office nearest to the mine site will be deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the Division and permittee or operator. Expiration of a notice or order will not affect the Division's right to assess civil penalties for the violations mentioned in the notice or order under R647-7.

4.12. A notice of violation or cessation order will not expire as provided in R647-6-4.11, if the condition, practice or violation in question has been abated or if the Stop Work Conference has been waived, or if, with the consent of the permittee or operator, the conference is held upon agreement later than 30 days after the notice or order was served. For purposes of R647-6-4.12:

4.12.111. The conference will be deemed waived if the permittee or operator:

4.12.111.A. Is informed, by written notice served in the manner provided in R647-6-102.3, that he or she will be deemed to have waived a conference unless he or she requests one within 30 days after service of the notice; and

4.12.111.B. Fails to request a conference within that time;

4.12.112. The written notice referred to in R647-6-4.12.111.A., will be served no later than five days after the notice or order is served on the permittee or operator; and

4.12.113. The permittee or operator will be deemed to have consented to an extension of the time for holding the conference if his or her request is received on or after the 21st day after service of the notice or order. The extension of time will be equal to the number of days elapsed after the 21st day.

4.13. The Division will give as much advance notice as is practicable of the time, place, and subject matter of the Stop Work Conference to the permittee or operator.

4.14. The Division will also post notice of the conference at the Division office closest to the mine site.

4.15. A Stop Work Conference will be conducted by a representative of the Division who may accept oral or written arguments and any other relevant information from any person attending.

4.16. Within five days after the close of the conference, the Division will affirm, modify or vacate the notice or order in writing. The decision will be sent to the permittee or operator.

4.17. The granting or waiver of a conference will not affect the right of any person to have a conference in R647-7-106 or to have a formal review under Subsection 40-8-9(5). No evidence as to statements made or evidence produced at a Stop Work Conference will be introduced as evidence or to impeach a witness at formal review proceedings of that matter before the Board.

4.17.111. Any order or decision issued by the Division as a result of a conference as provided for under Subsection 40-8-9(5) and R647-6-102 including an order upholding the cessation order shall be a modification of the cessation order.

5. Inability to Comply.

5.11. No cessation order or notice of violation issued under R647-6 may be vacated because of inability to comply.

5.12. Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under R647-7 and of the duration of the suspension of a permit under R647-6.

KEY: minerals reclamation
June 1, 2004 40-8-1 et seq.
Notice of Continuation January 24, 2018

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-7. Inspection and Enforcement: Civil Penalties.
R647-7-101. Information on Civil Penalties.

1. Objectives. Civil penalties are assessed under Section 40-8-9.1 of the Utah Mined Land Reclamation Act and R647-7 to deter violations and to ensure maximum compliance with the terms and purposes of the Utah Mined Land Reclamation Act on the part of the minerals mining industry.

2. How Assessments Are Made. The Division will appoint an assessment officer to review each notice of violation and cessation order in accordance with the assessment procedures described in R647-7 to determine whether a civil penalty will be assessed and the amount of the penalty.

R647-7-102. Penalty To Be Assessed.

1. The assessment officer will assess a penalty for each cessation order.

2. The assessment officer may assess a penalty for each notice of violation under the point system described in R647-7-103. In determining whether to assess a penalty, the assessment officer will consider the factors listed in R647-7-103.

3. Within 15 days of service of a notice of violation or cessation order, the permittee or operator may submit written information about the violation to the assessment officer at the Division offices. The assessment officer will consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

R647-7-103. Point System for Penalties.

1. Amount of Penalty. In determining the amount of the penalty, if any, to be assessed, consideration will be given to:

1.11. The permittee or operator's history of previous violations at the particular mining operation and reclamation, regardless of whether any led to a civil penalty assessment. However, a violation will not be considered if the notice or order containing the violation meets the conditions described in R647-7-103.2.11.111 or R647-7-103.2.11.112.

1.12. The seriousness of the violation based on the likelihood and extent of the potential or actual impact on the public or environment, both within and outside the permit area.

1.13. The degree of fault of the permittee or operator in causing or failing to correct the violation, either through act or omission. Such degree will range from inadvertent action causing an event which was unavoidable by the exercise of reasonable care to reckless, knowing or intentional conduct.

1.14. The permittee or operator's demonstrated good faith, by considering whether he took extraordinary measures to abate the violation in the shortest possible time, or merely abated the violation within the time given for abatement.

1.15. Consideration will also be given to whether the permittee or operator gained any economic benefit as a result of a failure to comply.

2. Assessment of Points.

2.11. History of Previous Violations. The assessment officer will assign up to 25 points based on the history of previous violations. One point will be assigned for each past violation contained in a notice of violation. Five points may be assigned for each violation contained in a cessation order. The history of previous violations, for the purpose of assigning points, will be determined and the points assigned with respect to the particular mining operation and reclamation. Points will be assigned as follows:

2.11.111. A violation will not be counted, if the notice or order is the subject of pending administrative or judicial review, or if the time to request such review, or to appeal any administrative or judicial decision has not expired, and thereafter, it will be counted for only three years;

2.11.112. No violation for which the notice or order has been vacated will be counted; and

2.11.113. Each violation will be counted without regard to whether it led to a civil penalty assessment.

2.12. Seriousness. The assessment officer will assign up to 45 points based on the seriousness of the violation as follows:

2.12.111. Probability of occurrence. The assessment officer will assign up to 20 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points will be assessed according to the following table:

TABLE 1

PROBABILITY OF OCCURRENCE	POINTS
None	0
Insignificant	1 - 4
Unlikely	5 - 9
Likely	10 - 19
Occurred	20

2.12.112. Extent of potential or actual damage. The assessment officer will assign up to 25 points, based on the extent of the potential or actual damage to the public health and safety or the environment, in terms of duration, area and impact of such damage.

2.12.113. Alternative to R647-7-103.2.12.111 and R647-7-103.2.12.112, in the case of a violation of an administrative requirement, such as a requirement to keep records, the assessment officer will, in lieu of R647-7-103.2.12.111 and R647-7-103.2.12.112, assign up to 25 points for seriousness, based upon the extent to which enforcement is hindered by the violation.

2.13. Degree of Fault.

2.13.111. The assessment officer will assign up to 30 points based on the degree of fault of the permittee or operator in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points will be assessed as follows:

2.13.111.A. A violation which occurs through no fault of the permittee or operator, or by inadvertence which was unavoidable by the exercise of reasonable care, will be assigned no penalty points for degree of fault;

2.13.111.B. A violation which is caused by fault of the operator will be assigned 15 points or less, depending on the degree of fault. Fault means the failure of a permittee or operator to prevent the occurrence of any violation of his or her permit or any requirement of the Utah Mined Land Reclamation Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Utah Mined Land Reclamation Act due to indifference, lack of diligence, or lack of reasonable care; and

2.13.111.C. A violation which occurs through a greater degree of fault, meaning reckless, knowing or intentional conduct will be assigned 16 to 30 points, depending on the degree of fault.

2.13.112. In calculating points to be assigned for degree of fault, the acts of all persons working at the mining operations on the mine site will be attributed to the permittee or operator, unless that permittee or operator establishes that they were acts of deliberate sabotage or acts of a third-party otherwise authorized to occupy the same lands.

2.14. Good Faith in Attempting to Achieve Compliance. The assessment officer will subtract points based on the degree of good faith of the permittee or operator. Points will be assigned as follows:

2.14.111. Easy Abatement Situation. An easy

abatement situation is one in which the operator has on-site the resources necessary to achieve compliance of the violated standard within the permit area.

TABLE 2

DEGREE OF GOOD FAITH	POINTS
Immediate Compliance	-11 to -20
Rapid Compliance	- 1 to -10
Normal Compliance	0

2.14.112. Difficult Abatement Situation. A difficult abatement situation is one which requires submission of plans prior to physical activity to achieve compliance, or the permittee or operator does not have the resources at hand to achieve compliance of the violated standard.

TABLE 3

DEGREE OF GOOD FAITH	POINTS
Rapid Compliance	-11 to -20
Normal Compliance	- 1 to -10
Extended Compliance	0

2.15. Definition of Compliance.

2.15.111. Immediate Compliance requires evidence that the violation has been abated immediately (which is a question of fact) following issuance of the notice of violation.

2.15.112. Rapid Compliance requires evidence that the permittee or operator used diligence to abate the violation.

2.15.113. Normal Compliance means that the operator complied within the abatement period required under the notice of violation or by the violated standards.

2.15.114. Extended Compliance means that the permittee or operator took minimal actions for abatement to stay within the limits of the notice of violation or the violated standard; or that the plan submitted for abatement was incomplete.

2.16. The Effect on the permittee or operator's Ability to Continue in Business. Initially, it will be presumed that the permittee or operator's ability to continue in business will not be affected by the order of assessment. The permittee or operator may submit to the assessment officer information concerning the operator's financial status to show that payment of the civil penalty will affect the permittee or operator's ability to continue in business. A reduction of the penalty, work in kind, or a special payment plan may be ordered if the information provided by the permittee or operator demonstrates that the civil penalty will substantially reduce the likelihood of the permittee or operator's ability to continue in business.

3. Determination of Amount of Penalty. The assessment officer will determine the amount of any civil penalty converting the total number of points assigned under R647-7-103.3 to a dollar amount, according to the following table:

TABLE 4

Points	Dollars
1	22
2	44
3	66
4	88
5	110
6	132
7	154
8	176
9	198
10	220
11	242
12	264
13	286
14	308
15	330
16	352
17	374
18	396
19	418
20	440
21	462
22	484
23	506
24	528
25	550
26	660
27	770
28	880
29	990
30	1,100
31	1,210
32	1,320
33	1,430
34	1,540
35	1,650
36	1,760
37	1,870
38	1,980
39	2,090
40	2,200
41	2,310
42	2,420
43	2,530
44	2,640
45	2,750
46	2,860
47	2,970
48	3,080
49	3,190
50	3,300
51	3,410
52	3,520
53	3,630
54	3,740
55	3,850
56	3,960
57	4,070
58	4,180
59	4,290
60	4,400
61	4,510
62	4,620
63	4,730
64	4,840
65	4,950

4. Whenever a violation contained in a cessation order has not been abated, a civil penalty of not less than $750.00 will be assessed for each day during which such failure continues, except that, if the permittee or operator initiates review proceedings with respect to the violation, the abatement period will be extended as follows:

4.11. If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under the Utah Mined Land Reclamation Act, after determination that the permittee or operator will suffer irreparable loss or damage from the application of the requirements, the extended period permitted for abatement will not end until the date specified in the Board final order; and a penalty will not be assessed until the time allowed for abatement by the order has expired.

4.12. If the permittee or operator initiates review proceedings under the Utah Mined Land Reclamation Act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to the Utah Mined Land Reclamation Act, the extended period permitted for abatement will not end until the date specified in the court final order; and a penalty will not be assessed until the time allowed for abatement by the order has expired.

R647-7-104. Waiver of Use of Formula to Determine Civil Penalty.

1. The assessment officer upon his or her own initiative or upon written request received by the Division within 15 days of receipt of a notice of violation or a cessation order, may waive the use of the formula contained in R647-7-103 to set the civil penalty, if they determine that, taking into

account exceptional factors present in the particular case, the penalty is demonstrably unjust.

R647-7-105. Procedures for Assessment of Civil Penalties - Proposed Assessment.

1. The assessment officer will serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the permittee or operator, by certified mail, within 30 days of the issuance of the notice or order.

1.11. If the mail is tendered at the address of the permittee or operator set forth in the permit application or at any address at which that permittee or operator is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of R647-7-105.1 will be deemed to have been complied with upon such tender.

1.12. Failure by the Division to serve any proposed assessment within 30 days will not be grounds for dismissal of all or any part of such assessment unless the permittee or operator:

1.12.111. Proves actual prejudice as a result of the delay; and

1.12.112. Makes a timely objection to the delay.

2. Unless a conference has been requested, the assessment officer will review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment. The assessment officer will serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in R647-7-105.1, within 30 days after the date the violation is abated.

R647-7-106. Procedures for Informal Conference.

1. The Division will arrange for a conference to review the fact of the violation and/or the proposed assessment or reassessment, upon written request of the permittee or operator, if the request is received within 30 days from the date the proposed assessment or reassessment is received by the permittee or operator.

2. Informal Conference Scheduling and Findings.

2.11. The Division will assign a conference officer to hold conferences. The conference will be informal. The conference will be held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later. PROVIDED: That a failure by the Division to hold such a conference within 60 days will not be grounds for dismissal of all or part of an assessment unless the permittee or operator proves actual prejudice as a result of the delay.

2.12. The Division will provide notice of the time and place of the conference to the operator or permittee and post notice of the conference at the main Division office at least five days before the conference. Any person may attend the conference.

2.13. The conference officer will consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer will either:

2.13.111. Settle the issues, in which case a settlement agreement will be prepared and signed by the conference officer on behalf of the Division and by the permittee or operator;

2.13.112. Affirm, raise, lower, or vacate the penalty; or

2.13.113. Affirm, deny, modify or vacate the violation.

3. The conference officer will promptly serve the permittee or operator with a notice of his or her action in the manner provided in R647-7-105.1, and will include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action will be fully documented in the file.

4. Informal Conference Settlement Agreement.

4.11. If a settlement agreement is entered into, the permittee or operator will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement will contain a clause to this effect.

4.12. If full payment of the amount specified in the settlement agreement is not received by the Division within 30 days after the date of signing, the Division may enforce the agreement or rescind it and proceed according to R647-7-106.2.13.112 within 30 days from the date of the rescission.

5. The conference officer may terminate the conference when he or she determines that the issues cannot be resolved or that the permittee or operator is not diligently working toward resolution of the issues.

6. At formal review proceedings of the matter before the Board, no evidence as to statements made or evidence produced by one party at a conference will be introduced as evidence by another party or to impeach a witness.

R647-7-107. Requests for Formal Hearing.

1. A permittee or operator charged with a violation may contest the proposed penalty or the fact of the violation by submitting: (a) a petition to the Board; and (b) an amount equal to the proposed penalty (or, if a conference has been held, the reassessed or affirmed penalty) to the Division (to be held in escrow as provided in R647-7-107.2) within 30 days of receipt of the proposed assessment or reassessment, or 30 days from the date of service of the conference officer's action, whichever is later, but in every case, the penalty must be escrowed prior to commencement of the formal hearing.

2. The Division will transfer all funds submitted under R647-7-107.1 to an escrow account pending completion of the administrative and judicial review process, at which time it will disburse them as provided in R647-7-108.2 or R647-7-108.3.

3. Formal review of the violation fact or penalty will be conducted by the Board under the provisions of R641, rules of practice and procedure before the Board.

R647-7-108. Final Assessment and Payment of Penalty.

1. If the permittee or operator fails to request a hearing as provided in R647-7-107, the proposed assessment or reassessment will become a final order of the Division and the penalty assessed will become due and payable upon expiration of the time allowed to request a hearing and upon the Division fulfilling its responsibilities under Subsection 40-8-9.1(3)(e).

2. If any party requests judicial review of a final order of the Board, the proposed penalty will be held in escrow until completion of the review. Otherwise, subject to R647-7-108.3, the escrowed funds will be transferred to the Division in payment of the penalty, and the escrow will end.

3. If the final decision of the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under R647-7, the Division will within 30 days of receipt of the order refund to the permittee or operator all or part of the escrowed amount and interest accumulated, if any.

4. If the review results in an order increasing the penalty, the permittee or operator will pay the difference to the Division within 15 days after the order is received by such permittee or operator.

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Notice of Continuation January 24, 2018

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-8. Inspection and Enforcement: Individual Civil Penalties.
R647-8-101. Information on Individual Civil Penalties.

1. The rules in R647-8 provide guidance to exercise the authority set forth in Subsection 40-8-9.1(6).

2. Individual civil penalties will be assessed by a Division-appointed assessment officer using the process described in R647-8.

R647-8-102. When an Individual Civil Penalty May Be Assessed.

1. Except as provided in R647-8-102.2, the assessment officer may assess an individual civil penalty against any corporate director, officer, or agent of a permittee or operator, or any other person who may be liable under Section 40-8-9.1 who knowingly and willfully authorized, ordered or carried out a violation, failure, or refusal.

2. The assessment officer will not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee or operator until a cessation order has been issued by the Division to the corporate permittee or operator for the violation, and the cessation order has remained unabated for 30 days.

R647-8-103. Amount of the Individual Civil Penalty.

1. In determining the amount of an individual civil penalty assessed under R647-8-102, the assessment officer will consider the criteria specified in Section 40-8-9.1, including:

1.11. The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular mining operation and reclamation;

1.12. The seriousness of the violation failure or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public; and

1.13. The demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure, or refusal.

2. The individual civil penalty will not exceed $5,000 for each violation. Each day of continuing violation may be deemed a separate violation and the assessment officer may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order, or other order incorporated in a final decision issued by the Board, until abatement or compliance is achieved.

R647-8-104. Procedure for Assessment of Individual Civil Penalty.

1. Notice. The Division will serve on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.

2. Final order and opportunity for review. The notice of proposed individual civil penalty assessment shall become a final order of the Division 30 days after service upon the individual unless:

2.11. The individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review with the Board; or

2.12. The Division and the individual or responsible corporate permittee or operator agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal.

3. Service. Service of notice under R647-8-104 will satisfy the standard of R641, concerning the rules of practice and procedure before the Board.

R647-8-105. Payment of Penalty.

1. No abatement or appeal. If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty will be due upon issuance of the final order.

2. Appeal. If an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with R641, the penalty will be due upon issuance of a final Board order affirming, increasing, or decreasing the proposed penalty.

3. Abatement agreement. Where the Board and the corporate permittee, operator, or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from the Board stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

4. Delinquent payment. Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent penalty will be subject to interest at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the Federal Government, pursuant to Treasury Financial Manual 6-8020.20. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the Federal Register. Interest on unpaid penalties will run from the date payment first was due until the date of payment. Failure to pay overdue penalties will result in referral to the Utah Attorney General for appropriate collection action.

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R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.
R649-6. Gas Processing and Waste Crude Oil Treatment.
R649-6-1. Gas Processing Plants.

1. In accordance with Section 40-6-16 any operator of a facility or plant in which liquefiable hydrocarbons are removed from natural gas, including wet gas or casinghead gas, and the remaining residue gas is conditioned for delivery for sale, recycling, or other use, shall file monthly, Form 13-A and Form 13-B.

1.1. Reports shall be filed for all gas processing plants or facilities to account for the receipt, processing, and disposition of all gas by the plant.

1.2. Plant operators that are required by contractual arrangements to allocate the residue gas and extracted liquids processed by the plant or facility to the individual producing wells, shall identify each well or entity connected to the plant or facility by API number and report the metered wet gas volumes, residue gas volumes returned to the field, and all allocated residue gas and natural gas liquid volumes.

R649-6-2. Waste Crude Oil Treatment Facilities.

1. Prior to the construction of a waste crude oil treatment facility, an application shall be submitted to the division describing the ownership, location, type, and capacity of the facility contemplated; the extent and location of the surface area to be disturbed, including any pit, pond, or land associated with the facility; and a reclamation plan for the site. Approval of the application must be issued by the division before any ground clearing or construction shall occur.

2. As a condition for approval of any application, the owner or operator shall post a bond in an amount determined by the division to cover reclamation costs for the site. Failure to post the bond shall be considered sufficient grounds for denial of the application.

3. No waste crude oil treatment facility operator shall accept delivery of crude oil obtained from any tank, reserve pit, disposal pond or pit, or similar facility unless the delivery is accompanied by a run ticket, invoice, receipt or similar document showing the origin and quantity of the crude oil.

KEY: oil and gas law
1989 40-6-1 et seq
Notice of Continuation January 24, 2018

R657. Natural Resources, Wildlife Resources.
R657-58. Fishing Contests and Clinics.
R657-58-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule to provide the standards and procedures for fishing contests and events including:

a) Type I fishing contests;
b) Type II fishing contests;
c) tagged fish contests; and
d) fishing clinics.

(2) Any violation of, or failure to comply with, any provision of this rule or any specific requirements in a Certificate of Registration issued pursuant to this rule may be grounds for revocation or suspension of the Certificate of Registration, as determined by the division.

R657-58-2. Definitions.

(1) Terms used in this rule are defined in Sections 23-13-2 and R657-13-2.

(2) In addition:

(a) "Certificate of Registration (COR)" means a license or permit issued by the division that authorizes a contest organizer to conduct a contest and spells out any special provisions and conditions that must be followed.

(b) "cold water fish species" means: mountain whitefish, Bonneville whitefish, Bear Lake whitefish, Bonneville cisco, Bear Lake cutthroat, Bonneville cutthroat, Colorado River cutthroat, Yellowstone cutthroat, rainbow trout, lake trout, brook trout, arctic grayling, brown trout, and kokanee salmon.

(c) "cull" or "high-grade" means to release alive and in good condition, a fish that has been held as part of a possession limit for the purpose of including larger fish in the possession limit.

(d) "fishing clinic" means an organized gathering of anglers for non-competitive, educational purposes that does not offer cash, awards or prizes for their individual or team catches.

(e) "live weigh" or "live weigh-in" means that fish are held in possession by contest participants and transported live to a specified location to be weighed.

(f) "possession" means active or constructive possession.

(g) "tagged fish contest" means any fishing contest where prizes are awarded for the capture of fish previously tagged or marked specifically for that contest.

(h) "Type I fishing contest" means a competitive event for warm or cold water fish species, other than a tagged fish contest, that meets any of the following criteria:

i) involves 50 or more participants or 25 or more boats;

ii) includes cash and/or prizes awarded individually or cumulatively per year at $2,000 or more for a contest or a series of contests; or

iii) utilizes a live weigh-in.

(i) "Type II fishing contest" means a competitive event for warm or cold water fish species, other than a tagged fish contest, that meets all of the following criteria:

(a) involves fewer than 50 contestants or fewer than 25 boats;

(b) includes cash and/or prizes awarded individually or cumulatively per year at less than $2,000 for a contest or a series of contests; and

(c) does not utilize a live weigh-in.

(j) "warmwater fish species" means: walleye, yellow perch, striped bass, largemouth bass, white bass, smallmouth bass, bullhead, channel catfish, black crappie, northern pike, green sunfish, wipers, bluegill, tiger muskellunge, common carp, and burbot.

R657-58-3. Certificate of Registration (COR) and General.

(1) Regardless of the size or type of contest, all boat operators must complete the Mussel Aware Boater Program online training provided at https://dwrapps.utah.gov/wex/dbconnection.jsp?examnbr=504688, and display the completed "decontamination certification form" on the dashboard of the boat transport vehicle for the duration of the fishing contest.

(2) Regardless of the size or type of contest, the contest sponsor shall verify and confirm that all boat operators participating in the fishing contest possess a completed Mussel Aware Boater Program "decontamination certification form".

(3) A COR is required for all Type I fishing contests and all tagged fish contests. The requirements are listed in sections R657-58-4 through R657-58-6.

(4) A COR is not required for Type II fishing contests and fishing clinics.

(5) A COR is valid for only one fishing tournament/tagged fish contest on one water.

(6) The division may request public comment before issuing a COR if, in the opinion of the division, the proposed contest has potential impacts to the public or could substantially impact a public fishery.

(7)(a) A COR may be denied for:

(i) failure to comply with the fishing proclamation and rule;

(ii) potential for resource damage;

(iii) location;

(iv) occurrence on a legal holiday or Free Fishing Day;

(v) public safety issues;

(vi) conflicts with the public;

(vii) failure to adequately protect state waters from invasive species;

(viii) problems with the applicants prior performance record; and

(ix) failure to comply with other state laws, including those applying to raffles and lotteries in Utah.

(b) The reason for denial will be identified and reported to the applicant in a timely manner. The division may impose conditions on the issuance of the Certification of Registration in order to achieve a management objective or adequately protect a fishery. Any conditions will be listed on the COR.

(8) All COR applications submitted for Type I fishing contests must include a written protocol for participants to disinfect boats and equipment to prevent the spread of aquatic nuisance species. The protocol must be consistent with division policy and rule.

(9)(a) COR applications are available at all division offices and online at the division's website.

(b) Applications must be received by the division at least 45 days prior to the contest. In some cases a public comment process may alter the 45-day COR review period.

(c) Variances to the COR review period may only be granted by the director.

(10) A COR application must include:

(a) a copy of proposed rules for the contest, and

(b) a complete schedule of entry fees, cash awards and prize values.

(11) Anyone conducting a Type I fishing contest or tagged fish contest must complete a post-contest report and that report must be received by the division within 30 days after the event is completed.

(12) Anyone conducting a Type I fishing contest or tagged fish contest who fails to obtain a COR or to follow the rules set by the division may be prohibited from conducting any fishing contests, and may be subject to other penalties.

R657-58-4. Requirements for Type I Fishing Contests for Warm Water Fish Species.

(1) A COR from the Division of Wildlife Resources is required for any Type I fishing contest for any warm water fish species.

(2) All participants' boats must be readily identifiable as such at a distance of 100 yards.

(3) Contestants may not possess fish species, numbers of fish, or sizes of fish that are in violation of the proclamation approved by the Utah Wildlife Board.

R657-58-5. Requirements for Type I Fishing Contests for Cold Water Fish Species.

(1) A COR from the division is required for all Type I fishing contests for cold water fish species.

(2) Type I fishing contests for cold water fish may not:

(a) involve more than 200 participants.

(b) offer more than $2,000 in total prizes.

(c) utilize live weigh-ins.

(3) Type I fishing contests for cold water fish species are prohibited on waters where the Wildlife Board has imposed more restrictive special harvest rules for targeted cold water fish species including tackle restrictions, size restrictions, and other exceptions to the general fishing regulations, except at Scofield Reservoir where Type 1 fishing contests are allowed for rainbow trout only.

(4) There is no limit to the number of participants or total prizes at Flaming Gorge and Echo Reservoirs.

(5) Type I fishing contests for cold water fish species may not be held

(a) on Free Fishing Day except at Echo Reservoir.

(6) Fish taken in Type I cold water fishing contests may not be culled.

R657-58-6. Requirements for Tagged Fish Contests.

(1) A COR from the Division of Wildlife Resources is required to conduct any tagged fish contest, regardless of number of contestants or value of prizes or awards.

(2) If more than one application is received for a water in a year then a drawing will be held to select the applicant to receive the COR.

(3) Only one tagged fish contest per year may be held on any water.

(4) Tagged fish contests must have the start date and end date identified on the COR Application.

(5) Tagging of fish for tagged fish contests must be conducted only by division personnel, or by designated representatives working under the direct supervision of the division.

(6) Without prior authorization from the division, it is prohibited to:

(a) tag, fin-clip or mark fish in any way, or

(b) introduce tagged, fin-clipped or marked fish into a water.

(7) The organizer of a tagged fish contest will assume all responsibility for the contest and the purchase of tags and tagging equipment.

KEY: fish, fishing, wildlife, wildlife law

January 10, 2012	**23-14-18**
Notice of Continuation January 9, 2018	**23-14-19**
	23-19-1
	23-22-3

R671. Pardons (Board of), Administration.
R671-201. Original Hearing Schedule and Notice.
R671-201-1. Schedule and Notice.

(1)(a) The Board shall schedule the month and year of an offender's original hearing, and provide notice to the offender, within 6 months of the offender's commitment to prison.

(b)(i) No original hearing may be scheduled for any offender whose prison commitment includes a sentence of death.

(ii) The Board may only consider parole for an offender whose prison commitment includes a sentence of Life Without Parole, pursuant to UCA Subsection 77-27-9(6).

(2) For purposes of this Rule, the following terms are defined:

(a) "Administrative Review" means the process by which the Board, by majority vote, reviews, deliberates, and schedules the month and year for an offender's original hearing.

(b) "Homicide Offense Commitment" means a prison commitment to serve a sentence for a conviction of aggravated murder (if the sentence includes the possibility of parole), murder, felony murder, manslaughter, child abuse homicide, negligent homicide, automobile homicide, homicide by assault, any attempt, conspiracy or solicitation to commit any of these offenses, or any other offense, regardless of title, description or severity, when it is known at the time of sentencing that the offense conduct resulted in the death of any person.

(c) "Sexual Offense Commitment" means a prison commitment to serve a sentence for a conviction of any crime for which an offender is defined as a kidnap offender pursuant to Utah Code Ann. Subsection 77-41-102(9); or for which an offender is defined as a sex offender pursuant to Utah Code Ann. Subsection 77-41-102(16); or any attempt, conspiracy or solicitation to commit any of the offenses listed in those sections.

(3) Within 6 months of an offender's commitment to prison, the Board shall conduct an administrative review and schedule a future date for an offender's original hearing, if the offender is committed to prison to serve a sentence for any:

(a) homicide offense commitment eligible for parole;

(b) commitment which includes a sentence of 25 years to life;

(c) commitment imposed if the offender is younger than 18 years of age at the time of prison commitment; or

(d) commitment imposed if the offender was younger than 18 years of age at the time the offense was committed.

(4) When scheduling an original hearing by administrative review, if the Board obtains and consider additional information which was not available to the court or offender prior to or at the time of sentencing, the additional information shall be provided to the offender, who shall be afforded a minimum of 21 days to consider and respond to the additional information prior to the Board making a decision that schedules an original hearing.

(5) When scheduling an original hearing by administrative review, if the offender was less than 18 years of age at the time of the commitment offense and the offense is eligible for parole, the original hearing shall be scheduled no later than 15 years after the date of sentencing.

(6) If an administrative review is not used to schedule an offender's original hearing pursuant to this rule, the original hearing shall be scheduled as follows:

(a) after the service of 12 years if the most severe sentence imposed is for a first degree felony with a minimum sentence of 15 years to life;

(b) after the service of 7 years if the most severe sentence imposed is for a first degree felony with a minimum sentence of 10 years to life;

(c) after the service of 3 years for any first degree felony if the most severe sentence imposed is greater than 3 years to life but less than 10 years to life;

(d) after the service of 1 year if the most severe sentence imposed is for:

(i) a first degree felony and the sentence is for 3 years to life; or

(ii) a second degree felony sexual offense commitment;

(e) after the service of 6 months if the most severe sentence imposed is for:

(i) all other second degree felony commitments; or

(ii) a third degree felony sexual offense commitment;

(f) after the service of 3 months if the most severe sentence imposed is for any other third degree felony or class A misdemeanor commitments.

(7) An offender may request in writing that their original appearance and hearing before the Board be continued. The request shall specify the reasons supporting the request. The Board may grant or deny the offender's request in its sole discretion.

(8) The Board may depart from the schedule as provided by this rule if:

(a) an offender requests a delay or continuance;

(b) an offender has unadjudicated criminal charges pending at the time a hearing would normally be held;

(c) a Class A misdemeanor commitment has expired prior to an original hearing; or

(d) the Board determines that other unusual or extraordinary circumstances impact the scheduling of an original hearing.

KEY: parole, inmates, hearings
January 8, 2018 **Art. VII Sec. 12**
Notice of Continuation September 22, 2014 **77-27-5**
77-27-7
77-27-9

R671. Pardons (Board of), Administration.
R671-202. Notification of Hearings.
R671-202-1. Notification.

(1)(a) An offender shall be notified of the date, time, place, and type or purpose of a personal appearance hearing at least seven calendar days in advance of the hearing, except in extraordinary circumstances.

(b) In extraordinary circumstances, the hearing may be conducted without the seven day notification.

(c) An offender may waive this notice requirement.

(2) Public notice of Board hearings shall be posted one week in advance on the Board's website (www.bop.utah.gov).

KEY: parole, inmates
January 8, 2018 **63G-3-201(2)**
Notice of Continuation January 30, 2017 **77-27-7(1)**
77-27-9(4)(a)

R671. Pardons (Board of), Administration.
R671-203. Victim Input and Notification.
R671-203-1. General Provisions.

For purposes of Utah Administrative Code, Title R671 and all rules contained therein:

(1) "Victim" means:

(a) A natural person against whom an offender, as a principal, accomplice or party to the offense, committed a criminal offense for which a conviction was entered and for which the Board of Pardons and Parole (Board) has jurisdiction;

(b) A natural person originally named in an allegation of criminal conduct who is not a victim of the offense of Board jurisdiction to which the defendant entered a negotiated plea of guilty; or

(c) A victim representative as provided herein.

(2) "Victim Representative" means: a person designated by a victim or by this rule to represent a victim during Board processes, hearings, or communications.

(3) Pursuant to Utah Code Ann. Subsection 77-27-13(2), the Department of Corrections shall provide the Board with all available information in its records or possession concerning the impact a crime may have had upon the victim or victim's family.

(4)(a) Pursuant to Utah Code Ann. Subsection 77-27-13(5)(a), within 30 days from the date of sentencing the prosecutor of the case responsible for an offender's arrest, conviction, and sentence, shall forward to the Board any victim impact statement in its possession that refers to any physical, mental, or economic loss suffered by the victim or victim's family.

(b) Upon request of the Board pursuant to Utah Code Ann. Subsection 77-27-13(4), any other law enforcement official responsible for an offender's arrest, prosecution, conviction, sentence, supervision or incarceration, shall forward to the Board any victim impact statement in its possession that refers to any victim contact information or any physical, mental, or economic loss suffered by the victim or victim's family.

(5) No victim or victim representative appearing at a hearing may be photographed without the approval of the victim, victim representative, and the presiding hearing official.

(6)(a) Victims are encouraged to:

(i) visit the Board's website (bop.utah.gov) as soon as possible to obtain information about Board procedures; and

(ii) provide information to the Board for future notifications.

(b) The Board shall maintain information in written form and on its website (bop.utah.gov) for victims about Board procedures, victim notification, attending hearings, submitting victim impact information, and testifying at hearings.

(7) Victims may contact the Board, after any parole hearing, for information concerning the outcome of that hearing. Victims may also contact the Department of Corrections for information on offender releases.

(8) All persons attending hearings must comply with the security and clearance regulations of the facility where the hearing is held. These regulations include picture identification, appropriate dress, and no contraband. Contraband for this purpose includes but is not limited to purses/bags, cell phones, and other electronic devices. Visitors should arrive at the facility 15 to 20 minutes prior to the scheduled hearing to allow adequate time for the security clearance.

R671-203-2. Victim Representative.

(1) If a victim does not wish to give testimony or is unable to do so, a victim representative may be designated to speak on the victim's behalf.

(a) If a victim over the age of 18 desires to designate a victim representative, the victim may make that designation on the record at a hearing, or in a notarized statement filed with the Board prior to or at a hearing.

(b) If a victim is under the age of 18, a victim's parent, guardian, or custodian may represent the victim during Board processes, hearings, and communications.

(c) If a victim is deceased, a family member, or the victim's personal representative as appointed by a court, may be designated as the victim's representative.

(2) A victim representative must, at all times, act according to the instructions, and in the best interests, of the victim.

(3) Notwithstanding any provision of this rule, or any designation, an offender, offender's co-defendant, or offender's attorney may not act as a victim representative in matters before the Board in which the offender was convicted of causing any injury or damage to the victim.

R671-203-3. Notification.

(1) Notice of an offender's original parole hearing shall be given to a victim as soon as practicable at the victim's most recent address of record as provided to the Board. The notice shall include:

(a) the date and location of the hearing;

(b) the type of hearing, and the cases or offenses involved;

(c) a list of or reference to the statutes and rules applicable to a victim's participation in the hearing;

(d) the address and telephone number of the Board employee who may be contacted for further explanation of procedures regarding victim participation in the hearing;

(e) specific information about how, when, and where the victim may obtain the results of the hearing; and

(f) notification that the victim must maintain current contact information with the Board in order to receive future notifications of hearings affecting a specific offender's incarceration or parole.

(2) If a victim is deceased, or the Board is otherwise unable to contact the victim, the Board shall make reasonable efforts to notify the victim's immediate family of the hearing.

(3)(a) Following notice of the original hearing, a victim may elect to receive notice of any future hearing as defined by Utah Code Ann. Subsection 77-38-2(5)(g) and Utah Administartive Code Section R671-203-4.

(b) In order to receive notice of these future hearings, the victim shall notify the Board of the desire to receive future notices, and shall thereafter maintain current contact information with the Board.

(4) If a victim elects to receive future notices, the notice shall be sent to the victim's most recent contact information as provided to the Board.

R671-203-4. Right to Attend and Testify.

(1) Pursuant to Utah Code Ann. Subsection 77-38-2(5)(g), "hearing" means a public hearing at which the offender is present, and which concerns whether to grant parole or other form of discretionary release from imprisonment.

(2) A victim may attend any hearing regarding the offender.

(3) A victim may testify during any hearing regarding the offender.

(4) A victim may request a re-scheduling or continuance of the hearing if travel or other significant conflict prohibits their attendance at the hearing.

R671-203-5. Victim Statements and Testimony.

(1) A victim, victim representative or victim's family member (if the victim is a child or deceased), may testify regarding the impact of the offense(s) upon the victim, any restitution claimed, and may present any concerns or statements regarding any decision to be made regarding the offender.

(2) The testimony may be presented as a written statement, which may also be read aloud, if the presenter desires; or as oral testimony.

(3) Oral testimony at hearings may be limited in order to accommodate the hearing calendar.

(4) If a deceased victim's family member testifies, testimony may be limited to one family member from the victim's marital family (i.e. spouse or children) and one family member from the victim's nuclear/extended family (i.e. parent, sibling or grandparent).

(5) In exceptional or extraordinary circumstances a victim or victim representative may request that additional testimony be permitted.

(6)(a) A victim may present testimony during the hearing outside the presence of the offender. However, the offender shall be permitted to hear the victim's testimony and respond during the hearing.

(b) If a victim presents testimony during a victim impact hearing held separately from an original hearing or rehearing, an audio recording of the victim's testimony shall be made available to the offender.

(7) Victims who desire to testify at hearings shall notify the Board as far in advance of the hearing as possible so that appropriate arrangements can be made and adequate time allocated.

(8) Victims or representatives are encouraged to bring a written copy of their testimony to the hearing or send a copy to the Victim Coordinator for the Board file.

(9)(a) Any person aggrieved by the conduct of the offender, who is not a victim as defined by this rule, may submit a written statement regarding any impact to the person from the offender's conduct.

(b) Other than protected identifying information, including but not limited to address, email, and phone numbers, information submitted to the Board is disclosed to the offender pursuant to legal requirements.

R671-203-6. Victim Impact Hearings.

(1) If an offender's original parole hearing is scheduled more than three years from the offender's commitment to prison, the victim or victim representative may request that the Board conduct a Victim Impact hearing, in order to preserve victim impact testimony for future use and reference by the Board.

(2) The Board may also conduct a Victim Impact hearing if a hearing, as defined by Utah Code Ann. Subsection 77-38-2(5)(g) and Utah Administrative Code Section R671-203-4, is to be held outside the State of Utah because the offender is housed in another state.

(3)(a) The sole purpose of a Victim Impact hearing held pursuant to R671-203-6(1) is to afford an opportunity for victim impact testimony to be made in cases where an offender's original hearing is scheduled more than three years following commitment to prison, so that the victim is not denied an opportunity to participate in the offender's original hearing, simply because of the passage of time between the offender's commitment to prison and original hearing.

(b) A Victim Impact hearing is not a substitute for an original hearing.

(c) A Victim Impact hearing held pursuant to R671-203-6(1) will not result in a review, re-scheduling, or re-determination of a previously determined original hearing date.

(d) Victim Impact hearings are for the convenience of victims, and may take the place of the victim's attendance and testimony at an out of state hearing.

(4) Victims who request, and for whom Victim Impact hearings are conducted, retain all rights afforded pursuant to constitutional provision, statute or Board rule, including: the right to notice of the original hearing and any future hearings; the right to attend any hearing for the offender; and the right to testify and make future statements to the Board at any hearing for the offender.

(5) In scheduling and conducting a Victim Impact hearing:

(a) All notice provisions of this Rule shall apply.

(b) All victim appearance, testimony and statement provisions of R671-203 shall apply.

(c) Unless the offender is housed in an out of state prison, the offender shall be present, pursuant to the provisions of R671-301, and shall be afforded an opportunity to respond to the victim's testimony. However, this is not an opportunity for the offender to discuss the conviction, sentence or potential release.

(6) The Victim Impact hearing shall be recorded, pursuant to the provisions of R671-304.

KEY: victims of crimes

January 8, 2018	**Art. I, Sec. 28**
Notice of Continuation January 30, 2017	**77-27-9.5**
	77-37-3
	77-37-4
	77-38-1 et seq.
	63G-3-201(3)
	77-27-1 et seq.
	77-27-9(4)

R671. Pardons (Board of), Administration.
R671-205. Credit for Time Served.
R671-205-1. Definitions.

(1) "Custody", for purposes of this rule, means that a person is held in jail or prison, and includes a person who is:

(a) in the custody of a peace officer pursuant to a lawful arrest;

(b) a minor confined in a facility operated by the Division of Juvenile Justice Services, following conviction as an adult in district court, when the district court obtained jurisdiction over the minor pursuant to Utah Code sections 78A-6-701, 78A-6-702, or 78A-6-703; or

(c) committed to the Department of Corrections, but who is housed at the Utah State Hospital or other medical facility.

(2)(a) "Sentence", for purposes of this rule, means a judgment, sentence, or commitment issued by a district court pursuant to Utah Code Section 77-18-1 for a criminal conviction and over which the Board has prison release jurisdiction.

(b) When a person is sentenced to prison after being convicted in multiple counts in the same criminal case, or after being convicted in multiple cases, credit for time served will be calculated separately for each sentence.

R671-205-2. Credit for Time Served.

(1) Credit for time served shall be granted by the Board against an offender's prison sentence for time an offender actually served in custody if, prior to being sentenced to prison, the offender was held in custody in connection with the specific sentence:

(a) while awaiting trial, conviction, or imposition of the sentence, including any time spent in confinement, detention, or hospitalization in the custody of the Department of Human Services or the Utah State Hospital awaiting competency evaluation or restoration;

(b) while on probation and awaiting a hearing or decision regarding probation violation allegations;

(c) as a condition of probation following the imposition of a suspended prison sentence, if the offender is later committed to prison on or after October 1, 2015;

(d) as a sanction for a violation of probation, following the revocation and re-start or re-imposition of probation, if the offender is later committed to prison on or after October 1, 2015;

(e) as a response to a violation of probation, pursuant to the AP and P Response and Incentive Matrix, if the offender is later committed to prison on or after October 1, 2015.

(f) that is reversed, vacated, or otherwise set aside, if a subsequent prison sentence is imposed for the same criminal conduct;

(g) at the Utah State Hospital following a "guilty and mentally ill" conviction; or

(h) outside the State of Utah based solely on a Utah warrant issued in connection with the sentence under Board jurisdiction.

(2) The Board may, in its discretion, grant credit for time served in other, extraordinary circumstances.

R671-205-3. Exclusions.

Credit for time served may not be granted for any period of custody served:

(1) for an arrest, pre-trial detention, probation, commitment, case, conviction, or sentence over which the Board has no jurisdiction;

(2) at the Utah State Hospital or comparable non-prison, psychiatric facility while an offender, prior to commitment to prison is under a civil commitment order or other similar order to remain in the facility;

in a medical or other treatment facility while under court supervision;

(3) under home-confinement, house arrest, in a community correctional center, or in any other treatment facility while under court supervision; or

(4) for an arrest, pre-trial detention, probation, commitment, or sentence while under the jurisdiction of the federal government.

R671-205-4. Concurrent and Consecutive Sentencing.

(1) If an offender is committed to prison for more than one sentence, credit for time served shall be calculated for each sentence separately.

(2) If an offender is committed to prison to serve consecutive sentences, only the credit for time served attributable to the consecutive sentence shall be granted against that sentence, and the consecutive sentence shall begin only following the expiration of all prior sentences.

(3) If an offender is serving one or more prison sentences, and a subsequent prison sentence is imposed concurrently, credit for time served shall begin on the date the subsequent prison sentence is imposed.

(4) If an offender is serving one or more prison sentences, and a subsequent prison sentence is imposed consecutively, credit for time served may not be granted toward the consecutive sentence, and the consecutive sentence shall begin only following the expiration of all prior sentences.

R671-205-5. Verification of Time Served Required.

(1) The Board shall only grant credit for time served if the time in custody is documented in official records of the court and facility of custody.

(2) If an offender desires credit in addition to that granted by the Board, the offender bears the burden to petition for, and provide copies of records supporting, the additional credit.

KEY: credit for time served, prison release, parole

January 8, 2018	**Art. VII Sec. 12**
Notice of Continuation January 30, 2017	**77-18-1(11)(a)(iii)**
	77-18-1(12)(e)(iv)
	77-27-5
	77-27-7
	77-27-9

R671. Pardons (Board of), Administration.
R671-206. Competency of Offenders.
R671-206-1. Incompetence for Board Proceedings Defined.

For purposes of the proceedings of the Board of Pardons and Parole (Board), an offender is incompetent to proceed if the offender is suffering from a mental disorder or intellectual disability resulting in either:

(1) an inability to have a rational and factual understanding of a pending Board hearing; or

(2) an inability to consult with counsel and participate in a hearing with a reasonable degree of rational understanding.

R671-206-2. Stay to Determine Offender Competence.

(1) If a Board member or hearing official, Department of Corrections (Department) agent or employee, counsel for the State, or counsel for an offender has reason to believe that an offender may be incompetent as defined herein or as defined in UCA 77-15-2, all proceedings shall be stayed pending a decision by the Board regarding the offender's competence.

(2) A stay of proceedings under this rule does not toll any time served nor does it affect an offender's sentence expiration date.

R671-206-3. Proceedings When Competence Is Questioned.

If there is reason to believe that an offender is or may be incompetent, the Board may:

(1) request a mental health evaluation from the Department or a private mental health expert to assist in determining whether the offender is competent or is likely to become competent while housed in the custody of the Department;

(2) appoint one or more contract psychologists to examine the offender and report in writing to the Board, specifically addressing the issue of competency, as defined herein and in UCA Subsection 77-27-7(5); or

(3) request that the Board's counsel from the Attorney General's office file a petition on behalf of the Board with the district court for a competency hearing pursuant to UCA Section 77-15-3.

R671-206-4. Determination of Competence.

If the Board or the district court, pursuant to UCA Section 77-15-3, determines the offender is competent, the Board shall proceed with scheduled hearings or other actions.

KEY: criminal competency
January 8, 2018

77-15-2
77-15-3
77-15-5
77-27-2
77-27-7

R671. Pardons (Board of), Administration.
R671-304. Hearing Record.
R671-304-1. Hearing Record.

(a) An electronic audio record shall be made of all in-person, video, or telephonic hearings held by the Board of Pardons and Parole (Board).

(b) Pursuant to Utah Code Ann. Section 77-27-8, a certified shorthand reporter shall record and transcribe the proceedings of any death penalty commutation hearing held by the Board.

(c) The electronic record made pursuant to this Rule shall be maintained by the Board for 7 years.

(d) Any magnetic, analog, or other non-digital hearing record made prior to January 1, 2009 shall only be maintained for ten years from the date of the hearing.

Upon written request, a copy of the recording may be provided to an offender or any member of the public.

If the request for the recording requires that the record be copied to an electronic or digital medium, the Board shall charge a fee, approved by the Legislature, for the copy.

When an offender affirms by affidavit that he or she is unable to pay for a copy of the recording, the Board may furnish a copy of the record, at no fee, to the offender.

KEY: government hearings

January 8, 2018	**63G-3-201(3)**
Notice of Continuation January 30, 2017	**77-27-1 et seq.**
	77-27-8
	77-27-9(4)(a)

R698. Public Safety Administration.
R698-11. Submission and Testing of Sexual Assault Kits.
R698-11-1. Authority.

This rule is authorized under Section 76-5-609.

R698-11-2. Purpose.

The purpose of this rule is to establish procedures for the submission and testing of sexual assault kits, requirements regarding information and evidence to be submitted as a part of each sexual assault kit submission, and goals for the completion of analysis and classification of sexual assault kit submissions.

R698-11-3. Definitions.

(1) Terms used in this rule are defined in Section 53-1-102 and 53-10-102.

(2) In addition:

(a) "bureau" means the Bureau of Forensic Services within the Department of Public Safety established in Section 53-10-201; and

(b) "DNA" means deoxyribonucleic acid.

R698-11-4. Sexual Assault Kit Submission.

(1)(a) Sexual assault kits submitted to the bureau for analysis shall be packaged in accordance with the Utah Bureau of Forensic Services Evidence Handbook.

(b) Sexual assault kits that do not meet the packaging guidelines in the Utah Bureau of Forensic Evidence Handbook shall be returned to the submitting entity without analysis.

(c) A sexual assault kits may be re-submitted after it has been repackaged in accordance with the Utah Bureau of Forensic Services Evidence Handbook.

(2) The bureau shall only accept sexual assault kits that meet the criteria for analysis in R698-11-5.

(3) Sexual assault kits submitted to the bureau for analysis shall be accompanied by the Sexual Assault Examination documentation provided by the medical personnel conducting the examination.

R698-11-5. Sexual Assault Kit Analysis.

(1) The bureau shall analyze sexual assault kits in the following types of cases:

(a) criminal investigations and prosecutions.

(2) The bureau shall only analyze sexual assault kits:

(a) which have been collected by means utilized and validated by the bureau; and

(b) that are of sufficient quality and quantity to be analyzed.

(3) Sexual assault kits submitted to the bureau for analysis shall be examined by the bureau to determine the number of samples in a given case on which it will perform identification, comparison or analysis.

(4)(a) The bureau shall give priority to current and active cases over cold cases.

(b) An entity seeking to have a sexual assault kit analyzed by the bureau may submit a request to expedite the analysis to the section manager.

(c) The bureau shall consider the following factors when determining whether to expedite the analysis of the sexual assault kit:

(i) there exists an immediate threat to public safety;

(ii) a court date is scheduled and imminent; or

(iii) a person is detained pending laboratory results.

(5) The submitting entity shall make reasonable efforts to provide the bureau with comparison standards, such as:

(a) comparison standards for DNA analysis from all available potential sources.

R698-11-6. Laboratory Goals and Classifications.

(1) The bureau shall classify sexual assault kit submissions as follows:

(a) first priority if an immediate threat to public safety exists;

(b) second priority if a court date is scheduled and imminent; or

(c) third priority for all other cases.

(2) The goal for completion of analysis of sexual assault kit submissions is as follows:

(a) within 30 days from the date of submission for first priority cases;

(b) within 60 days from the date of submission for second priority cases; and

(c) within 180 days from the date of submission for third priority cases.

KEY: sexual assault kits, sexual assault kit analysis
January 10, 2018 76-5-609

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-300. Concealed Firearm Permit and Instructor Rule.
R722-300-1. Purpose.

The purpose of this rule is to establish procedures whereby the bureau administers the Concealed Firearms Act in accordance with Title 53, Chapter 5, Part 7.

R722-300-2. Authority.

This rule is authorized by Subsection 53-5-704(17) which provides that the commissioner may make rules necessary to administer Title 53, Chapter 5.

R722-300-3. Definitions.

(1) Terms used in this rule are defined in Sections 53-5-702, 53-5-711, 76-10-501.

(2) In addition:

(a) "applicant" means an individual seeking to obtain or renew a permit, a temporary permit, an instructor certification, or an LEOJ permit from the bureau;

(b) "certified firearms instructor" means an individual certified by the bureau pursuant to Subsection 53-5-704(9) who can certify that an applicant meets the general firearm familiarity requirement under Subsection 53-5-704(8);

(c) " certified firearms instructor official seal" means a red, self-inking stamp containing the information required in Subsection 53-5-704(11)(a)(iii) which meets the design requirements described on the bureau's website;

(d) "crime of violence" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States which has, as an element, the use, threatened use, or attempted use of physical force or a dangerous weapon;

(e) "felony" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States for which the penalty is a term of imprisonment in excess of one year;

(f) "FBI" means the Federal Bureau of Investigation;

(g) "instructor certification" means a concealed firearm instructor certification issued by the bureau pursuant to Subsection 53-5-704(9);

(h) "LEOJ permit" means a permit to carry a concealed firearm issued to a judge or law enforcement official by the bureau pursuant to Section 53-5-711;

(i) "nonresident" means a person who:

(i) does not live in the state of Utah; or

(ii) has established a domicile outside Utah, as that term is defined in Section 41-1a-202.

(j) "NRA" means the National Rifle Association;

(k) "offense involving domestic violence" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving any of the conduct described in:

(i) Section 77-36-1; or

(ii) 18 U.S.C Subsection 921(a)(33);

(l) "offense involving moral turpitude" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving conduct which:

(i) is done knowingly contrary to justice, honesty, or good morals;

(ii) has an element of falsification or fraud; or

(iii) contains an element of harm or injury directed to another person or another's property;

(m) "offense involving the use of alcohol" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving any of the conduct described in:

(i) Section 32B-4-409;

(ii) Section 32B-4-421;

(iii) Subsection 41-6a-501(2) related to the use of alcohol;

(iv) Section 41-6a-526; or

(v) Section 76-10-528 related to carrying a dangerous weapon while under the influence of alcohol;

(n) "offense involving the unlawful use of narcotics or controlled substances" means:

(i) any offense listed in Subsection 41-6a-501(2) involving the use of a controlled substance;

(ii) any offense involving the use or possession of any controlled substance found in Title 58, Chapters 37, 37a, or 37b; or

(iii) the crime of carrying a dangerous weapon while under the influence of a controlled substance pursuant to Section 76-10-528;

(o) "past pattern of behavior involving unlawful violence" means verifiable incidents, regardless of whether there has been an arrest or conviction, that would lead a reasonable person to believe that an individual has a violent nature and would be a danger to themselves or others, including an attempt or threat to commit suicide;

(p) "permit" means a permit to carry a concealed firearm issued by the bureau pursuant to Section 53-5-704 or 53-5-704.5;

(q) "POST" means the Utah Department of Public Safety, Division of Peace Officer Standards and Training;

(r) "revocation" means the permanent deprivation of a permit, instructor certification, or certificate of qualification, however revocation does not preclude an individual from applying for a new permit, instructor certification, or certificate of qualification if the reason for revocation no longer exists;

(s) "suspension" means the temporary deprivation, for a specified period of time, of a permit, instructor certification, or certificate of qualification; and

(t) "temporary permit" means a temporary permit to carry a concealed firearm issued by the bureau pursuant to Section 53-5-705.

R722-300-4. Application for a Permit to Carry a Concealed Firearm.

(1)(a) An applicant seeking to obtain a permit shall submit a completed permit application packet to the bureau.

(i) The bureau may not accept an application more than 60 days prior to the applicant's date of permit eligibility.

(b) The permit application packet shall include:

(i) a written application form provided by the bureau with the address of the applicant's permanent residence;

(ii) a photocopy of a state-issued driver license or identification card;

(iii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph, unless the applicant submitted a photo which meets these requirements to the bureau within the previous three years;

(iv) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints;

(v) non-refundable fees as required under Sections 53-5-707, 53-5-707.5, and 53-10-108, and a fee for services provided by the FBI to conduct a federal background check as provided in Subsections 53-5-707(6)(a) and 53-5-707.5(4)(a), in the form of cash, check, money order, or credit card;

(vi) evidence indicating that the applicant has general familiarity with the types of firearms to be concealed as required by Subsection 53-5-704(6)(d);

(vii) any mitigating information that the applicant wishes the bureau to consider when determining whether the

applicant meets the qualifications set forth in Subsection 53-5-704(2)(a); and

(viii) a copy of the applicant's current concealed firearm or weapon permit or provisional concealed firearm or weapon permit issued by the applicant's state of residency pursuant to Subsections 53-5-704(4)(a) and 53-5-704.5(3)(a), unless the applicant is an active duty service member who presents orders requiring the active duty service member to report for duty in Utah or an active duty service member spouse who presents the active duty service member's orders requiring the service member to report for duty in Utah.

(2) An applicant may establish evidence of general familiarity with the types of firearms to be concealed as required in Subsection 53-5-704(6)(d) by submitting a signed certificate, issued within one year of the date of the application, bearing a certified firearms instructor's official seal, certifying that the applicant has completed the required firearms course of instruction established by the bureau.

(3) If the applicant is employed as a law enforcement officer, the applicant:

(a) may not be required to pay the application fee; and

(b) may establish evidence of general familiarity with the types of firearms to be concealed as required in Subsection 53-5-704(6)(d) by submitting documentation from a law enforcement agency located within the state of Utah indicating that the applicant has successfully completed the firearm qualification requirements of that agency within the last five years.

(4)(a) Upon receipt of a complete permit application packet, the bureau shall conduct a thorough background investigation to determine if the applicant meets the requirements found in Subsections 53-5-704(2) and (3).

(b) The background investigation shall consist of the following:

(i) sending the fingerprint card to the FBI for a review of the applicant's criminal history record pursuant to Section 53-5-706; and

(ii) verifying the accuracy of the information provided in the application packet through a search of local, state and national records which may include, but is not limited to, the following:

(A) the Utah Computerized Criminal History database;

(B) the National Crime Information Center database;

(C) the Utah Law Enforcement Information Network;

(D) state driver license records;

(E) the Utah Statewide Warrants System;

(F) juvenile court criminal history files;

(G) expungement records maintained by the bureau;

(H) the National Instant Background Check System;

(I) the Utah Gun Check Inquiry Database;

(J) Immigration and Customs Enforcement records; and

(K) Utah Department of Corrections Offender Tracking System; and

(L) the Mental Gun Restrict Database.

(5)(a) If the background check indicates that an applicant does not meet the qualifications set forth in Subsection 53-5-704(2)(a), the bureau shall consider any mitigating circumstances submitted by the applicant.

(b) If the applicant does not meet the qualifications set forth in Subsection 53-5-704(2)(a) because the applicant has been convicted of a crime, the bureau may find that mitigating circumstances exist if the applicant was not convicted of a registerable sex offense, as defined in Subsection 77-41-102(17) and the following time periods have elapsed from the date the applicant was convicted or released from incarceration, parole, or probation, whichever occurred last:

(i) five years in the case of a class A misdemeanor;

(ii) four years in the case of a class B misdemeanor; or

(iii) three years in the case of any other misdemeanor or infraction.

(c) Notwithstanding any other provision, the bureau may not grant a permit if the applicant does not meet the qualifications in Subsection 53-5-704(2)(a)(viii).

(6)(a) If the bureau determines that the applicant meets the requirements found in Subsections 53-5-704(2) and 53-5-704(3), the bureau shall issue a permit to the applicant within 60 days.

(b) The permit shall be mailed to the applicant at the address listed on the application.

(7)(a) If the bureau determines that the applicant does not meet the requirements found in Subsections 53-5-704(2), 53-5-704(3), and 53-5-704(4), the bureau shall mail a letter of denial to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

R722-300-5. Application for a Concealed Firearms Instructor Certification.

(1)(a) An applicant seeking to be certified as a Utah concealed firearms instructor shall submit a completed instructor certification application packet to the bureau.

(b) The instructor certification application packet shall include:

(i) a written instructor certification application form provided by the bureau with the applicant's residential or physical address and public contact information;

(ii) a photocopy of a state-issued driver license or identification card;

(iii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph, unless the applicant submitted a photo which meets these requirements to the bureau within the previous five years;

(iv) a photocopy of a valid Utah concealed firearm permit;

(v) a non-refundable processing fee in the form of cash, check, money order, or credit card;

(vi) evidence that the applicant has completed a firearm instructor training course from the NRA or POST, or received training equivalent to one of these courses, as required by Subsection 53-5-704(9)(a)(iii); and

(vii) evidence that the applicant has completed the course of instruction provided under the direction of the bureau and passed the certification test provided in Subsection 53-5-704(9)(c), within one year of the date of the application.

(2)(a) An applicant who has not completed a firearm instructor training course from the NRA or POST, may meet the requirement in R722-300-5(1)(b)(v) by providing evidence that the applicant has completed a firearm instructor training course that is at least eight hours long and includes the following training components:

(i) instruction and demonstration on:

(A) the safe, effective, and proficient use and handling of firearms;

(B) firearm draw strokes;

(C) the safe loading, unloading and storage of firearms;

(D) the parts and operation of a handgun;

(E) firearm ammunition and ammunition malfunctions, including misfires, hang fires, squib loads, and defensive/protection ammunition vs. practice ammunition;

(F) firearm malfunctions, including failure to fire, failure to eject, feed way stoppage and failure to go into battery;

(G) shooting fundamentals, including shooter's stance, etc.; and

(H) firearm range safety rules; and

(ii) a practical exercise with a proficiency qualification course consisting of not less than 30 rounds and a required score of 80% or greater to pass.

(b) The evidence required in R722-300-5(2)(a) shall include a copy of the:

(i) course completion certificate showing the date the course was completed and the number of training hours completed; and

(ii) training curriculum for the course completed.

(3)(a) If the bureau determines that an applicant meets the requirements found in Subsection 53-5-704(9), the bureau shall issue an instructor certification to the applicant.

(b) An instructor certification identification card shall be mailed to the applicant at the residential or physical address listed on the application.

(4)(a) If the bureau determines that the applicant does not meet the requirements found in Subsection 53-5-704(9), the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

R722-300-6. Renewal of a Concealed Firearms Permit or Concealed Firearms Instructor Certification.

(1)(a) An applicant seeking to renew a permit or an instructor certification shall submit a completed renewal packet to the bureau.

(b) The renewal packet for an applicant seeking to renew a permit shall include:

(i) a written renewal form provided by the bureau with the current address of the applicant's permanent residence;

(ii) a copy of the applicant's current concealed firearm or weapon permit or provisional concealed firearm or weapon permit issued by the applicant's state of residency pursuant to Subsections 53-5-704(4)(a) and 53-5-704.5(3)(a), unless the applicant is an active duty service member who presents orders requiring the active duty service member to report for duty in Utah or an active duty service member spouse who presents the active duty service member's orders requiring the service member to report for duty in Utah;

(iii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph, unless the licensee submitted a photo which meets these requirements to the bureau within the previous five years; and

(iv) a non-refundable processing fee in the form of cash, check, money order, or credit card, unless the applicant is an active duty service member who presents orders requiring the active duty service member to report for duty in Utah or an active duty service member spouse who presents the active duty service member's orders requiring the service member to report for duty in Utah.

(c) The renewal packet for an applicant seeking to renew an instructor certification shall include:

(i) a written renewal form provided by the bureau with the applicant's residential or physical address and the applicant's public contact information;

(ii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph, unless the applicant submitted a photo which meets these requirements to the bureau within the previous three years;

(iii) a photocopy of a valid Utah concealed firearm permit;

(iv) a non-refundable processing fee in the form of cash, check, money order, or credit card; and

(v) evidence that the instructor has completed the course of instruction provided under the direction of the bureau and passed the certification test provided in Subsection 53-5-704(9)(c), within one year of the date of the application.

(A) The course of instruction for instructor certification renewal may be completed in person or via an online training course administered by the bureau.

(2) A renewal packet may be submitted no earlier than 60 days prior to the expiration of a current permit or certification.

(3)(a) A fee will be collected for renewal packets submitted on a permit or an instructor certification that has been expired for more than 30 days but less than one year.

(b) Renewal packets for a permit or an instructor certification which has been expired for more than one year will not be accepted and the applicant will have to re-apply for a permit or an instructor certification.

(4) When renewing a permit or an instructor certification the bureau shall conduct a background investigation.

(5)(a) If the bureau determines that the applicant meets the requirements to renew a permit or an instructor certification, the bureau shall mail the renewed permit or instructor certification identification card to the applicant.

(b) The renewed permit or instructor certification identification card shall be mailed to the applicant at the address listed on the renewal application.

(6)(a) If the bureau determines that the applicant does not meet the requirements to renew a permit or an instructor certification, the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

(7) Provisional permits issued pursuant to Section 53-5-704.5 may not be renewed.

R722-300-7. Application for a Temporary Permit to Carry a Concealed Firearm.

(1)(a) In order to obtain a temporary permit an applicant shall submit a completed permit application packet to the bureau as provided by R722-300-4.

(b) In addition, the applicant shall provide written documentation to establish extenuating circumstances which would justify the need for a temporary permit to carry a concealed firearm.

(2) When reviewing an application for a temporary permit to carry a concealed firearm the bureau shall conduct the same background investigation as provided in R722-300-4.

(3)(a) If the bureau finds that extenuating circumstances exist to justify the need for a temporary permit, the bureau shall issue a temporary permit to the applicant.

(b) The temporary permit shall be mailed to the applicant at the address listed on the application.

(4) If the bureau finds that the applicant is otherwise eligible to receive a permit under Section 53-5-704, the bureau shall request that the applicant surrender the temporary permit prior to the issuance of the permit under Section 53-5-704.

R722-300-8. LEOJ Permits.

(1)(a) In order to obtain an LEOJ permit under Section 53-5-711, an applicant shall submit a completed permit application packet to the bureau as provided by R722-300-4.

(b) In addition, the applicant shall provide written documentation to establish to the satisfaction of the bureau that:

(i) the applicant is a law enforcement official or judge as defined in Section 53-5-711; and

(ii) that the applicant has completed the course of training required by Subsection 53-5-711(2)(b).

(2) When reviewing an application for an LEOJ permit the bureau shall conduct the same background investigation as if the individual were seeking a permit.

(3)(a) If the bureau finds that the applicant meets the requirements found in Subsection 53-5-711(2), the bureau shall issue an LEOJ permit to the applicant.

(b) The LEOJ permit shall be mailed to the applicant at the address listed on the application.

(4)(a) If the bureau finds that the applicant does not meet the requirements found in Subsection 53-5-711(2), the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

(5)(a) When the bureau receives notice that an LEOJ permit holder resigns or is terminated from a position as a law enforcement official or judge, the LEOJ permit will be revoked and the bureau shall issue a permit, pursuant to Section 53-5-704, if the former LEOJ permit holder otherwise meets the requirements found in that section.

(b) If a former LEOJ permit holder gains new employment as a law enforcement official or judge, the bureau shall re-issue an LEOJ permit.

R722-300-9. Suspension or Revocation of a Permit to Carry a Concealed Firearm, Concealed Firearms Instructor Certification, or an LEOJ Permit.

(1) A permit may be suspended or revoked for any of the following reasons:

(a) the bureau determines that the permit holder does not meet the requirements found in Subsection 53-5-704(2);

(b) the bureau determines that the permit holder has committed a violation under Subsection 53-5-704(3); or

(c) the permit holder knowingly and willfully provided false information on an application for a permit, or a renewal of a permit.

(2) An instructor certification may be suspended or revoked for any of the following reasons:

(a) the bureau determines that the instructor has become ineligible to possess a firearm under Section 76-10-506 or federal law; or

(b) the instructor knowingly and willfully provided false information to the bureau.

(3) An LEOJ permit may be suspended or revoked for any of the following reasons:

(a) the bureau determines that an LEOJ permit holder is no longer employed as a law enforcement official or judge; or

(b) an LEOJ permit holder fails to provide proof of annual requalification by November 30 of each year as required by Section 53-5-711.

(4)(a) If the bureau suspends or revokes a permit, an instructor certification, or an LEOJ permit, the bureau shall mail a notice of agency action to the permit holder, instructor, or LEOJ permit holder, return receipt requested.

(b) The notice of agency action shall state the reasons for suspension or revocation and indicate that the permit holder, instructor, or LEOJ permit holder has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

R722-300-10. Review Hearing Before the Board.

(1)(a) Review hearings before the board shall be informal and be conducted according to the provisions in Section 63G-4-203.

(b) At the hearing, the bureau shall establish the allegations contained in the notice of agency action by a preponderance of the evidence.

(2) Upon request, an applicant, permit holder, instructor, or LEOJ permit holder who is seeking review before the board is entitled to review all the materials in the bureau's file upon which the bureau intends to use in the hearing.

(3) In accordance with Section 63G-4-209 the board may enter an order of default against an applicant, permit holder, instructor, or LEOJ permit holder who fails to appear at the hearing.

(4) Within 30 days of the date of the hearing the board shall issue an order which:

(a) states the board's decision and the reasons for the board's decision; and

(b) indicates that the applicant, permit holder, instructor, or LEOJ permit holder has a right to appeal the decision of the board by filing a petition for judicial review within 30 days as provided in Section 63G-4-402.

R722-300-11. Records Access.

(1)(a) Information, except for the name of certified instructors and their public contact information, provided to the bureau by an applicant shall be considered "private" in accordance with Subsection 63G-2-302(2)(d).

(b) The name of certified instructors and their public contact information shall be considered public information.

(2) Information gathered by the bureau and placed in an applicant's file shall be considered "protected" in accordance with Subsection 63G-2-305(9).

(3) When a permit has been issued to an applicant, the names, address, telephone numbers, dates of birth, and Social Security numbers of the applicant are protected records pursuant to Section 53-5-708.

KEY: concealed firearm permits, concealed firearm permit instructors
January 10, 2018 53-5-701 through 53-5-711
Notice of Continuation May 12, 2015

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-350. Certificate of Eligibility.
R722-350-1. Purpose.

The purpose of these rules is to establish procedures by which a petitioner may seek a certificate of eligibility pursuant to Title 77 Chapter 40. Fees established by the bureau in accordance with Section 77-40-106 to be paid by applicants are available on request.

R722-350-2. Authority.

Section 77-40-111 authorizes the department to promulgate rules to implement procedures for the application and issuance of certificates of eligibility.

R722-350-2. Definitions.

Terms used in this rule are defined in Section 77-40-102.

R722-350-3. Application for a Certificate of Eligibility.

(1)(a) An application for a certificate of eligibility must be made in writing to the bureau by filing out the application form established by the bureau.

(b) An application form must be accompanied by a payment of the application fee established by the bureau in the form of cash, check, money order, or credit card.

(2)(a) Upon receipt of a completed application form and payment of the application fee, the bureau shall review each criminal episode contained on the petitioner's criminal history, in its entirety, to determine whether the petitioner meets the requirements for a certificate of eligibility found in Sections 77-40-104 and 77-40-105.

(b) In making its determination, the bureau shall also review all federal, state and local criminal records, to which it has access.

(3) If the bureau has insufficient information to determine if the petitioner meets the requirements for a certificate of eligibility, the bureau may request that the petitioner submit additional information.

(4) If the bureau is unable to obtain disposition information regarding the petitioner's criminal history or cannot determine whether the petitioner meets the requirements for a certificate of eligibility found in Sections 77-40-104 and 77-40-105, the bureau shall send a letter to the petitioner, at the address indicated on the application form, indicating that the petitioner may obtain a special certificate for each criminal episode upon the payment of the issuance fee established by the bureau, per special certificate.

(5) If the bureau determines that the petitioner meets the requirements for the issuance of a certificate of eligibility found in Section 77-40-104, the bureau shall send the certificate of eligibility to the petitioner, at the address indicated on the application form, unless the charges were dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance, or a diversion agreement under Title 77, Chapter 2, Prosecution, Screening, and Diversion.

(6) If the bureau determines that the petitioner meets the requirements for the issuance of a certificate of eligibility under any other circumstances, the bureau shall send a letter to the petitioner, at the address indicated on the application form, indicating that the petitioner must pay the issuance fee established by the bureau for each certificate of eligibility.

(7) If the bureau determines that the petitioner does not meet the criteria for the issuance of a certificate of eligibility, the bureau shall send a letter to the petitioner, at the address indicated on the application form, which describes the reasons why the petitioner's application was denied and notifies the petitioner that the petitioner may seek agency review of the bureau's decision by following the procedures outlined in R722-350-4.

R722-350-4. Agency Review of a Decision to Deny an Application for a Certificate of Eligibility.

(1) A petitioner may seek review of the denial of an application for a certificate of eligibility, as provided by Section 63G-4-301, by mailing a written request for review to the bureau within 30 days from the date the denial letter is issued.

(2) The request for review must:

(a) be signed by the petitioner;

(b) state the specific grounds upon which relief is requested;

(c) state the date upon which it was mailed; and

(d) include documentation which supports the petitioner's request for review.

(3) An employee of the bureau shall be designated to review the petitioner's written request, any accompanying documents supplied by the petitioner, and the materials contained in the application file to determine whether the petitioner meets the requirements for the issuance of a certificate found in Section 77-40-104 and 77-40-105.

(4)(a) Within a reasonable time after receiving the request for review, the bureau shall issue a final written order on review, which shall be mailed to the petitioner at the address indicated on the application.

(b) If upon further review the bureau is unable to determine whether the petitioner meets the requirements for a certificate of eligibility found in Sections 77-40-104 and 77-40-105, the bureau shall send a letter to the petitioner, at the address indicated on the application form, indicating that the petitioner may obtain a special certificate for each criminal episode upon the payment of the issuance fee established by the bureau, per special certificate.

(c) If further review indicates that the petitioner meets the requirements for the issuance of a certificate of eligibility found in Section 77-40-104, the bureau shall send a certificate of eligibility to the petitioner, unless the charges were dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance, or a diversion agreement under Title 77, Chapter 2, Prosecution, Screening, and Diversion.

(d) If further review indicates that the petitioner meets the requirements for the issuance of a certificate of eligibility under any other circumstances, the order shall indicate that the petitioner must pay the issuance fee established by the bureau for each certificate of eligibility.

(e) If further review indicates that the petitioner does not meet the requirements for the issuance of a certificate, the order shall describe the reasons why the bureau's decision was upheld and notify the petitioner that the petitioner's opportunity to review the bureau's decision is limited to review by the district court as described in R722-350-5.

R722-350-5. Judicial Review.

A petitioner may seek judicial review of the bureau's final written order on review denying an application for a certificate of eligibility, as provided by Section 63G-4-402, by filing a complaint in the district court within 30 days from the date that the bureau's final written order is issued.

KEY: expungement, certificate of eligibility

January 10, 2018	**77-40-111**
Notice of Continuation September 17, 2015	**77-40-102**
	77-40-104
	77-40-105
	77-40-106

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-380. Firearm Background Check Information.
R722-380-1. Authority.

This rule is authorized by Subsection 76-10-526(11).

R722-380-2. Definitions.

(1) "Bureau" means the Utah Bureau of Criminal Identification within the Department of Public Safety established by Section 53-10-201.

(2) "Firearm dealer" means any firearm dealer who is licensed as defined in Subsection 76-10-501(7).

(3) "NFA firearm" means a National Firearms Act firearm defined in Title 26 Section 5845 of the United States Code.

R722-380-3. Verification of Identification.

(1) For purposes of a criminal history background check as established in Section 76-10-526, the only form of photo identification the bureau shall accept is a driver license or identification card that may be accessed through the issuing state's database and verified as a valid form of identification.

R722-380-4. Inquiring Into Denial of Firearm Purchase.

(1)(a) An individual who has been denied the purchase of a firearm by the bureau may inquire why he or she was denied such a purchase by submitting a completed Request for Denial/Research Information form.

(b) The individual may have such denial information released to a third party by submitting a completed Third Party Release Form with a completed Request for Denial/Research Information form.

(2)(a) Within a reasonable time after receiving the completed request form, the bureau shall release denial information regarding why the individual has been denied the purchase of a firearm, which shall be mailed, e-mailed, or faxed to the individual at the address, e-mail address, or fax number indicated on the request form.

(3)(a) A denial of the purchase of a firearm by the bureau may not be overturned except if the denial was done in error by the bureau and no longer than 30 days has passed from the date of the initial background check.

R722-380-5. Law Enforcement Evidence Release.

(1)(a) A law enforcement agency seeking to obtain background clearance information from the bureau prior to releasing a firearm from custody must submit a completed Law Enforcement Evidence Release Form by mail or fax.

(b) Upon receipt of a completed Law Enforcement Evidence Release Form, the bureau shall conduct a thorough background investigation to determine whether the individual, to whom the firearm will be released, meets the requirements to possess a firearm established under Section 76-10-503 and Title 18 Section 922 of the United State Code.

(c) Upon completion of the background investigation, the bureau shall notify the law enforcement agency by fax or telephone, at the number indicated on the release form, whether the individual, to whom the firearm will be released, may possess a firearm.

R722-380-6. Procedures on Background Checks for NFA Firearms.

(1)(a) An applicant seeking to transfer or register an NFA firearm according to Title 26 Chapter 53 of the United States Code must complete the Bureau of Alcohol, Tobacco, Firearms, and Explosives Application for Tax Paid Transfer and Registration of Firearm form and submit to a background check by the bureau as provided in Section 76-10-526.

(b) The bureau shall conduct a thorough background investigation as provided in Section 76-10-526 on the individual receiving the NFA firearm upon receipt of a request from a firearm dealer to perform the background check.

(c) Applications initiated prior to July 3, 2016, are not subject to an additional background fee provided under Section 76-10-526 at the time of receiving the NFA firearm from the firearm dealer.

KEY: firearm purchases, firearm releases, firearm denials, firearm background check information

January 10, 2018	**53-10-201**
	76-10-526
	76-10-503
	76-10-501

R746. Public Service Commission, Administration.
R746-409. Pipeline Safety.
R746-409-1. General Provisions.

A. Scope and Applicability -- Pursuant to Title 54, Chapter 13, the following rules shall apply to persons engaged in the transportation of gas as defined in CFR Title 49 Parts 191 and 192.

B. Adoption of parts of CFR Title 49 -- The Commission adopts and incorporates by this reference the following parts of CFR Title 49, effective September 1, 2017:

1. Part 190 with the exclusion of Part 190.223 which is superseded by Title 54, Chapter 13, Part 8, Violation of chapter -- Penalty;

2. Part 191;

3. Part 192;

4. Part 198; and

5. Part 199.

C. Persons engaged in the transportation of gas, including distribution of gas through a master-metered system, shall comply with the requirements of CFR Title 49, identified in Section R746-409-1.B, including all minimum safety standards.

R746-409-2. Definitions.

For purposes of these rules, the following terms shall bear the following meanings:

A. "Authorized Inspector" means a person employed or authorized by the Commission or the director of the Division.

B. "CFR" means the Code of Federal Regulations;

C. "Commission" means the Public Service Commission of Utah;

D. "Division" means the Division of Public Utilities, Utah Department of Commerce;

E. "Federally Reportable Incident" has the same meaning set forth in Part 191.3. Definitions, Incident.

F. "Operator" has the same meaning set forth in CFR Title 49, Part 191.3, Definitions, Operator.

G. "Part 190" means CFR Title 49, Part 190, Pipeline Safety Programs and Rulemaking Procedures.

H. "Part 191" means CFR Title 49, Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports.

I. "Part 192" means CFR Title 49, Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.

J. "Part 198" means CFR Title 49, Part 198, Regulations for Grants to Aid State Pipeline Safety Programs.

K. "Part 199" means CFR Title 49, Part 199, Drug and Alcohol Testing.

L. "Pipeline Facility" has the same meaning set forth in Part 191.3 Definitions, Pipeline facility.

M. "State Reportable Incident" means an event that falls within the definition of a federally reportable incident or a safety-related condition as identified in CRF Title 49, Part 191.23, Reporting safety-related conditions, or meets one or more of the following:

1. Results in damage to any segment of:

a. steel main, twelve inches or greater in diameter, or

b. transmission pipeline;

2. Requires removal from service or repair of any segment of:

a. steel main, twelve inches or greater in diameter, or

b. transmission pipeline;

3. Results in property damage of $15,000 or more, including the loss to the operator and others, or both, but excluding the cost of gas that is lost;

4. Results in the loss of gas service to ten or more customers; or

5. Results in the known evacuation of any highly populated areas including commercial businesses, office buildings, eateries, schools, churches or public meeting places.

N. "Transportation of Gas" has the same meaning set forth in CFR Title 49, Part 191.3, Definitions, Transportation of gas.

R746-409-3. Inspections.

A. Access for inspection

1. During Normal Business Hours -- During normal business hours, an authorized inspector, upon presentation of appropriate credentials, may enter an operator's offices and pipeline facilities to inspect and examine the records and pipeline facilities, if the records and pipeline facilities are relevant to determining compliance with applicable state and federal pipeline safety statutes, rules and regulations.

2. Outside of Normal Business Hours -- For incidents occurring outside of normal business hours, an authorized inspector, upon presentation of appropriate credentials, may enter an operator's pipeline facilities involved in or associated with an incident to inspect and examine the pipeline facilities, if inspection of the pipeline facility is relevant to determining compliance with applicable state and federal pipeline safety statutes, rules and regulations.

B. Reasons for Inspection -- Inspections are ordinarily conducted pursuant to one of the following:

1. Routine inspection, including but not limited to a compliance inspection;

2. A complaint received from a member of the public;

3. Information obtained from a previous inspection;

4. A pipeline incident; or

5. When deemed appropriate by the Commission.

C. Testing -- To the extent necessary to carry out its responsibilities, the Commission may require testing of portions of intrastate pipeline facilities which have been involved in or affected by an incident.

D. Further Action -- When information obtained from an authorized inspector or from other appropriate sources indicates that further action is warranted, the Division shall issue a warning letter to an operator and, if necessary, initiate proceedings, including but not limited to seeking the issuance of Commission subpoenas to compel the production of records and the taking of testimony, hearings and related procedures, before the Commission.

R746-409-4. Reporting and Notification Requirements.

A. An operator must comply with the notification and reporting requirements contained in Part 191 and Section R746-409-4.

B. Telephonic notification to the Division.

1. For incidents requiring immediate notice under Part 191.5, an operator must also provide contemporaneous telephonic notification of the same information required under Part 191.5 to the Division at (844)-GAS-2525 or (844)-427-2525.

2. State Reportable Incidents. An operator must provide telephonic notice to the Division at (844)-GAS-2525 or (844)-427-2525 of all state reportable incidents, including the location and known details at the time of reporting, at the earliest practicable moment when safely possible following discovery.

C. Written Reports required by Part 191. For all reports required under Part 191, including updates and supplemental reports, an operator shall contemporaneously furnish these reports to the Commission and the Division in accordance with Section R746-409-4.F.

D. Excavation Damage Quarterly Report. Each operator with more than 10,000 customers shall file a quarterly excavation damage report within 60 days after the end of the each quarter with the Commission and the Division in accordance with Section R746-409-4.F on a form approved by the Division.

E. Reports Relating to Safety Issues. An operator shall prepare and file reports relating to safety issues as requested and described by the Commission or the Division in accordance with Section R746-409-4-F.

F. Filing of Written Reports:

1. All required written reports shall be filed with the Commission in accordance with Commission's filing requirements posted on the Commission's website at http://www.psc.utah.gov at the

"Filing Req" tab under the Document column labeled "Pipeline Safety."

2. All required written reports shall be filed electronically with the Division at the following e-mail address: pipelinesafety@utah.gov.

R746-409-5. Written Plans.

A. An operator must develop and implement all plans required in Parts 192 and 199, including operations and maintenance plans, emergency response plans, public awareness plans, operator qualifications plans, anti-drug and alcohol misuse plans, and integrity management plans (both transmission and distribution). These plans must be made available to the Commission or the Division upon request.

R746-409-6. Remedies.

A. Rules of Practice and Procedure -- The Commission's Administrative Procedures Act Rule, Subsection R746-1, shall govern and control proceedings before the Commission regarding pipeline safety, with the exception of the additional remedies and procedures specified herein.

B. Hazardous Facility Order -- If the Commission finds, after notice and a hearing, that a particular intrastate pipeline facility is hazardous to life or property, it may issue a Hazardous Facility Order requiring the owner or operator of the intrastate pipeline facility to take corrective action. Civil penalties set forth in Section 54-13-8 may also be imposed. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other action as may be appropriate.

C. Waiver of Notice and Hearing -- The Commission may waive the requirement for notice and hearing in Subsection (B) above before issuing an order pursuant to this section when it or the Division determines that the failure to do so would result in the likelihood of serious harm to life or property. However, the Commission shall include in the order an opportunity for hearing as soon as practicable after issuance of the order.

D. Hazardous Conditions -- The Commission may find an intrastate pipeline facility to be hazardous under paragraph 2 of this section if:

1. Under the facts and circumstances the Commission determines the particular facility is hazardous to life or property; or

2. The intrastate pipeline facility, or a component thereof, has been constructed or operated with equipment, material, or technique which the Commission determines is hazardous to life or property, unless the operator involved demonstrates to the satisfaction of the Commission that, under the particular facts and circumstances involved, such equipment, material, or technique is not hazardous to life or property.

E. Considerations -- In making a determination under paragraph (D)(2) of this section, the Commission may consider, if relevant:

1. The characteristics of the pipe and other equipment used in the intrastate pipeline facility involved, including its age, manufacturer, physical properties, including its resistance to corrosion and deterioration, and the method of its manufacture, construction, or assembly;

2. The nature of the materials transported by the facility, including their corrosive and deteriorative qualities, the sequence in which the materials are transported, and the pressure required for the transportation;

3. The aspects of the areas in which the intrastate pipeline facility is located, in particular the climatic and geologic conditions, including soil characteristics, associated with the areas, and the population density and population and growth patterns of such areas;

4. A recommendation of the National Transportation Safety Board issued in connection with an investigation conducted by the board;

5. Other factors as the Commission may consider appropriate.

F. Contents of Hazardous Facility Order -- A Hazardous Facility Order issued by the Commission shall contain the following information:

1. A finding that the pipeline facility is hazardous to life or property;

2. The relevant facts which form the basis for the finding;

3. The legal basis for the order;

4. The nature and description of particular corrective action required of the respondent;

5. The date by which the required action must be taken or completed and, where appropriate, the duration of the order.

G. No Longer Hazardous -- The Commission shall rescind or suspend a Hazardous Facility Order whenever it determines that the facility is no longer hazardous to life or property.

KEY: rules and procedures, safety, pipelines
January 9, 2018 54-13-3
Notice of Continuation March 31, 2016 54-13-5
54-13-6

R856. Science Technology and Research Governing Authority (Utah), Administration.
R856-1. USTAR Technology Acceleration Program Grants.
R856-1-1. Authority.

Subsection 63M-2-503(2) requires the USTAR governing authority to make rules establishing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

R856-1-2. Purpose and Goals.

(1) USTAR's Technology Acceleration Program (TAP) provides grants and other support to assist start-ups and early stage companies to accelerate the development of a new technology.

(2) The goals of the program are to:

(a) enhance the state's innovation system by supporting the development, retention, and attraction of science and technology companies in Utah; and,

(b) accelerate the growth of high-potential technology companies in the state leading to the creation of high-paying science and technology jobs in Utah.

R856-1-3. Definitions.

(1) "Applicant" means a company applying for a USTAR TAP Grant.

(2) "Awardee" means a company that has been awarded a TAP Grant.

(3) "Governing authority" means the Utah Science, Technology, and Research Governing Authority.

(4) "Company" means a privately owned corporation, limited liability company, partnership, or other business entity or association and:

(a) does not include an individual, sole proprietorship, or higher-education institution; and,

(b) is represented by persons at least 18 years old.

(5) "TAP" means the USTAR Technology Acceleration Program, its activities and services.

(6) "TAP grant" means the competitive grant funding awarded and administered by USTAR under TAP.

(7) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(8) "Technology Gap" means the disparity between a company's existing technology or technological capacity and what is needed to develop a commercial application for a product.

(9) "Technology Readiness Level" or "TRL" level means the method of estimating technology maturity used by the Federal Government and is available on the USTAR website.

(10) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for TAP grants using the selection criteria described in these rules.

(11) "USTAR" means the Utah Science, Technology, and Research Initiative.

R856-1-4. Eligibility Criteria.

(1) Company must be Utah-based.

(a) To be considered "Utah-based," a company must:

(i) be registered with the Utah Division of Corporations as an active, for-profit business entity, in good standing;

(ii) maintain its principal place of business in Utah; and,

(iii) not relocate the business or substantial portions of its employees, operations, or management outside of the State of Utah.

(b) If a company does not meet the criteria in Subsection R856-1-4(1) above, or if it cannot be reasonably determined whether the company meets the criteria, the governing authority, in its discretion and upon approval by a majority vote, may determine whether a company should be considered a Utah-based company for purposes of the TAP grant by weighing the following factors:

(i) relative size of the entity including the number of employees in Utah and the relative size of operations in the state;

(ii) whether the company is registered as a domestic, for-profit business entity in Utah and has a business license in the appropriate Utah city or county;

(iii) whether the company's principal place of business is Utah;

(iv) likelihood that the company will maintain a significant presence in the state of Utah; and,

(v) degree to which the company's activities and operations positively impact Utah's economy.

(2) Company must have fewer than 50 employees, less than $1 million annual revenue and raised less than $5 million in private capitol.

(3) Company must be developing a technology in a targeted industry sector.

(a) USTAR will identify the targeted industry sector(s) eligible to receive a TAP grant in the TAP application materials.

(b) The USTAR governing authority will, according to its discretion and judgment, review and approve the targeted technology sectors to ensure they are strategically selected to align with USTAR's economic development objectives and maximize the potential benefit to the state

(c) In selecting industry sectors eligible to receive support from TAP, the governing authority may consider the following factors:

(i) statewide or regional importance of the industry to Utah's economy;

(ii) relative size of the sector, its stability, and growth potential;

(iii) characteristics of the state's existing workforce, including education and training;

(iv) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;

(v) the potential for the industry sector to develop new jobs and business opportunities in the state; and,

(vi) Likelihood that research in this sector will result in creation of a company in Utah or IP transfer to an existing Utah company; and,

(vii) any other factor the governing authority deems relevant, considering the mission of USTAR and the purpose of TAP.

(4) The company must be developing a technology assessed to be between a TRL of 3-5.

(5) If the Company is a current recipient of a USTAR grant, that project must be verified as complete by USTAR before the application deadline in order for the awardee to be eligible to apply, unless expressly exempted by USTAR.

R856-1-5. Application Form and Submission Guidelines.

(1) For each new round of grants, USTAR will provide a program announcement and make applications and instructions available on USTAR's website and in paper form upon request.

(2) The instructions will include the following:

(a) A general procedure for submitting an application;

(b) Requirements for a letter of intent;

(c) Instructions for application content which includes:

(i) description of the company's technology;

(ii) commercialization plan;

(iii) description of technical milestones and qualifications of team to meet milestones;

(iv) potential market;

(v) potential economic impact on Utah economy; and,

(vi) timeline for completion.

(d) Instructions for the required budget outline, including:

(i) total project cost;

(ii) a description of funds already secured for activities related to this project;

(iii) an itemized budget detailing planned use of grant funds; and,

(iv) breakdown of costs to complete each milestone.

(e) Description of the application evaluation process and

scoring system.

(f) Instructions for reporting project results and completing annual follow-up surveys.

(3) Completed applications must be received on or before the specified deadline in the application instructions.

(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Sections R856-1-6 and R856-1-7 herein.

R856-1-6. Application Review Procedure.

(1) Pre-screening

(a) Companies will submit a letter of intent before the specified deadline.

(b) Letter of intent will be reviewed by USTAR staff to determine eligibility to apply based on this Rule and TAP policies. Only companies determined to be eligible may apply for TAP.

(2) Initial eligibility screening.

(a) USTAR will conduct an initial eligibility screening for each application to ensure:

(i) Completeness; and

(ii) Verification of minimum eligibility requirements.

(b) Any application that fails to meet the criteria in Section R856-1-6(2) will be rejected.

(3) Panel Review.

(a) Accepted applications will be reviewed by a panel of independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-1-7.

(i) Each expert panel will consist of at least two technical expert one business expert

(v) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:

(A) academic qualifications, including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;

(B) relevant work experience and practical training in the field;

(C) knowledge of the target industry sector in Utah;

(D) experience evaluating grant proposals;

(E) any other factors USTAR deems important.

(vi) USTAR will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website.

(4) Governing authority review.

(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.

(b) GA subcommittee will consider prior performance of applicant in evaluation

(c) The subcommittee will recommend projects for award and award amounts to the full governing authority for final approval.

R856-1-7. Application Evaluation Criteria.

(1) Letter of Intent

(a) The administrative criteria to review letters of intent will be published in advance.

(2) The review panel will use a scoring system to evaluate and rank grant applications and recommend grant amounts.

(a) The scoring criteria will be made available during the application period.

(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:

(i) technical merit of proposal;

(ii) strength and maturity of company and management;

(iii) potential for economic impact, as measured by:

(A) job creation;

(B) product sales;

(C) potential revenue due to expansion of current business or development of new businesses; and/or

(D) projected time to revenue or job creation;

(iv) Commercialization plan/ market need;

(v) reasonableness of cost proposal (i.e. size and allocation of budget is appropriate for the work proposed and matching funds available);

(vi) reasonableness of proposed milestones and timelines; and

(vii) any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.

(3) TAP Grants must be used to accelerate the development and commercialization of a technology and project proposals must identify specific technical milestones leading to the proposed outcome.

(4) Examples of acceptable milestones must be specific to the project may include:

(a) research and development activities;

(b) proof of concept;

(c) product validation; and,

(d) product development.

R856-1-8. Grant Amount, Award, and Required Contract.

(1) USTAR will have the discretion to determine the maximum amount of funding that may be awarded for each round of TAP based on available funds and quality of applicant pool.

(2) USTAR reserves the right to award funding for any application in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of USTAR and the governing authority.

(3) Upon award of the TAP grant, and prior to any disbursement of funds, Company must enter into a written agreement with USTAR governing the use of TAP grant funding.

(4) Unless addressed in the terms and conditions of the written agreement between company and USTAR, the following provisions shall apply:

(a) company must remain a Utah-based company for at least five years from initial disbursement of TAP funding;

(b) company may not use TAP grant funding to provide a primary benefit to any state other than Utah; and,

(c) for all other eligibility requirements, company must maintain eligibility status for the TAP program until the project is complete, all milestones have been met, final dispersant of funding has been made, and first year reporting has been completed.

(5) Violations of Section R856-1-8(4) may result in the forfeiture of grant funding and may require repayment all or a portion of funds received as part of the TAP grant.

R856-1-9. Contract Modifications.

(1) Company may request a modification to the terms of a TAP contract.

(2) USTAR may deny a modification request for any reason.

(3) USTAR shall have discretion to agree to reasonable, non-substantive changes.

(a) Nonsubstantive changes may include the following:

(i) changes to timelines within the scope of work;

(ii) corrections to clerical errors in the application materials;

(iii) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law;

(4) Substantive changes must be approved by the USTAR governing authority.

(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant agreement.

R856-1-10. Funding Distribution.

(1) Initial funding of no more than 50% of the total grant award will be provided within a reasonable time after a TAP grant is approved to allow company to meet initial milestones.

(2) Remaining grant funds will be disbursed upon successful completion of designated milestones.

(3) Specific funding details will be provided in the program announcement and in each TAP grant contract.

(4) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

R856-1-11. Reporting.

(1) Companies are required to provide reporting as specified in Section 63M-2-703 for at least five (5) years following initial receipt of grant funds.

KEY: Utah Science Technology and Research (USTAR), Technology Acceleration Program (TAP) grants, technology readiness level (TRL)

January 23, 2018 63M-2-302(h)

R856. Science Technology and Research Governing Authority (Utah), Administration.
R856-2. USTAR University-Industry Partnership Program Grants.
R856-2-1. Authority.

Subsection 63M-2-503(2) requires the USTAR governing authority to make rules establishing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

R856-2-2. Purpose and Goals.

(1) USTAR's Industry Partnership Program (IPP) promotes the development of industry-university partnerships for technology development. This program teams industry and university research expertise to address specific technology problems or gaps identified by a Utah company.

(2) The goals of IPP are to accelerate the commercialization of technology and innovation that will lead to a new product or a market advantage for the company.

R856-2-3. Definitions.

(1) "Applicant" means a collaboration between a company and university researcher for a particular project.

(2) "Awardee(s)" means a project that has been awarded an Industry Partnership Program Grant.

(3) "Governing authority" means the Utah Science, Technology, and Research Governing Authority.

(4) "Company" means a privately-owned corporation, limited liability company, partnership, or other business entity or association and:

(a) does not include an individual, sole proprietorship, or higher-education institution; and,

(b) is represented by persons at least 18 years old.

(5) "IPP" means the USTAR Industry Partnership Program, its activities and services.

(6) "IPP Grant" means the competitive grants awarded and administered as part of the USTAR Industry Partnership Program.

(7) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(8) "Technology gap" means the disparity between a company's existing technology or technological capacity and what is needed to develop a commercial application for a product.

(9) "Technology Readiness Level" or "TRL" level means the method of estimating technology maturity used by the Federal Government and is available on the USTAR website.

(10) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for IPP grants using the selection criteria described in these rules.

(11) "Commercialization plan" means the strategy or process by which a company will introduce a technology into the market.

(12) "University" means any public or not-for-profit institution of higher education with its primary location in Utah.

(13) "USTAR" means the Utah Science, Technology, and Research Initiative.

(14) "Utah Company" means any company that meets the eligibility criteria

R856-2-4. Eligibility Criteria.

(1) Proposal must be jointly developed by a Utah company and a university.

(2) Proposal must be submitted by an authorized body within the university.

(3) An authorized representative from the company must certify that:

(a) Company lacks technical capacity to resolve stated technology gap;

(b) The proposed university technology will resolve the technology gap; and,

(c) Company commits to provide a cost-share contribution in the form of a defined amount of funding paid to the university and/or in-kind contributions as defined in Sections R856-2-4 and R856-2-5.

(4) Company must have a substantial presence in Utah.

(a) A substantial presence, for purposes of the IPP grant, requires the following:

(i) Company must be properly registered with the Utah Division of Corporations as an active, for-profit business entity, in good standing; and,

(ii) Company must be properly licensed in the appropriate city or county.

(b) Additionally, USTAR shall, according to its judgment and discretion, determine whether a company has a substantial presence for purposes of the IPP grant by weighing the following factors:

(i) size of workforce in Utah;

(ii) percentage of company's total workforce in Utah;

(iii) amount of matching funds;

(iv) amount of business taxes paid to the State of Utah;

(v) relative size of the entity including the number of employees in Utah and the relative size of operations in the state;

(vi) whether the company is registered as a domestic, for-profit business entity in Utah and has a business license in the appropriate Utah city or county;

(vii) whether the company's principal place of business is Utah;

(viii) likelihood that the company will maintain a significant presence in the state of Utah; and,

(ix) the degree to which the company's activities and operations positively impact Utah's economy.

(5) Company must achieve cost-sharing requirement:

(a) Company must pledge a matching contribution to support the project;

(b) Company matching funds may be provided via:

(i) Direct payment to university for the research project; and/or

(ii) "In-kind" contribution, which may include:

(A) Company Subject Matter Expert(s) (SME) time spent on project;

(B) Materials and equipment;

(C) Work/research space;

(D) Travel and other company expenses budgeted for the project; or,

(E) Other contributions, as approved by USTAR.

(c) A one-to-one match is not required. USTAR retains discretion to approve the ratio of the match. In determining the ratio of the match, USTAR considerations may include:

(i) size of company; and,

(ii) potential economic impact to the state.

(d) University will provide USTAR with documentation of funding received from company to fulfill the company cost-share commitment prior to completion of the project.

(e) All reported cost-share is subject to audit by USTAR.

(6) The technology gap must be between TRL 2-5.

(7) Applicants must be developing a technology in a targeted industry sector.

(a) USTAR will identify the targeted industry sector eligible to receive an IPP grant in the IPP application materials.

(b) The USTAR governing authority will, according to its discretion and judgment, review and approve the eligible technology sectors to ensure they are strategically selected to align with USTAR's economic development objectives and maximize the potential benefit to the state.

(c) In selecting industry sectors eligible to receive support from STIG, the Governing Authority may consider the following factors:

(i) statewide or regional importance of the industry to Utah's economy;

(ii) relative size of the sector, its stability, and growth potential;

(iii) characteristics of the state's workforce including education and training;

(iv) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;

(v) the potential for the industry sector to develop new jobs and business opportunities in the state;

(vi) likelihood that research in this sector will result in creation of a company in Utah or IP transfer to an existing Utah company; and,

(vii) any other factor the governing authority deems relevant, considering the mission of USTAR and the purpose of IPP.

(8) If Company or University is a current recipient of a USTAR Grant, that project must be verified as complete by USTAR before the application deadline in order for the awardee to be eligible to apply, unless expressly exempted by USTAR.

R856-2-5. Application Form and Submission Guidelines.

(1) USTAR will accept applications for IPP grants on an ongoing basis.

(2) USTAR will make applications and instructions available on USTAR's website and in paper form upon request.

(3) The instructions will include the following:

(a) A general procedure for submitting an application;

(b) Instructions for application content, which includes:

(i) description of technology gap;

(ii) commercialization plan if technology gap is solved;

(iii) description of technical milestones and qualification of team to meet milestones;

(iv) potential market;

(v) potential economic impact on Utah economy; and,

(vi) timeline for completion.

(c) Instructions for providing an outlined budget for total project cost, including;

(i) a description of any funds already secured for activities related to the project;

(ii) an itemized budget detailing planned use of grant funds; and,

(iii) breakdown of costs to costs to complete each milestone.

(d) Description of the application evaluation process and scoring system.

(e) Instructions for reporting project results and completing annual follow-up surveys.

(4) All completed applications will be reviewed and awardees selected via the criteria and method outlined in Sections R856-2-6 and R856-2-7 herein.

R856-2-6. Application Review Procedure.

(1) Pre-screening.

(a) Companies and researchers are encouraged to work with USTAR staff in identifying appropriate researchers and developing a proposal.

(b) Universities may perform an initial analysis and assessment of the project to be submitted with the application.

(2) Initial eligibility screening.

(a) USTAR will conduct an initial screening for each application to ensure:

(i) completeness; and

(ii) verification of minimum eligibility requirements.

(b) Any application that fails to meet the criteria in Subsection R856-2-6(2) will be rejected.

(3) Panel Review.

(a) Accepted applications will be reviewed by a panel of independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-2-7.

(i) Each expert panel will consist of at least two technical experts and one business expert, and use the scoring rubric provided by USTAR.

(ii) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:

(A) academic qualifications, including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;

(B) relevant work experience and practical training in the field;

(C) knowledge of the target industry sector in Utah;

(D) experience evaluating grant proposals; and,

(E) any other factors USTAR deems important.

(iii) USTAR will screen the experts for conflicts of interest before reviews are initiated.

(4) Governing authority review.

(i) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.

(ii) GA subcommittee will consider prior performance of research team in evaluation.

(iii) Recommendations from the subcommittee concerning which projects should be awarded a grant will be presented to the full governing authority for final approval.

R856-2-7. Application Evaluation Criteria.

(1) The review panel will use a scoring system to evaluate grant applications and recommend grant amounts:

(a) The scoring criteria will be made available during the application period;

(b) The scoring system will be designed to assess each proposal and may include:

(i) Technical merit of proposal;

(ii) Appropriate technology readiness level (TRL 2-5);

(iii) Reasonableness of proposed milestones with the recommended technical approach;

(iv) Reasonableness of the proposed timeline;

(v) Potential for economic impact, as measured by potential for:

(A) job creation;

(B) product sales;

(C) potential revenue due to expansion of current business or development of new businesses; and/or

(D) projected time to revenue or job creation;

(vi) Commercialization plan/Market need;

(vii) reasonableness of cost proposal (i.e. size and allocation of budget is appropriate for the work proposed and matching funds available);

(viii) reasonableness of proposed milestones and timelines; and

(ix) any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.

(2) IPP Grants must be used to accelerate the development and commercialization of a technology and project proposals must identify specific technical milestones leading to the proposed outcome.

(3) Examples of acceptable milestones must be specific to the project may include:

(a) research and development activities;

(b) proof of concept;

(c) product validation; and,

(d) product development.

R856-2-8. Grant Amount, Award, and Required Contract.

(1) USTAR will have the discretion to limit the maximum amount of funding that may be awarded for each IPP grant based on available funds, scope of project, and quality of proposal.

(2) USTAR reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject

any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of USTAR and the governing authority. USTAR also reserves the right to certify any agreements between university and company on IP terms and confidentiality, publishing embargos, etc.

(3) Upon award of an IPP grant, and prior to any disbursement of funds, university must enter into a contract with USTAR governing the use of IPP grant funding.

(4) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:

(a) Company must maintain a substantial presence in the state for at least five years subsequent to initial disbursement of grant funds;

(b) IPP grant funding may not be used to provide a primary benefit to any state other than Utah; and,

(c) for all other eligibility requirements, awardees must maintain eligibility status for the IPP program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year reporting has been completed.

(5) Violations of Subsection R856-2-8(4) of this section may result in forfeiture of grant funding and may require repayment of all or a portion of the funding received as part of the IPP grant.

R856-2-9. Contract Modifications.

(1) University and Company may request a modification to the terms of an IPP contract.

(2) USTAR may deny a modification request for any reason.

(3) USTAR shall have discretion to agree to reasonable, non-substantive changes.

(a) Non-substantive changes may include the following:

(i) changes to timelines within the scope of work.

(ii) corrections to clerical errors in the application materials;

(iii) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law;

(4) Substantive changes must be approved by the USTAR governing authority.

(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.

R856-2-10. Funding Distribution.

(1) USTAR shall reimburse University for no more than the total amount specified in the contract.

(2) Payment will only be made for those costs authorized and approved by USTAR and submitted in accordance with the terms and conditions provided in the contract.

(3) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

R856-2-11. Reporting.

(1) Companies are required to provide the reporting, as applicable, specified in Section 63M-2-703 for at least five (5) years following initial receipt of grant funds.

(2) University is required to provide the reporting, as applicable, specified in Sections 63M-2-702 and 63M-2-704.

KEY: Utah Science Technology and Research (USTAR), Industry Partnership Program (IPP), technology readiness level (TRL)

R856. Science Technology and Research Governing Authority (Utah), Administration.
R856-3. USTAR University Technology Acceleration Grants.
R856-3-1. Authority.

Subsection 63M-2-503(2) requires the USTAR governing authority to make rules establishing the eligibility, award process, and reporting criteria for each grant program administered by USTAR.

R856-3-2. Purpose and Goals.

(1) USTAR's University Technology Acceleration Grants (UTAG) provide funding to individual researchers or research teams employed by a Utah not-for-profit college or university to support research, discovery and innovation that has a strong market potential.

(2) The goals of the program are to:

(a) enhance the state's innovation system by supporting the development of technology within Utah universities;

(b) accelerate the creation of high-potential technology companies in the state leading to the creation of high-paying science and technology jobs in Utah.

R856-3-3. Definitions.

(1) "Applicant" means an individual researcher or a research team applying for a UTAG.

(2) "Awardee" means an individual researcher or team that have been awarded a UTAG.

(3) "Governing authority" means the Utah Science, Technology, and Research Governing Authority.

(4) "UTAG" and "UTAG grant" mean the University Technology Acceleration Grants administered by the Utah Science, Technology and Research Initiative.

(5) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(6) "Technology Readiness Level" or "TRL" level means means the method of estimating technology maturity used by the Federal Government and is available on the USTAR website.

(7) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for UTAG grants using the selection criteria described in these rules.

(8) "University" means any public or not-for-profit institution of higher education with its primary location in Utah.

(9) "USTAR" means the Utah Science, Technology, and Research Initiative.

R856-3-4. Eligibility Criteria.

(1) Individual researchers or research teams employed by a Utah University are eligible to apply for UTAG.

(2) Applicant must be developing a technology in a targeted industry sector.

(a) USTAR will identify the targeted industry sectors eligible to receive a UTAG grant in the UTAG application materials.

(b) The USTAR governing authority will, according to its discretion and judgment, review and approve the targeted technology sectors to ensure they are strategically selected to align with USTAR's economic development objectives and maximize the potential benefit to the state.

(c) In selecting industry sectors eligible to receive support from UTAG, the Governing Authority may consider the following factors:

(i) statewide or regional importance of the industry to Utah's economy;

(ii) relative size of the sector, its stability, and growth potential;

(iii) characteristics of the state's workforce including education and training;

(iv) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;

(v) the potential for the industry sector to develop new jobs and business opportunities in the state;

(vi) likelihood that research in this sector will lead to creation of a company in Utah or IP transfer to an existing Utah company; and,

(vii) any other factor the governing authority deems relevant, considering the mission of USTAR and the purpose of UTAG.

(3) Applicant must be developing a technology assessed to be between a TRL of 3-4.

(4) If Applicant is a current recipient of a USTAR grant, that project must be verified as complete by USTAR before the application deadline in order for the awardee to be eligible to apply, unless expressly exempted by USTAR.

R856-3-5. Application Form and Submission Guidelines.

(1) For each new round of grants, USTAR will provide a program announcement and make applications and instructions available on USTAR's website and in paper form upon request.

(2) The instructions will include the following:

(a) A general procedure for submitting an application;

(b) Requirements for a of letter of intent;

(c) Instructions for application content, which includes:

(i) description of the technology;

(ii) commercialization plan;

(iii) description of technical milestones and qualifications of team to meet milestones;

(iv) potential market;

(v) potential economic impact on Utah economy; and,

(vi) timeline for completion.

(d) instructions for the required budget outline, including:

(i) total project cost;

(ii) a description of funds already secured for activities related to this project;

(iii) an itemized budget detailing planned use of grant funds; and,

(iv) breakdown of costs to complete each milestone.

(e) Description of the application evaluation process and scoring system.

(f) Instructions for reporting project results and completing annual follow-up surveys.

(3) Completed applications must be received on or before the specified deadline in the application instructions.

(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Sections R856-3-6 and R856-3-7 herein.

R856-3-6. Application Review Process.

(1) Pre-screening

(a) Applicants will submit a letter of intent before the specified deadline.

(b) Letter of intent will be reviewed by USTAR staff to determine eligibility to apply.

(2) University Pre-screening.

(a) Universities may perform an initial analysis and assessment of the project to be submitted with the application.

(3) Initial eligibility screening.

(a) USTAR will conduct an initial eligibility screening for each application to ensure:

(i) Completeness; and

(ii) Verification of minimum eligibility requirements.

(b) Any application that fails to meet the criteria in Section R856-3-6(3) will be rejected.

(4) Panel Review.

(a) Accepted applications will be reviewed by a panel of independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-3-7.

(i) Each expert panel will consist of at least two technical

experts and one business expert.

(ii) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:

(A) academic qualifications, including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;

(B) relevant work experience and practical training in the field;

(C) knowledge of the target industry sector in Utah;

(D) experience evaluating grant proposals; and,

(E) any other factors USTAR deems important.

(v) USTAR will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website.

(4) Governing authority review.

(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.

(b) The GA Subcommittee will consider prior performance of applicant in its evaluation.

(b) The subcommittee will recommend projects for award and award amounts to the full governing authority for final approval.

R856-3-7. Application Evaluation Criteria.

(1) Letter of Intent

(a) The Administrative criteria to review of letters of intent will be published in advance.

(2) The review panel will use a scoring system to evaluate and rank grant applications and recommend grant amounts.

(a) The scoring criteria will be made available during the application period;

(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:

(i) Technical merit of proposal:

(ii) Strength and maturity of research or management team, as applicable;

(iii) Appropriate technology readiness level (TRL 3-4);

(iv) Potential for economic impact, as measured by:

(A) Job creation;

(B) Product sales;

(C) Potential revenue due to expansion of current business or development of a new business; and/or,

(D) Projected time to revenue or job creation;

(v) Commercialization plan/Market need;

(vi) Reasonableness of cost proposal (i.e. size and allocation of budget is appropriate for the work proposed);

(vii) reasonableness of proposed milestones and timelines; and

(ix) Any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.

(3) UTAG Grants must be used to accelerate the development and commercialization of a technology and project proposals must identify specific technical milestones leading to the proposed outcome.

(4) Examples of acceptable milestones must be specific to the project may include:

(a) research and development activities;

(b) proof of concept;

(c) product validation; and,

(d) product development.

R856-3-8. Grant Amount, Award, and Required Contract.

(1) USTAR will have the discretion to limit the amount of funding that may be awarded for each UTAG grant based on available funds, scope of project, and quality of proposal.

(2) USTAR reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of USTAR and the governing authority.

(3) Upon award of a UTAG grant, and prior to any disbursement of funds, university must enter into a contract with USTAR governing the use of grant funding.

(4) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:

(a) grant funding may not be used to provide a primary benefit to any state other than Utah; and,

(b) for all other eligibility requirements, awardee must maintain eligibility status for the UTAG program until the project is complete, all milestones have been met, final dispersant of funding has been made, and first year reporting has been completed.

(5) Violations of Section R856-3-8(4) may result in forfeiture of grant funding and may require repayment of all or a portion of the funding received as part of the UTAG grant.

R856-3-9. Contract Modifications.

(1) University may request a modification to the terms of an UTAG contract.

(2) USTAR may deny a modification request for any reason.

(3) USTAR shall have discretion to agree to reasonable, non-substantive changes.

(a) Non-substantive changes may include the following:

(i) changes to timelines within the scope of work;

(ii) corrections to clerical errors in the application materials;

(iii) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law;

(4) Substantive changes must be approved by the USTAR governing authority.

(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.

R856-3-10. Funding Distribution.

(1) USTAR shall reimburse University for no more than the total amount specified in the contract.

(2) Payment will only be made for those costs authorized and approved by USTAR and submitted in accordance with the terms and conditions provided in the contract.

(3) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

R856-3-11. Reporting.

(1) University is required to provide the reporting for researchers or research teams, as applicable, specified in Sections 63M-2-702 and 63M-2-704.

KEY: Utah Science Technology and Research (USTAR), University Technology Acceleration Grants (UTAG), technology readiness level (TRL)

January 23, 2018 63M-2-302(h)

R856. Science Technology and Research Governing Authority (Utah), Administration.
R856-4. USTAR Science Technology Initiation Grant.
R856-4-1. Authority.

Subsection 63M-2-503(2) requires the USTAR governing authority to make rules establishing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

R856-4-2. Purpose and Goals.

(1) USTAR's Science and Technology Initiation Grant (STIG) provides grants to individual researchers or research teams employed by a Utah not-for-profit college or university to develop preliminary data, conduct proof of concept experiments, or perform other precursor research activities required to pursue larger, commercially-oriented grants from a federal agency, grant making foundation, industry or related entity.

(2) The goal of STIG is to increase the amount of external research funding received by Utah's universities and strengthen the research and development capacity at state Universities in commercially-oriented areas aligned to existing state industry sectors.

R856-4-3. Definitions.

(1) "Applicant" means an individual researcher or research team applying for a STIG.

(2) "Awardee(s)" means an individual researcher or team that have been awarded a STIG.

(3) "Governing authority" means the Utah Science, Technology, and Research Governing Authority.

(4) "STIG" and "STIG grant" mean the Science and Technology Initiation Grant, a competitive grant program administered by USTAR.

(5) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(6) "Technology Readiness Level" or "TRL" level means the method of estimating technology maturity used by the Federal Government and is available on the USTAR website.

(7) "Targeted funding" means the larger commercially-oriented grant or other external funding offered by a federal agency, grant making foundation, or related entity for which the researcher will apply after using the STIG grant to develop required data.

(8) "Grant making foundation" means any not-for-profit organization that awards research grants (e.g. The Bill and Melinda Gates Foundation, The Lemelson Foundation, etc).

(9) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for STIG grants using the selection criteria described in these rules.

(10) "University" means any public or not-for-profit higher education institution with its primary location in Utah.

(11) "USTAR" means the Utah Science, Technology, and Research Initiative.

R856-4-4. Eligibility Criteria.

(1) Individual researchers or research teams employed by a University are eligible to apply for a STIG grant.

(2) Applicants must identify the specific targeted funding source and the award type or solicitation.

(3) Applicants must propose using grant funds to support specific research and development activities, such as developing proofs of concept or performing initial data generation, necessary to develop requisite data for applicant's technology to be eligible for the targeted funding.

(4) Applicant's existing technology must be assessed to be between TRL 0-3.

(5) Collaborations among researchers at different universities and/or among researchers in different disciplines, while not required, will be given priority in the evaluation process described in Section R856-4-7.

(6) USTAR funding cannot be used as a material benefit to another state. Funding from a STIG grant must be used within the State of Utah.

(7) Applicants must be developing a technology in a targeted industry sector.

(a) USTAR will identify the targeted industry sector eligible to receive a STIG grant in the STIG application materials.

(b) The USTAR governing authority will, according to its discretion and judgment, review and approve the eligible technology sectors to ensure they are strategically selected to align with USTAR's economic development objectives and maximize the potential benefit to the state.

(c) In selecting industry sectors eligible to receive support from STIG, the Governing Authority may consider the following factors:

(i) statewide or regional importance of the industry to Utah's economy;

(ii) relative size of the sector, its stability, and growth potential;

(iii) characteristics of the state's workforce including education and training;

(iv) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;

(v) the potential for the industry sector to develop new jobs and business opportunities in the state;

(vi) likelihood that research in this sector will result in creation of a company in Utah or IP transfer to an existing Utah company; and,

(vii) any other factor the governing authority deems relevant.

(8) Applicants must obtain a cost-sharing commitment from each university that will receive funding from a STIG grant;

(a) matching funds may be provided via:

(i) Direct payment to university for the research project; and/or

(ii) "In-kind" contribution, which may include:

(A) Salary of university-affiliated researcher or personnel;

(B) Cost of Subject Matter Expert(s) (SME) time spent on project;

(C) Materials and equipment;

(D) Work/research space;

(E) Travel and other expenses budgeted for the project; or,

(F) Other contributions, as approved by USTAR

(4) If Applicant is a current recipient of a USTAR grant, that project must be verified as complete by USTAR before the application deadline in order for the awardee to be eligible to apply, unless expressly exempted by USTAR.

R856-4-5. Application Form and Submission Guidelines.

(1) USTAR will accept applications for STIG grants on an ongoing basis.

(2) USTAR will make applications and instructions available on USTAR's website and in paper form upon request.

(3) The instructions will include the following:

(a) A general procedure for submitting an application.

(b) Instructions for application content, which includes:

(A) description of the target grant;

(B) description of technical milestones and qualifications of team to meet milestones;

(C) timeline for completion of research.

(iii) Instructions for providing an outlined budget for total project cost including;

(2) a description of any funds already secured for activities related to the project;

(3) an itemized budget detailing planned use of grant funds; and,

(4) funding by milestones and timelines.

(iv) Description of the application evaluation process and

scoring system.

(v) Instructions for reporting project results and completing annual follow-up surveys.

(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Sections R856-4-6 and R856-4-7 herein.

R856-4-6. Application Review Procedure.

(1) University Pre-screening.

(a) Universities may perform an initial analysis and assessment of the project to be submitted with the application.

(2) Initial eligibility screening.

(a) USTAR will conduct an initial eligibility screening for each application to ensure:

(i) Completeness; and

(ii) Verification of minimum eligibility requirements.

(b) Any application that fails to meet the criteria in Section R856-4-6(2) will be rejected.

(3) Panel Review.

(a) Accepted applications will be reviewed by a panel of independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-4-7.

(i) Each expert panel will consist of at least two technical experts who will use the scoring rubric provided by USTAR.

(ii) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:

(A) academic qualifications including whether the expert has a terminal degree in a relevant field;

(B) relevant work experience and practical training in the field;

(C) knowledge of the target grant program/agency.

(D) experience evaluating grant proposals; and,

(E) any other factors USTAR deems important.

(iii) USTAR will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website.

(4) Governing Authority review.

(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.

(b) The GA Subcommittee will consider prior performance of applicant on in evaluation.

(c) The subcommittee will recommend projects for award and award amounts to the full governing authority for final approval.

R856-4-7. Application Evaluation Criteria.

(1) The panel of subject matter experts will use a scoring rubric to evaluate applications and recommend grant amounts.

(a) The scoring criteria will be made available during the application period;

(b) The scoring system will be designed to assess each proposal and may include:

(i) technical merit of proposal;

(iii) whether proposal involves a collaboration between researchers at more than one university;

(iv) whether the proposal involves a collaboration between researchers in more than one discipline;

(v) competitiveness of the proposed project and team for the target grant;

(vi) potential economic benefit to the state;

(vii) reasonableness of cost proposal (i.e. size and allocation of budget is appropriate for the work proposed additional funds available to complete work);

(viii) reasonableness of proposed milestones and timelines; and

(ix) any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance, including capture of Federal Funding.

R856-4-8. Grant Amount, Award, and Required Contract.

(1) USTAR will have the discretion to limit the amount of funding that may be awarded for each STIG grant based on available funds, scope of project, and quality of proposal.

(2) USTAR reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of USTAR and the governing authority.

(3) Upon award of a STIG grant, and prior to any disbursement of funds, university(ies) must enter into a contract with USTAR governing the use of STIG grant funding.

(4) Unless addressed in the terms and conditions of the contract between university(ies) and USTAR, the following provisions shall apply:

(a) grant funding may not be used to provide a primary benefit to any state other than Utah; and,

(b) for all other eligibility requirements, awardees must maintain eligibility status for the STIG program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year of reporting has been completed.

(5) Violations of Sections R856-4-8(-4) may result in forfeiture of grant funding and require repayment of all or a portion of the funding received as part of the STIG grant.

R856-4-9. Contract Modifications.

(1) University may request a modification to the terms of STIG contract.

(2) USTAR may deny a modification request for any reason.

(3) USTAR shall have discretion to agree to reasonable, non-substantive changes.

(a) Nonsubstantive changes may include the following:

(i) changes to timelines of within the scope of work

(ii) corrections to clerical errors in the application materials;

(iii) technical changes that do not alter the budget, researcher eligibility status, or violate any state or federal law;

(4) Substantive changes must be approved by the USTAR governing authority.

(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.

R856-4-10. Milestones.

(1) STIG funding must be used by individual researchers or research teams to develop proof of concept and/or initial data generation projects needed to apply for the targeted funding.

(2) Acceptable milestones must be specific to the project and designed to result in achieving the targeted funding.

(3) Specific funding details will be provided in the program announcement and in each STIG contract.

R856-4-11. Funding Distribution.

(1) USTAR shall reimburse University for no more than the total amount specified in the contract.

(2) Payment will only be made for those costs authorized and approved by USTAR and submitted in accordance with the terms and conditions provided in the contract.

(3) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

R856-4-12. Milestones and Reporting.

(1) All universities receiving STIG funding are required to provide the reporting for researchers or research teams as specified in Section 63M-2-702 and 704, as applicable.

KEY: Science Technology Initiation Grant (STIG), Utah Science Technology and Research (USTAR), technology

readiness level (TRL)
January 23, 2018 63M-2-302(h)

R856. Science Technology and Research Governing Authority (Utah), Administration.
R856-5. Utah Science, Technology, and Research (USTAR) Energy Research Triangle Professors (ERT-P) Grant.
R856-5-1. Authority.

Subsection 63M-2-503(2) requires the USTAR governing authority to make rules establishing the eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

R856-5-2. Purpose and Goals.

(1) USTAR's Energy Research Triangle Professors grant program is a collaborative effort between USTAR and The Utah Governor's Office of Energy Development and will be administered according to these rules.

(2) Grants provide funding for projects in which research teams from at least 3 Utah non-profit higher education institutions collaborate to address energy related technical challenges important to economic growth in the state of Utah.

R856-5-3. Definitions.

(1) "Applicant" means the research team for a particular project.

(2) "Awardee(s)" means a research team that has been awarded an Energy Research Triangle - Professor grant.

(3) "Governing authority" means the Utah Science, Technology and Research Governing Authority.

(4) "ERT-P" and "ERT-P grant" mean the Energy Research Triangle - Professor grant program, a competitive grant program administered by USTAR.

(5) "Lead university" is defined as the university which applies for ERT-P funding and is the principal contact between USTAR and the research team.

(6) "OED" means the Utah Governor's Office of Energy Development.

(7) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(8) Technology Readiness Level" or "TRL" level means the method of estimating technology maturity used by the Federal Government and is available on the USTAR website.

(10) "University" means any public or not-for-profit institution of higher education with its primary location in Utah.

(11) "USTAR" means the Utah Science, Technology, and Research Initiative.

(12) "UTAG" means the University Technology Acceleration Grants administered by the Utah Science, Technology and Research Initiative.

R856-5-4. Eligibility Criteria.

(1) ERT-P grant is available to university research teams that meet the following guidelines:

(a) Research team must include at least three researchers.

(b) Research team must include at least three Utah universities or colleges.

(c) Research team must include at least two Utah research universities under the Carnegie Classification of Institutions of Higher Education (http://carnegieclassifications.iu.edu/classification_descriptions/basic.php). The following three Utah universities are currently classified as research universities:

(i) University of Utah;

(ii) Utah State University;

(iii) Brigham Young University;

(d) Research team may include at least one researcher from universities in the state of Utah other than those listed in (1)(c).

(2) Research team must be developing a technology with applications that can address Utah-specific energy and natural resource issues.

(a) USTAR/OED may specify a specific subsector of Utah's energy and natural resource industry as a priority for grant funding in the ERT-P application materials.

(b) ERT-P grants are targeted at energy and natural resource innovation and development.

(c) In selecting targeted energy and natural resource subsectors eligible to receive support from ERT-P, the governing authority may consider the following factors:

(A) statewide or regional importance of the subsector to Utah's economy;

(B) relative size of the subsector, its stability, and growth potential;

(C) characteristics of the state's existing workforce, including education and training;

(D) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;

(E) the potential for the subsector to develop new jobs and business opportunities in the state;

(F) the likelihood that research in this subsector will result in the creation of a company in Utah or IP transfer to an existing Utah company; and,

(G) any other factor USTAR/OED deems relevant, considering the mission of USTAR and the purpose of ERT-P.

(3) Eligible technologies will be between a TRL 2-5;

(4) Applicants may not receive ERT-P funding and UTAG funding for the same technology in the same Utah fiscal year.

(5) If Applicant is a current recipient of any other USTAR grant, that project must be verified as complete by USTAR before the application deadline in order for the awardee to be eligible to apply, unless expressly exempted by USTAR.

R856-5-5. Application Form and Submission Guidelines.

(1) For each round of grants, USTAR/OED will provide a program announcement and make applications and instructions available on USTAR and/or OED's website, and in paper form upon request.

(2) Completed applications must be received on or before the specified deadline in the application instructions.

(3) The instructions will include the following:

(a) A general procedure for submitting an application;

(b) Requirements for a letter of intent;

(c) Instructions for application content which includes:

(i) description of the technology;

(ii) commercialization plan;

(iii) description of technical milestones and qualifications of team to meet milestones;

(iv) potential market;

(v) potential economic impact on Utah economy; and,

(vi) timeline for completion.

(d) Instructions for the required budget outline, including:

(i) total project cost;

(ii) a description of funds already secured for activities related to this project;

(iii) an itemized budget detailing planned use of grant funds; and,

(iv) breakdown of costs to complete each milestone.

(e) Description of the application evaluation process and scoring system.

(f) Instructions for reporting project results and completing annual follow-up surveys.

(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Sections R856-5-6 and R856-5-7 herein.

R856-5-6. Application Review Procedure.

(1) Pre-screening

(a) Applicants will submit a letter of intent before the specified deadline.

(b) Letter of intent will be reviewed by USTAR staff to determine eligibility to apply.

(2) University Pre-screening.

(a) Universities may perform an initial analysis and assessment of the project to be submitted with the application.

(3) Initial eligibility screening.

(a) USTAR/OED will conduct an initial eligibility screening for each application to ensure:

(i) Completeness; and,

(ii) Verification of minimum eligibility requirements.

(b) Any application that fails to meet the criteria in Section R856-5-(3) will be rejected.

(4) Panel Review.

(a) Accepted applications will be reviewed by subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-5-7.

(i) USTAR/OED will have discretion to select the experts for the review panels and shall consider, as applicable:

(A) academic qualifications including whether the expert has a terminal degree in a relevant field;

(B) relevant work experience and practical training in the field;

(C) knowledge of the commercial/industrial energy sector or sub-sector in Utah;

(D) experience evaluating grant proposals; and,

(E) any other factors USTAR/OED deems important.

(ii) USTAR/OED will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website.

(5) Governing authority review.

(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.

(b) The GA subcommittee will consider prior performance of applicant in its evaluation.

(c) The subcommittee will recommend projects for award and award amounts to the full governing authority for final approval.

R856-5-7. Application Evaluation Criteria.

(1) Letter of Intent

(a) The Administrative criteria to review of letters of intent will be published in advance.

(2) The review panel will use a scoring system to evaluate and rank grant applications and recommend grant amounts.

(a) The scoring criteria will be made available during the application period;

(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:

(i) Technical merit of proposal;

(ii) Strength and maturity of research and management team, as applicable;

(iii) Appropriate technology readiness level (TRL 2-5);

(iv) Potential economic impact, as measured by:

(A) Job creation;

(B) Product sales;

(C) Potential revenue due to expansion of current business or development of a new business; and/or,

(D) Projected time to revenue or job creation;

(E) Other measures of economic impact such as natural resource impacts.

(v) Market need, technical and management experience and qualifications;

(vi) Reasonableness of cost proposal (i.e. size and allocation of budget is appropriate for the work proposed);

(vii) Reasonableness of proposed milestones and timelines; and,

(ix) Any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.

(3) ERT-P Grants must be used to accelerate the development and commercialization of a technology and project proposals must identify specific technical milestones leading to the proposed outcome.

(4) Examples of acceptable milestones must be specific to the project may include:

(a) research and development activities;

(b) proof of concept;

(c) product validation; and,

(d) product development.

R856-5-8. Grant Amount, Award, and Required Contract.

(1) USTAR/OED will have the discretion to limit the amount of funding that may be awarded for each ERT-P grant based on available funds, scope of project, and quality of proposal.

(2) USTAR/OED reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of the governing authority.

(3) Upon award of an ERT-P grant, and prior to any disbursement of funds, each lead university must enter into a contract with USTAR governing the use of grant funding.

(a) The "lead university" is defined as the principal investigator's university

(b) Subcontracts to the remaining universities will be administered by the lead university.

(4) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:

(a) grant funding may not be used to provide a primary benefit to any state other than Utah; and,

(b) for all other eligibility requirements, awardee must maintain eligibility status for the ERT-P program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year reporting has been completed.

(5) Violations of Section R856-5-8(4) may result in forfeiture of grant funding and may require repayment of all or a portion of the funding received as part of the ERT-P grant.

R856-5-9. Contract Modifications.

University may request a modification to the terms of an ERT-P contract.

(1) USTAR may deny a modification request for any reason.

(2) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.

(a) Nonsubstantive changes may include the following:

(i) changes to timelines within the scope of work;

(ii) corrections to clerical errors in the application materials;

(iii) technical changes that do not alter the budget, company's eligibility status, or violate any state or federal law;

(3) Substantive changes must be approved by the USTAR governing authority.

(4) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.

R856-5-10. Funding Distribution.

(1) Funding will be provided to the lead university and will be distributed per the subcontracts to each of the supporting universities.

(2) USTAR shall reimburse University for no more than the total amount specified in the contract.

(3) Payment will only be made for those costs authorized and approved by USTAR and submitted in accordance with the terms and conditions provided in the contract.

(4) Failure to successfully complete the milestones may

result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

R856-5-11. Reporting.

(1) University is required to provide reporting for researchers or research teams, as applicable, specified in Sections 63M-2-702 and 704.

(2) USTAR Executive Director can modify or waive reporting requirement if the USTAR grant is less than $50k.

KEY: Energy Research Triangle Professors Grant (ERT-P), technology readiness level (TRL), Utah Science Technology and Research (USTAR)
January 23, 2018 63M-2-302(h)

R856. Science Technology and Research Governing Authority (Utah), Administration.
R856-6. Utah Science, Technology and Research (USTAR) Energy Research Triangle Scholars (ERT-S) Grant.
R856-6-1. Authority.

Subsection 63M-2-503(2) requires the USTAR governing authority to make rules establishing the eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

R856-6-2. Purpose and Goals.

(1) USTAR's Energy Research Triangle Scholars grant program is a collaborative effort between USTAR and The Utah Governor's Office of Energy Development and will be administered according to these rules.

(2) Grants provide funding to university faculty research professors for student-led projects that seek to address technical challenges related to energy issues important to economic growth in the state of Utah.

R856-6-3. Definitions.

(1) "Applicant" means the researcher for a particular project.

(2) "Awardee" means a researcher that has been awarded an Energy Research Triangle Scholars grant.

(3) "Governing authority" means the Utah Science, Technology and Research Governing Authority.

(4) "ERT-S" and "ERT-S grant" mean the Energy Research Triangle Scholar grant program, a competitive grant program administered by USTAR.

(5) "OED" means the Utah Governor's Office of Energy Development.

(6) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(7) Technology Readiness Level" or "TRL" level means the method of estimating technology maturity used by the Federal Government and is available on the USTAR website.

(9) "University" means any public or not-for-profit institution of higher education with its primary location in Utah.

(10) "USTAR" means the Utah Science, Technology and Research Initiative.

(11) "ERT-P" and "ERT-P grant" mean the Energy Research Triangle - Professor grant program, a competitive grant program administered by USTAR.

(12) "UTAG" means the University Technology Acceleration Grants administered by the Utah Science, Technology and Research Initiative.

R856-6-4. Eligibility Criteria.

(1) The ERT-S grant is restricted to university-affiliated researchers for student-lead projects meeting the following guidelines:

(a) Project must be led by currently matriculated students in good standing.

(b) Project must be led by student enrolled in a nonprofit Utah university.

(c) Student project must be overseen by a research professor at a nonprofit Utah university.

(2) Student researcher must be developing a technology with applications that can address Utah-specific energy and natural resource issues.

(a) USTAR/OED may specify a specific subsector of Utah's energy and natural resource industry as a priority for grant funding in the ERT-S application materials.

(b) ERT-S grants are targeted at energy and natural resource innovation and development.

(c) In selecting targeted energy and natural resource subsectors eligible to receive support from ERT-S, the governing authority may consider any or all of the following factors:

(A) statewide or regional importance of the subsector to Utah's economy;

(B) relative size of the subsector, its stability, and growth potential;

(C) characteristics of the state's existing workforce, including education and training;

(D) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;

(E) the potential for the subsector to develop new jobs and business opportunities in the state; and,

(F) the likelihood that research in this subsector will result in the creation of a company in Utah or IP transfer to an existing Utah company.

(G) any other factor USTAR/OED deems relevant, considering the mission of USTAR and the purpose of ERT-S.

(3) Student researcher must be developing a technology assessed at the start of the project to be between a TRL of 2 and 5.

(4) ERT-S, ERT-P funding and UTAG funding cannot be requested for the same technology in the same fiscal year.

(4) If Applicant is a current recipient of any other USTAR grant, that project must be verified as complete by USTAR before the application deadline in order for the awardee to be eligible to apply, unless expressly exempted by USTAR.

R856-6-5. Application Form and Submission Guidelines.

(1) For each round of grants, USTAR/OED will provide a program announcement and make applications and instructions available on USTAR and/or OED's website and in paper form upon request.

(2) Completed applications must be received on or before the specified deadline in the application instructions.

(3) The instructions will include the following:

(a) A general procedure for submitting an application.

(b) Requirements for a letter of intent;

(c) Instructions for application content which includes:

(i) description of the technology;

(ii) commercialization plan;

(iii) description of technical milestones and qualifications of team to meet milestones;

(iv) potential market;

(v) potential economic impact on Utah economy; and,

(vi) timeline for completion.

(d) Instructions for the required budget outline, including:

(i) total project cost;

(ii) a description of funds already secured for activities related to this project;

(iii) an itemized budget detailing planned use of grant funds; and,

(iv) breakdown of costs to complete each milestone.

(e) Description of the application evaluation process and scoring system.

(f) Instructions for reporting project results and completing annual follow-up surveys.

(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Sections R856-6-6 and R856-4-7 herein.

R856-6-6. Application Review Procedure.

(1) Pre-screening

(a) Applicants will submit a letter of intent before the specified deadline.

(b) Letter of intent will be reviewed by USTAR staff to determine eligibility to apply.

(2) University Pre-screening.

(a) Universities may perform an initial analysis and assessment of the project to be submitted with the application.

(3) Initial eligibility screening.

(a) USTAR/OED will conduct an initial eligibility

screening for each application to ensure:

(i) Completeness; and,

(ii) Verification of minimum eligibility requirements.

(b) Any application that fails to meet the criteria in Section R856-6-6(3) will be rejected.

(4) Panel Review.

(a) Accepted applications will be reviewed by subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-6-7.

(i) USTAR/OED will have discretion to select the experts for the review panels and shall consider, as applicable:

(A) academic qualifications including whether the expert has a terminal degree in a relevant field;

(B) relevant work experience and practical training in the field;

(C) knowledge of the commercial/industrial energy sector or sub-sector in Utah;

(D) experience evaluating grant proposals; and,

(E) any other factors USTAR/OED deems important.

(ii) USTAR/OED will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website.

(5) Governing authority review.

(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.

(b) The GA subcommittee will consider prior performance of applicant in its evaluation.

(c) The subcommittee will recommend projects for award and award amounts to the full governing authority for final approval.

R856-6-7. Evaluation and Award Criteria.

(1) Letter of Intent

(a) The Administrative criteria to review of letters of intent will be published in advance.

(2) The review panel will use a scoring system to evaluate and rank grant applications and recommend grant amounts.

(a) The scoring criteria will be made available during the application period;

(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:

(i) Technical merit of proposal;

(ii) Strength and maturity of research or management team, as applicable;

(iii) Appropriate technology readiness level (TRL 2- 5);

(iv) Potential economic impact, as measured by:

(A) Job creation;

(B) Product sales;

(C) Potential revenue due to expansion of current business or development of a new business; and/or,

(D) Projected time to revenue or job creation;

(E) Other measures of economic impact such as natural resource impacts.

(v) Market need, technical and management experience and qualifications;

(vi) Reasonableness of cost proposal (i.e. size and allocation of budget is appropriate for the work proposed);

(vii) Reasonableness of proposed milestones and timelines; and,

(ix) Potential for positive impact on student's professional development goals and,

(x) Any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.

(3) ERT-S Grants must be used to accelerate the development and commercialization of a technology and project proposals must identify specific technical milestones leading to the proposed outcome.

(4) Examples of acceptable milestones must be specific to the project may include:

(a) research and development activities;

(b) proof of concept;

(c) product validation; and,

(d) product development.

R856-6-8. Grant Amount, Award, and Required Contract.

(1) USTAR/OED will have the discretion to limit the amount of funding that may be awarded for each ERT-S grant based on available funds, scope of project, and quality of proposal.

(2) USTAR/OED reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of the governing authority.

(3) Upon award of a ERT-S grant, and prior to any disbursement of funds, each university must enter into a contract with USTAR governing the use of grant funding.

(4) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:

(a) grant funding may not be used to provide a primary benefit to any state other than Utah; and,

(b) for all other eligibility requirements, awardee must maintain eligibility status for the ERT-S program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year reporting has been completed.

(5) Violations of Section R856-6-8(4) may result in forfeiture of ERT-S grant funding and may require repayment of all or a portion of the funding received as part of the ERT-S grant.

R856-6-9. Contract Modifications.

University may request a modification to the terms of an ERT-S contract.

(1) USTAR may deny a modification request for any reason.

(2) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.

(a) Nonsubstantive changes may include the following:

(i) changes to timelines within the scope of work;

(ii) corrections to clerical errors in the application materials;

(iii) technical changes that do not alter the budget, company's eligibility status, or violate any state or federal law;

(3) Substantive changes must be approved by the USTAR governing authority.

(4) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.

R856-6-10. Funding Distribution.

(1) Award funding shall be made to the university faculty research professor mentoring the student. The professor will then distribute funds to the student researcher to engage in research under the professor's direction.

(2) USTAR shall reimburse University for no more than the total amount specified in the contract.

(3) Payment will only be made for those costs authorized and approved by USTAR and submitted in accordance with the terms and conditions provided in the contract.

(4) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

R856-6-11. Milestones and Reporting.

(1) University is required to provide reporting for researchers, as applicable, specified in Section 63M-2-702 and 704.

(2) USTAR Executive Director can modify or waive reporting if grant is less than 50k.

KEY: Energy Research Triangle Scholars Grant (ERT-S), technology readiness level (TRL), Utah Science Technology and Research (USTAR)
January 23, 2018 63M-2-302(h)

R909. Transportation, Motor Carrier.
R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation, and Certification.
R909-19-1. Authority.

This rule is enacted under the authority of Sections 72-9-601, 72-9-602, 72-9-603, 72-9-604, 53-1-106, 41-6a-1405, Utah Code.

R909-19-2. Applicability.

All tow truck motor carriers and employees must comply and observe all rules, including R909-1, regulations, traffic laws and guidelines as prescribed by State Law, including Sections 41-6a-401.9, 41-6a-1404, 41-6a-1405, 41-6a-1406, 72-9-301, 72-9-303, 72-9-601, 72-9-602, 72-9-603, 72-9-604, 72-9-701, 72-9-702, and 72-9-703.

R909-19-3. Definitions.

(1) "Consent Tow" means any tow truck service that is done at the vehicle, vessel, or outboard motor owner's, or its legal operator, knowledge and/or approval.

(2) "Department" means the Utah Department of Transportation.

(3) "Division" means the Motor Carrier Division.

(4) "Emergency Moves" means a tow operation initiated by law enforcement to move a wrecked or disabled motor vehicle.

(5) "Gross Combination Weight Rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GVCR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

(6) "Gross Vehicle Weight Rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

(7) "Life-Essential personal property" includes those items essential to sustain life or health including: prescription medication, medical equipment, essential clothing (e.g. shoes, coat), food and water, child safety seats, and government issued photo-identification.

(8) "Non-Consent Police Generated Tow" means tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority, as defined in Section 72-1-102.

(9) "Non-Consent Non-Police Generated Tow" means towing services performed without the prior consent or knowledge of the owner of the vehicle or the person authorized by the owner to operate the vehicle from private property. The tow truck service must be from private property, at the request of the property landowner or agent for the landowner.

(10) "Normal Office Hours" means hours of operation where the office or yard shall be staffed and open for public business during normal business hours Monday thru Friday, except for designated state and federal holidays.

(11) "Recovery Operation" means a towing service that may require charges in addition to the normal one-truck/one-operator towing service requirements. The additional charges may include charges for manpower, extra equipment, traffic control, and special recovery equipment and supplies.

(12) "Tow Truck" means a motor vehicle constructed, designed, altered, or equipped primarily for the purpose of towing or removing damaged, disabled, abandoned, seized, repossessed or impounded vehicles from highway or other place by means of a crane, hoist, tow bar, tow line, dolly tilt bed, or other similar means of vehicle transfer without its own power or control.

(13) "Tow Truck Certification Program" means a program to authorize and approve tow truck motor carrier owners, operators, and vehicles is the process by which the Department, acting under Section 72-9-602, shall verify compliance with the State and Federal Motor Carriers Safety Regulations.

(14) "Tow Truck Motor Carrier" means any company that provides for-hire, private, salvage, or repossession towing services. It includes the company's agents, officers, and representatives as well as employees responsible for hiring, training, supervisory, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of equipment and/or accessories.

(15) "Tow Truck Service" means the functions and any ancillary operations associated with recovering, removing, and towing a vehicle and its load from a highway or other place by means of a tow truck.

(a) Tow Truck Service, with regards to authorized towing fees, is determined by the type and size of the towed vehicle, not the type and size of the tow truck performing the service.

(b) Towed Vehicle Classifications will be used when determining authorized fees. Information regarding the GVWR to determine classification category of towed vehicle can be found on the identification plate on the vehicle driver side doorframe. Towed vehicle classifications are as follows:

(i) "Light Duty" means any towed vehicle with a GVWR 10,000 pounds or less;

(ii) "Medium Duty" means any towed vehicle with a GVWR between 10,001 and 26,000 pounds;

(iii) "Heavy Duty" means any towed vehicle with a GVWR or GCWR 26,001 pounds and greater.

(16) "Tow truck operator" means a natural person who drives or operates the towing equipment or a motor vehicle adapted to or designed for the towing of motor vehicles.

(17) "Tow Truck Motor Carrier Steering Committee" means a committee established by the Motor Carrier Division and will include enforcement personnel, industry representatives and other persons as deemed necessary.

R909-19-4. Duties - Enforcement - Compliance Audits, Inspections and Right of Entry.

The Department shall administer and in cooperation with the Department of Public Safety, Utah Highway Patrol Division as specified under Section 53-8-105, shall administer and enforce state and federal laws related to the operation of tow truck motor carriers within the state. In addition, a tow truck motor carrier shall submit its lands, property, buildings, equipment for inspection and examination and shall submit its accounts, books, records, or other documents for inspection and copying to verify compliance as authorized by Section 72-9-301.

R909-19-5. Insurance.

(1) Tow Truck Motor Carriers performing emergency moves shall maintain liability insurance coverage of at least $750,000 per occurrence. Tow Truck Motor Carriers performing non-emergency moves shall maintain liability insurance coverage of at least $1,000,000 per occurrence.

(2) All Tow Truck Motor Carriers performing consent or non-consent tows are required to obtain a MCS-90 endorsement for environmental restoration as required in 49 CFR Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers.

(3) Evidence of required insurance shall be maintained at the principal place of business and made available to the Department and/or Investigator upon request and prior to issuance of the Tow Truck Motor Carrier certification.

R909-19-6. Penalties and Fines.

(1) Any tow truck motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations, other statutes, any part of this rule, any term or condition of the permit or any materials that it incorporates either by reference or attachment, or a Departmental order, is subject to:

(a) a civil penalty as authorized by Section 72-9-701, and 72-9-703;

(b) suspension or revocation of a carrier or tow truck certification (suspension or revocation will be based upon the severity of violations to this rule, Sections 41-6a-1406 and 72-9-603);

(c) issuance of a cease-and-desist order as authorized by

Section 72-9-303; and

(d) the revocation or suspension of registration by the Utah State Tax Commission pursuant to Section 72-9-303.

R909-19-7. Towing Notice Requirements.

(1) All non-consent police generated and non-consent non-police generated tows conducted by Tow Truck Motor Carriers must input required information in electronic form on the Division of Motor Vehicles Utah State Tax Commission's website, at "https://secure.utah.gov/ivs/ivs" as required by 41-6a-1406(11).

(2) Tow Truck Motor Carriers must notify the local enforcement agency having jurisdiction over the area from where the vehicle, vessel, or outboard motor was removed on all non-consent non-police generated tows immediately upon arrival at the impound or storage yard.

(a) For tows conducted on vehicles, vessels, and outboard motors and the owner information does not appear in the IVS or TLR (Title License Registration) systems, a Tow Truck Motor Carrier has met this requirement if they can provide proof that a letter has been sent to the Utah State Tax Commission Division of Motor Vehicle or the appropriate state where the vehicle, vessel, and outboard motor is registered, within two business days requesting the needed information to send the letter.

(3) If required notifications to the Division of Motor Vehicles and local law enforcement is not completed as required by Sections 41-6a-1406 and 72-9-603, the Tow Truck Motor Carrier or operator may not collect any fees associated with the removal or begin charging storage fees as authorized under Sections 41-6a-1406 and 72-9-603 until the removal has been reported to the Motor Vehicle Division and the local law enforcement agency.

(4) If notification to the last known owner and lien holder is not made as required by this rule, the Tow Truck Motor Carrier may be subject to penalties as outlined in this rule.

(5) The tow truck motor carrier or the tow truck operator must provide a copy of the Utah Consumer Bill of Rights Regarding Towing at first contact with the owner of a vehicle, vessel, or out board motor that was towed.

(a) The tow truck motor carrier must be able to verify that the consumer received their copy of the Utah Consumer Bill of Rights Regarding Towing.

(6) The Utah Consumer Bill of Rights Regarding Towing shall contain the language and information as published at, www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396.

(b) The consumer has a right to receive documentation from the tow truck motor carrier showing the date and time the storage began.

(c) The tow truck motor carrier, operator(s) and vehicle(s) shall comply with 49 CFR Section 390, of the Federal Motor Carrier Safety Regulations, which are incorporated and made a part of this Rule by this reference.

(d) A consumer has the right to file a complaint alleging:

(i) Overcharges;

(ii) Inadequate certification for the operator, truck or company, and;

(iii) Violations of the Federal Motor Carrier Safety Regulations, Utah Code Annotated or Utah Administrative Code.

(e) Complaints may be filed online with the Utah Department of Transportation at http://www.udot.utah.gov. Click on the Motor Carrier Division tab, Motor Carrier Contacts, and click on Motor Carrier Comments and Complaints; or by contacting the Motor Carrier Division at (801) 965-5892.

R909-19-8. Certification.

There are three (3) certifications required by the Department.

(1) Tow Truck Operator Certification.

(a) Effective July 1, 2004 all tow truck operators will be tested and certified in accordance with National Driver Certification Procedure (NDCP) standards and carry evidence of certification for the appropriate level of vehicle they are operating. These standards of conduct and proficiency may be tested and certified through an accepted program approved by the Department.

(i) Towing and Recovery Association of America (TRAA) Testing Program;

(ii) Wreckmaster Certification Program;

(iii) AAA Certification Program;

(iv) Utah Safety Council;

(v) North American Towing Academy; or

(vi) Other driver testing certification programs approved by the Department to meet certification requirements, however, the Tow Truck Motor Carrier must obtain prior approval in writing from the Motor Carrier Division Administrator or Division representative by calling (801) 965-4892.

(b) Information on qualified certification programs may be obtained by contacting the Motor Carrier Division at (801) 965-4892.

(c) Tow Truck Motor Carriers shall ensure that all tow truck operators:

(i) are properly trained to operate tow truck equipment;

(ii) are licensed, as required under Sections 53-3-101, through 53-3-909 Uniform Driver License Act;

(iii) are complying with the requirements under Sections 41-6a-1406 and 72-9-603;

(iv) have cleared the criminal background check required in Subsections 72-9-602(2) and (3). In addition, a tow truck motor carrier must notify the department of an tow truck operator whom is not in compliance with 72-9-602(3) within two business days of obtaining knowledge from the Bureau of Criminal Identification.

(v) obtain and maintain a valid medical examiner's certificate under 49 C.F.R Sec 391.45.

(2) Tow Truck Vehicle Certification.

(a) All tow trucks shall be inspected and certified biannually.

(b) All tow trucks must be equipped with required safety equipment. Safety Equipment List can be found at http://www.udot.utah.gov/main/f?p=100:pg:::1:T,V:396 or by calling 801-965-4892.

(c) Upon vehicle certification, a UDOT certification sticker will be issued and shall be affixed on the driver's side rear window.

(d) Documentation of UDOT tow truck vehicle inspection certification shall be kept in the vehicle files and be available upon request by Department personnel.

(3) Tow Truck Motor Carrier Certification.

(a) Tow Truck Motor Carriers shall be certified biannually to ensure compliance as required by the Federal Motor Carrier Safety Regulations, Utah Code Annotated, and local laws where applicable.

R909-19-9. Certification Fees.

The Department may charge Tow Truck Motor Carriers a fee biannually as authorized by Section 72-9-603 to cover costs associated with driver, vehicle, and carrier certifications.

R909-19-10. Information Required on Towing Receipt.

Charges for services provided must be clearly reflected on a company receipt and a copy shall be provided to the customer. The receipt must include the following information:

(a) company name;

(b) address;

(c) phone number;

(d) transportation, administration, fuel surcharge, and storage fees charged;

(e) name of company driver;

(f) unit number;

(g) license plate of the towed vehicle;

(h) make, model, Vehicle Identification Number, and year of the towed vehicle;

(i) start and end time with total hours for services provided; and

(j) the date vehicle was retrieved from tow yard or other

storage area.

R909-19-11. Non-Consent Towing, Storage, Administrative and Fuel Surcharge Fees.

(1) The Motor Carrier Division is required to establish the allowable maximum fees for tow truck service, storage, the tow truck carrier's administrative fee for reporting the removal, and the fuel surcharge as per Utah State Code 72-9-603. The Towing Fees Schedule is published on the Division's website at http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396.

(2) The allowable maximum fee for tow truck service and the maximum allowable administrative fee for reporting the removal ("Allowable Maximum Fees") shall be tied to the Consumer Price Index for all Urban Wage Earners and Clerical Workers (CPI-W) in the West Urban Region of the U.S. The (CPI-W) is calculated by the U.S. Department of Labor, Bureau of Labor and Statistics (BLS), which publishes CPI Detailed Report Tables every month on its web site at http://www.bls.gov/cpi/tables.htm.

(3) The Motor Carrier Division shall adjust the Allowable Maximum Fees once annually as follows:

(a) The base fee schedule for each calendar year after a year in which the motor Carrier Division determines the Allowable Maximum Fees pursuant to R909-19-11(1) shall be adjusted effective January 1 of each such calendar year (the "Adjustment Date").

(b) The adjustment amount of the Allowable Maximum Fees shall be equal to the change in the CPI-W for the twelve-month period prior to the October CPI-W figure reported by the BLS immediately preceding the Adjustment Date in question.

(c) The first CPI-W based adjustment to the Allowable Maximum Fees shall be equal to the cumulative change in the CPI-W for 2014 and 2015.

(d) If the twelve-month change in the CPI-W from October to October is negative, the Allowable Maximum Fees shall remain unchanged until the next Adjustment Date.

(e) The Division of Motor Carriers shall round the Allowable Maximum Fees to the nearest whole number.

(4) A Tow Truck Motor Carrier may charge up to but not exceeding the approved tow rate, based upon the type of non-consent tow, as indicated in the Towing Fee Schedule published online at http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396.

(a) An additional 15% of the fee for tow truck service may be charged if the towed vehicle is used in the transportation of materials found to be hazardous for the purposes of and in accordance with the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(b) If a tow truck apparatus is mechanically connected to a vehicle, the tow truck motor carrier shall be considered in possession of the vehicle.

(c) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle is attempting to retrieve said vehicle before the tow truck motor carrier is in possession of the vehicle, no fee(s) shall be charged to the vehicle owner.

(d) If the owner, authorized operator, or authorized agent of the owner of the vehicle is attempting to retrieve the vehicle after the tow truck motor carrier is in possession of the vehicle but before the vehicle is removed from the property or scene, the maximum fee shall not exceed 50% of the posted rate schedule.

(e) Charges for recovery operations, as defined by R909-19-3, shall be coordinated with the towed vehicle owner prior to initiating the additional charges relating to the recovery operation. Coordination with the towed vehicle owner should result in an agreement between the towed vehicle owner and Tow Truck Motor Carrier.

(f) Tow Truck Motor Carriers shall obey all applicable local municipal and county laws, pertaining to placement of signs, notification, and other towing related ordinances.

(g) Strobe lights are not allowed on Tow Trucks. The acceptable color for tow truck lights is amber.

(5) A Tow Truck Motor Carrier may charge up to but not exceeding the amount for storage per day for the type of non-consent tow as indicated in the Towing Fee Schedule as published online at, http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396.

(a) A Tow Truck Motor Carrier may charge a higher fee for inside storage per day per unit as indicated in the Towing Fees Schedule as published at on the Divisions website at, http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396. Only if requested by the owner(s), or a law enforcement agency or highway authority.

(b) Vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F may be charged a higher storage fee rate based upon the Towing Fees Schedule as published online at, http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396.

(c) For the purpose of calculating storage rates, if the first six (6) hours of storage for a vehicle includes more than one day, the authorized storage fee is only the charge for one day.

(6) A Tow Truck Motor Carrier may charge an administrative fee for reporting the removal of up to but not exceeding the amount indicated in the Towing Fee Schedule as published online at, http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396 per vehicle notification for reporting non-consent tows to the Department of Motor Vehicles and for sending notifications to the owner and lien-holder (if applicable).

(7) A Tow Truck Motor Carrier may charge a fuel surcharge When the daily Rocky Mountain Average, as determined by the Department of Energy, for the price of fuel reaches $3.25 per gallon, a tow truck motor carrier may charge a surcharge equal to 5% of the base tow rate. An additional 5% shall be allowed for each $0.25 per gallon increase. Conversely, as the price of fuel drops, the fuel surcharge shall decrease by the same rate.

(a) To determine the Rocky Mountain daily average per gallon diesel cost, refer to the U.S. Energy Information Administration's website at https://www.eia.gov/.

(b) The fuel surcharge may be charged on non-consent police generated tow when the vehicle is being used in the function of a tow vehicle i.e. travel to and from the scene and during the operation of equipment for recovery operation. Non-consent non-police tows may charge a onetime fee.

(c) Surcharge fee shall be listed as a separate fee on the tow bill.

R909-19-12. Towing and Storage Rates. Public Consent Tows.

Towing rates for public consent tows are the responsibility of the consumer and the tow truck motor carrier as contracted for services rendered and are not regulated by the Department.

R909-19-13. Rates and Storage Posting Requirements.

Pursuant to Section 72-9-603, a tow truck motor carrier or impound yard shall clearly and conspicuously post and disclose all its current non-consent fees and rates for towing and storage of a vehicle.

R909-19-14. Federal Motor Carrier Safety Requirements.

All tow truck motor carriers that meet the definition of a commercial motor carrier shall comply with all State and Federal Motor Carrier Safety Regulations, in addition to any other legal requirements established in statute, rule, or permit.

R909-19-15. Consumer Protection Information.

Pursuant to Section 72-9-602, the Department shall make consumer protection information available to the public that may use a tow truck motor carrier. To obtain such information, including a list of Tow Truck Motor Carriers that are currently certified by the Department, the public can access this information online at http://www.udot.utah.gov/main/f?p=100:pg:::::1:T,V:396, or by calling the Motor Carrier Division at (801) 965-4892.

R909-19-16. Establishment of Tow Truck Steering Committee and Work Group.

(1) The Administrator for the Motor Carrier Division will establish a Steering Committee to provide advisory information and input.

(2) The Motor Carrier Advisory Board, established by the Governor, will serve as the steering body for regulatory guidance and the Department's certification process.

R909-19-17. Review of Rates, Fees and Certification Process.

(1) During a regularly scheduled Motor Carrier Advisory Board meeting, the board may review rates, fees, tow truck motor carrier procedures, and the certification process. The board is not required to review each of these items every year.

(2)(a) Interested parties must notify the department of their desire to appear and be heard at a regularly scheduled Motor Carrier Advisory Board meeting. To ensure placement on the agenda, notify the Motor Carrier Division at 801-965-4892, by the first day of the month of the scheduled meeting.

(b) Interested parties must be present at the Motor Carrier Advisory Board meeting to submit evidence supporting or challenging proposed rate or fee adjustments, or issues related to procedures regarding the certification process.

R909-19-18. Ability to Petition for Review.

Any Tow Truck Carrier who believes the Division has acted wrongfully in denying or suspending certification or in imposing a cease-and-desist order may petition the Department for review of that action pursuant to Utah Admin. Code R907-1, Administrative Procedures.

R909-19-19. Record Retention.

Tow Truck Motor Carriers shall retain records relating to rates charged for services for a period of six months after the service has been provided. However, if the Division or the vehicle owner have notified the carrier that it disputes its ability to charge a particular fee, the carrier shall retain the record until six months after the dispute has concluded or a court rule or order requires a longer retention period.

R909-19-20. Life Essential Property.

Property which is deemed as life essential shall be given to the vehicle owner regardless of payment for rendered services.

KEY: safety regulations, tow trucks, towing, certifications
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72-9-602
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