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

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

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

R13-3-2. Definitions.

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

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

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

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

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

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

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

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

R13-3-3. Filing of Complaints.

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

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

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

(4) Each complaint shall:

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

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

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

(d) describe the action and accommodation desired; and

(e) be signed by the complainant or by his legal representative.

(5) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

(6) If the complaint is not in writing, the ADA coordinator or designee shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

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

R13-3-4. Investigation of Complaints.

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

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

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

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

(b) require facility modifications.

R13-3-5. Recommendation and Decision.

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

(2) If the ADA coordinator or designee is unable to make a recommendation within the 15 working day period, the complainant shall be notified in writing, or in another accessible

format suitable to the complainant, stating why the recommendation is delayed and what additional time is needed.

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

R13-3-6. Appeals.

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

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

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

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

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

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

(b) require facility modifications

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

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

R13-3-7. Record Classification.

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

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

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

R13-3-8. Relationship to Other Laws.

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

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

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

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

KEY: grievance procedures, disabled persons
April 23, 2018 63A-1-105.5
Notice of Continuation October 10, 2017 63G-3-201(3)
28 CFR 35.107

R137. Career Service Review Office, Administration.
R137-2. Government Records Access and Management Act.
R137-2-1. Purpose.

The purpose of this rule is to provide procedures for access to government records of the Career Service Review Office.

R137-2-2. Authority.

The authority for this rule is found in Sections 63G-2-204 of the Government Records Access and Management Act (GRAMA) and 63A-12-104 of the Utah Administrative Services Code.

R137-2-3. Definitions.

A. "Administrator" means the Administrator of the Career Service Review Office as set forth at Sections 67-19a-101(1) and 67-19a-204.

B. "CSRO" means the Career Service Review Office.

C. "GRAMA" means the Government Records Access and Management Act as enacted by the 1992 Utah Legislature, Sections 63G-2-101 through 901, Utah Code Annotated.

D. "Records Officer" means the individual responsible to fulfill Section 63G-2-103(25) of the GRAMA.

R137-2-4. Records Officer.

A. The records officer for the CSRO shall be the administrative assistant.

B. The records officer shall review and respond to requests for access to CSRO records, according to Section 63A-12-103.

R137-2-5. Requests for Access.

A. Requests for access to CSRO records shall be in writing and must include the requester's name, mailing address, daytime telephone number if available, and a brief but reasonably specific description of the records being requested. A records access form may be obtained from the CSRO upon request, but this form is not required in order to petition for access to CSRO records.

B. Requests should be directed to the Records Officer, Career Service Review Office, 1120 State Office Building, Salt Lake City, UT 84114.

C. The CSRO is not required to respond to requests submitted to the wrong person, agency or location within the time limits set by the GRAMA.

R137-2-6. Fees.

A. Reasonable fees may be charged for copies of records provided upon request. Fees for photocopying may be charged as authorized by Section 63G-2-203. A fee schedule may be obtained from the CSRO by telephoning 801-538-3048 or by making a personal inquiry at the office during regular business hours.

B. The CSRO may require payment of past fees and future fees before beginning to process a request if fees are expected to exceed $50.00, or if the requester has not paid fees from previous requests.

R137-2-7. Waiver of Fees.

Fees for duplication and compilation of a record may be waived under certain circumstances described in Section 63G-2-203(4). Requests for application of a waiver of a fee may be made to the CSRO records officer.

R137-2-8. Requests to Amend a Record.

A. An individual may contest the accuracy or completeness of a document pertaining to the requester, pursuant to Section 63G-2-603. Requests to amend a record shall be processed as informal adjudications under the Utah Administrative Procedures Act. All requests to amend a record must include the requester's name, mailing address, daytime telephone number if available, and a brief but reasonably specific description of the record to be amended.

B. Adjudicative proceedings concerning requests to amend a record or records under the GRAMA shall be informal adjudicative proceedings and shall comply with Section 63G-2-401 et seq.

R137-2-9. Time Periods under GRAMA.

The provisions of Rule 6 of the Utah Rules of Civil Procedure shall apply to calculate time periods specified in GRAMA.

R137-2-10. Appeal of Agency Decision.

A. If a requester is dissatisfied with the CSRO's initial decision, the requester may appeal that decision to the CSRO administrator under the procedures of Section 63G-2-401 et seq.

B. A person may contest the accuracy or completeness of a document pertaining to that individual according to Section 63G-2-603. The initial request must be made to the CSRO administrative assistant. An appeal from the CSRO administrative assistant's decision may be made to the CSRO administrator under the procedures of Section 63G-2-603.

C. Appeals of requests to amend a record shall be informal adjudications under the Utah Administrative Procedures Act.

R137-2-11. Request for Access for Research Purposes.

Access to private or controlled records for research purposes is allowed by GRAMA under Section 63G-2-202(8). Requests for access to such records for research purposes may be made directly to the CSRO records officer.

KEY: public records, records access
July 1, 2010 63G-2-101 through 63G-2-901
Notice of Continuation April 22, 2013 63A-12-103 through 63A-12-104
67-19a-203(8)

R152. Commerce, Consumer Protection. **13-15-3(1)**
R152-1. Division of Consumer Protection Buyer Beware List Rule. **13-16-12**

R152-1-1. Buyer Beware List.

(1) Authority and purpose.

(a) This rule is promulgated pursuant to:

(i) the Division's general authority as set forth in Utah Code Section 13-2-5; and

(ii) specific authority granted to the Division in:

(A) Utah Code Section 13-11-8(2); and

(B) Utah Code Section 13-15-3(1).

(b) The purposes of this rule are to:

(i) protect consumers from individuals and businesses who have engaged in and committed deceptive acts or practices, or have engaged in and committed unconscionable acts or practices;

(ii) supply consumers with pertinent information about the nature of deceptive acts or practices committed or engaged in by certain persons against whom the Division has taken action; and

(iii) encourage the development of fair consumer sales practices and wise decision making by consumers.

(2) Placement on the Buyer Beware List.

(a) The following circumstances warrant a person's being placed on the Buyer Beware List:

(i) failure or refusal to respond to an administrative subpoena of the Division;

(ii) after notification and opportunity to respond, failure or refusal to respond to a consumer complaint on file with the Division establishing a reasonable basis from which the Division may assert jurisdiction;

(iii) failure to comply with an order issued by the Division, including a default order; or

(iv) breach of a settlement agreement, stipulation, assurance of voluntary compliance, or similar instrument entered into with the Division.

(b) Failure or refusal to respond is evidenced:

(i) where certified mail, properly addressed, is returned to the Division as unclaimed or refused;

(ii) where the person who is responsible to respond:

(A) allows a compliance deadline, as set forth in a statute, rule, or in a properly served order, citation, or notice, to pass without taking action or communicating with the Division; or

(B) indicates to the Division that the person does not intend to comply; or

(iii) in any circumstances comparable to those set forth in this subsection (2)(b)(i)-(ii).

(3) Removal from Buyer Beware List.

A person whose name is included in the Buyer Beware List may qualify to have the listing removed by:

(a)(i) demonstrating that the person has had no complaints filed against the person with the Division for a period of 90 consecutive days after being placed on the list; and

(ii) complying with all aspects of the order entered against the person by the Division, including full payment of any administrative fines assessed;

(b) providing a sufficient response to an outstanding Division subpoena;

(c) providing a satisfactory response to outstanding Division inquiries; or

(d) entering into a stipulated settlement with the Division that:

(i) resolves all allegations raised by the Division in its action; and

(ii) supersedes any previous order issued by the Division in the action.

KEY: consumer protection, buyer beware list
June 8, 2015 **13-2-5(1)**
Notice of Continuation April 15, 2015 **13-11-8(2)**

R152. Commerce, Consumer Protection.
R152-1a. Internet Content Provider Ratings Methods Rule.
R152-1a-1. Authority and Purpose.

In accordance with Utah Code Sections 76-10-1231(7)(c) and 76-10-1233(2), these rules (R152-1a) establish acceptable rating methods by which a content provider may restrict access to material harmful to minors.

R152-1a-2. Definitions.

As used in these rules (R152-1a):

(1) "Content provider" is as defined in Utah Code Section 76-10-1230.

(2) "Harmful to minors" is as defined in Utah Code Section 76-10-1201.

(3) "HTML" means Hypertext Markup Language, the authoring language used to create documents on the Internet, which defines the structure and layout of an Internet document.

(4) "URL" means an Internet address, usually consisting of at least an access protocol and a domain name.

(5) "Utah content provider" means a content provider described in Utah Code Section 76-10-1233(1).

R152-1a-3. Compliance with Utah Code Section 76-10-1233(1).

A Utah content provider may comply with Utah Code Section 76-10-1233(1) by rating material harmful to minors with a rating label:

(1) listed in R152-1a-4; and

(2) placed in a location listed in R152-1a-5.

R152-1a-4. Acceptable Rating Labels.

A Utah content provider may rate material harmful to minors with one of the following labels:

(1) "XXX" in all capital letters;

(2) "xxx" in all lower case letters; or

(3) "-NFM-" which consists of the letters NFM in all capital letters:

(a) immediately preceded by a single hyphen, en dash, or em dash; and

(b) immediately followed by a single hyphen, en dash, or em dash.

R152-1a-5. Acceptable Rating Locations.

A Utah content provider may rate material harmful to minors by placing a label listed in R152-1a-4 in one of the following locations:

(1) if the material harmful to minors is contained within an Internet website:

(a) within the URL of the website; or

(b) within the first 300 characters of the HTML for the website;

(2) if the material harmful to minors is contained within an email message:

(a) within the first 300 characters of the email message;

(b) in the subject line of the email message;

(c) in the return address of the email message; or

(d) in any of the descriptive headers of the email message; or

(3) if the material harmful to minors is contained within a chat-room message or any other type of instant message:

(a) within the first 300 characters of the chat-room message or instant message; or

(b) within the personal identification of the sender of the chat-room message or instant message.

KEY: Internet ratings, consumer protection
September 18, 2006 76-10-1231(7)(c)
Notice of Continuation July 15, 2016 76-10-1233(2)

R152. Commerce, Consumer Protection.
R152-6. Administrative Procedures Act Rule.
R152-6-1. Designation of Adjudicative Proceedings.

A. All adjudicative proceedings within the Division are designated as informal proceedings.

B. Notwithstanding Subsection A, a party may move to convert proceedings to formal adjudicative proceedings in accordance with the provisions of Subsection 63G-4-202(3).

C. No hearing will be held unless specifically allowed or required under any laws administered by the Division, or by the Utah Administrative Procedures Act.

R152-6-2. Designation of Presiding Officer.

The presiding officer in any proceeding shall be the director of the division. The director may designate another person to act as presiding officer in any proceeding or portion thereof.

KEY: administrative procedures, government hearings, consumer protection
January 9, 2017 13-2-5(1)
Notice of Continuation December 1, 2016

R152. Commerce, Consumer Protection.
R152-11. Utah Consumer Sales Practices Act Rule.
R152-11-1. Purposes, Rules of Construction.

A. These substantive rules are adopted by the Director of the Division of Consumer Protection pursuant to Section 8 of Chapter 188 of the Laws of Utah, 1973 (Utah Consumer Sales Practices Act, Utah Code Annotated Section 13-11-1 et seq., as amended). Without limiting the scope of any section of the Utah Consumer Sales Practices Act or any other rule, these rules are intended to promote their purposes and policies. The purpose and policies of these rules are to:

(1) define with reasonable specificity acts and practices which violate Section 4 of the Utah Consumer Sales Practices Act.

(2) protect consumers from suppliers who engage in referral sellings, commit deceptive acts or practices, or commit unconscionable acts or practices.

(3) encourage the development of fair consumer sales practices.

(4) supplement and compliment any other rules promulgated by the State of Utah or any agency or subdivision thereof or any other governmental entity.

B. Definitions.

(1) "Advertisement" means any written, visual, or oral communication made to a consumer by means of newspaper, magazine, circular, billboard, direct mailing, sign, radio, television or otherwise, which identifies or represents the terms of any item of goods, service, franchise, distributorship or intangible which may be transferred in a consumer transaction.

(2) "Consumer Commodity" means any subject of a consumer transaction.

(3) "Express Authorization" means the agreement of the consumer expressed in a form that is evidenced by a written agreement signed by the consumer or by any electronically transferred authorization from the consumer that is stored, recorded, or retained by the supplier, such as a facsimile transmission, e-mail, telephonic, or other electronic means.

(4) "Fixture" or "Fixtures" means goods or products that are not readily removable from a permanent structure or land itself such as shingling, siding and or windows or other like improvements and which, when they thus become so related to particular real estate that an interest in them arises under real estate law.

(5) "Goods" mean all things which are movable at time of identification to the contract for sale other than the money in which the price is to be paid and things in action.

(6) "Service" means performance of labor or any act for the benefit of another.

(7) "Offer" means any attempt to effect, an offer to enter into a consumer transaction.

(8) "Product" means any goods, services, consumer commodity, or other property, both tangible and intangible (except securities and insurance) which is the subject or object of a consumer transaction.

(9) All other terms used in these regulations shall carry the same meaning and definition as in the Utah Consumer Sales Practices Act unless otherwise specified, consistent with that Act.

R152-11-2. Exclusions and Limitations in Advertisement.

A. It is a deceptive act or practice for a supplier in connection with a consumer transaction, in the sale or offering for sale of a consumer commodity to make any offer in written or printed advertising or promotional literature without stating clearly and conspicuously in close proximity to the words stating the offer of any material exclusions, reservations, limitations, modifications, or conditions. The following are examples of the types of material exclusions, reservations, limitations, modifications, or conditions of offers which must be clearly stated:

(1) An advertisement for any consumer commodity not disclosing the amount of any additional charge for any of the features displayed or listed in the advertisement would be deceptive.

(2) An advertisement for an article of clothing must state that there is an additional charge for sizes above or below a certain size if such is the case.

(3) An advertisement which offers floor covering with an additional charge for room sizes above or below a certain size must disclose the nature and amount of additional charge.

(4) An advertisement for a consumer commodity sold from more than one outlet under the direct control of the supplier causing the advertisement to be made must state:

(a) Which outlets within the area served by the publication in which the advertisement appears either have or do not have certain features mentioned in the advertisement;

(b) Which outlets within the area served by the publication in which the advertisement appears charge rates higher than the rate mentioned in advertisement. For example:

TABLE

"Rug Shampooer - $15.00 a day at West 3rd Street South Office - all other locations are more."

(c) An advertisement for a consumer commodity sold from outlets not under the direct control of the supplier causing the advertisement to be made does not violate Section 2a(4)(a) or 2a(4)(b) of this rule if it states that the consumer commodity is available only at participating independent dealers.

(5) An advertisement for any consumer commodity requiring installation must reflect the exact price of the commodity and if the price includes installation or if installation is additional.

(6) If the advertised price is available only during certain hours of the day or certain days of the week that fact must be stated along with the hours and days the price is available.

(7) If the advertisement involves or pictures more than one consumer commodity (for example: a sofa, cocktail table and two commodes) and the advertised price applies only if the complete set is purchased, that fact must be stated.

(8) If there is a minimum amount (or maximum amount) that must be purchased for the advertised price to apply, that fact must be stated.

(9) If an advertisement specifies a price for a consumer commodity which includes a trade-in, that fact must be stated. For example: a 6 volt battery for $50.00 plus your old battery.

(10) If there are "additional" items that must be purchased for the advertised price to apply that fact must be so stated.

(11) These examples are intended to be illustrative only and do not limit the scope of any section of the Utah Consumer Sales Practices Act or of this or any other rule or regulation.

B. Offers made orally, such as through radio or television advertising, must include a conspicuously clear and oral statement of any material exclusions, reservations, modifications, or conditions.

C. If an error is made in advertising, either by pricing, wording, picture, or description, it shall be the responsibility of the supplier to retract or correct the error. A retraction is necessary when it cannot be shown that the error was due to the fault of the advertising medium. If it can be documented that the responsibility rests with the advertising medium, a retraction by the supplier is not necessary but the supplier may post a correction in close proximity to the merchandise which was advertised incorrectly.

R152-11-3. Bait Advertising/Unavailability of Goods.

A. Definitions: For the purposes of this rule, the following

definitions shall apply:

(1) "Raincheck" means a written document evidencing a consumer's entitlement to purchase advertised items at an advertised price within the time limits set forth in paragraph d. of this rule.

(2) "Salesperson" means the supplier or his agent or employee who interacts personally or directly with a consumer in negotiating or effecting a consumer transaction.

B. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to offer to sell consumer commodities when the offer is not a bona fide effort to sell the advertised consumer commodities. An offer is not bona fide if:

(1) A supplier uses a statement or illustration in any advertisement which would create in the mind of a reasonable consumer a false impression of the grade, quality, quantity, make, value, model, year, size, color, usability, or origin of the consumer commodities offered or which otherwise misrepresents the consumer commodities in such a manner that, on subsequent disclosure or discovery of the true facts, the consumer is diverted from the advertised consumer commodities to other consumer commodities. An offer is not bona fide, even though the true facts are made known to the consumer before he views the advertised consumer commodities, if the first contact or interview is secured by deception.

(2) A supplier discourages the purchase of the advertised consumer commodities in order to sell other consumer commodities. This does not however, prohibit the good faith recommendation concerning a different consumer commodity as it relates to a consumer's particular or unique needs or problems concerning the consumer commodity. The following are examples of acts or practices which raise a presumption that an offer to sell consumer commodities is not bona fide:

(a) Refusal to show, demonstrate, or sell the consumer commodities advertised in accordance with the terms of the advertisement;

(b) Disparagement by the supplier either by acts or words of the advertised consumer commodities or of the guarantee, credit terms, availability of service, repairs, or parts, or any other respects of the consumer commodities;

(c) The failure of a supplier to have available at all outlets under its direct control, or listed in the advertisement, a sufficient quantity of the advertised consumer commodities at the advertised price to meet reasonably anticipated demands, unless the advertisement clearly and adequately disclosed that there is a limited quantity of advertised consumer commodities available and/or that the consumer commodities are available only at the designated outlets;

(d) The failure to give rainchecks to consumers where the advertisement does not disclose that there is a limited quantity or availability of consumer commodities. Suppliers who clearly and consistently post a raincheck policy for public review shall be exempt from this section;

(e) The showing or demonstrating of defective, unusable, or impractical consumer commodities when such defective, unusable, or impractical nature is not fairly and adequately disclosed in the advertisement;

(f) The use of a sales plan or method of compensation for salesperson designed to prevent or discourage them from selling the advertised consumer commodity. This does not, however, prohibit the usual and reasonable use of commissions as a means of compensation;

(g) The demonstration of an advertised consumer commodity in such a manner that makes the commodity appear inferior.

(3) A supplier, in the event of a sale to the consumer of the offered consumer commodities, attempts to persuade a consumer to repudiate the purchase of the offered commodities and purchase other consumer commodities in their stead, by any means, including but not limited to the following:

(a) Accepting a consideration for the offered consumer commodities and then switching the consumer to other commodities;

(b) Delivering offered consumer commodities which are unusable or impractical for the purposes represented or materially different from the offered consumer commodities. The purchase on the part of some consumers of the offered consumer commodities is not in itself prima facie evidence that the offer is bona fide.

(4) A supplier represents in any advertisement, which would create in the mind of the consumer, a false impression that the offer of goods has been occasioned by a financial or natural catastrophe when such is not true.

(5) A supplier misrepresents the former price, savings, quality or ownership of any goods sold.

R152-11-4. Use of the Word "Free" etc.

A. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to use the word "free" or other words of similar import or meaning, except when such representation is, in fact, the case and the cost of the "free" consumer commodity is not passed on to the consumer by raising the regular price of the consumer commodity that must be purchased in connection with the "free" offer.

(1) The meaning of "free".

(a) An offer of "free" consumer commodities is based upon a regular price for the merchandise or services which must be purchased by consumers in order to avail themselves of that which is represented to be "free." Such consumer commodities are not free if the supplier will directly and immediately recover, in whole or in part, the costs of the free consumer commodities by marking up the price of the other consumer commodities which must be purchased, by the substitution of inferior consumer commodities, or otherwise.

(b) For the purpose of this rule, all references to the word "free" shall include within the term all other words of similar import and meaning. Representative of the word or words to which this rule is applicable would be the following: "free"; "buy one, get one free"; "two for one sale"; "50% off the purchase of two"; "gift"; "given without charge"; "bonus" or other words and terms which tend to convey to the consuming public the impression that an item of a consumer commodity is "free".

(2) The meaning of "regular price".

(a) The term "regular price" means the price in the same quantity, quality, and with the same service, at which the seller or advertiser of the consumer commodity has openly and actively sold the consumer commodity in the geographic market or trade area in which he is making a "free" or similar offer in the most recent and regular course of business for a reasonably substantial period of time. For consumer products or services which fluctuate in price, the "regular price" shall be the lowest price at which any substantial sales were made during the aforementioned period of time.

(b) Negotiated sales. If a consumer commodity usually is sold at a price arrived at through bargaining, rather than at a regular price, it is improper to represent that another consumer commodity is being offered "free" with the sale, unless the supplier is able to establish a mean, average price immediately prior to the free offer. The same representation is also improper where there may be a regular price, but where other material factors such as quantity, quality, or size are arrived at through bargaining.

(3) Frequency of offers.

(a) In order to establish a regular price over a reasonably substantial period of time, a single kind of consumer commodity should not be advertised with a "free" offer in a trade area for more than six months in any twelve-month period. At least 30 days should elapse before another such offer is promoted in the

same trade area. No more than three such offers should be made in the same area in any twelve-month period.

B. Disclosure of Conditions. A "free" or similar offer is deceptive unless all the terms, conditions, and obligations upon which receipt and retention of the "free" item are contingent are set forth clearly and conspicuously at the outset of the offer so as to leave no reasonable probability that the terms of the offer might be misunderstood.

C. Combination Offer. This rule does not preclude the use of nondeceptive, "combination" offers in which two or more items of consumer commodities such as, but not limited to, toothpaste and a toothbrush, or soap and deodorant, or clothing and alterations are offered for sale as a single unit at a single state price, and, in which no representation is made that the price is being paid for one item and the other is "free." Similarly, suppliers are not precluded from settling a price for an item of consumer commodities which also includes furnishing the consumer with a second, distinct item of consumer commodities at one inclusive price if no presentation is made that the latter is free.

D. Introductory Offers. No "free" offers should be made in connection with the introduction of a new consumer commodity offered for sale at a specified price unless the offerer expects in good faith to discontinue the offer after a limited time and to commence selling the consumer commodity promoted separately, at the same price at which it was promoted with a "free" offer.

R152-11-5. Repairs and Services.

A. It shall be a deceptive act or practice in connection with a consumer transaction involving repairs, inspections, or other similar services for a supplier to:

(1) Fail to obtain the consumer's express authorization for repairs, inspections, or other services. The authorization shall be obtained only after the supplier has clearly explained to the consumer the anticipated repairs, inspection or other services to be performed, the estimated charges for those repairs, inspections or other services, and the reasonably expected completion date of such repairs, inspection or other services to be performed, including any charge for re-assembly of any parts disassembled in regards to the providing of such estimate. For repairs, inspections or other services that exceed a value of $50, a transcript or copy of the consumer's express authorization shall be provided to the consumer on or before the time that the consumer receives the initial billing or invoice for supplier's performance. This rule is in addition to the requirements of any other statute or rule;

(2) Fail to obtain the consumer's express authorization for additional, unforeseen, but necessary, repairs, inspections, or other services when those repairs, inspections, or other services amount to ten percent (10%) or more (excluding tax) of the original estimate. A transcript or copy of the consumer's express authorization shall be provided to the consumer on or before the time that the consumer receives the initial billing or invoice for supplier's performance. This rule is in addition to the requirements of any other statute or rule;

(3) Fail to re-assemble any parts disassembled for inspection unless the consumer is so advised, prior to acceptance for inspection by supplier that there will be a charge for re-assembly of the parts or that it is not possible to re-assemble such parts;

(4) Charge for repairs, inspections, or other services which have not been authorized by the consumer;

(5) In the case of an in-home service call where the consumer had initially contacted the supplier, to fail to disclose before the supplier's repairman goes to the consumer's residence that a service or diagnostic charge will be imposed, even though no repairs may be effected;

(6) Represent that repairs, inspections, or other services are necessary when such is not the fact;

(7) Represent that repairs, inspections, or other services must be performed away from the consumer's residence when such is not the fact;

(8) Represent that repairs, inspections or other services have been made when such is not the fact;

(9) Represent that the goods being inspected or diagnosed are in a dangerous condition or that the consumer's continued use of them may be harmful to him when such is not the fact;

(10) Intentionally understate or misstate materially the estimated cost of repairs, inspections, or other services;

(11) Fail to provide the consumer with an itemized list of repairs, inspections, or other services performed and the reason for such repairs, inspections, or other services, including:

(a) A list of parts and a statement of whether they are new, used, rebuilt, or after market, and the cost thereof to the consumer; and

(b) The number of hours of labor charged, apportioned for each part, service or repair, and the name or other reasonable means of identification of the mechanic or repairman performing the service, provided, however, that the requirements of (b) shall be satisfied by the statement of a flat rate price if such repairs are customarily done and billed on a flat rate price basis and such has been previously disclosed to the consumer in writing.

(12) Fail to give reasonable written notice before repairs, inspections, or other services are provided, that replaced or repaired parts may be inspected or fail to allow the consumer to inspect replaced or repaired parts on request, unless:

(a) the parts are to be rebuilt or sold by the supplier and such intended reuse is made known to the consumer by written notice on the original estimate; or

(b) the parts are to be returned to the manufacturer or distributor under a written warranty agreement; or

(c) the parts are impractical to return to the consumer because of size, weight, or other similar factors; or

(d) the consumer waives the return of such parts in writing after repairs are completed and a total cost is presented.

(13) Fail to provide to the consumer a written, itemized receipt for any consumer commodities that are left with, or turned over to, the supplier for repairs, inspections, or other services. Such receipt shall include:

(a) The exact name and business address of the business entity (or person, if the entity is not a corporation or partnership) which will repair or service the consumer commodities.

(b) The name and signature of the person who actually takes the consumer commodities into custody.

(c) The name of any entity to whom such repairs, inspections, or other services are sublet including the address, phone number and a contact person at such entity.

(d) A description including make and model number or such other features as will reasonably identify the consumer commodities to be repaired or serviced.

B. It shall be a deceptive act or practice in connection with a consumer transaction involving all other services not covered under Section A for a supplier to:

(1) Intentionally understate or misstate the estimated cost of the services to be provided;

(2) Fail to obtain the consumer's express authorization prior to performing services that exceed a value of $50;

(3) Fail to obtain the consumer's express authorization for any change orders, cost increases, or other amendments to the parties' contract;

(4) Fail to give the consumer written documentation containing the terms of any warranty made with respect to labor, services, products, or materials furnished;

(5) Misrepresent that the supplier has the particular license, bond, insurance, qualifications, or expertise that is

related to the work to be performed;

(6) Misrepresent that the consumer's present equipment, material, product, home or a part thereof is dangerous or defective, or in need of repair or replacement;

(7) Fail to timely complete performance under the contract as represented unless the cause for the delay is beyond the supplier's control or the supplier obtains the consumer's express authorization to the supplier's delay;

(8) Wrongfully refuse to perform any obligation under a contract with the intent to induce the consumer to agree to pay a higher price than originally agreed to in the contract; or

(9) Misrepresent or mislead the consumer into believing that no obligation will be incurred because of the signing of any document, or that the consumer will be relieved of some or all obligations under a contract by the signing of any document.

R152-11-6. Prizes.

A. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to notify in any way a consumer or prospective consumer that he has (1) won a prize or will receive anything of value, or (2) been selected, or is eligible, to win a prize or receive anything of value, if the receipt of the prize or thing of value is conditioned upon the consumer's listening to or observing a sales promotional effort or entering into a consumer transaction, unless the supplier clearly and explicitly discloses, at the time of notification of the prize, that an attempt will be made to induce the consumer or prospective consumer to undertake a monetary obligation irrespective of whether that obligation constitutes a consumer transaction. If a supplier states or implies a value to the prize or thing of value the true market value of such prize must be accurately stated. A supplier must further state that the prize or thing of value could not benefit the consumer or prospective consumer without the expenditure of the consumer's or prospective consumer's time or transportation expense, or that a salesman will be visiting the consumer's or prospective consumer's residence; if such is the case.

B. A statement to the effect that the consumer or prospective consumer must observe or listen to a "demonstration" or promotional effort in connection with a consumer transaction does not satisfy the requirements of this rule, unless it is reasonably clear from the information supplied to the consumer that the supplier is in the business of making consumer sales or that the intent is to encourage or induce the consumer to undertake a monetary obligation irrespective of whether that obligation constitutes a consumer transaction.

R152-11-7. New for Used.

A. Except as provided in Section 7c and d of this rule, it shall be a deceptive act or practice in connection with a consumer transaction for a supplier to represent, directly or indirectly, that an item of consumer commodity, or that any part of an item of consumer commodity, is new or unused when such is not the fact, or to misrepresent the extent of previous use thereof, or to fail to make clear and conspicuous disclosures, prior to time of offer, to the consumer or prospective consumer that an item of consumer commodity has been used.

B. For the purpose of this rule, "used" shall include rebuilt, re-manufactured, reconditioned consumer commodity or parts, thereof, or used either as a demonstrator or as a consumer commodity by a previous consumer.

C. For the purpose of this rule, a returned consumer commodity which has not been used by a previous purchaser, shall be considered new or unused.

D. The disclosure that an item of consumer commodity has been used or contains used parts as required by Section 7a may be made by use of words such as, but not limited to, "used"; "second hand"; "repaired"; "re-manufactured"; "reconditioned"; "rebuilt"; or "reline"; whichever is applicable to the item of consumer commodity involved.

R152-11-8. Substitution of Consumer Commodities.

A. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to furnish similar consumer commodities of equal or greater value when there was no intention to ship, deliver or install the original consumer commodities ordered. The act of a supplier in furnishing similar merchandise of equal or greater value as a good faith substitute does not violate this rule if such substitution is first approved by the consumer.

B. For the purpose of this rule, consumer commodities may not be considered of "equal or greater value" if they are not substantially similar to the consumer commodity ordered, or are not fit for the purposes intended, or if the supplier normally offers the substituted consumer commodities at a lower price than the "regular price".

C. It will be assumed that a supplier had no intention to deliver, ship, or install the original ordered or substitute goods if the supplier fails to ship, deliver or install the goods within 30 days of the date of the order, purchase or of the notice of delay and fails to notify the purchaser of any delay or further delay; unless the supplier can show that it has made a good faith effort to ship, deliver or install the goods or to notify the purchaser of any delay or further delay within the prescribed period.

R152-11-9. Direct Solicitations.

A. It shall be a deceptive act or practice in connection with a consumer transaction involving any direct solicitation sale for a supplier to do any of the following:

(1) Solicit a sale without clearly, affirmatively, and expressly revealing at the time the seller initially contacts the consumer or prospective consumer, and before making any other statements or asking any questions, except for a greeting: the name of the seller, the name or trade name of the company, corporation or partnership the seller represents, and stating in general terms the nature of the consumer commodities the seller wishes to show or demonstrate.

(2) Represent that the consumer or prospective consumer will receive a discount, rebate, or other benefit for permitting his home or other property, real or personal, to be used as a so-called "model home" or "model property" for demonstration or advertising purposes when such, in fact, is not true;

(3) Represent that the consumer or prospective consumer has been specially selected to receive a bargain, discount, or other advantage when such, in fact, is not true;

(4) Represent that the consumer or prospective consumer is a winner of a contest when such, in fact, is not true;

(5) Represent that the consumer commodities that are being offered for sale cannot be purchased in any place of business, but only through direct solicitation, when such, in fact, is not true;

(6) Represent that the salesman representative, or agent has authority to negotiate the final terms of a consumer transaction when such, in fact, is not true;

(7) Sell, lease, or rent consumer goods or services with a purchase price of $25 or more and fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution which is in the same language (e.g. Spanish) as that principally used in the oral sales presentation and which shows the date of the transaction and the name and address of the seller.

(8) Except as otherwise provided in the "Home Solicitations Sales Act", Section 70C-5-102(5) and or the "Telephone Fraud Prevention Act", Section 13-26-5, to fail to provide a notice of the buyer's right to cancel within three (3) business days at the time of purchase if the total of the sale exceeds $25, unless the supplier's cancellation policy is communicated to the buyer and the policy offers greater rights

to the buyer than three days, which notice shall be in conspicuous statement written in dark bold at least 12 point type on the front page of the purchase documentation, and shall read as follows: "You, the Buyer, May Cancel This Transaction At Any Time Prior to Midnight of the Third Business Day (or Time Period Reflecting the Supplier's Cancellation Policy But Not Less Than Three Business Days) After the Date of This Transaction or Receipt of The Product, Whichever is Later."

(a) Paragraph (8) shall not apply to "fixture" solicitation sales where the supplier:

(i) automatically provides the buyer a right to cancel within three (3) or more business days from the time of purchase; or

(ii) automatically provides a refund for return of goods within three (3) or more business days from the time of purchase, but prior to installation as a fixture; or

(iii) supplies merchandise to a buyer without prior full payment and allows the buyer three (3) or more business days from the time of receipt of the merchandise, but prior to installation as a fixture to cancel the order and return the merchandise; or

(iv) discloses its refund/return policy in its advertising, catalog and contract, and that policy provides for a return of merchandise within a period of three (3) or more business days from the time of purchase, but prior to installation as a fixture or that policy indicates no return or refund will be offered or made on special merchandise (such as uniquely sized items, custom made or special ordered items); or

(9) Fail or refuse to honor any valid notice of cancellation by a consumer and within 30 calendar days after the receipt of such notice, to: (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the supplier; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

B. "Direct Solicitation" means solicitation of a consumer transaction initiated by a supplier, at the residence or place of employment of any consumer, and includes a sale or solicitation of sale made by the supplier by direct mail or telephone or personal contact at the residence or place of employment of any consumer. In the case of a subscription or club membership (e.g., tape, book, or record club) solicitation, "direct solicitation" means solicitation of the initial consumer transaction pursuant to a subscription or club membership agreement, made by the supplier at the residence or place of employment of any consumer, and includes a solicitation of an initial sale made by the supplier by direct mail or telephone or personal contact at the residence or place of employment of any consumer, but excludes all subsequent consumer transactions which are provided for in the subscription or club membership agreement.

C. "Time of Purchase" is defined as the day on which the buyer signs an agreement or accepts an offer to purchase consumer goods or services where the total of the sale is $25 or more.

D. Except for direct solicitations subject to Section 13-26-5, for the purposes of this rule "business day" does not include Saturday, Sunday, or a federal or state holiday.

R152-11-10. Deposits and Refunds.

A. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to accept a deposit unless the following conditions are met:

(1) The deposit obligates the supplier to refrain for a specified period of time from offering for sale to any other person the consumer commodities in relation to which the deposit has been made by the consumer if such consumer commodities are unique; provided that a supplier may continue to sell or offer to sell consumer commodities on which a deposit has been made if he has available sufficient consumer commodities to satisfy all consumers who have made deposits;

(2) All deposits accepted by a supplier must be evidenced by dated receipts, provided to the consumer at the time of the transaction, stating the following information:

(a) Description of the consumer commodity, (including model, model year, when appropriate, make, and color);

(b) The cash selling price;

(c) Allowance on the consumer commodity to be traded in, if any;

(d) Time during which the option is binding;

(e) Whether the deposit is refundable and under what conditions; and

(f) Any additional cost such as delivery charge.

(3) For the purpose of this rule "deposit" means any payment in cash, or of anything of value or an obligation to pay including, but not limited to, a credit device transaction incurred by a consumer as a deposit, refundable or non-refundable option, or as partial payment for consumer commodities.

B. It shall be a deceptive act or practice in connection with a consumer transaction when the consumer can provide reasonable proof of purchase from a supplier for the supplier to refuse to give refunds for:

(1) Used, damaged or defective products, unless they are clearly marked "as is" or with some other conspicuous disclaimer of any implied or express warranty, and also clearly marked that no refund will be given; or

(2) Non-used, non-damaged or non-defective products unless:

(a) Such non-refund, exchange or credit policy, including any applicable restocking fee, is clearly indicated by:

(i) a sign posted at the point of display, the point of sale, the store entrance;

(ii) adequate verbal or written disclosure if the transaction occurs through the mail, over the telephone, via facsimile machine, via e-mail, or over the Internet; or

(iii) a clear and conspicuous statement on the first or front page of any sales document or contract at the time of the sale.

(b) The consumer commodities are food, perishable items, merchandise which is substantially custom made or custom finished.

(3) For the purpose of this rule "refund" means cash if payment were made in cash provided that if payment were made by check the refund may be delayed until the check has cleared; and further provided that if payment were made by debit to a credit card or other account, then refund may be made by an appropriate credit or refund pursuant to the applicable law.

C. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier who has accepted a deposit and has received from the consumer within a reasonable time a valid request for refund of the deposit to fail to make the refund within 30 calendar days after receipt of such request.

(1) In determining the amount required to be refunded under this rule, the supplier may take into consideration the nature of the commodity returned, the condition of the commodity returned, shipping charges if agreed to and any lawful restocking fee.

(2) For purposes of this rule, "reasonable time" means within 30 days of the date of the deposit unless a longer period is justified due to the nature of the commodity returned or any agreement between the parties.

D. No deposit accepted by a supplier to secure the value of equipment or materials provided to a consumer for the consumer's use in any business opportunity where it is anticipated by either the consumer or the supplier that some remuneration will be paid to the consumer for services or goods supplied to the supplier or to some third party in the behalf of the supplier shall exceed the actual cost of the supplies or

equipment paid by the supplier or any person acting on behalf of the supplier.

R152-11-11. Franchises, Distributorships, Referral Sales.

A. Definitions. As used in this chapter, the following words and terms shall have the following meanings, unless some other meaning is plainly indicated:

(1) "Referral Selling" means any consumer transaction where the seller gives or offers a rebate or discount to the buyer as an inducement for a sale in consideration of the buyer's providing the seller with the names of prospective purchasers.

(2) The term "franchise or distributorship" means a contract or agreement requiring substantial capital investment, either expressed or implied, whether oral or written, between two or more persons:

(a) Wherein a commercial relationship of definite duration or continuing indefinite duration is involved;

(b) Wherein the purchaser, is granted the right to offer, sell and distribute consumer commodities manufactured, processed, distributed or, in the case of services, organized and directed by the seller; and the purchaser has not been previously engaged in such business opportunity;

(c) Wherein the franchise or distributorship as an independent business constitutes a component of seller's distribution system; or

(d) Wherein the operation of the purchaser's business is substantially reliant on sellers for the basic supply of consumer commodities.

B. Franchises and Distributorships. It shall be an unfair or deceptive act or practice for any person in the trade or commerce of establishing a franchise, distributorship to:

(1) Misrepresent the prospects or chances for success of a proposed or existing franchise or distributorship;

(2) Misrepresent by failure to disclose or otherwise, the known required total investment for such franchise or distributorship;

(3) Misrepresent or fail to disclose efforts to sell or establish more franchises or distributorships than is reasonable to expect the market or market area for the particular franchise or distributorship to sustain;

(4) Misrepresent the quantity or quality of the products to be sold or distributed through the franchise or distributorship;

(5) Misrepresent the training and management assistance available to the franchise or distributorship;

(6) Misrepresent the amount of profits, net or gross, the franchisee can expect from the operation of the franchise or distributorship;

(7) Misrepresent the size, choice, potential or demographic feature of a franchise territory or misrepresent the number of present or future franchises or distributorships within the franchise territory;

(8) Misrepresent by failure to disclose or otherwise, the termination, transfer or renewal provision of a franchise or distributorship agreement;

(9) Falsely claim or infer that a primary marketer of trademark products or services sponsors or participates directly or indirectly in the franchise or distributorship operation;

(10) Assign a so-called exclusive territory encompassing the same area to more than one franchise;

(11) Provide vending locations for which written authorizations have not been granted by the property owners or lessees of the premises;

(12) Provide vending machines or displays of a brand or kind different from or inferior to those promised by the seller;

(13) Fail to provide to the purchaser a written contract which includes the following provisions:

(a) The total financial obligation of the purchaser to the seller;

(b) The date of delivery of the purchaser consumer commodity to the purchaser if the seller is responsible for delivery of such consumer commodity;

(c) The description and quantity of consumer commodities to be delivered to the purchaser if the seller is responsible for delivery of such consumer commodities; and

(d) All other disclosures and provisions required in the preceding subsections;

(14) Fail to honor his contract as required in this section with the purchaser.

R152-11-12. Negative Options.

A. A negative option, as defined in 16 C.F.R. 425.1, is a deceptive act or practice only if the negative option violates 16 C.F.R. 425.1.

R152-11-13. Travel Packages.

(1) This rule is authorized by Subsection 13-11-8(2). The purpose of this rule is to define one type of conduct that violates Subsection 13-11-4(1).

(2) It shall be a deceptive act or practice for a supplier to offer, knowingly or intentionally, a reduced rate travel package which:

(a) is tendered to a consumer as an incentive for the performance of some act the consumer has no legal obligation to perform;

(b) is subject to redemption rules the violation of which will result in a default which discharges the supplier's obligation to perform under such rules; and

(c) is structured so that the supplier will only realize a profit if a majority of the consumers who receive reduced rate travel package default.

(3)(a) For a supplier to be held liable under this rule, it is not necessary that he contract directly with a consumer for a reduced rate travel package. It is a sufficient basis for liability for the supplier to offer such a package to any person knowing that a consumer eventually will look to him for performance.

(b) A supplier acts deceptively required by Subsection 13-11-4(2) when he consciously engages in conduct which constitutes a deceptive act or practice, even if he is unaware that such conduct is unlawful.

(4) The definitions appearing in Section 13-11-3 shall apply to this rule, with the following additional definitions:

(a) "reduced rate" means the payment of funds, whether styled as fees, taxes, a discounted payment, or otherwise, which is less than the fair market value of the travel package offered by a supplier; and

(b) "travel package" means air, land, or sea transportation, with or without lodging, for pleasure or business purpose within the scope of the term "consumer transaction".

KEY: advertising, bait and switch, consumer protection, negative options

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13-11

R152. Commerce, Consumer Protection.
R152-15. Business Opportunity Disclosure Act Rule.
R152-15-1. Authority and Purpose.

Pursuant to Section 13-15-3, these rules are intended to assist in the administration of the Business Opportunity Disclosure Act, Chapter 15, Title 13.

R152-15-2. Filing Requirements. Filing Fees.

(1) Information filed with the Division. In addition to the information required to be filed by Section 13-15-4 or 13-15-4.5 Utah Code Annotated (1953, as amended), sellers shall file with the Division, upon request, the following:

(a) the name and address of the registered agent of seller;

(b) any promotional materials used or to be used by either the seller or the purchaser, whether in writing or in any other form; and

(c) the appropriate filing fee as set in accordance with Section 63J-1-303 Utah Code Annotated (1953, as amended), which presently is set as follows:

(i) Section 13-5-4 filing: $200.00 per year; and

(ii) Section 13-15-4.5 filing: $100.00 per year.

(2) Amendment of disclosures. The disclosure document must be current as of the seller's most recent fiscal year, or no later than 90 days after the close of its most recent fiscal year. A seller must amend any information it files or filed with the Division in the event of any material change in the information. Such amendment shall be made by filing with the Division, within a reasonable time after such material change, the new or correct information.

(a) "Material change" means any change in information where there is a reasonable likelihood the decision of a prospective purchaser to purchase or not purchase the assisted marketing plan would be influenced by the change.

(b) Without limitation, example of material changes include:

(i) An increase or decrease in the initial or continuing fees charged by the seller;

(ii) The termination, cancellation, failure to renew or reacquisition of a significant number of purchasers of an assisted marketing plan since the most recent date of filing;

(iii) Any significant change in seller's management;

(iv) Any significant change in the seller's or purchaser's obligations;

(v) Significant decrease in seller's income or net worth or;

(vi) Significant change in claims about past sales or projected sales, income, gross or net profits, cash flows or costs involved in the assisted marketing plan.

R152-15-3. Compensated Employees and Independent Contractors.

(1) As used in Utah Code Section 13-15-2(1)(a)(iv), "sales program" or "marketing program" shall not include support, advice, or training that is:

(a) provided by a business to its compensated employee or independent contractor;

(b) unrelated to sales or marketing; and

(c) regarding work performed for the business providing the support, advice, or training.

KEY: franchises, marketing, consumer protection
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R152. Commerce, Consumer Protection.
R152-20. New Motor Vehicle Warranties Act Rule.
R152-20-1. Authority and Purpose.

These rules are promulgated to prescribe for the administration of Title 13, Chapter 20, the New Motor Vehicle Warranties Act (hereinafter the "Act"), and are under the authority granted the Division under Section 13-2-5.

R152-20-2. Definitions.

A. For purposes of determining whether a nonconformity has been subject to repair the required number of times, an "attempt" to repair, as used in Section 13-20-4 or 13-20-5, means that the vehicle is or has been presented to the manufacturer or its agent for the same non-conformity.

B. "Collateral charges" as used in Section 13-20-4 includes, but is not limited to:

1. Sales taxes
2. Document preparation fees
3. The cost of additional warranties or extended warranties, if included in the purchase price

C. "Comparable new motor vehicle" as used in Section 13-20-4 means:

1. A motor vehicle that is determined by the division to be identical to, or reasonably equivalent to, the nonconforming vehicle had it conformed to all applicable express warranties. A comparable new motor vehicle includes any service contracts, contract options, and factory or dealer installed options that were originally included in the sale of the nonconforming vehicle; or

2. A vehicle with an equivalent retail value including any service contracts, and factory or dealer installed options that were originally included with the nonconforming vehicle, if the consumer consents to a different make or model.

D. "New motor vehicle" as used in Section 13-20-4 means a motor vehicle which has never been titled or registered and has been driven fewer than 7,500 miles.

E. "Nonconforming vehicle" as used in Section 13-20-4 means a motor vehicle that does not meet all express warranties provided in the sales agreement or contract.

F. "Purchase price" as used in Section 13-20-4 means the actual amount paid for the vehicle. "Purchase price" includes taxes, licensing fees, and additional warranty fees, but does not include collateral charges.

G. "Reasonable allowance" as used in Section 13-20-4 for mileage means the dollar value based on the prescribed deduction per mile. The cap on a reasonable allowance shall be calculated as the purchase price divided by 100,000, but shall not in any case be less than ten (10) cents per mile nor more than twenty-one (21) cents per mile. The consumer shall not be liable for mileage on the vehicle at the time of delivery, nor for mileage during the time the vehicle was being repaired.

R152-20-3. Replacement or Refund of Nonconforming Motor Vehicles.

A. When the manufacturer is repurchasing a nonconforming motor vehicle that has been leased to a consumer, the following provisions also apply:

1. The manufacturer shall refund to the lessor all payments made under the lease.

2. The refund or repurchase price shall include trade-in value, inception payment, and security deposit.

3. The manufacturer shall make all payments on behalf of the lessee, to the lessor and/or lienholder of record as necessary to obtain clear title to the motor vehicle. The excess from said payments shall be paid to lessee. Upon the lessor's and/or lienholder's receipt of the payment, the consumer shall be relieved of any future obligation to the lessor and/or lienholder.

B. If a manufacturer is unable to provide a comparable new motor vehicle, it may provide, upon the consent of the consumer, a replacement vehicle of comparable quality. The customer shall not incur additional expense with respect to the replacement vehicle, except as a reasonable allowance for use of the buy-back vehicle.

KEY: automobiles, automobile repair, consumer protection, motor vehicles
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13-20-1

R152. Commerce, Consumer Protection.
R152-21. Credit Services Organizations Act Rule.
R152-21-1. Purpose.

The purpose of this rule is to clarify the legal mandates and prohibitions of Section 13-21-3.

R152-21-2. Definitions.

The definitions set forth in Section 13-21-2, as well as the following supplementary definitions, shall be used in construing the meaning of this rule.

(1) "Challenge" means any act performed by a credit services organization for the purpose of facilitating the disputation, by any person, of an entry appearing on the buyer's credit report.

(2) "Credit report" means any document prepared by a credit reporting agency showing the credit-worthiness, credit standing, or credit capacity of the buyer.

(3) "Inaccurate information" means data affected by typographical errors and other similar inadvertent technical faults which create a reasonable doubt about the reliability of such data.

(4) "Material error" means false or misleading information that could reasonably affect a decision to extend or deny credit to the buyer. "Accurate" information contains no material errors.

(5) "Material omission" means missing information that could reasonably affect a decision to extend or deny credit to the buyer. "Complete" information contains no material omissions.

(6) "Outdated information" means information that should not appear on the buyer's credit report because of its age. How long a given entry may remain on a credit report is determined by applicable state and federal law. Information which is not outdated is "timely."

(7) "Unverifiable information" means an entry on a credit report lacking sufficient supporting evidence to convince a reasonable person that it is proper. Information which is not unverifiable is "verifiable".

R152-21-3. Factual Basis for Credit Report Challenges.

(1) A credit services organization shall not challenge an entry made on the buyer's credit report without first having a factual basis for believing that the entry contains a material error or omission, or outdated, inaccurate, or unverifiable information.

(2) A credit services organization has a factual basis for challenging an entry on the buyer's credit report only when it:

(a) has received a written statement from the buyer identifying any entry on his credit report that he believes contains a material error or omission, or outdated, inaccurate, or unverifiable information;

(b) has conducted an investigation to determine if the information in the buyer's written statement is correct; and

(c) has concluded in good faith, based upon the results of its investigation, that the buyer's credit report contains one or more material errors or omissions, or outdated, inaccurate, or unverifiable information.

(3) In connection with any investigation undertaken pursuant to this rule, a credit services organization shall:

(a) contact the person who provided the information in question to the credit reporting agency and give him a reasonable opportunity to demonstrate the accuracy, completeness, timeliness, and verifiability of such information;

(b) memorialize, in writing and in detail, the results of the investigation; and

(c) retain the investigative report for not less two years after it is completed.

R152-21-4. Fraudulent Practices.

It shall be a violation of Section 13-21-3 for a credit services organization to do any of the following:

(1) to state or imply that it can permanently remove from a buyer's credit report an accurate, complete, timely, and verifiable entry;

(2) to challenge an entry on a buyer's credit report without a factual basis for believing the entry contains a material error or omission, or outdated, inaccurate, or unverifiable information; or

(3) to challenge an entry on a credit report for the purpose of temporarily denying accurate, complete, timely, and verifiable information to any person about the credit-worthiness, credit standing, or credit capacity of the buyer.

KEY: credit services, consumer, protection
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Notice of Continuation January 29, 2014

R152. Commerce, Consumer Protection.
R152-22. Charitable Solicitations Act Rule.
R152-22-1. Authority.

These rules are promulgated under Section 13-2-5(1) to facilitate the orderly administration of the Charitable Solicitations Act (hereafter, "the Act"), Title 13, Chapter 22.

R152-22-2. Definitions. Clarifications.

(1) The definitions set forth in Section 13-22-2 are incorporated herein.

(2) In addition the following definition as regards the administration of R152-22 and Chapter 22 of Title 13 is deemed necessary by the division.

(a) "Parent foundation" or "Parent organization" means a charitable organization which charters or affiliates local units under terms specified in the parent charitable organization's charter, articles of organization, agreement of association, instrument of trust, constitution or other organizational instrument or bylaws. For purposes of registration under Section 13-22-5 a parent foundation or organization is deemed to be soliciting, requesting, promoting, advertising, or sponsoring solicitation in the state within the meaning of said section and thus requiring registration if any part of the funds raised within the state or from residents and inhabitants of the state by the local chapter, branch, area, office or similar affiliate of any other person located within and maintaining a presence in the state inure to the benefit of the parent foundation or organization whether in the form of a percentage division or "split" or affiliation fee or fees paid by the local chapter, branch, area, office or similar affiliate of any other person located within and maintaining a presence in the state.

(1) In addition the following clarification of definition as regards the administration of R152-22 and Chapter 22 of Title 13 is deemed necessary by the division.

(a) "Vending device" as defined by Section 13-22-2(12) and "Vending device decal" as defined by Section 13-22-2(13) as they relate to the necessity of registering as a charitable organization, professional fund raiser, professional fund raising counsel or consultant creates a rebuttable presumption that the party utilizing such a vending device and or vending device decal is acting as such.

R152-22-3. Application for Charitable Organization Permit.

(1) Any application for registration as a charitable organization shall be executed on the form authorized by the Division.

(2) A statement of collections and expenditures shall be executed on the form authorized by the division.

(3) Applicants or registrants shall submit to the division, on request:

(a) an updated copy of a financial statement prepared by an independent certified public accountant;

(b) a copy of any written contracts, agreements or other documents showing to whom the applicant or registrant disbursed the funds or a portion of the funds contributed to it;

(c) a copy of the applicant's or registrant's articles of incorporation or other organizational documentation showing current legal status;

(d) a copy of the applicant's or registrant's current by-laws or other policies and procedures governing day to day operations;

(e) a setting forth of the applicant's or registrant's registered agent within the State of Utah for purposes of service of process, including his, her or its name, street address, telephone and facsimile numbers;

(f) a copy of the applicant's or registrant's IRS Section 501(c)(3) tax exemption letter, if applicable;

(g) either the social security number or driver's license number of each of the applicant's or registrant's board of directors and officers, if a corporation, or partners or the individual applicant or registrant, for the purposes of background checks;

(h) as to the most recent tax year:

(A) if the applicant filed an IRS Form 990, a copy of the most recent IRS filing;

(B) if the applicant filed an IRS Form 990-EZ, 990-N, or 990-PF:

(I) a copy of the most recent IRS filing; and

(II) a completed Utah Statement or Functional Expenses;

(C) if the applicant is not required to file any type of IRS Form 990, a completed Utah Statement of Functional Expenses; or

(D) if the applicant has no previous financial information, the financial portion of the application, completed on a pro forma basis; and

(i) a statement as to whether the charitable organization has conducted activities regulated by the Charitable Solicitations Act, Utah Code Title 13, Chapter 22, without being duly registered with the Division.

(4) All initial applications and renewals of registration in accordance with Section 13-22-6 shall be processed within twenty (20) business days after their receipt by the division.

R152-22-4. Financial Reports and IRS Form 990s.

(1) Based on the intent of Section 13-22-15(4) an "annual financial report or IRS Form 990" means the most recent or previous fiscal year only will be accepted by the division.

(2) Based on the intent of Section 13-22-15(2) "within 30 days after the end of the year reported" means the end of the registration year just completed.

R152-22-5. Notice of Claim of Exemption.

(1) A charitable organization or individual claiming an exemption from registration under Section 13-22-8 shall file a notice of claim of exemption with the division, prior to conducting any solicitation.

(2) A notice of claim of exemption shall contain:

(a) a detailed description of the claimant and its charitable purposes;

(b) a citation to the exemption within Section 13-22-8 being claimed and a detailed explanation of why the exemption applies;

(c) any documents supporting the notice of claim of exemption;

(d) a notarized statement from the organization's chief executive officer or the individual certifying that the statements made in the notice of claim of exemption are true to the best of his knowledge; and

(e) such other additional information the division deems necessary to support such claim of exemption.

(3) This rule does not relieve any exempt organization or individual of other applicable reporting requirements under the Act.

(4) The division shall charge a reasonable fee to cover the expense of processing the notices of claim of exemption received pursuant to this rule.

R152-22-6. Application for Professional Fund Raiser, Fund Raising Counsel or Consultant Permit.

(1) Any application for a professional fund raiser, fund raising counsel or consultant permit shall be executed on the form provided by the Division.

(2) The application shall include a copy of all contracts, agreements, or other documents showing:

(a) the relationship and terms of employment or engagement between the applicant and the organization on whose behalf the applicant proposes to act as a professional fund raiser, fund raising counsel or consultant;

(b) the terms of any direct or indirect compensation, in whatever form, paid or promised to the applicant, including the method of payment and the basis for calculating the amounts of payment;

(c) a copy of the applicant's or registrant's articles of incorporation or other organizational documentation showing current legal status;

(d) a copy of the applicant's or registrant's current by-laws or other policies and procedures governing day to day operations;

(e) a setting forth of the applicant's or registrant's registered agent within the State of Utah for purposes of service of process, including his, her or its name, street address, telephone and facsimile numbers;

(f) either the social security number or driver's license number of each of the applicant's or registrant's board of directors and officers, if a corporation, or partners or the individual applicant or registrant, for the purposes of background checks; and

(g) a statement as to whether the professional fund raiser, fund raising counsel or consultant has conducted activities regulated by the Charitable Solicitations Act, Utah Code Title 13, Chapter 22, without being duly registered with the Division.

(3) All initial applications and renewals of registration in accordance with Section 13-22-9 shall be processed within twenty (20) business days after their receipt by the division.

(4) Professional fund raisers that provide services only through online or web-based software may submit a copy of the terms and conditions that all users must agree to along with evidence demonstrating that a user accepted the terms and conditions.

R152-22-7. Incomplete Applications.

(1) Based on Sections 13-22-6(3) and 13-22-9(3) the division may grant a charitable organization, professional fund raiser, professional fund raising counsel or consultant a 10 calendar day "grace" period for an incomplete application prior to assessing a penalty fee.

(2) Based on Section 13-22-6(1)(xiv)(B) and Section 13-22-6(3) if a charitable organization's initial application or renewal application is deemed incomplete due to the organization's professional fund raiser, professional fund raising counsel or consultant not being registered the division may assess a penalty fee accordingly.

(3) Based on Sections 13-22-6(3) and 13-22-9(3) the division may as regards any charitable organization, professional fund raiser, professional fund raising counsel or consultant whose status is that of "incomplete" or "suspended" for more than 12 months permit such to elect to submit the accumulated penalty fee or cease solicitations in the state for a 1 year period prior to making reapplication.

(4) Based on Sections 13-22-6(3) and 13-22-9(3) the division shall impose a penalty fee of $25 for each calendar month or part of a calendar month after the date on which a permit application or renewal was due to be filed or such permit application or renewal remains incomplete.

R152-22-8. Commencement of Solicitation.

(1) After registration and receipt of a current permit prior to commencement of each solicitation campaign thereafter each professional fund raiser, fund raising counsel or consultant or charitable organization shall notify the Division in writing at least ten (10) days in advance of its intent to commence a campaign.

(2) Professional fund raisers, fund raising counsels or consultants shall not commence or conduct or continue solicitations on behalf of a charitable organization that is not currently registered. "Not currently registered" means not being in possession of a current permit during all times during the solicitation campaign. A professional fund raiser, fund raising counsel or consultant act at their own peril if prior to commencement of any individual solicitation campaign its fails or neglects to confirm with the division that the charitable organization is in fact currently registered and will be during the full extent of any proposed solicitation campaign.

R152-22-9. Grounds for Denial, Suspension or Revocation Procedure.

(1) The director may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, issue an order to deny an initial or renewal application for registration as per Section 13-22-12(5), and suspend or revoke a registration, permit, or information card at anytime, on the grounds set forth in Section 13-22-12(3); and if the necessity of such denial, suspension or revocation in the director's opinion is based on facts known by the division or presented to the division showing that an immediate and significant danger to the public health, safety or welfare exists, and such threat requires immediate action by the director that such denial, suspension or revocation may issue forthwith as an emergency order, subject to the division's compliance with Section 63G-4-502.

(2) Any hearing convened in accordance with R152-22-11(1), shall be convened within 5 business days of the request for or order of the Division requiring the same. Administrative hearing determinations regarding such Division actions shall receive priority and decisions shall be expedited so as to be issued within no more than 5 business days of such hearings.

KEY: charities, consumer protection, solicitations, registration

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Notice of Continuation December 1, 2016 13-22-6
13-22-8
13-22-9
13-22-10

R152. Commerce, Consumer Protection.
R152-23. Health Spa Services Protection Act Rule.
R152-23-1. Authority.

These Rules are promulgated in accordance with the provisions of Section 63G-3-201 and Section 13-2-5, Utah Code Ann. (1953), as amended, to prescribe for the administration of the Health Spa Services Protection Act, Section 13-23-1, et seq., Utah Code Ann. (1953), as amended.

R152-23-2. Scope and Applicability.

These rules shall apply to the conduct of every health spa within the State of Utah.

R152-23-3. Definitions.

In addition to the definitions set forth in Section 13-23-2, the following definitions shall apply to these Rules.

(1) "Advance Sales" shall mean sales of consumer contracts on any date prior to the date a health spa facility becomes fully operational and available for use.

(2) "Costs" shall mean those costs incurred by the Division in investigating complaints, in collecting and distributing funds, and in otherwise fulfilling its responsibilities under the Health Spa Services Protection Act or these Rules.

(3) "Facility" means the physical building where the health spa services are provided.

(4) "Operate" means to advertise health spa services, to sell memberships, or to perform any other function of business by a health spa that is doing business in Utah.

R152-23-4. Registration Requirements.

(1) A health spa may not operate in this state without first having received a registration permit from the Division. Each health spa entity shall obtain a registration permit prior to selling, offering or attempting to sell, soliciting the sale of, or becoming a party to any contract to provide health spa services.

(2) The application shall request the following items:

(a) Name, addresses, email address and telephone numbers of owner(s) of the health spa Facility and the facility address, telephone number, email address, and name of contact person at the facility.

(b) Payment of the non-refundable application fee.

(c) A current pricing structure for health and fitness services.

(d) A copy of the contract that will be utilized by the facility containing the provisions required by law. The required provisions shall be highlighted for easy reference.

(e) The documents necessary to satisfy the surety requirement of Section 13-23-5(2)(a). If the health spa claims that it is exempt from providing the surety, then it must provide the Division with sufficient evidence that each requirement of Section 13-23-6 is satisfied.

(f) The number of consumer contracts that relate to each facility.

(g) The name, address, email address, and telephone number of each employee, independent contractor, or any other health spa service provider who will be authorized by the registrant to use the health spa's facilities in providing health spa services to consumers during the year.

(h) The company name and contact information for a third party billing and management provider, if used.

(i) Evidence that the health spa facility maintains current liability or professional liability insurance.

(3) A separate registration shall be required for each facility that is maintained and operated by a health spa.

(4) If any information contained in the application becomes incorrect or incomplete, then the health spa shall, within thirty (30) days of the information becoming incorrect or incomplete, correct the application or file the complete information.

(5) All initial applications and renewal applications shall be processed within twenty (20) business days after their receipt by the Division.

R152-23-5. Health Spa Consumer Contracts for Health Spa Services.

(1) Health Spa consumer contracts shall contain the following provisions:

(a) Each consumer contract shall contain:

(i) the date of the transaction, including the date health spa services will commence and expire;

(ii) the name and address of the health spa facility; and

(iii) the name, address, email address (if available), and telephone number of the consumer.

(b) Each consumer contract shall contain one of the following provisions, printed in capital letters, regarding closure of the facility:

(i) A health spa that is required to comply with the surety requirement shall include a provision in consumer contracts that states as follows: "IN THE EVENT THE HEALTH SPA FACILITY CLOSES AND ANOTHER HEALTH SPA FACILITY OPERATED BY THE SELLER OF THIS CONTRACT, OR ASSIGNS OF THE SELLER, IS NOT AVAILABLE WITHIN FIVE (5) MILES OF THE LOCATION THE CONSUMER INTENDS TO PATRONIZE, SELLER WILL REFUND TO CONSUMER A PRORATA SHARE OF THE CONTRACT COST, BASED UPON THE UNUSED TIME REMAINING ACCORDING TO THE CONTRACT."

(ii) A health spa that is not required to comply with the surety requirement shall include a provision in consumer contracts that states as follows: "IF THIS HEALTH SPA CEASES OPERATION AND FAILS TO OFFER AN ALTERNATE LOCATION WITHIN FIVE (5) MILES, NO FURTHER PAYMENTS UNDER THIS CONTRACT SHALL BE DUE TO ANYONE, INCLUDING ANY PURCHASER OF ANY NOTE ASSOCIATED WITH OR CONTAINED IN THIS CONTRACT."

(c) All consumer contracts shall specify what items of equipment or services provided by the health spa facility on the date of the execution of the contract are subject to deletion or change at the discretion of the facility.

(d) Each consumer contract shall include one of the following provisions regarding the consumer's right of rescission under Section 13-23-3(6). The provision shall be bolded and printed in capital letters with at least 12 point font and shall be located on the first page of the contract and just above the signature line.

(i) Consumer contracts sold in advance sales shall contain a provision that states as follows: "YOU, THE CONSUMER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE HEALTH SPA BECOMES FULLY OPERATIONAL AND AVAILABLE FOR USE. IF THE HEALTH SPA DOES NOT BECOME FULLY OPERATIONAL AND AVAILABLE FOR USE WITHIN 60 DAYS AFTER THE DATE OF THE CONTRACT, YOU MAY CANCEL THIS CONTRACT AT ANY TIME."

(ii) All other consumer contracts shall contain a provision that states as follows: "YOU, THE CONSUMER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE ON WHICH THE CONTRACT IS EXECUTED."

(e) All consumer contracts shall itemize the costs to the consumer and shall include a statement as to the total cost of the contract. These costs shall be clearly stated on the first page of the contract.

(f) Every consumer contract shall clearly state the beginning and expiration dates of its term. In any event, no consumer contract shall provide for a term of longer than thirty-

six (36) months.

(2) The consumer contract or any attachment to it shall clearly state any rules of the health spa that apply to:

(a) the consumer's use of its facilities and services; and

(b) cancellation and refund policies of the health spa, which shall include:

(i) A clear and unambiguous written statement of the health spa's cancellation and refund policy for consumers who desire a refund after the three-business-day cooling-off period under Section 13-23-3(6).

(ii) A clear and unambiguous written statement of the health spa's cancellation and refund policy for consumers who desire a refund after a consumer has received a portion of the contracted health spa services.

(3) Each consumer contract shall specify which equipment or facility of the health spa is omitted from the contract's coverage.

R152-23-6. Rescission.

(1) Except where advanced sales are involved, no fee may be charged if a consumer exercises the consumer's right to rescind the contract pursuant to Section 13-23-3(6).

(2) When the consumer contract is the result of the health spa's advance sales and the consumer exercises the consumer's right to rescind, then a fee may be charged against the payments made by the consumer to the extent allowed by Section 13-23-4.

R152-23-7. Procedure When Facility Closes.

(1) In the event a health spa shall, for any reason, close, discontinue normal operations for a period of ten (10) business days, or otherwise cease to do business at any of its facilities while having outstanding obligations to provide health spa services to consumers holding valid consumer contracts, the health spa shall, after obtaining the Division's approval, immediately refund the unused portion of all fees, including the proration of any fees paid up front. The proration of fees paid up front is required only on initial contracts unless similar fees were charged when the contracts were renewed.

(2) Within ten (10) business days of the closure of its facility, the health spa shall provide the Division with a copy of each consumer contract that was valid on the date of closure.

(3) The Division shall determine the amount of refunds that shall be made and to whom. Such refunds shall be made under the supervision and with the prior approval of the Division. If sufficient funds are not available to make a full refund, then the refund shall be made from the surety proceeds on a prorata basis based upon the full amount that is determined to be due to all consumers. The refund amount due shall be determined by multiplying the number of days remaining on the consumer's contract term as of the date of closure by the daily cost of the health spa services contract to the consumer at the time of purchase. The health spa shall remain responsible for the balance.

(4) For purposes of Sections 13-23-5(6) and (7), the distance of five (5) miles shall be calculated by the distance traveled by an automobile over a public road.

(5) The notice required in Section 13-23-5(7) shall be in writing and shall include the following:

(a) The date on which the health spa will cease operations or relocate and fail to offer an alternative location within five miles;

(b) Information concerning consumers holding contracts with the health spa, including:

(i) the total number of active consumer contracts;

(ii) the name, address, email address, and telephone number of each consumer;

(iii) the total cost of each consumer contract; and

(iv) the effective beginning and ending dates of each consumer contract;

(c) Proof of the bond, letter of credit, or certificate of deposit required under Section 13-23-5(2)(a) and proof that the bond, letter of credit, or certificate of deposit will remain in force for one year after the health spa notifies the Division that it has ceased all activities regulated by Title 13, Chapter 23 of the Utah Code;

(d) A description of what action the health spa plans to take with regard to its consumers holding contracts for health spa services, including:

(i) the amount of each consumer's refund;

(ii) any reason refunds are not to be made;

(iii) an explanation of how refunds are to be calculated; and

(iv) copies of the refund checks that the health spa has issued.

(e) Any complaints that the health spa has received from consumers and how the complaints were resolved.

(6) Within thirty (30) days prior to closing, the health spa shall notify consumers of the closure in writing and set forth what actions the health spa plans to take in regards to transfers, cancellations or refunds.

(7) Once the health spa has notified the Division of its intent to cease operations, it may not offer, sell or attempt to sell, solicit the sale of, or become a party to any new contracts to provide health spa services within forty-five (45) days preceding the anticipated date of closure.

(8) In the event a health spa transfers its contracts to an alternative facility located within five (5) miles of the facility of origin, neither the health spa facility transferring consumer contracts nor the health spa facility receiving consumer contracts may charge any additional fees to contract holders in order to gain access to or otherwise utilize services originally contracted for.

(a) Contract transfers shall be serviced at health spa facilities that are comparable to the facility of origin. In instances where consumers have paid for services that are not offered or are otherwise not comparable, the health spa shall obtain written authorization from consumers to transfer to the noncomparable facility or make an offer to rescind the contract.

R152-23-8. Bond, Irrevocable Letter of Credit, or Certificate of Deposit.

(1) The surety required by Section 13-23-5(2) shall be provided to the Division not less than thirty (30) days in advance of any advanced sales by any health spa. Annual renewals of such Bonds, Irrevocable Letters of Credit, or Certificates of Deposit shall be filed with the Division not less than thirty (30) days in advance of expiration of existing Bonds, Irrevocable Letters of Credit, or Certificates of Deposit.

(2) The Division shall have the right to approve or reject Bonds, Irrevocable Letters of Credit, or Certificates of Deposit submitted to the Division. In the event a Bond, Irrevocable Letter of Credit, or Certificate of Deposit is rejected by the Division, the health spa shall submit another surety within fifteen (15) days following notice by the Division. In no event shall a health spa operate without having a Bond, Irrevocable Letter of Credit, or Certificate of Deposit in effect or establishing an exemption pursuant to Section 13-23-6.

(3) In addition to consumer refunds, the Division shall be entitled to recover from the surety proceeds all of its costs and fines as allowed by Sections 13-23-5(2)(c) and (e).

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R152. Commerce, Consumer Protection.
R152-26. Telephone Fraud Prevention Act Rule.
R152-26-1. Authority.

These rules are promulgated pursuant to Section 13-2-5 to administer the Utah Telephone Fraud Prevention Act.

R152-26-2. Scope and Applicability.

These rules shall have the same scope and applicability as Title 13, Chapter 26.

R152-26-3. Definitions.

The following terms, in addition to the definitions appearing in Section 13-26-2, shall be used in construing this rule.

(1) "Director" means the director of the Utah Department of Commerce, Division of Consumer Protection.

(2) "Division" means the Utah Department of Commerce, Division of Consumer Protection.

(3) "Registrant" means any person who has submitted an application for registration to the division pursuant to Section 13-26-3.

(4) "Durable goods" means goods likely to be used for three years or more.

R152-26-4. Denial, Revocation, or Suspension of Registration.

(1) The director may deny an application for registration for the following reasons:

(a) the registrant has committed any of the violations of law set forth in Section 13-26-11; or

(b) the registrant has failed to comply with all of the requirements of Section 13-26-3 and these rules;

(2) The director may suspend or revoke a registration for any violation of Title 13, Chapter 26 by the registrant.

R152-26-5. Registration.

(1) A registrant shall submit an application for registration only on the form authorized by the division. An application may be summarily denied if:

(a) it is submitted on a form not authorized by the division;

(b) it is submitted on the authorized form but it is not legible; or

(c) it is submitted on the authorized form but it is incomplete in some material respect.

(2) The application shall include the following:

(a) the registrant's name, address, telephone number and facsimile number, if any;

(b) the names, addresses, birth dates and places, and social security numbers of all registrant's officers, directors, members, principals and/or key employees;

(c) the registrant's previous business addresses during the previous ten years;

(d) other names, if any, that the registrant does business under;

(e) identification of all licenses or permits currently held by the registrant and any that have been revoked or suspended;

(f) disclosure of any judgment, injunctive order or conviction of any of registrant's officers, directors, members, principals, or key-employees of racketeering or any offense involving fraud, theft, embezzlement, fraudulent conversion of property, misappropriation of property or other similar crimes;

(g) the name and address of the registrant's registered agent;

(h) the location where telephone numbers are to be dialed; and

(i) a description of the goods or services that are to be the subject of the telephone solicitation.

(3) Each registrant shall submit copies of the following documents with their application:

(a) All scripts to be used in the telephone solicitation;

(b) Articles of incorporation or other organizational documentation showing registrant's current legal status.

(4) At the option of the director, the processing of an application by the division's staff may be delayed to give the registrant an opportunity to cure technical defects in his application.

(5) If information in an application for registration or for renewal of registration as a telephone soliciting business materially changes or becomes incorrect or incomplete, the applicant shall, within 30 days after the information changes or becomes incorrect or incomplete, submit the correct information on the corresponding page of the registration application with a cover page or letter clarifying that the submission is correcting information to an existing registration.

(a) Material changes to the legal status of the registrant's organization or ownership of the telephone soliciting business may not be submitted as an amendment to an existing registration. An initial application for registration must be completed and submitted for approval by the Division.

(b) The director may suspend or revoke a registration if material changes or corrections to the registration are not submitted as required by this rule.

R152-26-7. Bonds, Irrevocable Letters of Credit and Certificates of Deposit.

(1) At the option of the registrant, a bond, irrevocable letter of credit or certificate of deposit may be tendered to the division to fulfill the requirements of Section 13-26-3(3)(a).

(2) Whichever type of instrument is tendered by a registrant, payment is immediately due and owing to the division when:

(a) the director delivers a signed writing to the registrant's surety or issuing financial institution demanding payment of a specified sum of money; and

(b) the registrant's liability in the amount specified is demonstrated by a certified copy of the division's final order or the civil judgment of any Utah or federal court, which copy shall be attached to the director's demand for payment.

(3) The division may make a demand on a bond, irrevocable letter of credit or certificate of deposit either in its own right or as the representative of consumers who have been injured by the registrant's violation of Title 13, Chapter 26.

(4) Instruments tendered to the division under Section 13-26-3(3)(a) may be executed in any form that the director deems commercially and legally reasonable and consistent with this rule. The division's acceptance of a non-conforming instrument does not result in a waiver of the requirements of this rule.

R152-26-8. Isolated Transaction Exemption.

For purposes of Section 13-26-4(2)(i), an "isolated transaction" means no more than two occurrences in any twelve month period.

R152-26-9. Right of Rescission.

(1) For purposes of Section 13-26-5(2), a written notification of cancellation is effective the earlier of:

(a) when the notice is actually received by the seller; or

(b) when the notice is placed in the custody of the U.S. Postal Service, provided the postage is prepaid and the letter is properly addressed to the seller.

(2) A rescission letter is in the custody of the U.S. Postal Service when the letter is actually placed in the possession of a U.S. Postal Service employee or in a receptacle for letters authorized by the U.S. Postal Service.

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Notice of Continuation April 19, 2016

R152. Commerce, Consumer Protection.
R152-32a. Pawnshop and Secondhand Merchandise Transaction Information Act Rule.
R152-32a-1. Authority.

These rules are promulgated pursuant to Utah Code 13-2-5(1) and 13-32a-102.5(1) to facilitate the orderly administration of the Pawnshop and Secondhand Merchandise Transaction Information Act, Utah Code Title 13, Section 32a.

R152-32a-2. Exempt Businesses.

(1) The owner or operator of a business that is not a pawnbroker is exempt from the requirements of Title 13, Chapter 32a if the owner or operator deals exclusively in one or more of the following consumer products:

(a) scrap metal acquired by a scrap metal processor pursuant to Section 76-6-1402(10);

(b) antique items as defined in Section 13-32a-102(2);

(c) used furniture;

(d) used appliances;

(e) used games (i.e., card games, table-top games, and magic tricks), except as specified in this Subsection (3); and

(f) used children's products, except as specified in this Subsection (3).

(2) The owner or operator of a business that is not a pawnbroker shall comply with Title 13, Chapter 32a if the owner or operator buys or sells a used or secondhand item that is other than an exempt item pursuant to this Subsection (1).

(3) Notwithstanding the exemptions listed in this Subsection (1), the following consumer products are not exempt from the registration, uploading, retention, and other requirements of Title 13, Chapter 32a:

(a) sports trading cards;

(b) electronic games, video games, and gaming systems;

(c) electronic and acoustic musical instruments (non-toys);

(d) motorized ride-on scooters/vehicles, whether titled or non-titled;

(e) bicycles/scooters designed for use on a public street;

(f) golfing, snow skiing, snowboarding, or water skiing equipment (non-toys);

(g) rare or collectible toys (i.e., trading cards, original issue versions of classic games, and dolls or decorations that are signed or numbered);

(h) child transport devices, including:

(i) strollers and jogging strollers;

(ii) bicycle trailers;

(iii) car seats; and

(iv) baby backpacks, frontpacks, and similar strap-on carriers; and

(i) any item reasonably similar to a consumer product listed in this Subsection (3).

KEY: pawnshops, consumer protection, secondhand merchandise dealers

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	13-32a-112.5

R152. Commerce, Consumer Protection.
R152-34. Utah Postsecondary Proprietary School Act Rule.
R152-34-1. Purpose.

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

R152-34-2. References.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) in-service competencies as evaluated and recommended by recognized national associations such as the American Council on Education. Such credit for personal experiences shall be limited to not more than one year's worth of work (30 semester credit hours/45 quarter credit hours).

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

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

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

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

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

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

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

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

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

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

(b) The date of issue;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(s) The facilities and equipment available;

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

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

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

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

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

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

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

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

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

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

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

(ii) the organization, association, society, labor union, or franchise system provides courses of instruction only to students who are currently employed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A sample of the credential(s) awarded upon completion of a program;

(b) A sample of current advertising including radio, television, newspaper and magazine advertisements, and listings in telephone directories;

(c) A copy of the student enrollment agreement; and

(d) Financial information, as described in Section 13-34-107(6).

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

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

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

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

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

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

(a) The number of students enrolled for the previous one-year period of registration;

(b) The number of students who completed and received a credential;

(c) The number of students who terminated their registration or withdrew from the institution;

(d) The number of administrators, faculty, supporting staff, and agents; and

(e) The new catalog, information bulletin, or supplements.

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

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

(a) the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules, as determined in a criminal, civil or administrative proceeding;

(b) the violation(s) are relevant to the appropriate operation of the school; and

(c) there is reasonable doubt that the institution will provide students with an appropriate learning experience or that the institution will function in accordance with all applicable laws and rules.

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

(a) issue a certificate of registration;

(b) refuse to accept the registration statement based on Sections 13-34-107 and 113.

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

(a) a copy of any new articles of incorporation;

(b) a current financial statement;

(c) a listing of all institutional personnel that have changed as a result of the ownership transaction, together with complete resumes and qualifications;

(d) a detailed description of any material modifications to be made in the operation of the institution; and

(e) payment of the appropriate fee.

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

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

(i) faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the institution and persons enrolling as students; and

(ii) conform to the provisions of the Utah Postsecondary Proprietary School Act and Rules.

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

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

(ii) In each instance the Division may determine:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A three-business-day cooling-off period during which time the student may rescind the contract and receive a refund of all money paid. The cooling-off period may not end prior to midnight of the third business day after the latest of the following days:

(i) the day the student signs an enrollment agreement;

(ii) the day the student pays the institution an initial deposit or first payment toward tuition and fees; or

(iii) the day that the student first visits the institution, if the program lasts more than 30 consecutive calendar days.

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

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

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

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

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

(i) the student directly; or

(ii) a lender or any other entity on behalf of the student.

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

(i) under any provision of:

(A) the Utah Postsecondary Proprietary School Act, Utah Code Title 13, Chapter 34;

(B) the Postsecondary Proprietary School Act Rules, R152-34; or

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

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

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

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

(6) The name of the institution shall not contain any reference that could mislead potential students or the general public as to the type or nature of its educational services, affiliations or structure.

(7) Advertising standards consist of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Recruitment standards include the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) entrance application and admission acceptance information;

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

(c) graduation or termination dates; and

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

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

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

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

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

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

(1) The Division may perform on-site evaluations to verify

information submitted by an institution or an agent, or to investigate complaints filed with the Division.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

KEY: education, postsecondary proprietary schools, registration, consumer protection
December 15, 2017 13-2-5(1)
Notice of Continuation May 8, 2017

R152. Commerce, Consumer Protection.
R152-34a. Utah Postsecondary School State Authorization Act Rule.
R152-34a-101. Authority and Purpose.

(1) These rules are promulgated under the authority of Section 13-2-5(1) and Section 13-34a-103.

(2) These rules are promulgated to:

(a) administer and enforce the Utah Postsecondary School State Authorization Act; and

(b) provide standards by which persons subject to the Utah Postsecondary School State Authorization Act shall operate.

R152-34a-102. Definition.

"Accredited" means public recognition by a national or regional accrediting agency, as defined in Section 13-34a-102(2).

R152-34a-201. Application Process.

(1) To obtain a certificate of postsecondary state authorization, an applicant shall:

(a) submit to the division a completed application form, as provided by the division;

(b) attach to the application:

(i)(A) a copy of the school's accreditation statement; and

(B) if the applicant does not meet the criteria stated in Section 13-34a-203, audited financial statements pursuant to this Subsection (2);

(ii) a list of all current course offerings;

(iii) a copy of the school's tuition schedule and total program cost(s); and

(iv) a copy of the school's refund policy;

(c) comply in all respects with Section 13-34a-203 or Section 13-34a-204 as applicable;

(d) sign and notarize a statement that the owner of the school or similar controlling individual:

(i) has read and understood Section 13-34a et seq and these rules; and

(ii) agrees to operate in full compliance with Section 13-34a et seq and these rules; and

(e) pay the nonrefundable application fee.

(2) A school that is required to submit audited financial statements pursuant to this Subsection (1)(b)(i)(B) shall submit:

(a) the audited financial statements that were completed or provided to an accrediting agency in conjunction with the school's most recent accreditation review; and

(b) audited financial statements for the most recent fiscal year.

(3)(a) A postsecondary school that submits an application for a certificate of authorization under this Subsection R152-34a-201 is not required to apply concurrently with the division for registration as a postsecondary proprietary school under Section 13-34 et seq.

(b) For the purpose of Section 13-34-107(1)(b)(ii), a certificate of state authorization issued under this Subsection R152-34a-3 establishes an exemption to the registration requirement that otherwise applies to a person operating as a postsecondary proprietary school.

R152-34a-206. Complaint Process.

To file a complaint under Section 13-34a et seq against a postsecondary school that holds a certificate from the division, a person shall submit to the division:

(1) a completed complaint form as provided by the division; or

(2) a letter, signed by the complainant, and including:

(a) all documentary evidence related to the complaint; and

(b) contact information for the complainant.

R152-34a-302. Grounds for Investigation and Enforcement - Requirements Upon Termination of Certificate of Authorization.

(1) A postsecondary school that holds a certificate of authorization shall:

(a) as to an entity granted a certificate under Section 13-34a-204, maintain financial capability pursuant to Section 13-34a-204(2)(a);

(b) disclose to each student, in writing, the school's tuition schedule, total program cost, and refund policy before requiring a student to make any payment to the school;

(c) if cited or investigated by the division, provide:

(i) copies of all advertised claims;

(ii) copies of any documents signed by or on behalf of the complainant and other interested person(s), as identified by the division;

(iii) all academic records of the complainant and other student(s), as identified by the division and permitted under any applicable confidentiality law or agreement; and

(iv) all other records requested by the division;

(d)(i) maintain each student's transcript(s) for a period of at least 60 years from the date of the student's last attendance:

(A) in either paper or electronic form; and

(B) at a physical location within the continental United States; and

(ii) provide a student's transcript(s):

(A) within 20 days of a request from the student or the division; and

(B)(I) without charge, if the request is from the division; or

(II) with or without a reasonable charge, if the request is from a student;

(e) if terminating operations, within the 30-day period following the date of termination:

(i) surrender to the division the school's current state certificate of authorization; and

(ii) identify:

(A) the name and contact information of the individual who will maintain custody of student records pursuant to this Subsection (1)(d); and

(B) the physical location where student transcripts will be maintained in compliance with this Subsection (1)(d); and

(f) notify the division within 10 business days of:

(i) any change in information on record with division; and

(ii) any action taken against the school by an accrediting body or a regulatory agency, including a state or the federal government.

(2) A postsecondary school that holds a certificate of state authorization may not:

(a) promulgate to the public a fraudulent or misleading statement relating to a program or service offered; or

(b) withhold information or documents requested by the division in an investigation.

(3) Pursuant to Section Subsection 13-34a-103(2)(iv), the violation of a rule in this Subsection R152-34a-302 may be sanctioned by denial, suspension, or revocation of a certificate of the postsecondary school state authorization.

KEY: postsecondary schools, certificate of state authorization, application requirements, consumer protection
November 24, 2014 **13-2-5(1)**
13-34a-103

R152. Commerce, Consumer Protection.
R152-39. Child Protection Registry Rule.
R152-39-1. Authority and Purpose.

Pursuant to Utah Code Section 13-39-203, these rules (R152-39) are intended to establish the procedures under which:

(1) a person may register a contact point with the registry; and

(2) a marketer may verify compliance with the registry.

R152-39-2. Definitions.

As used in these rules (R152-39):

(1) "Contact point" is as defined in Utah Code Section 13-39-102.

(2) "Division" is as defined in Utah Code Section 13-39-102.

(3) "Marketer" means a person described in Utah Code Section 13-39-201(4).

(4) "Provider" means the third party with whom the Division has contracted, pursuant to Utah Code Section 13-39-201(1)(b), to establish and secure the registry.

(5) "Registry" is as defined in Utah Code Section 13-39-102.

R152-39-3. Information Required to Register.

(1) A person desiring to register a contact point with the registry shall provide the following information to the provider:

(a) the contact point the person desires to register;

(b) an affirmation that:

(i) the contact point belongs to a minor;

(ii) a minor has access to the contact point; or

(iii) the contact point is used in a household in which a minor is present;

(c) an affirmation that the minor referenced in R152-39-3(1)(b) is a Utah resident; and

(d) an affirmation that the person registering the contact point is:

(i) the minor referenced in R152-39-3(1)(b); or

(ii) a parent or guardian of the minor referenced in R152-39-3(1)(b).

(2) A contact point may not become a part of the registry until the provider sends a message to the contact point informing the user of the contact point:

(a) the contact point has been registered; and

(b) the process for removing the contact point from the registry.

(3) A school or institution desiring to register a domain name shall provide verification to the provider that:

(a) the school or institution primarily serves minors; and

(b) the school or institution owns the domain name being registered.

R152-39-4. Information Required to Verify Compliance.

A marketer desiring to verify compliance with the registry shall provide the following information to the provider before the provider compares the marketer's contact point list against the registry:

(1) the name, address, and telephone number of the marketer;

(2) the specific legal nature and corporate status of the marketer;

(3) the name, address, and telephone number of a natural person who consents to service of process for the marketer; and

(4) an affirmation that the person described in R152-39-4(3) understands that improper use of information obtained from the registry is a second degree felony.

R152-39-5. Compliance.

(1) After a marketer has complied with R152-39-4 and paid the fee established by the Division under Section 13-39-201(4)(b), the marketer may check the marketer's contact point list with the provider according to the privacy and security measures implemented by the provider.

(2) After a marketer has complied with R152-39-5(1) and paid the fee established by the Division under Section 13-39-201(4)(b), the provider shall, according to the privacy and security measures implemented by the provider, remove from the marketer's list of contact points any contact points that are contained on the registry.

(3)(a) A marketer who desires to utilize the provisions of Subsection 13-39-202(4) shall:

(i) provide the Division with a detailed description of the methods the marketer intends to use to verify compliance with Subsection 13-39-202(4); and

(ii) agree to provide to the Division, at any time upon request by the Division, copies of all documentation relating to the marketer's compliance with Subsection 13-39-202(4).

(b) Within thirty calendar days after a marketer complies with R152-39-5(3)(a), the Division shall inform the marketer in writing whether the Division considers the marketer's methods sufficient to verify compliance with Subsection 13-39-202(4).

(c)(i) Approval of a verification method for compliance with Subsection 13-39-202(4) does not prevent the Division from investigating further whether the approved verification method actually guarantees compliance with Subsection 13-39-202(4).

(ii) The Division may revoke an approval granted pursuant to R152-39-5(3) upon a finding that the verification method does not adequately guarantee compliance with Subsection 13-39-202(4).

R152-39-6. Discounted Fee.

(1) In order for senders to qualify for the discounted fee schedule established pursuant to Subsection 13-39-203(3)(a), a sender must agree to be subject to enhanced security criteria for each subsequent list that they may submit to the state's compliance mechanism. To meet these criteria, senders must affirmatively agree that their scrubbing tasks may be stopped if a particular task deviates from a statistically normal baseline.

(2) The statistical baseline used for comparison will be based on the senders' past histories as well as the totality of the histories of senders that have used the compliance mechanism to scrub their lists.

(3) To restart a task and retrieve the results, senders whose tasks have been stopped must confirm that they in fact initiated the task and that the list submitted is not an attempt to abuse the registry mechanism. Depending on the amount of the deviation from the baseline, this confirmation may come from a telephone call to a pre-established phone number, completing information online, or sending an e-mail to a customer support representative.

(4) The Division, or its appointed representative, shall have discretion in allowing the retrieval of tasks if the confirmation does not resolve the security concerns.

KEY: consumer protection, e-mail, minors, advertising
December 11, 2006 13-39
Notice of Continuation April 15, 2015

R152. Commerce, Consumer Protection.
R152-42. Uniform Debt-Management Services Act Rule.
R152-42-1. Authority, Purpose and Definitions.

These rules are promulgated under Utah Code Section 13-42-102(9)(c), 13-42-112(2), 13-42-132(3), and 13-42-132(6) to facilitate the orderly administration of the Uniform Debt-Management Services Act, Utah Code Title 13, Chapter 42.

R152-42-2. Application for Registration.

In addition to the requirements contained in Sections 13-42-105 and 13-42-106, applicants shall submit to the division with their initial application a copy of the applicant's articles of incorporation or other organizational documentation showing the applicant's current legal status.

R152-42-3. Registration in Another State.

(1) If a provider holds a license or certificate of registration authorizing it to provide debt-management services in another state, the provider may submit a copy of that license or certificate and the application for that license or certificate, instead of an application in the form prescribed by the Uniform Debt-Management Services Act, Utah Code Title 13, Chapter 42, provided that the license or certificate was issued by one of the following states:

(a) Rhode Island, pursuant to Rhode Island General Laws, Title 19, Chapter 14.8;

(b) Delaware, pursuant to Delaware Code Annotated, Title 6, Chapter 24A; or

(c) any state approved by the Division by rule.

(2) To qualify under this rule, the provider must meet all the requirements of Utah Code Section 13-42-112, including filing a surety bond or substitute in accordance with Utah Code Section 13-42-113 or 13-42-114 that is solely payable or available to this state and to individuals who reside in this state.

R152-42-4. Independent Accrediting Organizations.

In order to comply with requirements of Utah Code Section 13-42-106(8) a provider must provide evidence of accreditation by an independent accrediting organization approved by the Director of the Division that assures compliance with industry standards. A list of organizations that have been approved can be found on the Division's website or obtained by contacting the Division.

R152-42-5. Certification of Counselors.

In order to comply with the requirements of Utah Code Section 13-42-106(9), a provider must provide evidence that, within 12 months after initial employment, each of the applicant's counselors becomes certified as a certified counselor. A list of organizations or programs that have been approved can be found on the Division's website or by contacting the Division.

R152-42-6. Adoption of Base Year.

Pursuant to Utah Code Section 13-42-132(6), the Division adopts a base year of 2007.

KEY: debt-management, consumer protection

May 22, 2007	**13-42-102(9)(c)**
Notice of Continuation December 1, 2016	**13-42-112(2)**
	13-42-132(3)
	13-42-132(6)

R152. Commerce, Consumer Protection.
R152-49. Immigration Consultants Registration Act Rule.
R152-49-101. Authority and Purpose.

(1) Authority. These rules are promulgated under:

(a) Utah Code Subsection 13-2-5(1); and

(b) Utah Code Subsection 13-49-202(1).

(2) Purpose. These rules:

(a) prescribe certain contents of the application form that shall be submitted to the Division in order to request registration as an immigration consultant; and

(b) impose upon registered immigration consultants a duty to notify the Division of changes in information that is on record with the Division.

R152-49-202. Application for Registration -- Duty to Notify Division of Changes.

(1) In addition to the requirements contained in Utah Code Section 13-49-202, an applicant for registration as an immigration consultant shall submit a complete application form, including the following documents and information:

(a) photocopy of:

(i) a state-issued identification card or driver license;

(ii) a passport issued by the United States Department of State; or

(iii) an identification card issued by any branch of the United States armed forces;

(b) applicant's date of birth;

(c)(i) applicant's social security number, if the applicant has one; and

(ii) applicant's individual taxpayer identification number (ITIN), if the applicant has one;

(d) a complete list of:

(i) any other names used by the applicant at any time past or present; and

(ii) all entity names, including dbas, through which the applicant will engage in the activities of an immigration consultant;

(e) pursuant to Section 13-49-301(1), a copy of the contract that the applicant will use to create a contractual obligation with a client; and

(f) a copy of the disclosure document required under Section 13-49-303(2):

(i) written in English; and

(ii) written in each of the native languages of the applicant's clientele.

(2) Within 30 days of any change in information or documents that are on file with the Division, a registered immigration consultant shall:

(a) notify the Division in writing of the change; and

(b) provide to the Division current versions of any affected contracts, disclosures, and other documents.

KEY: immigration consultant, registration, consumer protection
September 21, 2015 **13-2-5(1)**
13-49-202(1)
13-49-301(1)
13-49-303(2)

R156. Commerce, Occupational and Professional Licensing.
R156-1. General Rule of the Division of Occupational and Professional Licensing.
R156-1-101. Title.

This rule is known as the "General Rule of the Division of Occupational and Professional Licensing."

R156-1-102. Definitions.

In addition to the definitions in Title 58, as used in Title 58 or this rule:

(1) "Active and in good standing" means a licensure status which allows the licensee full privileges to engage in the practice of the occupation or profession subject to the scope of the licensee's license classification. A license that has been placed on probation subject to terms and conditions is not active and in good standing.

(2) "Aggravating circumstances" means any consideration or factors that may justify an increase in the severity of an action to be imposed upon an applicant or licensee. Aggravating circumstances include:

(a) prior record of disciplinary action, unlawful conduct, or unprofessional conduct;

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses;

(e) obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the Division;

(f) submission of false evidence, false statements or other deceptive practices during the disciplinary process including creating, destroying or altering records after an investigation has begun;

(g) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the Division;

(h) vulnerability of the victim;

(i) lack of good faith to make restitution or to rectify the consequences of the misconduct involved;

(j) illegal conduct, including the use of controlled substances; and

(k) intimidation or threats of withholding clients' records or other detrimental consequences if the client reports or testifies regarding the unprofessional or unlawful conduct.

(3) "Cancel" or "cancellation" means nondisciplinary action by the Division to rescind, repeal, annul, or void a license:

(a) issued to a licensee in error, such as where a license is issued to an applicant:

(i) whose payment of the required application fee is dishonored when presented for payment;

(ii) who has been issued a conditional license pending a criminal background check and the check cannot be completed due to the applicant's failure to resolve an outstanding warrant or to submit acceptable fingerprint cards;

(iii) who has been issued the wrong classification of licensure; or

(iv) due to any other error in issuing a license; or

(b) not issued erroneously, but where subsequently the licensee fails to maintain the ongoing qualifications for licensure, when such failure is not otherwise defined as unprofessional or unlawful conduct.

(4) "Charges" means the acts or omissions alleged to constitute either unprofessional or unlawful conduct or both by a licensee, which serve as the basis to consider a licensee for inclusion in the diversion program authorized in Section 58-1-404.

(5) "Conditional licensure" means an interim non-adverse licensure action, in which a license is issued to an applicant for initial, renewal, or reinstatement of licensure on a conditional basis in accordance with Section R156-1-308f, while an investigation, inspection, or audit is pending.

(6) "Denial of licensure" means action by the Division refusing to issue a license to an applicant for initial licensure, renewal of licensure, reinstatement of licensure or relicensure.

(7)(a) "Disciplinary action" means adverse licensure action by the Division under the authority of Subsections 58-1-401(2)(a) through (2)(b).

(b) "Disciplinary action", as used in Subsection 58-1-401(5), shall not be construed to mean an adverse licensure action taken in response to an application for licensure. Rather, as used in Subsection 58-1-401(5), it shall be construed to mean an adverse action initiated by the Division.

(8) "Diversion agreement" means a formal written agreement between a licensee, the Division, and a diversion committee, outlining the terms and conditions with which a licensee must comply as a condition of entering in and remaining under the diversion program authorized in Section 58-1-404.

(9) "Diversion committees" mean diversion advisory committees authorized by Subsection 58-1-404(2)(a)(i) and created under Subsection R156-1-404a.

(10) "Duplicate license" means a license reissued to replace a license which has been lost, stolen, or mutilated.

(11) "Emergency review committees" mean emergency adjudicative proceedings review committees created by the Division under the authority of Subsection 58-1-108(2).

(12) "Expire" or "expiration" means the automatic termination of a license which occurs:

(a) at the expiration date shown upon a license if the licensee fails to renew the license before the expiration date; or

(b) prior to the expiration date shown on the license:

(i) upon the death of a licensee who is a natural person;

(ii) upon the dissolution of a licensee who is a partnership, corporation, or other business entity; or

(iii) upon the issuance of a new license which supersedes an old license, including a license which:

(A) replaces a temporary license;

(B) replaces a student or other interim license which is limited to one or more renewals or other renewal limitation; or

(C) is issued to a licensee in an upgraded classification permitting the licensee to engage in a broader scope of practice in the licensed occupation or profession.

(13) "Inactive" or "inactivation" means action by the Division to place a license on inactive status in accordance with Sections 58-1-305 and R156-1-305.

(14) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the Division regulatory and compliance officer, or if the Division regulatory and compliance officer is unable to so serve for any reason, a Department administrative law judge, or if both the Division regulatory and compliance officer and a Department administrative law judge are unable to so serve for any reason, an alternate designated by the director in writing.

(15) "License" means a right or privilege to engage in the practice of a regulated occupation or profession as a licensee.

(16) "Limit" or "limitation" means nondisciplinary action placing either terms and conditions or restrictions or both upon a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(17) "Mitigating circumstances" means any consideration or factors that may justify a reduction in the severity of an action to be imposed upon an applicant or licensee.

(a) Mitigating circumstances include:

(i) absence of prior record of disciplinary action, unlawful conduct or unprofessional conduct;

(ii) personal, mental or emotional problems provided such problems have not posed a risk to the health, safety or welfare

of the public or clients served such as drug or alcohol abuse while engaged in work situations or similar situations where the licensee or applicant should know that they should refrain from engaging in activities that may pose such a risk;

(iii) timely and good faith effort to make restitution or rectify the consequences of the misconduct involved;

(iv) full and free disclosure to the client or Division prior to the discovery of any misconduct;

(v) inexperience in the practice of the occupation and profession provided such inexperience is not the result of failure to obtain appropriate education or consultation that the applicant or licensee should have known they should obtain prior to beginning work on a particular matter;

(vi) imposition of other penalties or sanctions if the other penalties and sanctions have alleviated threats to the public health, safety, and welfare; and

(vii) remorse.

(b) The following factors may not be considered as mitigating circumstances:

(i) forced or compelled restitution;

(ii) withdrawal of complaint by client or other affected persons;

(iii) resignation prior to disciplinary proceedings;

(iv) failure of injured client to complain;

(v) complainant's recommendation as to sanction; and

(vi) in an informal disciplinary proceeding brought pursuant to Subsection 58-1-501(2)(c) or (d) or Subsections R156-1-501(1) through (5):

(A) argument that a prior proceeding was conducted unfairly, contrary to law, or in violation of due process or any other procedural safeguard;

(B) argument that a prior finding or sanction was contrary to the evidence or entered without due consideration of relevant evidence;

(C) argument that a respondent was not adequately represented by counsel in a prior proceeding; and

(D) argument or evidence that former statements of a respondent made in conjunction with a plea or settlement agreement are not, in fact, true.

(18) "Nondisciplinary action" means adverse licensure action by the Division under the authority of Subsections 58-1-401(1) or 58-1-401(2)(c) through (2)(d).

(19) "Peer committees" mean advisory peer committees to boards created by the legislature in Title 58 or by the Division under the authority of Subsection 58-1-203(1)(f).

(20) "Probation" means disciplinary action placing terms and conditions upon a license;

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(21) "Public reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a public record.

(22) "Regulatory authority" as used in Subsection 58-1-501(2)(d) means any governmental entity who licenses, certifies, registers, or otherwise regulates persons subject to its jurisdiction, or who grants the right to practice before or otherwise do business with the governmental entity.

(23) "Reinstate" or "reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (26)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.

(24) "Relicense" or "relicensure" means to license an applicant who has previously been revoked or has previously surrendered a license.

(25) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (25)(a), placed on a license issued to an applicant for licensure.

(26) "Restrict" or "restriction" means disciplinary action qualifying or limiting the scope of a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-304; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(27) "Revoke" or "revocation" means disciplinary action by the Division extinguishing a license.

(28) "Suspend" or "suspension" means disciplinary action by the Division removing the right to use a license for a period of time or indefinitely as indicated in the disciplinary order, with the possibility of subsequent reinstatement of the right to use the license.

(29) "Surrender" means voluntary action by a licensee giving back or returning to the Division in accordance with Section 58-1-306, all rights and privileges associated with a license issued to the licensee.

(30) "Temporary license" or "temporary licensure" means a license issued by the Division on a temporary basis to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-303.

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

(32) "Warning or final disposition letters which do not constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions of law and do not constitute a reprimand, but which may address any or all of the following:

(a) Division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of Division concerns.

R156-1-102a. Global Definitions of Levels of Supervision.

(1) Except as otherwise provided by statute or rule, the global definitions of levels of supervision herein shall apply to supervision terminology used in Title 58 and Title R156, and shall be referenced and used, to the extent practicable, in statutes and rules to promote uniformity and consistency.

(2) Except as otherwise provided by statute or rule, all unlicensed personnel specifically allowed to practice a regulated occupation or profession are required to practice under an appropriate level of supervision defined herein, as specified by the licensing act or licensing act rule governing each occupation or profession.

(3) Except as otherwise provided by statute or rule, all license classifications required to practice under supervision shall practice under an appropriate level of supervision defined herein, as specified by the licensing act or licensing act rule governing each occupation or profession.

(4) Levels of supervision are defined as follows:

(a) "Direct supervision" and "immediate supervision" mean the supervising licensee is present and available for face-to-face communication with the person being supervised when and where occupational or professional services are being provided.

(b) "Indirect supervision" means the supervising licensee:

(i) has given either written or verbal instructions to the person being supervised;

(ii) is present within the facility in which the person being supervised is providing services; and

(iii) is available to provide immediate face-to-face communication with the person being supervised as necessary.

(c) "General supervision" means that the supervising licensee:

(i) has authorized the work to be performed by the person being supervised;

(ii) 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, without regard to whether the supervising licensee is located on the same premises as the person being supervised; and

(iii) can provide any necessary consultation within a reasonable period of time and personal contact is routine.

(5) "Supervising licensee" means a licensee who has satisfied any requirements to act as a supervisor and has agreed to provide supervision of an unlicensed individual or a licensee in a classification or licensure status that requires supervision in accordance with the provisions of this chapter.

R156-1-103. 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.

R156-1-106. Division - Duties, Functions, and Responsibilities.

(1) In accordance with Subsection 58-1-106(2), the following responses to requests for lists of licensees may include multiple licensees per request and may include home telephone numbers, home addresses, and e-mail addresses, subject to the restriction that the addresses and telephone numbers shall only be used by a requester for purposes for which the requester is properly authorized:

(a) responses to requests from another governmental entity, government-managed corporation, a political subdivision, the federal government, another state, or a not-for-profit regulatory association to which the Division is a member;

(b) responses to requests from an occupational or professional association, private continuing education organizations, trade union, university, or school, for purposes of education programs for licensees;

(c) responses to a party to a prelitigation proceeding convened by the Division under Title 78, Chapter 14;

(d) responses to universities, schools, or research facilities for the purposes of research;

(e) responses to requests from licensed health care facilities or third party credentialing services, for the purpose of verifying licensure status for issuing credentialing or reimbursement purposes; and

(f) responses to requests from a person preparing for, participating in, or responding to:

(i) a national, state or local emergency;

(ii) a public health emergency as defined in Section 26-23b-102; or

(iii) a declaration by the President of the United States or other federal official requesting public health-related activities.

(2) In accordance with Subsection 58-1-106(3)(a) and (b), the Division may deny a request for an address or telephone number of a licensee to an individual who provides proper identification and the reason for the request, in writing, to the Division, if the reason for the request is deemed by the Division to constitute an unwarranted invasion of privacy or a threat to the public health, safety, and welfare.

(3) In accordance with Subsection 58-1-106(3)(c), proper identification of an individual who requests the address or telephone number of a licensee and the reason for the request, in writing, shall consist of the individual's name, mailing address, and daytime number, if available.

R156-1-107. Organization of Rules - Content, Applicability and Relationship of Rules.

(1) The rules and sections in Title R156 shall, to the extent practicable, follow the numbering and organizational scheme of the chapters in Title 58.

(2) Rule R156-1 shall contain general provisions applicable to the administration and enforcement of all occupations and professions regulated in Title 58.

(3) The provisions of the other rules in Title R156 shall contain specific or unique provisions applicable to particular occupations or professions.

(4) Specific rules in Title R156 may supplement or alter Rule R156-1 unless expressly provided otherwise in Rule R156-1.

R156-1-109. Presiding Officers.

In accordance with Subsection 63G-4-103(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the Director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

(1) The Division Regulatory and Compliance Officer is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the Division Regulatory and Compliance Officer is unable to so serve for any reason, a replacement specified by the Director is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Unless otherwise specified in writing by the Director, or with regard to Title 58, Chapter 55, by the Construction Services Commission, a department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the Director or Commission, respectively, determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as provided in Subsection (4) or otherwise specified in writing by the Director, the presiding officer for adjudicative proceedings before the Division are as follows:

(a) Director. The Director shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(b), and R156-46b-201(2)(a) through (c), however resolved, including stipulated settlements and hearings; and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(g), (i), (l), (m), (o), (p), and (r), and R156-46b-202(2)(a), (b)(ii), (c), and (d), however resolved, including memoranda of understanding and stipulated settlements.

(b) Bureau Managers or Program Coordinators. Except for Title 58, Chapter 55, the bureau manager or program coordinator over the occupation or profession or program involved shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsection R156-46b-201(1)(c), for purposes of determining whether a request for a board of appeal is properly filed as set forth in Subsections R156-15A-210(1) through (4); and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (d),(f), (h), (j), (n) and R156-46b-202(2)(b)(iii).

(iii) At the direction of a bureau manager or program coordinator, a licensing technician or program technician may sign an informal order in the name of the licensing technician or program technician provided the wording of the order has been approved in advance by the bureau manager or program coordinator and provided the caption "FOR THE BUREAU MANAGER" or "FOR THE PROGRAM COORDINATOR"

immediately precedes the licensing technician's or program technician's signature.

(c) Citation Hearing Officer. The Division Regulatory and Compliance Officer or other citation hearing officer designated in writing by the Director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(k).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(e) for convening a board of appeal under Subsection 15A-1-207(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. An administrative law judge shall perform the role specified in Subsection 58-1-109(2).

(e) Residence Lien Recovery Fund Advisory Board. The Residence Lien Recovery Fund Advisory Board shall be the presiding officer to serve as the factfinder for formal adjudicative proceedings involving the Residence Lien Recovery Fund.

(f) Residence Lien Recovery Fund Manager. The Residence Lien Recovery Fund manager, bureau manager, or program coordinator designated in writing by the Director shall be the presiding officer for the informal adjudicative proceeding described in Subsection R156-46b-202(1)(q), for approval or denial of an application for a tax credit certificate.

(4) Unless otherwise specified in writing by the Construction Services Commission, the presiding officers and process for adjudicative proceedings under Title 58, Chapter 55, are established or clarified as follows:

(a) Commission.

(i) The Construction Services Commission shall be the presiding officer for all adjudicative proceedings under Title 58, Chapter 55, except as otherwise delegated by the Commission in writing or as otherwise provided in this rule; provided, however, that all orders adopted by the Commission as a presiding officer shall require the concurrence of the Director.

(ii) Unless otherwise specified in writing by the Construction Services Commission, the Commission is designated as the presiding officer:

(A) for informal adjudicative proceedings described in Subsections R156-46b-202(1)(l), (m), (o), (p), and (q), and R156-46b-202(2)(b)(i), (c), and (d), however resolved, including memoranda of understanding and stipulated settlements;

(B) to serve as fact finder and adopt orders in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed under Title 58, Chapter 55; and

(C) to review recommended orders of a board, an administrative law judge, or other designated presiding officer who acted as the fact finder in an evidentiary hearing involving a person licensed or required to be licensed under Title 58, Chapter 55, and to adopt an order of its own. In adopting its order, the Commission may accept, modify or reject the recommended order.

(iii) If the Construction Services Commission is unable for any reason to act as the presiding officer as specified, it shall designate another presiding officer in writing to so act.

(iv) Orders of the Construction Services Commission shall address all issues before the Commission and shall be based upon the record developed in an adjudicative proceeding conducted by the Commission. In cases in which the Commission has designated another presiding officer to conduct an adjudicative proceeding and submit a recommended order, the record to be reviewed by the Commission shall consist of the findings of fact, conclusions of law, and recommended order submitted to the Commission by the presiding officer based upon the evidence presented in the adjudicative proceeding before the presiding officer.

(v) The Construction Services Commission or its designee shall submit adopted orders to the director for the Director's concurrence or rejection within 30 days after it receives a recommended order or adopts an order, whichever is earlier. An adopted order shall be deemed issued and constitute a final order upon the concurrence of the Director.

(vi) In accordance with Subsection 58-55-103(10), if the Director or the Director's designee refuses to concur in an adopted order of the Construction Services Commission or its designee, the Director or the Director's designee shall return the order to the Commission or its designee with the reasons set forth in writing for refusing to concur. The Commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return. The Director or the Director's designee shall consider the Commission's resubmission of an adopted order and either concur rendering the order final, or refuse to concur and issue a final order, within 90 days of the date of the initial recommended order. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the Commission or its designee and the Director or the Director's designee to resolve the reasons for the Director's refusal to concur in an adopted order.

(vii) The record of the adjudicative proceeding shall include recommended orders, adopted orders, refusals to concur in adopted orders, and final orders.

(viii) The final order issued by the Construction Services Commission and concurred in by the Director or the Director's designee, or nonconcurred in by the Director or the Director's Designee, and issued by the Director or the Director's designee, may be appealed by filing a request for agency review with the Executive Director or the Director's designee within the Department.

(ix) The content of all orders shall comply with the requirements of Subsection 63G-4-203(1)(i) and Sections 63G-4-208 and 63G-4-209.

(b) Director. The Director or the Director's designee is designated as the presiding officer for the concurrence role, except where the Director or the Director's designee refuses to concur and issues the final order as provided by Subsection (a), on disciplinary proceedings under Subsections R156-46b-202(2)(b)(i), (c), and (d) as required by Subsection 58-55-103(1)(b)(iv).

(c) Administrative Law Judge. Unless otherwise specified in writing by the Construction Services Commission, a Department administrative law judge is designated as the presiding officer to conduct formal adjudicative proceedings before the Commission and its advisory boards, as specified in Subsection 58-1-109(2).

(d) Bureau Manager. Unless otherwise specified in writing by the Construction Services Commission, the responsible bureau manager is designated as the presiding officer for conducting informal adjudicative proceedings specified in Subsections R156-46b-202(1)(a) through (d),(h), and (n).

(e) At the direction of a bureau manager, a licensing technician may sign an informal order in the name of the licensing technician provided the wording of the order has been approved in advance by the bureau manager and provided the caption "FOR THE BUREAU MANAGER" immediately precedes the licensing technician's signature.

(f) Plumbers Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Plumbers Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the Construction Services Commission

in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as plumbers.

(g) Electricians Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Electricians Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the Construction Services Commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as electricians.

(h) Alarm System Security and Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the Commission, the Alarm System Security and Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the Construction Services Commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as alarm companies or agents.

R156-1-110. Issuance of Investigative Subpoenas.

(1) All requests for subpoenas in conjunction with a Division investigation made pursuant to Subsection 58-1-106(1)(c), shall be made in writing to the investigative subpoena authority and shall be accompanied by an original of the proposed subpoena.

(a) Requests to the investigative subpoena authority shall contain adequate information to enable the subpoena authority to make a finding of sufficient need, including: the factual basis for the request, the relevance and necessity of the particular person, evidence, documents, etc., to the investigation, and an explanation why the subpoena is directed to the particular person upon whom it is to be served.

(b) Approved subpoenas shall be issued under the seal of the Division and the signature of the subpoena authority.

(2) The person who requests an investigative subpoena is responsible for service of the subpoena.

(3)(a) Service may be made:

(i) on a person upon whom a summons may be served pursuant to the Utah Rules of Civil Procedure; and

(ii) personally or on the agent of the person being served.

(b) If a party is represented by an attorney, service shall be made on the attorney.

(4)(a) Service may be accomplished by hand delivery or by mail to the last known address of the intended recipient.

(b) Service by mail is complete upon mailing.

(c) Service may be accomplished by electronic means.

(d) Service by electronic means is complete on transmission if transmission is completed during normal business hours at the place receiving the service; otherwise, service is complete on the next business day.

(5) There shall appear on all investigative subpoenas a certificate of service.

(6) The investigative subpoena authority may quash or modify an investigative subpoena if it is shown to be unreasonable or oppressive.

(a) A motion to quash or modify an investigative subpoena shall be filed with and served upon the subpoena authority no later than ten days after service of the investigative subpoena.

(b) A response by the Division to a motion to quash or modify an investigative subpoena shall be filed with and served upon the subpoena authority no later than five business days after receipt of a motion to quash or modify an investigative subpoena.

(c) No final reply by the recipient of an investigative subpoena who files a motion to quash or modify shall be permitted.

R156-1-111a. Qualifications for Tax Certificate - Definitions.

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

(1) "Psychiatrist", as defined under Subsection 58-1-111(1)(d, is further defined to include a licensed physician who is board certified for a psychiatry specialization recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association's Bureau of Osteopathic Specialists (BOS).

(2) Under Subsection 58-1-111(1)(f)(ii), the definition of a "volunteer retired psychiatrist" is further defined to mean a physician or osteopathic physician licensed under Title 58, Chapter 81, Retired Volunteer Health Practitioner Act, who is previously or currently board certified for a psychiatry specialization recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association's Bureau of Osteopathic Specialists (BOS).

R156-1-111b. Qualifications for Tax Certificate - Application Requirements.

An applicant for a tax credit certificate under Section 58-1-111 shall provide to the Division:

(1) the original application made available on the Division's website, containing the signed attestation of compliance; and

(2) any additional documentation that may be required by the Division to verify the applicant's representations made in the application.

R156-1-205. Peer or Advisory Committees - Executive Director to Appoint - Terms of Office - Vacancies in Office - Removal from Office - Quorum Requirements - Appointment of Chairman - Division to Provide Secretary - Compliance with Open and Public Meetings Act - Compliance with Utah Administrative Procedures Act - No Provision for Per Diem and Expenses.

(1) The executive director shall appoint the members of peer or advisory committees established under Title 58 or Title R156.

(2) Except for ad hoc committees whose members shall be appointed on a case-by-case basis, the term of office of peer or advisory committee members shall be for four years. The executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the peer or advisory committee is appointed every two years.

(3) No peer or advisory committee member may serve more than two full terms, and no member who ceases to serve may again serve on the peer or advisory committee until after the expiration of two years from the date of cessation of service.

(4) If a vacancy on a peer or advisory committee occurs, the executive director shall appoint a replacement to fill the unexpired term. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(5) If a peer or advisory committee member fails or refuses to fulfill the responsibilities and duties of a peer or advisory committee member, including the attendance at peer committee meetings, the executive director may remove the peer or advisory committee member and replace the member in accordance with this section. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(6) Committee meetings shall only be convened with the approval of the appropriate board and the concurrence of the Division.

(7) Unless otherwise approved by the Division, peer or advisory committee meetings shall be held in the building occupied by the Division.

(8) A majority of the peer or advisory committee members shall constitute a quorum and may act in behalf of the peer or advisory committee.

(9) Peer or advisory committees shall annually designate one of their members to serve as peer or advisory committee chairman. The Division shall provide a Division employee to act as committee secretary to take minutes of committee meetings and to prepare committee correspondence.

(10) Peer or advisory committees shall comply with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings, in their meetings.

(11) Peer or advisory committees shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

(12) Peer or advisory committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in peer or advisory committees business, except as otherwise provided in Title 58 or Title R156.

R156-1-206. Emergency Adjudicative Proceeding Review Committees - Appointment - Terms - Vacancies - Removal - Quorum - Chairman and Secretary - Open and Public Meetings Act - Utah Administrative Procedures Act - Per Diem and Expenses.

(1) The chairman of the board for the profession of the person against whom an action is proposed may appoint the members of emergency review committees on a case-by-case or period-of-time basis.

(2) With the exception of the appointment and removal of members and filling of vacancies by the chairman of a board, emergency review committees, committees shall serve in accordance with Subsections R156-1-205(7), and (9) through (12).

R156-1-301. Application for Licensure - Filing Date - Applicable Requirements for Licensure - Issuance Date.

(1) The filing date for an application for licensure shall be the postmark date of the application or the date the application is received and date stamped by the Division, whichever is earlier.

(2) Except as otherwise provided by statute, rule or order, the requirements for licensure applicable to an application for licensure shall be the requirements in effect on the filing date of the application.

(3) The issuance date for a license issued to an applicant for licensure shall be as follows:

(a) the date the approval is input into the Division's electronic licensure database for applications submitted and processed manually; or

(b) the date printed on the verification of renewal certificate for renewal applications submitted and processed electronically via the Division's Internet Renewal System.

R156-1-302. Consideration of Good Moral Character, Unlawful Conduct, Unprofessional Conduct, or Other Mental or Physical Condition.

(1) This section applies in circumstances where an applicant or licensee:

(a) is not automatically disqualified from licensure pursuant to a statutory provision; and

(b)(i) has history that reflects negatively on the person's moral character, including past unlawful or unprofessional conduct; or

(ii) has a mental or physical condition that, when considered with the duties and responsibilities of the license held or to be held, demonstrates a threat or potential threat to the public health, safety or welfare.

(2) In a circumstance described in Section (1), the following factors are relevant to a licensing decision:

(a) aggravating circumstances, as defined in Subsection R156-1-102(2);

(b) mitigating circumstances, as defined in Subsection R156-1-102(17);

(c) the degree of risk to the public health, safety or welfare;

(d) the degree of risk that a conduct will be repeated;

(e) the degree of risk that a condition will continue;

(f) the magnitude of the conduct or condition as it relates to the harm or potential harm;

(g) the length of time since the last conduct or condition has occurred;

(h) the current criminal probationary or parole status of the applicant or licensee;

(i) the current administrative status of the applicant or licensee;

(j) results of previously submitted applications, for any regulated profession or occupation;

(k) results from any action, taken by any professional licensing agency, criminal or administrative agency, employer, practice monitoring group, entity or association;

(l) evidence presented indicating that restricting or monitoring an individual's practice, conditions or conduct can protect the public health, safety or welfare;

(m) psychological evaluations; or

(n) any other information the Division or the board reasonably believes may assist in evaluating the degree of threat or potential threat to the public health, safety or welfare.

R156-1-303. Temporary Licenses in Declared Disaster or Emergency.

(1) In accordance with Section 53-2a-1203, persons who provide services under this exemption from licensure, shall within 30 days file a notice with the Division as provided under Subsection 53-2a-1205(1) using forms posted on the Division internet site.

(2) In accordance with Section 53-2a-1205 and Subsection 58-1-303(1), a person who provides services under the exemption from licensure as provided in Section 53-2a-1203 for a declared disaster or emergency shall, after the disaster period ends and before continuing to provide services, meet all the normal requirements for occupational or professional licensure under this title, unless:

(a) prior to practicing after the declared disaster the person is issued a temporary license under the provisions of Subsection 58-1-303(1)(c); or

(b) the person qualifies under another exemption from licensure.

R156-1-305. Inactive Licensure.

(1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee may not apply for inactive licensure status.

(2) The following licenses issued under Title 58 that are active in good standing may be placed on inactive licensure status:

(a) architect;
(b) audiologist;
(c) certified public accountant emeritus;
(d) certified court reporter;
(e) certified social worker;
(f) chiropractic physician;
(g) clinical mental health counselor;
(h) clinical social worker;
(i) contractor;
(j) deception detection examiner;
(k) deception detection intern;

(l) dental hygienist;
(m) dentist;
(n) dispensing medical practitioner - advanced practice registered nurse;
(o) dispensing medical practitioner - physician and surgeon;
(p) dispensing medical practitioner - physician assistant;
(q) dispensing medical practitioner - osteopathic physician and surgeon;
(r) dispensing medical practitioner - optometrist;
(s) dispensing medical practitioner - clinic pharmacy;
(t) genetic counselor;
(u) health facility administrator;
(v) hearing instrument specialist;
(w) landscape architect;
(x) licensed advanced substance use disorder counselor;
(y) marriage and family therapist;
(z) naturopath/naturopathic physician;
(aa) optometrist;
(bb) osteopathic physician and surgeon;
(cc) pharmacist;
(dd) pharmacy technician;
(ee) physician assistant;
(ff) physician and surgeon;
(gg) podiatric physician;
(hh) private probation provider;
(ii) professional engineer;
(jj) professional land surveyor;
(kk) professional structural engineer;
(ll) psychologist;
(mm) radiology practical technician;
(nn) radiologic technologist;
(oo) security personnel;
(pp) speech-language pathologist;
(qq) substance use disorder counselor; and
(rr) veterinarian.

(3) Applicants for inactive licensure shall apply to the Division in writing upon forms available from the Division. Each completed application shall contain documentation of requirements for inactive licensure, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(4) If all requirements are met for inactive licensure, the Division shall place the license on inactive status.

(5) A license may remain on inactive status indefinitely except as otherwise provided in Title 58 or rules which implement Title 58.

(6) An inactive license may be activated by requesting activation in writing upon forms available from the Division. Unless otherwise provided in Title 58 or rules which implement Title 58, each reactivation application shall contain documentation that the applicant meets current renewal requirements, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(7) An inactive licensee whose license is activated during the last 12 months of a renewal cycle shall, upon payment of the appropriate fees, be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their activated license.

(8) A Controlled Substance license may be placed on inactive status if attached to a primary license listed in Subsection R156-1-305(2) and the primary license is placed on inactive status.

R156-1-308a. Renewal Dates.

(1) The following standard two-year renewal cycle renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

TABLE
RENEWAL DATES

Acupuncturist	May 31	even years
Advanced Practice Registered Nurse	January 31	even years
Advanced Practice Registered Nurse-CRNA	January 31	even years
Architect	May 31	even years
Athlete Agent	September 30	even years
Athletic Trainer	May 31	odd years
Audiologist	May 31	odd years
Barber	September 30	odd years
Barber Apprentice	September 30	odd years
Barber School	September 30	odd years
Behavior Analyst and Assistant Behavior Analyst	September 30	even years
Behavior Specialist and Assistant Behavior Specialist	September 30	even years
Building Inspector	November 30	odd years
Burglar Alarm Security	March 31	odd years
C.P.A. Firm	December 31	even years
Certified Court Reporter	May 31	even years
Certified Dietitian	September 30	even years
Certified Medical Language Interpreter	March 31	odd years
Certified Nurse Midwife	January 31	even years
Certified Public Accountant	December 31	even years
Certified Social Worker	September 30	even years
Chiropractic Physician	May 31	even years
Clinical Mental Health Counselor	September 30	even years
Clinical Social Worker	September 30	even years
Construction Trades Instructor	November 30	odd years
Contractor	November 30	odd years
Controlled Substance License	Attached to primary license renewal	
Controlled Substance Precursor	May 31	odd years
Controlled Substance Handler	September 30	odd years
Cosmetologist/Barber	September 30	odd years
Cosmetologist/Barber Apprentice	September 30	odd years
Cosmetology/Barber School	September 30	odd years
Deception Detection Deception Detection Examiner, Deception Detection Intern, Deception Detection Administrator	November 30	even years
Dental Hygienist	May 31	even years
Dentist	May 31	even years
Direct-entry Midwife	September 30	odd years
Dispensing Medical Practitioner Advanced Practice Registered Nurse, Optometrist, Osteopathic Physician and Surgeon, Physician and Surgeon, Physician Assistant	September 30	odd years
Dispensing Medical Practitioner Clinic Pharmacy	September 30	odd years
Electrician Apprentice, Journeyman, Master, Residential Master	Residential Journeyman, November 30	even years
Electrologist	September 30	odd years
Electrology School	September 30	odd years
Elevator Mechanic	November 30	even years
Environmental Health Scientist	May 31	odd years
Esthetician	September 30	odd years
Esthetician Apprentice	September 30	odd years
Esthetics School	September 30	odd years
Factory Built Housing Dealer	September 30	even years
Funeral Service Director	May 31	even years
Funeral Service Establishment	May 31	even years
Genetic Counselor	September 30	even years
Hair Designer	September 30	odd years
Hair Designer Instructor	September 30	odd years
Hair Designer School	September 30	odd years
Health Facility Administrator	May 31	odd years
Hearing Instrument Specialist	September 30	even years
Internet Facilitator	September 30	odd years
Landscape Architect	May 31	even years
Licensed Advanced Substance Use Disorder Counselor	May 31	odd years
Licensed Practical Nurse	January 31	even years
Licensed Substance Use Disorder Counselor	May 31	odd years
Marriage and Family Therapist	September 30	even years
Massage Apprentice	May 31	odd years
Massage Therapist	May 31	odd years
Master Esthetician	September 30	odd years
Master Esthetician Apprentice	September 30	odd years
Medication Aide Certified	March 31	odd years
Music Therapist	March 31	odd years
Nail Technologist	September 30	odd years
Nail Technologist Apprentice	September 30	odd years

Nail Technology School	September 30	odd years
Naturopath/Naturopathic Physician	May 31	even years
Occupational Therapist	May 31	odd years
Occupational Therapy Assistant	May 31	odd years
Optometrist	September 30	even years
Osteopathic Physician and Surgeon, Online Prescriber, Restricted Associate Osteopathic Physician	May 31	even years
Outfitter/Hunting Guide	May 31	even years
Pharmacy Class A-B-C-D-E, Online Contract Pharmacy	September 30	odd years
Pharmacist	September 30	odd years
Pharmacy Technician	September 30	odd years
Physical Therapist	May 31	odd years
Physical Therapist Assistant	May 31	odd years
Physician Assistant	May 31	even years
Physician and Surgeon, Online Prescriber, Restricted Associate Physician	January 31	even years
Plumber Apprentice, Journeyman, Master, Residential Master, Residential Journeyman	November 30	even years
Podiatric Physician	September 30	even years
Pre Need Funeral Arrangement Sales Agent	May 31	even years
Private Probation Provider	May 31	odd years
Professional Engineer	March 31	odd years
Professional Geologist	March 31	odd years
Professional Land Surveyor	March 31	odd years
Professional Structural Engineer	March 31	odd years
Psychologist	September 30	even years
Radiologic Technologist, Radiology Practical Technician Radiologist Assistant	May 31	odd years
Recreational Therapy Therapeutic Recreation Technician, Therapeutic Recreation Specialist, Master Therapeutic Recreation Specialist	May 31	odd years
Registered Nurse	January 31	odd years
Respiratory Care Practitioner	September 30	even years
Security Personnel	November 30	even years
Social Service Worker	September 30	even years
Speech-Language Pathologist	May 31	odd years
State Certified Commercial Interior Designer	March 31	odd years
Veterinarian	September 30	even years
Vocational Rehabilitation Counselor	March 31	odd years

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:

(a) Associate Clinical Mental Health Counselor licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(b) Associate Marriage and Family Therapist licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(c) Certified Advanced Substance Use Disorder Counselor licenses shall be issued for a period of four years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(d) Certified Advanced Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(e) Certified Medical Language Interpreter Tier 1 and 2 licenses shall be issued for a period of three years and may be renewed. The initial renewal date of March 31, 2017, is established for these license classifications, subject to the provisions of Subsection R156-1-308c(7) to establish the length of the initial license period.

(f) Certified Substance Use Disorder Counselor licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(g) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(h) Certified Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed, whichever occurs first.

(i) Funeral Service Intern licenses shall be issued for a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(j) Hearing Instrument Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examination, but a circumstance arose beyond the control of the licensee, to prevent the completion of the examination process.

(k) Pharmacy technician trainee licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward completing the requirements necessary for the next level of licensure.

(l) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(m) Type I Foreign Trained Physician-Educator licenses will be issued initially for a one-year term and thereafter renewed every two years following issuance.

(n) Type II Foreign Trained Physician-Educator licenses will be issued initially for an annual basis and thereafter renewed annually up to four times following issuance if the licensee continues to satisfy the requirements described in Subsection 58-67-302.7(3) and completes the required continuing education requirements established under Section 58-67-303.

R156-1-308b. Renewal Periods - Adjustment of Renewal Fees for an Extended or Shortened Renewal Period.

(1) Except as otherwise provided by statute or as required to establish or reestablish a renewal period, each renewal period shall be for a period of two years.

(2) The renewal fee for a renewal period which is extended or shortened by more than one month to establish or reestablish a renewal period shall increased or decreased proportionately.

R156-1-308c. Renewal of Licensure Procedures.

The procedures for renewal of licensure shall be as follows:

(1) The Division shall send a renewal notice to each licensee at least 60 days prior to the expiration date shown on the licensee's license. The notice shall include directions for the licensee to renew the license via the Division's website.

(2) Except as provided in Subsection(4), renewal notices shall be sent by mail deposited in the post office with postage prepaid, addressed to the last mailing address shown on the Division's automated license system.

(3) In accordance with Subsection 58-1-301.7(1), each licensee is required to maintain a current mailing address with the Division. In accordance with Subsection 58-1-301.7(2), mailing to the last mailing address furnished to the Division constitutes legal notice.

(4) If a licensee has authorized the Division to send a renewal notice by email, a renewal notice may be sent by email to the last email address shown on the Division's automated license system. If selected as the exclusive method of receipt of renewal notices, such mailing shall constitute legal notice. It shall be the duty and responsibility of each licensee who authorizes the Division to send a renewal notice by email to maintain a current email address with the Division.

(5) Renewal notices shall provide that the renewal requirements are outlined in the online renewal process and that each licensee is required to document or certify that the licensee meets the renewal requirements prior to renewal.

(6) Renewal notices shall advise each licensee that a license that is not renewed prior to the expiration date shown on the license automatically expires and that any continued practice without a license constitutes a criminal offense under Subsection 58-1-501(1)(a).

(7) Licensees licensed during the last 12 months of a renewal cycle shall be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their license.

R156-1-308d. Waiver of Continuing Education Requirements - Credit for Volunteer Service.

(1)(a) In accordance with Subsection 58-1-203(1)(g), a licensee may request a waiver of any continuing education requirement established under this title or an extension of time to complete any requirement on the basis that the licensee was unable to complete the requirement due to a medical or related condition, humanitarian or ecclesiastical services, extended presence in a geographical area where continuing education is not available, etc.

(b) A request must be submitted no later than the deadline for completing any continuing education requirement.

(c) A licensee submitting a request has the burden of proof and must document the reason for the request to the satisfaction of the Division.

(d) A request shall include the beginning and ending dates during which the licensee was unable to complete the continuing education requirement and a detailed explanation of the reason why. The explanation shall include the extent and duration of the impediment, extent to which the licensee continued to be engaged in practice of his profession, the nature of the medical condition, the location and nature of the humanitarian services, the geographical area where continuing education is not available, etc.

(e) The Division may require that a specified number of continuing education hours, courses, or both, be obtained prior to reentering the practice of the profession or within a specified period of time after reentering the practice of the profession, as recommended by the appropriate board, in order to assure competent practice.

(f) While a licensee may receive a waiver from meeting the minimum continuing education requirements, the licensee shall not be exempted from the requirements of Subsection 58-1-501(2)(i), which requires that the licensee provide services within the competency, abilities and education of the licensee. If a licensee cannot competently provide services, the waiver of meeting the continuing education requirements may be conditioned upon the licensee limiting practice to areas in which the licensee has the required competency, abilities and education.

(2)(a) In accordance with Subsection 58-1-203(1)(g) and 58-55-302.5(2)(e)(i), the Division may grant continuing education credit to a licensee for volunteering as a subject-matter expert in the review and development of licensing exams for the licensee's profession.

(b) Subject to specific limitations established by rule by the Division, in collaboration with a licensing board, or the Construction Services Commission, this volunteer continuing education credit shall:

(i) apply to the license period or periods during which the volunteer service was provided;

(ii) be granted on a 1:1 ratio, meaning that for each hour of attendance, the licensee may receive one hour of credit;

(iii) be deemed "core", "classroom", or "live" credit, regardless of whether the licensee attended meetings in person or electronically; and

(iv) at the licensee's discretion, all or part of the credit hours may be counted towards any law or ethics continuing education requirements.

(c) The licensee shall be responsible for maintaining information with respect to the licensee's volunteer services to demonstrate the services meet the requirements of this subsection.

(3) In accordance with Section 58-13-3, a health care professional licensee may fulfill up to 15% of the licensee's continuing education requirements by providing volunteer services at a qualified location, within the scope of the licensee's license, earning one hour of continuing education credit for every four documented hours of volunteer services.

R156-1-308e. Automatic Expiration of Licensure Upon Dissolution of Licensee.

(1) A license that automatically expires prior to the expiration date shown on the license due to the dissolution of the licensee's registration with the Division of Corporations, with the registration thereafter being retroactively reinstated pursuant to Section 16-10a-1422, shall:

(a) upon written application for reinstatement of licensure submitted prior to the expiration date shown on the license, be retroactively reinstated to the date of expiration of licensure; and

(b) upon written application for reinstatement submitted after the expiration date shown on the current license, be reinstated on the effective date of the approval of the application for reinstatement, rather than relating back retroactively to the date of expiration of licensure.

R156-1-308f. Denial of Renewal of Licensure - Classification of Proceedings - Conditional Renewal of Licensure During Adjudicative Proceedings - Conditional Initial, Renewal, or Reinstatement Licensure During Audit or Investigation.

(1) When an initial, renewal or reinstatement applicant under Subsections 58-1-301(2) through (3) or 58-1-308(5) or (6)(b) is selected for audit, is under investigation, or is pending inspection, the Division may conditionally issue an initial license to an applicant for initial licensure, or renew or reinstate the license of an applicant pending the completion of the audit, investigation or inspection.

(2) The undetermined completion of a referenced audit, investigation or inspection, rather than the established expiration date, shall be indicated as the expiration date of a conditionally issued, renewed, or reinstated license.

(3) A conditional issuance, renewal, or reinstatement shall not constitute an adverse licensure action.

(4) Upon completion of the audit, investigation, or inspection, the Division shall notify the initial license, renewal, or reinstatement applicant whether the applicant's license is

unconditionally issued, renewed, reinstated, denied, or partially denied or reinstated.

(5) A notice of unconditional denial or partial denial of licensure to an applicant the Division conditionally licensed, renewed, or reinstated shall include the following:

(a) that the applicant's unconditional initial issuance, renewal, or reinstatement of licensure is denied or partially denied and the basis for such action;

(b) the Division's file or other reference number of the audit or investigation; and

(c) that the denial or partial denial of unconditional initial licensure, renewal, or reinstatement of licensure is subject to review and a description of how and when such review may be requested.

R156-1-308g. Reinstatement of Licensure which was Active and in Good Standing at the Time of Expiration of Licensure - Requirements.

The following requirements shall apply to reinstatement of licensure which was active and in good standing at the time of expiration of licensure:

(1) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the Division between the date of the expiration of the license and 30 days after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the Division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and a late fee.

(2) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the Division between 31 days after the expiration of the license and two years after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the Division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and reinstatement fee.

(3) In accordance with Subsection 58-1-308(6)(a), if an application for reinstatement is received by the Division more than two years after the date the license expired and the applicant has not been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States during the time the license was expired, the applicant shall:

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

(b) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to engage in the occupation or profession for which reinstatement of licensure is requested; and

(c) pay the established license fee for a new applicant for licensure.

(4) In accordance with Subsection 58-1-308(6)(b), if an application for reinstatement is received by the Division more than two years after the date the license expired but the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States shall:

(a) provide documentation that the applicant has continuously, since the expiration of the applicant's license in Utah, been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;

(b) provide documentation that the applicant has completed or is in compliance with any renewal qualifications;

(c) provide documentation that the applicant's application was submitted within six months after reestablishing domicile within Utah or terminating full-time government service; and

(d) pay the established license renewal fee and the reinstatement fee.

R156-1-308h. Reinstatement of Restricted, Suspended, or Probationary Licensure During Term of Restriction, Suspension, or Probation - Requirements.

(1) Reinstatement of restricted, suspended, or probationary licensure during the term of limitation, suspension, or probation shall be in accordance with the disciplinary order which imposed the discipline.

(2) Unless otherwise specified in a disciplinary order imposing restriction, suspension, or probation of licensure, the disciplined licensee may, at reasonable intervals during the term of the disciplinary order, petition for reinstatement of licensure.

(3) Petitions for reinstatement of licensure during the term of a disciplinary order imposing restriction, suspension, or probation, shall be treated as a request to modify the terms of the disciplinary order, not as an application for licensure.

R156-1-308i. Reinstatement of Restricted, Suspended, or Probationary Licensure After the Specified Term of Suspension of the License or After the Expiration of Licensure in a Restricted, Suspended or Probationary Status - Requirements.

Unless otherwise provided by a disciplinary order, an applicant who applies for reinstatement of a license after the specified term of suspension of the license or after the expiration of the license in a restricted, suspended or probationary status shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and conditions of license reinstatement;

(2) pay the established license renewal fee and the reinstatement fee;

(3) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be reinstated to engage in the occupation or profession for which the applicant was suspended, restricted, or placed on probation; and

(4) pay any fines or citations owed to the Division prior to the expiration of license.

R156-1-308j. Relicensure Following Revocation of Licensure - Requirements.

An applicant for relicensure following revocation of licensure shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(2) pay the established license fee for a new applicant for licensure; and

(3) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was revoked.

R156-1-308k. Relicensure Following Surrender of Licensure - Requirements.

The following requirements shall apply to relicensure applications following the surrender of licensure:

(1) An applicant who surrendered a license that was active and in good standing at the time it was surrendered shall meet the requirements for licensure listed in Sections R156-1-308a through R156-1-308l.

(2) An applicant who surrendered a license while the license was active but not in good standing as evidenced by the written agreement supporting the surrender of license shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(b) pay the established license fee for a new applicant for licensure;

(c) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was surrendered;

(d) pay any fines or citations owed to the Division prior to the surrender of license.

R156-1-308l. Reinstatement of Licensure and Relicensure - Term of Licensure.

Except as otherwise governed by the terms of an order issued by the Division, a license issued to an applicant for reinstatement or relicensure issued during the last 12 months of a renewal cycle shall, upon payment of the appropriate fees, be issued for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than requiring the licensee to immediately renew their reinstated or relicensed license.

R156-1-310. Cheating on Examinations.

(1) Policy.

The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the Division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

(2) Cheating Defined.

Cheating is defined as the use of any means or instrumentality by or for the benefit of an examinee to alter the results of an examination in any way to cause the examination results to inaccurately represent the competency of an examinee with respect to the knowledge or skills about which they are examined. Cheating includes:

(a) communication between examinees inside of the examination room or facility during the course of the examination;

(b) communication about the examination with anyone outside of the examination room or facility during the course of the examination;

(c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;

(d) permitting anyone to copy answers to the examination;

(e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;

(f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination;

(g) obtaining, using, buying, selling, possession of or having access to a copy of any portion of the examination prior to administration of the examination.

(3) Action Upon Detection of Cheating.

(a) The person responsible for administration of an examination, upon evidence that an examinee is or has been cheating on an examination shall notify the Division of the circumstances in detail and the identity of the examinees involved with an assessment of the degree of involvement of each examinee;

(b) If cheating is detected prior to commencement of the examination, the examinee may be denied the privilege of taking the examination; or if permitted to take the examination, the examinee shall be notified of the evidence of cheating and shall be informed that the Division may consider the examination to have been failed by the applicant or licensee because of the cheating; or

(c) If cheating is detected during the examination, the examinee may be requested to leave the examination facility and in that case the examination results shall be the same as failure of the examination; however, if the person responsible for administration of the examination determines the cheating detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further cheating shall be taken and the examinee may be permitted to continue with the examination.

(d) If cheating is detected after the examination, the Division shall make appropriate inquiry to determine the facts concerning the cheating and shall thereafter take appropriate action.

(e) Upon determination that an applicant has cheated on an examination, the applicant may be denied the privilege of retaking the examination for a reasonable period of time, and the Division may deny the applicant a license and may establish conditions the applicant must meet to qualify for a license including the earliest date on which the Division will again consider the applicant for licensure.

R156-1-404a. Diversion Advisory Committees Created.

(1) There are created diversion advisory committees of at least three members for the professions regulated under Title 58. The diversion committees are not required to be impaneled by the director until the need for the diversion committee arises. Diversion committees may be appointed with representatives from like professions providing a multi-disciplinary committee.

(2) Committee members are appointed by and serve at the pleasure of the director.

(3) A majority of the diversion committee members shall constitute a quorum and may act on behalf of the diversion committee.

(4) Diversion committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in diversion committees business.

R156-1-404b. Diversion Committees Duties.

The duties of diversion committees shall include:

(1) reviewing the details of the information regarding licensees referred to the diversion committee for possible diversion, interviewing the licensees, and recommending to the director whether the licensees meet the qualifications for diversion and if so whether the licensees should be considered for diversion;

(2) recommending to the director terms and conditions to be included in diversion agreements;

(3) supervising compliance with all terms and conditions of diversion agreements;

(4) advising the director at the conclusion of a licensee's

diversion program whether the licensee has completed the terms of the licensee's diversion agreement; and

(5) establishing and maintaining continuing quality review of the programs of professional associations and/or private organizations to which licensees approved for diversion may enroll for the purpose of education, rehabilitation or any other purpose agreed to in the terms of a diversion agreement.

R156-1-404c. Diversion - Eligible Offenses.

In accordance with Subsection 58-1-404(4), the unprofessional conduct which may be subject to diversion is set forth in Subsections 58-1-501(2)(e) and (f).

R156-1-404d. Diversion - Procedures.

(1) No later than 60 days following the referral of a licensee to the diversion committee for possible diversion, diversion committees shall complete the duties described in Subsection R156-1-404b(1) and (2).

(2) Following the completion of diversion committee duties, the Division shall prepare and serve upon the licensee a proposed diversion agreement. The licensee shall have a period of time determined by the Division not to exceed 30 days from the service of the proposed diversion agreement, to negotiate a final diversion agreement with the director. The final diversion agreement shall comply with Subsection 58-1-404.

(3) If a final diversion agreement is not reached with the director within 30 days from service of the proposed diversion agreement, or if the director finds that the licensee does not meet the qualifications for diversion, the Division shall pursue appropriate disciplinary action against the licensee in accordance with Section 58-1-108.

(4) In accordance with Subsection 58-1-404(5), a licensee may be represented, at the licensee's discretion and expense, by legal counsel during negotiations for diversion, at the time of execution of the diversion agreement, and at any hearing before the director relating to a diversion program.

R156-1-404e. Diversion - Agreements for Rehabilitation, Education or Other Similar Services or Coordination of Services.

(1) The Division may enter into agreements with professional or occupational organizations or associations, education institutions or organizations, testing agencies, health care facilities, health care practitioners, government agencies or other persons or organizations for the purpose of providing rehabilitation, education or any other services necessary to facilitate an effective completion of a diversion program for a licensee.

(2) The Division may enter into agreements with impaired person programs to coordinate efforts in rehabilitating and educating impaired professionals.

(3) Agreements shall be in writing and shall set forth terms and conditions necessary to permit each party to properly fulfill its duties and obligations thereunder. Agreements shall address the circumstances and conditions under which information concerning the impaired licensee will be shared with the Division.

(4) The cost of administering agreements and providing the services thereunder shall be borne by the licensee benefiting from the services. Fees paid by the licensee shall be reasonable and shall be in proportion to the value of the service provided. Payments of fees shall be a condition of completing the program of diversion.

(5) In selecting parties with whom the Division shall enter agreements under this section, the Division shall ensure the parties are competent to provide the required services. The Division may limit the number of parties providing a particular service within the limits or demands for the service to permit the responsible diversion committee to conduct quality review of the programs given the committee's limited resources.

R156-1-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) 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;

(2) 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;

(3) 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;

(4) 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;

(5) 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;

(6) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", 2004, established by the Federation of State Medical Boards, which is hereby adopted and incorporated by reference;

(7) failing, as a prescribing practitioner, to follow the "Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain", July 2013, adopted by the Federation of State Medical Boards, which is incorporated by reference;

(8) violating any term, condition, or requirement contained in a "diversion agreement", as defined in Subsection 58-1-404(6)(a); or

(9) failing, as a health care provider, to follow the health care claims practices of Subsection 31A-26-301.5(4), in violation of Subsection 58-1-508(2).

R156-1-502. Administrative Penalties.

(1) In accordance with Subsection 58-1-401(5) and Section 58-1-502, except as otherwise provided by a specific chapter under Title R156, the following fine schedule shall apply to citations issued under the referenced authority:

TABLE

FINE SCHEDULE

FIRST OFFENSE

Violation	Fine
58-1-501(1)(a)	$ 500.00
58-1-501(1)(c)	$ 800.00
58-1-501(2)(o)	$ 0 - $250.00
58-1-508(2)	$ 250.00

SECOND OFFENSE

58-1-501(1)(a)	$1,000.00
58-1-501(1)(c)	$1,600.00
58-1-501(2)(o)	$251.00 - $500.00
58-1-508(2)	$ 500.00

THIRD OFFENSE

Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-1-

502(2)(j)(iii).

(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 or chief investigator 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.

R156-1-503. Reporting Disciplinary Action.

The Division may report disciplinary action to other state or federal governmental entities, state and federal data banks, the media, or any other person who is entitled to such information under the Government Records Access and Management Act.

R156-1-506. Supervision of Cosmetic Medical Procedures.

The 80 hours of documented education and experience required under Subsection 58-1-506(2)(f)(iii) to maintain competence to perform nonablative cosmetic medical procedures is defined to include the following:

(1) the appropriate standards of care for performing nonablative cosmetic medical procedures;

(2) physiology of the skin;

(3) skin typing and analysis;

(4) skin conditions, disorders, and diseases;

(5) pre and post procedure care;

(6) infection control;

(7) laser and light physics training;

(8) laser technologies and applications;

(9) safety and maintenance of lasers;

(10) cosmetic medical procedures an individual is permitted to perform under this title;

(11) recognition and appropriate management of complications from a procedure; and

(12) current cardio-pulmonary resuscitation (CPR) certification for health care providers from one of the following organizations:

(a) American Heart Association;

(b) American Red Cross or its affiliates; or

(c) American Safety and Health Institute.

KEY: diversion programs, licensing, supervision, evidentiary restrictions
April 9, 2018 58-1-106(1)(a)
Notice of Continuation December 6, 2016 58-1-308
58-1-501(2)

R156. Commerce, Occupational and Professional Licensing.
R156-5a. Podiatric Physician Licensing Act Rule.
R156-5a-101. Title.

This rule is known as the "Podiatric Physician Licensing Act Rule".

R156-5a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 5a, as used in Title 58, Chapters 1 and 5a or this rule:

(1) "CPME" means the Council on Podiatric Medical Education.

(2) "Recognized school" as used in Subsection 58-5a-306(2) means a school that is accredited by the Council on Podiatric Medical Education.

R156-5a-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 5a.

R156-5a-104. Organization - Relationship to Rule R156-1.

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

R156-5a-302a. Qualifications for Licensure - Education Requirements.

In accordance with Subsections 58-5a-302(5)(b)(ii) and (iii), an applicant shall complete and sign the affidavit of current Utah post-graduate resident training contained in the Division's podiatric physician license application, to satisfy the Division and board that the applicant:

(1) has been accepted in and is successfully participating in a CPME-approved progressive resident training program within Utah; and

(2) has agreed to the required automatic revocation and surrender of the applicant's license if the applicant fails to continue in good standing in that program.

R156-5a-302b. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1) and 58-5a-302(6), the examinations required to be passed for licensure are Part I, Part II written, Part II CSPE, and Part III of the American Podiatric Medical Licensing Examination (APMLE), developed by the National Board of Podiatric Medical Examiners examination (NBPME).

R156-5a-302c. Qualifications for Licensure - Training Requirements.

(1) In accordance with Subsection 58-5a-103(3)(b)(iii), acceptable documentation that the podiatric physician has completed training and experience in standard or advanced midfoot, rearfoot, and ankle procedures, shall consist of verification from the American Board of Foot and Ankle Surgery that the applicant is currently board qualified.

(2) In accordance with Subsection 58-5a-103(3)(c)(iii), acceptable documentation that the podiatric physician has completed training and experience in standard or advanced midfoot, rearfoot, and ankle procedures, shall consist of verification of a fellowship in foot and ankle surgery from a program approved, at the time of completion, by the Council on Podiatric Medical Education.

R156-5a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1)(a), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 5a is established by rule in Section R156-1-308a.

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

R156-5a-304. Continuing Education.

(1) In accordance with Section 58-5a-304, a continuing professional education requirement is established for all individuals licensed under Title 58, Chapter 5a.

(2) During each two-year period commencing on September 30 of each even-numbered year, a licensee shall be required to complete not less than 40 hours of qualified professional education directly related to the licensee's professional clinical practice.

(3) The required number of hours of professional education for an individual who first becomes licensed during the two-year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the license date.

(4) Qualified professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the program directly related to the practice of a podiatric physician;

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

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

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

(e) have a competent method of registration of individuals who completed the program with records of registration and completion available for review; and

(f) be sponsored or approved by a combination of the following:

(i) one of the organizations listed in Subsection 58-5a-304(3);

(ii) the American Podiatric Medical Association; or

(iii) the Division of Occupational and Professional Licensing.

(5) Credit for professional education shall be recognized in accordance with the following:

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

(b) a maximum of 40 hours per two-year period may be recognized for teaching in a college or university or teaching qualified professional education courses in the field of podiatry;

(c) a maximum of ten hours per two-year period may be recognized for clinical readings directly related to practice as a podiatric physician;

(d) a maximum of six hours per two-year period may come from the Division of Occupational and Professional Licensing; and

(e) per Section 58-13-3 concerning charity health care, a maximum of 15% of the required hours per two-year period may come from providing volunteer services within the scope of license at a qualified location, with one hour of credit earned for every four hours of volunteer service.

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after close of the two-year period to which the records pertain. It is the responsibility of the licensee to demonstrate the professional education meets the requirements of this section.

(7) If a licensee properly documents that the licensee is engaged in full-time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section, the licensee may be excused from the requirement for a period of up to three years.

R156-5a-305. Radiology Course for Unlicensed Podiatric Assistants.

In accordance with Subsection 58-54-306(3), radiology courses for an unlicensed person performing services under the supervision of a podiatric physician shall include radiology theory consisting of the following:

(1) orientation of radiation technology;

(2) terminology;

(3) radiographic podiatric anatomy and pathology (cursory);

(4) radiation physics (basic);

(5) radiation protection to patient and operator;

(6) radiation biology including interaction of ionizing radiation on cells, tissues and matter;

(7) factors influencing biological response to cells and tissues to ionizing radiation and cumulative effects of x-radiation;

(8) external radiographic techniques;

(9) processing techniques including proper disposal of chemicals; and

(10) infection control in podiatric radiology.

KEY: licensing, podiatrists, podiatric physician
October 10, 2017 58-1-106(1)(a)
Notice of Continuation May 1, 2018 58-1-202(1)(a)
58-5a-101

R156. Commerce, Occupational and Professional Licensing.
R156-37c. Utah Controlled Substance Precursor Act Rule.
R156-37c-101. Title.

This rule is known as the "Utah Controlled Substance Precursor Act Rule."

R156-37c-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 37c, as used in Title 58, Chapters 1 and 37c or this rule:

(1) "Involved officer, director, partner, proprietor, employee or manager" means an individual who has direct responsibility for the purchasing, storage, handling, disbursement, sale, shipping or disposal of controlled substance precursors.

(2) "Unusual and extraordinary regulated transaction" means:

(a) a cash transaction;

(b) a transaction of a magnitude outside of standard business conduct; or

(c) a transaction in which the distributor does not have good knowledge of the legitimate use by the purchaser of the controlled substance precursors being purchased.

R156-37c-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 37c.

R156-37c-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.

R156-37c-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsection 58-37c-8(2), an applicant shall submit a complete application on a form provided by the division which includes the following:

(1) identifying information including business legal name, physical location and mailing address, contact person for licensing purposes, organization type and identifying information, trade or business names;

(2) disclosure of nature of business;

(3) all facilities where business will be conducted;

(4) identification of all controlled substance precursors for which licensure is requested; and

(5) qualifying information concerning involved officers, directors, partners, proprietors, employees, and managers.

R156-37c-601. Routine Transactions.

In accordance with Subsection 58-37c-10(4)(a), the following are the recordkeeping and reporting requirements which shall be met by a regulated controlled substance precursor distributor and purchaser transaction.

(1) Each distributor shall submit to the division the following:

(a) all records of purchase 15 days following the end of the calendar quarter;

(b) all records of sale or transfer 15 days following the end of each calendar month; and

(c) all inventory reconciliations 15 days following the end of the calendar quarter.

(2) Each purchaser shall submit to the division the following:

(a) all records of purchase 15 days following the end of each calendar month;

(b) all records of disposition 15 days following the end of the calendar quarter; and

(c) all inventory reconciliations 15 days following the end of the calendar quarter.

R156-37c-602. Extraordinary or Unusual Regulated Transactions.

In accordance with Subsection 58-37c-10((4)(b), the following are the recordkeeping and reporting requirements which shall be met by a regulated controlled substance precursor distributor and purchaser with respect to each extraordinary or unusual regulated transaction.

(1) Each distributor shall cause records of sale or transfer to be received by the division within 72 hours after the sale or transfer.

(2) Each purchaser shall cause records of purchase to be received by the division within 72 hours after purchase.

R156-37c-603. Identification.

In accordance with Subsection 58-37c-10(4)(c), the following is the identification which shall be presented by a purchaser to a distributor and the requirements for recording that identification by the distributor prior to the sale or transfer or any controlled substance precursor in a regulated transaction.

(1) A purchaser shall present a copy of the controlled substance precursor license and a photo identification, if the purchase is to be shipped by other than a common carrier.

(2) A distributor shall record the controlled substance precursor license number and organization name along with the date of sale and material and quantity sold. This identification can be kept on file for a customer for the duration of a license period. A notarized photocopy of the license is acceptable proof of licensure. For transactions involving purchasers outside the state, no license number is required, but all other reporting is required.

R156-37c-604. Theft, Loss, or Shortage of Controlled Substance Precursor.

In accordance with Subsection 58-37c-10(4)(e), purchasers and distributors shall file a report with respect to a theft, loss, or shortage of a controlled substance precursor with the division within 72 hours of discovery of the loss or shortage using the format required for unusual transactions except in the case of minor shortages discovered during inventory which would be consistent with expected handling losses which will not be reported except in the inventory reconciliation.

KEY: licensing, controlled substances, precursor
1994 **58-1-106(1)(a)**
Notice of Continuation April 24, 2018 **58-1-202(1)(a)**
58-37c-1

R156. Commerce, Occupational and Professional Licensing.
R156-74. Certified Court Reporters Licensing Act Rule.
R156-74-101. Title.

This rule shall be known as the "Certified Court Reporters Licensing Act Rule."

R156-74-102. Definitions.

(1) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 74, is further defined, in accordance with Subsections 58-1-203(1)(e), in Section R156-74-502.

R156-74-103. 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 74.

R156-74-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-307.

R156-74-303. Renewal Cycle - Procedure.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 74 is established by rule in Section 58-1-308.

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

R156-74-304. Continuing Education.

(1) In accordance with Subsection 58-74-303(2), the standards for the continuing education requirement for renewal of a certified court reporter shorthand reporter license shall be the standards established by the National Court Reporters Association, Council of the Academy of Professional Reporters Continuing Education Program, revised October 1, 1998, which is hereby adopted and incorporated by reference.

(2) In accordance with Subsection 58-74-303(2), the requirements and standards for the continuing education requirement for renewal of a certified court reporter voice reporter license shall be the standards established by the National Verbatim Reporters Association, Council of the Academy of Professional Reporters Continuing Education Program, effective January 1, 2006, which is hereby adopted and incorporated by reference.

R156-74-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing, as a certified shorthand reporter to conform to the generally accepted and recognized standards and ethics of the profession including those established by the National Court Reporters Association, Council of the Academy of Professional Reporters, July 1997 edition, which is hereby incorporated by reference; and

(2) failing as a certified voice reporter to conform to the generally accepted and recognized standards and ethics of the profession including those established by the National Verbatim Reporters Association, Council of the Academy of Professional Reporters, April 2005 edition, which is hereby incorporated by reference.

KEY: court reporting, licensing, shorthand reporter, certified court reporter

July 22, 2008	**58-74-101**
Notice of Continuation April 24, 2018	**58-74-303(2)**
	58-1-106(1)
	58-1-202(1)

R277. Education, Administration.
R277-100. Definitions for Utah State Board of Education (Board) Rules.
R277-100-1. Authority and Purpose.

(1) This rule is authorized by Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board and by Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to provide definitions that are used in the Board rules beginning with R277.

R277-100-2. Definitions.

(1) "Accreditation" means the formal process for internal and external review and approval under the standards of an accrediting entity adopted by the Board.

(2) "Audit" means an independent appraisal activity established by the Board as a control system to examine and evaluate the adequacy and effectiveness of internal control systems within an agency.

(3) "Board" means the State Board of Education.

(4) "Charter school" means a school established as a charter school by a charter school authorizer under Title 53G, Chapter 5, Charter Schools, and rule.

(5) "District school" means a public school under the control of a local school board elected under Title 20A, Chapter 14, Nomination and Election of State and Local School Boards.

(6) "Educator" means an individual licensed under Section 53E-6-201 and who meets the requirements of R277-501.

(7) "Individualized education program" or "IEP" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 (2004), and rule.

(8) "Individuals with Disabilities Education Act" or "IDEA," 20 U.S.C. Section 1400 et seq. (2004), is a four part (A-D) piece of federal legislation that ensures a student with a disability is provided with a Free Appropriate Public Education (FAPE) that is tailored to the student's individual needs.

(9)(a) "LEA" or "local education agency" means a school district or charter school.

(b) For purposes of certain rules, "LEA" or "local education agency" may include the Utah Schools for the Deaf and the Blind (USDB) if indicated in the specific rule.

(10)(a) "LEA governing board" means:

(i) for a school district, a local school board; and

(ii) for a charter school, a charter school governing board.

(b) For purposes of certain rules, "LEA governing board" may include the State Board of Education as the governing board for the Utah Schools for the Deaf and the Blind if indicated in the specific rule.

(11) "Parent" means a parent or guardian who has established residency of a child under Sections 53G-6-302, 53G-6-303, or 53G-6-402, or another applicable Utah guardianship provision.

(12) "Plan for College and Career Readiness" or "SEOP" means a student education occupation plan for college and career readiness that is a developmentally organized intervention process that includes:

(a) a written plan, updated annually, for a secondary student's (grades 7-12) education and occupational preparation;

(b) all Board, local board and local charter board graduation requirements;

(c) evidence of parent or guardian, student, and school representative involvement annually;

(d) attainment of approved workplace skill competencies, including job placement when appropriate; and

(e) identification of post secondary goals and approved sequence of courses.

(13) "State Charter School Board" or "SCSB" means the State Charter School Board created in Section 53G-5-201.

(14) "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

(15) "USDB" means the Utah Schools for the Deaf and the Blind.

(16) "USOR" means the Utah State Office of Rehabilitation.

KEY: Board of Education, rules, definitions
August 11, 2016 **Art X Sec 3**
53E-3-401(4)

R277. Education, Administration.
R277-101. Public Participation in Utah State Board of Education Meetings.
R277-101-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Title 52, Chapter 4, Open and Public Meetings Act, which directs that the deliberations and actions of the Board be conducted openly; and

(c) Subsection 53E-3-401(4), 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 describe procedures to be followed by the Board in its conduct of the public's business in order to:

(a) hear from those who desire to be heard on public education matters in the state;

(b) effectively and efficiently utilize the time of the Board; and

(c) balance desire for public information with other demands on the Board's time.

R277-101-2. Definitions.

"Chair" means:

(1) the duly elected Chairperson of the Board;

(2) a Vice-chair when conducting a meeting of the Board; or

(3) the Chair of a Board standing committee.

R277-101-3. Public Participation.

(1) The general public may attend meetings of the Board, unless a meeting is closed in accordance with Section 52-4-204.

(2) The general public may speak to the Board regarding any issue when acknowledged and recognized by the Board Chair during scheduled public comment.

(a) The chair may give priority to an individual or group who submits a written request to address the Board prior to the meeting, including a brief description of the issue to be addressed.

(b) The Board may not take action during the public comment portion of a meeting.

(c) A Board member may request that an item raised during public comment be placed on a future agenda for possible action in accordance with Board bylaws.

(d)(i) The Chair may limit the time available for individual comments.

(ii) The Chair may request groups to designate a spokesperson.

(iii) The Board shall include in its meeting agenda the amount of time set aside for public comment and the restrictions on individual speakers or group spokespersons.

(3)(a) A member of the general public may speak to items on the agenda:

(i) during the time designated for public comment; or

(ii) at the discretion of and as invited by the Chair, when the item is properly before the Board or a committee.

(b) The Chair may request that public comment be provided in writing.

(4) All presentations to the Board or one of its committees shall exemplify courteous behavior and appropriate language.

(5) The Chair may invite additional comment to the Board or a committee in the Chair's discretion.

(6) In accordance with Subsection 52-4-202(6)(b), at the discretion of the Chair, the Board may discuss a topic raised by the public in an open meeting even if the item was not included in the public meeting notice.

(7) At the discretion of the Chair, a member of the public may request to comment in the committee meeting by raise of hand.

KEY: school boards, open government

August 7, 2017	**Art X Sec 3**
Notice of Continuation June 6, 2017	**52-4-1**
	53E-3-401(4)

R277. Education, Administration.
R277-102. Adjudicative Proceedings.
R277-102-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Default" means the failure of a party to an administrative proceeding to meet the requirements or timelines of the proceeding.

C. "Presiding officer" means, in addition to the definition of 63G-4-103(1)(h)(i), the Chair of the Board or any person designated to serve as the presiding officer.

D. "State Superintendent" means the State Superintendent of Public Instruction.

E. "USOE" means the Utah State Office of Education.

R277-102-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of public education in the Board, Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities, and Section 63G-4-203 which directs agencies to make rules regarding adjudicative proceedings following the general designation of Board hearings as informal.

B. The purpose of this rule is to specify how adjudicative proceedings are conducted before the Board. All procedures shall be consistent with Title 63G, Chapter 4. This rule does not govern Board actions under Subsections 63G-4-102(2)(a),(d),(g),(j),(l), and (p).

R277-102-3. Commencement of Adjudicative Proceedings.

A. Any party to an initial determination made by the Board may initiate an adjudicative proceeding under the Administrative Procedures Act and this rule by filing a request for Board action on a form, Request for Board Action, provided by the Board, or by submitting in writing the information required on the form.

B. Each Notice of Board Action and Request for Board Action filed is assigned a number consisting of the year in which the notice or request is filed and another number showing its numerical position among the hearings filed during the year.

R277-102-4. Designation of Adjudicative Proceedings as Formal or Informal.

All proceedings conducted before the Board are initially designated as informal. The presiding officer designated for the proceeding may convert an informal proceeding to a formal proceeding and vice versa under Subsection 63G-4-202(3).

R277-102-5. Procedures for Informal Adjudicative Proceedings.

A. The Board may hold a hearing if a request for a hearing is received by the Board within 20 business days of Board action.

B. The Board shall make appropriate arrangements for the hearing including:

(1) determining the date of the hearing;

(2) designating a Board member, USOE employee or another individual as a hearing officer;

(3) designating the hearing location and other necessary information; or

(4) establishing timelines consistent with Section 63G-4-301.

C. The Board may delegate the hearing arrangements and procedures to a hearing officer.

D. The Board may, on a case by case basis, determine if an informal hearing may be held electronically.

E. The Board shall maintain a record of all aspects of an informal adjudicative proceeding.

F. The Board shall issue a decision no later than 120 days from the receipt of the Request for Agency Action and following the conclusion of an informal proceeding.

R277-102-6. Procedures for Formal Adjudicative Proceedings.

A. The Board may designate an adjudicative proceeding as formal following a Request for Board Action.

B. If the Board designates a proceeding as formal, the Board may add any of the following procedures, as appropriate, to the hearing procedures designated in R277-102-5:

(1) responsive pleadings;

(2) discovery for parties;

(3) the right to subpoena witnesses;

(4) intervention by third parties;

(5) an electronic recording of the complete proceeding; and

(6) a written final decision consistent with Subsection 63G-4-208(1).

C. For both informal and formal adjudicative proceedings, the Board-designated presiding officer or hearing officer shall have considerable discretion in managing and making procedural and evidentiary decisions throughout the hearing process.

R277-102-7. Default.

A. A presiding officer or hearing officer designated for a formal or informal hearing may recommend a default to the Board consistent with deadlines set by the presiding officer and the provisions of Section 63G-4-209.

B. A defaulted party may seek to have a default set aside consistent with Subsection 63G-4-209(3) and timelines set by the presiding officer.

R277-102-8. Recommendation to Board.

A. A written hearing report, including findings of fact and conclusions of law, and presiding officer decision shall be submitted to the Board as a recommendation.

B. The Board's final decision following acceptance of written findings is the final administrative decision on the issue, subject to a Request for Reconsideration under Section 63G-4-302.

KEY: administrative procedures, rules and procedures
February 7, 2012 63G-4-101 through 63G-4-302
Notice of Continuation April 4, 2014 63G-4-405
63G-4-503
53E-3-401(4)
Art X Sec 3

R277. Education, Administration.
R277-105. Recognizing Constitutional Freedoms in the Schools.
R277-105-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Conscience" means a standard based upon learned experiences, a personal philosophy or system of belief, religious teachings or doctrine, an absolute or external sense of right and wrong which is felt on an individual basis, a belief in an external Absolute, or any combination of the foregoing.

C. "Discretionary time" for students means school-related time that is not instructional time. It includes free time before and after school, during lunch and between classes or on buses, and private time before athletic and other events or activities.

D. "Exercise of religious freedom" means the right to choose or reject religious, theistic, agnostic, or atheistic convictions and to act upon that choice.

E. "Guardian" means a person who has been granted legal guardianship of a child in accordance with state law.

F. "Instructional time" means time during which a school is responsible for a student and the student is required or expected to be actively engaged in a learning activity. It includes instructional activities in the classroom or study hall during regularly scheduled hours, required activities outside the classroom, and counseling, private conferences, or tutoring provided by school employees or volunteers acting in their official capacities during or outside of regular school hours.

G. "LEA" means local education agency, including local school boards/ public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

H. "Parent" means a biological or adoptive parent who has legal custody of a child.

I. "USOE" means the Utah State Office of Education.

R277-105-2. Authority and Purpose.

A. This rule is adopted pursuant to Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board. The rule is based upon the First Amendment to the Constitution of the United States; Article I, Section 4, Article III, Sections 1 and 4, and Article X, Section 1 of the Utah State Constitution which speak of rights of conscience, perfect toleration of religious sentiment, the free exercise of religion, and prohibitions against the establishment of religion or the imposition of sectarian control in the schools; Subsection 53G-10-204(3), which directs that curriculum promoting respect for parents and home, morality, qualities of character and respect for and an understanding of the Constitutions of the United States and the State of Utah be taught in connection with regular school work; and Sections 53G-10-202 through 53G-10-203, which provide direction for the USOE and LEAs regarding curriculum, freedom of conscience, exercise of religious freedoms, and student expression.

B. The purpose of this rule is to help public school officials to protect and accommodate individual rights in the operation of Utah's schools.

R277-105-3. Interpretive Context for the Rule.

A. The Board recognizes the importance of religious belief and practice and other expressions of conscience in the lives of many people, the critical role that such beliefs have played in the development of societies and cultures throughout the world, and the influence that these beliefs continue to have on concepts and interpretations relating to school curricula. The Board also recognizes that Utah is becoming a pluralistic society with an increasing diversity of peoples and beliefs, and that this diversity will require the development of greater tolerance and understanding among the people of the state.

B. The Constitution of Utah prohibits the use of the powers of government to encourage or discourage religious beliefs or practices, or to repress rights of conscience. Given their unique relationship to children attending the public schools, school officials must be particularly careful to remain neutral in matters relating to religion, while striving to accommodate the religious beliefs and practices and the freedom of conscience of students and their parents.

C. Court decisions interpreting Constitutional establishment clause provisions are a commonly used source for information about acceptable relationships between government and religion. The Board has attempted to reflect applicable rulings in the development of this rule. Because of the relative absence of court interpretations concerning the meaning of the Utah Constitution as applied to the public schools, this rule places primary reliance upon interpretations of related clauses in the First Amendment to the United States Constitution. In applying the rule, school officials may presume that any accommodation of religion which would be permissible under applicable rulings interpreting the First Amendment to the United States Constitution, and has not been prohibited in a decision interpreting Utah law which is binding upon the Utah public education system, is permissible in the schools of the state of Utah.

R277-105-4. Creation and Implementation of Curriculum.

A. A study, performance, or display which includes examination of or presentations about religion, religious thought or expression, or the influence thereof in music, art, literature, law, politics, history, or any other portion of the curriculum may be undertaken in the public schools so long as it is designed to achieve permissible educational objectives and is presented within the context of the approved curriculum.

B. The objective study of comparative religions is permissible, but no religious tenet, belief, or denomination may be given inappropriate emphasis.

C. No aspect of cultural heritage, political or moral theory, or societal value may be either included or excluded from consideration in the public schools primarily because it explicitly or implicitly contains theistic, agnostic, or atheistic assumptions.

D. An analysis of religion, deity, an absolute moral principle, or any other concept that may contain a theistic, agnostic, or non-theistic assumption, may be presented when included as an appropriate component or aspect of a broader study, display, presentation, or discussion regarding cultural heritage, political theory, moral theory or a societal value.

R277-105-5. Requests for Waiver of Participation in School Activities.

A. A parent, a legal guardian of a student, or a secondary student may request a waiver of participation in any portion of the curriculum or school activity which the requesting party believes to be an infringement upon a right of conscience or the exercise of religious freedom in any of the following ways:

(1) it would require an affirmance or denial of a religious belief or right of conscience;

(2) it would require participation in a practice forbidden by a religious belief or practice, or right of conscience; or

(3) it would bar participation in a practice required by a religious belief or practice, or right of conscience.

B. A claimed infringement under Subsection A must rise to a level of belief that the requested conduct violates a superior duty which is more than personal preference.

C. If a minor student seeks a waiver of participation under Subsection A, the school shall promptly notify the student's parent or legal guardian about the student's choice. In the event of a conflict, a parent's or legal guardian's wishes shall prevail over those of a minor student.

D. A parent, guardian, or secondary student requesting a waiver of participation under Subsection A may also suggest an alternative that requires reasonably equivalent performance by the student of the objective of the curriculum or activity that is believed to be objectionable.

E. In responding to a request under Subsection A, the school shall:

(1) waive participation by the student in the objectionable curriculum or activity;

(2) provide a reasonable alternative as suggested by the parent or secondary student, or other reasonable alternative developed in consultation with the requesting party, that will achieve the objectives of the portion of the curriculum or activity for which waiver is sought; or

(3) deny the request.

F. A request for waiver of required participation shall not be denied unless the responsible school official finds that requiring the participation of that particular student is the least restrictive means necessary to achieve a specifically identified educational objective in furtherance of a compelling governmental interest.

G. In responding to a request under Subsection A, the school shall not require an affected student to accept a sub-standard or educationally deficient alternative that is unreasonably burdensome.

H. Permitting the submission of requests for participation waivers, and the provision of reasonable alternatives, is intended to facilitate appropriate protection and accommodation of a requesting party's asserted right of conscience or exercise of religious freedom, and shall not be considered to be an attempt by a school official to endorse, promote or disparage a particular religious or non-religious viewpoint.

R277-105-6. Student Expression.

A. A student participating in a classroom discussion, presentation, or assignment, or in a school sponsored activity, shall not be prohibited from expressing personal beliefs of any kind nor be penalized for so doing, unless the conduct:

(1) unreasonably interferes with order or discipline;

(2) threatens the well-being of persons or property; or

(3) violates concepts of civility or propriety appropriate in a school setting.

B. Students may initiate and conduct voluntary religious activities or otherwise exercise their religious freedom on school grounds during discretionary time. Individuals not currently enrolled as students in the school may neither conduct nor regularly attend the activities. School officials may neither conduct nor actively participate in the activities, but may be present as necessary to ensure proper observance of school rules and may limit or prohibit student activities under this section which:

(1) unreasonably interfere with the ability of school officials to maintain order and discipline;

(2) threaten the well-being of persons or property; or

(3) violate concepts of civility or propriety appropriate in a school setting.

R277-105-7. Religious Services and Church-Owned Facilities.

A. Public school officers and employees may neither authorize nor encourage prayer or devotional activities in connection with any class, program, presentation or other student activity which is under the control, direction, or sponsorship of an LEA or public school. This Subsection shall not act to restrict student rights under R277-105-6.

B. No school employee or student may be required to attend or participate in any religious service, whether in an individual capacity or as a member of a performing group, regardless of where or when the service is held. No penalty may be assessed for failure to attend or perform in such an activity.

C. Subject to the requirements of Subsection R277-105-5, students who are members of performing groups such as school choirs may be required to rehearse or otherwise perform in a church-owned or operated facility if the following conditions are met:

(1) the performance is not part of a religious service;

(2) the activity of which the performance is a part is neither intended to further a religious objective nor under the direction of a church official; and

(3) the activity is open to the general public.

D. Students may voluntarily attend and perform during a religious service as individuals or as members of a group, provided all arrangements are made by students or non-school personnel.

E. Religious activities may be conducted on the same basis as any other non-school activity outside of regular school hours.

F. Subject to the requirements of R277-105-5, students may be required to visit church-owned facilities when religious services are not being conducted if the visit is intended solely for the purpose of pursuing permissible educational objectives such as those relating to art, music, architecture, or history.

R277-105-8. Expressions of Personal Belief by Employees.

A. An employee's rights relating to voluntary religious practices and freedom of speech do not include proselytizing of any student regarding atheistic, agnostic, sectarian, religious, or denominational doctrine while the employee is acting in the employee's official capacity, nor may an employee attempt to use his position to influence a student regarding the student's religious beliefs or lack thereof.

B. Even though acting in an official capacity, an employee may respond in an appropriate and restrained manner to a spontaneous question from a student regarding the employee's personal belief or perspective. Nevertheless, because of the special position of trust held by school employees, employees may not advocate or encourage acceptance of a belief or perspective; but may, by exercising due caution, explain or define personal religious beliefs or perspectives, or opinions about the rightfulness or wrongfulness of his/her own, or any other person's religious beliefs or lack thereof.

R277-105-9. Mandatory Responsibilities of LEAs.

A. Supervision and Training

(1) Local school boards and their employees shall cooperate and share responsibilities in implementing Sections 53G-10-204, et seq.

(2) Each local school board shall adopt and implement policies and training in accordance with this rule and the provisions of Sections 53G-10-204 et seq., to include the following:

(a) the person to whom a request for waiver of participation or substitution of another activity is to be directed;

(b) how notice is to be given to the parent of a minor secondary student who makes a request pursuant to an exercise of freedom of conscience or exercise of religious freedom under Sections 53G-10-205 and 53G-10-203;

(c) how appeals may be taken from a decision to require participation in any curriculum or activity after a request to either waive participation or allow substitution of another activity has been made by a parent, legal guardian or secondary student, including suspension of participation requirements until a ruling on the appeal is issued;

(d) establish procedures whereby students are not compelled to participate in any curriculum or activity after a request to waive participation or allow substitution of another activity has been submitted unless it is determined that requiring the participation of that particular student is the least restrictive means necessary to achieve a specifically identified educational

objective in furtherance of a compelling governmental interest; and

(e) establish procedures whereby any portion of any curriculum or activity that is repeatedly alleged to interfere with the rights of conscience or exercise of religious freedom of students, parents or legal guardians shall be evaluated to determine whether the educational objectives could be achieved by less intrusive means.

KEY: freedom of religion, public education
June 9, 2014 Art X Sec 3
Notice of Continuation April 4, 2014 53E-10-204(3)
53G-10-202 through 53G-10-205

R277. Education, Administration.
R277-106. Utah Professional Practices Advisory Commission Appointment Process.
R277-106-1. 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 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53E-6-503(1)(a), which directs the Board to adopt rules establishing procedures for nominating and appointing UPPAC members.

(2) The purpose of this rule is to establish nomination and appointment procedures for UPPAC members.

R277-106-2. Definitions.

(1) "Nomination application" means a form prepared by the Superintendent as described in R277-106-3.

(2) "Utah Professional Practices Advisory Commission" or "UPPAC" means an advisory commission established under Section 53E-6-501 to assist and advise the Board in matters relating to the professional practices of educators.

R277-106-3. UPPAC Notification, Nomination and Application Process.

(1) The UPPAC Executive Secretary shall notify school districts, charter schools, and education organizations in writing of openings on UPPAC for the upcoming term by May 1.

(2) The Superintendent shall develop a nomination application through which an applicant expresses interest in serving on UPPAC, which outlines the expectations and time commitment required of a UPPAC member.

(3) A nomination application must be signed by:

(a) the applicant;

(b) in the case of a licensed educator whose primary assignment is teaching or school level, the applicant's principal and superintendent or charter school director;

(c) in the case of a licensed educator whose assignment is as a principal or at the district level, the applicant's superintendent;

(d) in the case of a licensed educator whose assignment is as a district superintendent or charter school director, the applicant's local board or charter school governing board chair; and

(e) in the case of an education organization representative, an officer of the education organization as provided in Subsection 53E-6-502(1).

(4) An educator shall submit a statement of interest and resume or vita along with the nomination application.

(5) An applicant who is interested in serving on UPPAC shall submit a nomination application to the Superintendent by May 31.

R277-106-4. UPPAC Selection Process.

(1) The UPPAC Executive Secretary shall review all complete and properly filed applications and may make recommendations to the Superintendent and Board prior to June 1.

(2) Prior to making the recommendations described in Subsection (1), the Executive Secretary may seek additional information to provide to the Superintendent and Board about the experience and qualification of UPPAC applicants.

(3) Prior to making the recommendations described in Subsection (1), the Executive Secretary shall consider demographic diversity, including:

(i) rural and urban representation;

(ii) geographical balance;

(iii) elementary and secondary representation;

(iv) gender diversity;

(v) ethnic diversity;

(vi) specialized knowledge of an applicant; and

(vii) representation of LEA superintendents, principals, or charter school administrators.

(4) In addition to receiving recommendations from the UPPAC Executive Secretary, as described in Subsection (1), the Superintendent shall solicit recommendations from the Board prior to making UPPAC appointments consistent with Section 53E-6-503.

(5) If a current UPPAC member desires to serve a second term, the member shall indicate the desire to serve an additional term in writing to the Superintendent prior to May 1 of the year in which the member's term expires.

(6) The application of a UPPAC member seeking reappointment shall be considered for recommendation at the same time that new appointments are considered.

(7) The Executive Secretary may retain nomination applications for consideration in the event of mid-term vacancies or for vacancies in subsequent years.

R277-106-5. Education Organization Member Appointments.

(1) The state organization or a local chapter of the education organization with the largest membership of parents of students and teachers in the state may nominate community members to serve on UPPAC.

(2) Community members may submit their names to the education organization described in Subsection 53E-6-502(1) for nomination by the organization.

(3) The two education organization members may not serve concurrent terms.

R277-106-6. Filling of Vacancies.

(1) The UPPAC Executive Secretary shall recommend names to the Superintendent and Board to fill UPPAC vacancies that occur midyear.

(2) The UPPAC Executive Secretary may recommend names of previous applicants for UPPAC vacancies or names from school districts or charter schools or other groups or areas of the state that are under represented.

KEY: professional competency, professional practices
February 7, 2017 **Art X Sec 3**
Notice of Continuation December 14, 2016 **53E-6-503(1)(a)**
53E-3-401(4)

R277. Education, Administration.
R277-108. Annual Assurance of Compliance by Local School Boards.
R277-108-1. 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) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law and allows the Board to interrupt disbursements of state aid to any district which fails to comply with rules adopted in accordance with the law.

(2) The purpose of this rule is to provide local school boards with a list of laws requiring local school board action and a means of assuring that local boards are in compliance.

R277-108-2. Definitions.

"Annual assurance letter" means a letter required annually from each local school board by the Board to be received no later than October 1 of each year that provides the required compliance information and documentation, if directed, for identified programs and funds.

R277-108-3. Superintendent Responsibilities.

(1) The Superintendent shall provide a list of laws and a list of State Board of Education Administrative Rules which require action or compliance by June 30 of each year to school district superintendents, the superintendent for the Utah School for the Deaf and the Blind and charter school directors.

(2) The list described in Subsection (1) shall identify laws and rules along with required compliance dates and reporting forms, if different or necessary than or in addition to the annual assurance letter.

(3) The Superintendent shall consolidate all required reporting and compliance forms and provide for electronic reporting, to the extent possible.

R277-108-4. LEA Responsibilities.

(1) An LEA shall submit the required annual assurance letter and other compliance forms on or before dates identified by the Board.

(2) In the event that an LEA is unable to provide required assurances, compliance information or forms by required dates, an LEA shall provide to the Superintendent a written explanation of the LEA's inability and provide a compliance date.

(3) An LEA's request for additional time to provide the assurance shall be reviewed by the Superintendent and accepted or rejected in a timely manner.

R277-108-5. Assurances.

An LEA shall provide, consistent with state law, written assurance of the following:

(1) the National motto is displayed in schools consistent with Subsection 53G-10-302(6);

(2) the Pledge of Allegiance is recited in public schools consistent with Subsection 53G-10-304(3);

(3) a policy has been developed, in consultation with school personnel, parents, and school community, to provide for effective implementation of student education plans and plans for college and career readiness consistent with Subsection 53E-2-304(2)(b);

(4) compliance with Section 53G-11-205, that the LEA does not endorse or provide preferential treatment for any education employee association;

(5) a policy has been developed for the Quality Teaching Block Grant Program consistent with Section 53F-2-517;

(6) a policy has been developed on education association leave consistent with Section 53G-11-206;

(7) each public school within the LEA has established a community council consistent with Section 53G-7-1202, and the community council members have been advised of their responsibilities consistent with Sections 53G-7-1202 and 53G-7-1204;

(8) the LEA has provided the Superintendent with required Utah Performance Assessment System for Students (U-PASS) test results in order for the Superintendent to fulfill the requirements of Section 53E-4-311;

(9) the LEA does not make payroll deductions from the wages of its employees for political purposes consistent with Subsection 34-32-1.1(2);

(10) the LEA has implemented a training program for school administrators consistent with Subsection 53G-4-402(1)(f);

(11) for a school district, the local school board has an educator evaluation program developed by a joint committee including classroom teachers, parents and administrators consistent with Section 53G-11-506;

(12) the local school board or charter school governing board has presented and implemented an electronic device policy consistent with the timelines and provisions of R277-495;

(13) the LEA has posted the LEA's collective bargaining agreement on the LEA's website within ten days of the ratification or modification of any collective bargaining agreement consistent with Section 53G-11-207;

(14) by May 15 of each year, the LEA has posted certain public financial information on the LEA's website consistent with Sections 63A-3-401 through 63A-3-404; and

(15) the LEA has trained educators employed by the LEA on the Utah Educator Professional Standards described in Rules R277-515 and R277-516 as required in Section R277-515-7.

R277-108-6. Reporting Deadlines.

Letters from LEAs assuring compliance with the laws described in Section R277-108-5 are due to the Superintendent no later than October 1 of each year.

R277-108-7. Penalties for Noncompliance.

(1) The Superintendent shall request written explanation from an LEA and identified schools that fail to meet reporting and compliance deadlines.

(2) Following an opportunity to provide explanations and request delays, LEAs and identified schools shall be notified of penalties assessed by the Board against the LEAs in accordance with R277-114.

R277-108-8. Record Retention.

Letters of assurance, as required by the Board, shall be kept on file by the Superintendent for five years, together with letters of explanation and documentation of penalties, as directed by the Board.

KEY: local school boards, compliance
November 7, 2017 Art X Sec 3
Notice of Continuation September 13, 2017 53E-3-401(4)

R277. Education, Administration.
R277-109. Legislative Reporting and Accountability.
R277-109-1. 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 53E-3-501(1), which directs the Board to establish rules and minimum standards for the public schools;

(c) Subsection 53E-3-401(2)(a), which gives the Board general control and supervision of the state's public education system for adoption and enforcement of rules;

(d) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Boards duties and responsibilities under the Utah Constitution and state law, and allows the Board to interrupt disbursements of state aid to any district which fails to comply with rules adopted in accordance with Subsection 53E-3-401(8)(a).

(2) The purpose of this rule is to:

(a) require the Superintendent to create data collection plans necessary as determined by the Superintendent to fulfill statutory or Board reporting requirements; and

(b) require LEAs to submit data upon request to the Superintendent.

(3) The rule provides that LEA participation in Minimum School Program funding is conditioned upon LEAs providing complete and accurate data and information to the Superintendent and the Board.

R277-109-2. Definitions.

(1) "Minimum school program funds" or "MSP funds" means the state and local funds appropriated for the Minimum School Program to support educational activities in all grades Kindergarten through 12th grade, including the Basic State-Supported School Program, Related to Basic Program, the State-Supported Voted and Board Leeway Levy Programs, and other programs or allocations appropriated by the Legislature in Title 53F, Chapter 2, Minimum School Program Act.

(2) "Statutory or Board reporting requirement" means a reporting requirement as described in:

(a) the Utah Code or legislative intent as documented by legislative records; or

(b) Board rule.

R277-109-3. Board Direction to Superintendent and LEA Appeal Process.

(1) The Superintendent shall, in consultation with LEAs, collect data and prepare data collection reports or plans, as the Board directs or as the Superintendent deems necessary, to fulfill statutory or Board reporting requirements.

(2) The Superintendent is authorized by the Board to assist LEAs to fulfill reporting requests and to complete accountability or reporting plans.

(3) The Superintendent may sanction an LEA, if necessary, if the LEA fails to provide required data or reports by withholding MSP funds due to the LEA's failure to provide complete and accurate data or reports as requested.

(4) The Superintendent shall provide adequate notice to LEAs of reporting requirements and procedures for providing data in requested formats.

(5) If an LEA does not comply with a data program request or requirement, the Superintendent shall provide adequate and timely notice to the LEA that data was not submitted accurately and completely and LEA has 30 days to respond to the Superintendent's request for data or a required data report.

(6) The Superintendent may impose sanctions for noncompliance up to and including the withholding of MSP funds directly related to the data collection or reporting requirement.

(7) The Superintendent may withhold the program funds related to the requested data report or reporting requirement beginning with the next MSP transfer or beginning with subsequent MSP transfers including MSP funding for a subsequent fiscal year.

(8) An LEA may appeal to the Board in writing the Superintendent's decision to withhold program funds within 10 calendar days.

(9) The Board shall respond to the LEA within 30 calendar days.

(10) The Board's response is the final administrative action.

KEY: reporting, accountability

November 7, 2016	**Art X Sec 3**
Notice of Continuation September 15, 2016	**53E-3-501(1)**
	53E-3-401(2)(a)
	53E-3-401

R277. Education, Administration.
R277-110. Educator Salary Adjustment.
R277-110-1. 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 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53F-2-405(5), which authorizes the Board to make rules to administer the educator salary adjustment program.

(2) The purpose of this rule is to outline a consistent method for enacting educator salary adjustments in accordance with Section 53F-2-405.

R277-110-2. Definitions.

(1) "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "CACTUS" has the same meaning as defined in Subsection R277-512-2(1).

(2) "Educator" has the same meaning as defined in Subsection 53F-2-405(1).

(3) "Educator Salary Adjustment" or "Adjustment" means funds allocated by the Board to an LEA in accordance with Subsection 53F-2-405(3).

(4) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

R277-110-3. Procedures.

(1) An LEA shall:

(a)(i) have employee evaluation procedures consistent with Title 53A, Chapter 8a, Public Education Human Resource Management Act; or

(ii) if an LEA is exempt from the requirements of Subsection (1)(a)(i), have employee evaluation procedures in place to receive funds under Section 53F-2-405;

(b) put the adjustment appropriation into the LEA's salary schedule each year that funds are appropriated by the Legislature;

(c) ensure the amount of the adjustment is the same for each eligible full-time-equivalent educator position in the LEA;

(d) ensure that each eligible employee who is not a full-time educator receives a proportional salary adjustment based on the number of hours the employee works in the employee's current assignment as an educator; and

(e) ensure that each educator who receives an adjustment has received a satisfactory or above job performance rating in the educator's most recent evaluation concluded in the school year prior to the year for which the adjustment is made.

(2) Notwithstanding Subsection (1)(e), an LEA may grant an adjustment to a new hire who has successfully completed the position hiring process and been selected for an educator position.

(3) Once an educator qualifies for an adjustment in a designated school year, the adjustment becomes an ongoing part of the educator's salary.

(4) An educator shall receive an annual adjustment of $4200 based upon legislative funding allocations.

(5) A school building level administrator shall receive an annual adjustment of $2500 and benefits as provided in Subsection 53F-2-405(7).

(6) Each LEA shall annually note on the appropriate salary schedule:

(a) the amount of the educator salary adjustment;

(b) the positions qualifying for the adjustment; and

(c) performance rating requirements in accordance with Subsection 53F-2-405(4)(c).

(7) Each LEA shall annually maintain record of performance ratings for an educator receiving an adjustment in accordance with this rule.

(8)(a) The Superintendent shall remit to LEAs an estimated educator salary adjustment allotment through monthly bank transfers and allotment memos beginning in July of each year.

(b) The Superintendent shall adjust the allotment amount in November of each year to match the number of qualified educators in CACTUS.

(9) An adjustment to CACTUS made after November 15 may not count towards an LEA's amount for educator salary adjustments until the following year.

(10) An LEA may not include educator salary adjustments when calculating the weighted average compensation adjustment for non-administrative licensed staff.

KEY: educators, salary adjustments

September 21, 2017	**Art X Sec 3**
Notice of Continuation July 19, 2017	**53E-1-401(4)**
	53F-2-405(5)

R277. Education, Administration.
R277-114. Corrective Action and Withdrawal or Reduction of Program Funds.
R277-114-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53E-3-401(8)(c), which allows the Board to make rules setting forth the procedures to be followed for enforcing Board rules.

(2) The purpose of the rule is to provide procedures for public education program monitoring and corrective action for noncompliance with identified:

(a) program requirements;

(b) program accountability standards; and

(c) financial propriety.

R277-114-2. Definitions.

(1) "Program" means a public education project or plan under the direction of the Board.

(2) "Recipient" means an LEA or a school.

R277-114-3. Program Monitoring.

(1) For each program, the Superintendent shall design and implement a consistent monitoring plan that includes standards for both program outcomes and program financial compliance.

(2) The Superintendent shall notify all recipients of the initiation of or changes to any monitoring plan.

(3) The Superintendent shall monitor compliance with:

(a) program outcomes;

(b) reporting requirements; and

(c) financial compliance.

R277-114-4. Corrective Action Plans.

(1) The Superintendent shall place a recipient on a corrective action plan when a recipient:

(a) does not demonstrate satisfactory program outcomes;

(b) demonstrates noncompliance with program requirements or allowable program expenditures; or

(c) does not comply with requests to provide accurate and complete program or financial information.

(2) The Superintendent shall clearly outline in a corrective action plan:

(a) all areas of noncompliance;

(b) steps required to satisfy the corrective action plan; and

(c) a reasonable time frame for the recipient to correct identified issues.

(3) A corrective action plan may also include provision and a timeline for:

(a) referral for monitoring by a Board section;

(b) referral for monitoring to the Board's internal audit department, with approval of the Board's Audit Committee;

(c) periodic meetings between a recipient administrator or governing board member and the Superintendent or a member of the Superintendency;

(d) planned appearances before the Board to provide status updates; and

(e) training for the LEA's staff.

(4) The Superintendent may employ escalating restrictive conditions in a corrective action plan based on:

(a) the severity of the violation; or

(b) repeated violations by an LEA.

(5) The Superintendent may include penalties for non-compliance with a corrective action plan in accordance with Subsection 53E-3-401(8).

(6) The Superintendent shall give notice and a copy of the corrective action plan in writing to:

(a) the recipient LEA's administrators;

(b) the respective LEA's governing board; and

(c) the charter school authorizer, if applicable.

(7) The Superintendent shall report to the Board monthly about the status of noncompliant program recipients.

R277-114-5. Recipient Appeals.

(1) A recipient may file an appeal to the Board of any adverse decision of the Superintendent resulting from a corrective action plan or penalty.

(2) An appeal must be made in writing and within 30 days of the date of the Superintendent's action.

(3) The Board may:

(a) review the appeal as a full board; or

(b) refer the matter to the Board audit committee to make a recommendation to the Board for action.

KEY: programs, noncompliance, corrective action
February 7, 2017 Art X Sec 3
Notice of Continuation May 1, 2015 53E-3-401BR

R277. Education, Administration.
R277-116. Audit Procedure.
R277-116-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;

(b) Subsection 63I-5-201(4) which requires the Board to direct the establishment of an internal audit department for programs administered by the entities it governs;

(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Boards duties and responsibilities under the Utah Constitution and state law;

(d) Subsection 53E-3-501(1)(e), which directs the Board to develop rules and minimum standards regarding school productivity and cost effectiveness measures, school budget formats, and financial, statistical, and student accounting requirements for the local school districts;

(e) Section 53E-3-602, which allows the Board to approve auditing standards for school boards;

(f) Section 53E-3-603, which makes the Board responsible for verifying audits of local school districts;

(g) Subsection 53F-2-204(2), which directs the Board to assess the progress and effectiveness of all programs funded under the State System of Public Education; and

(h) Subsection 53E-3-401(9), which gives the Board authority to audit the use of state funds by an education entity that receives state funds as a distribution from the Board.

(2) The purpose of this rule is to:

(a) outline the role of the Audit Director, Superintendent, and agency in the audit process; and

(b) outline the Board's procedures for audits of agencies.

R277-116-2. Definitions.

(1) "Agency" means:

(a) an entity governed by the Board;

(b) an LEA; or

(c) a sub-recipient.

(2) "Audit committee" means a standing committee of members appointed by the Board in accordance with Board bylaws.

(3) "Audit Director" means the person who:

(a) directs the audit program of the Board in accordance with Title 63I, Chapter 5, the Utah Internal Audit Act and Board policies;

(b) is appointed by and reports to the audit committee; and

(c) is independent of the agencies subject to Board audit.

(4) "Audit plan" means a prioritized list of audits with associated resource requirements to be performed by the audit program that is reviewed, approved, and adopted at least annually by the Board.

(5) "Audit program" means a department that provides internal audit services for the Board that is directed by the Audit Director.

(6) "Draft audit report" means a draft audit report compiled by the Audit Director that is classified as protected under Title 63G, Chapter 2, Part 3, Section 305, Protected records.

(7) "Education entity" means the same as that term is defined in Section 53E-3-401.

(8) "Final audit report" means a draft audit report that is approved by the audit committee and the Board as a final audit report that is classified as public under Title 63G, Chapter 2, Part 3, Section 301, Public records.

(9) "Local administrator" means the district superintendent or charter school director.

(10) "Sub-recipient" means any entity that receives funds from an entity governed by the Board.

R277-116-3. Audit Director Authority and Responsibilities.

(1) The Audit Director shall:

(a) manage the audit program and facilitate the audit process:

(i) as approved and directed by the Board and audit committee;

(ii) in accordance with the current International Standards for the Professional Practice of Internal Auditing; and

(iii) in accordance with the USBE Internal Audit Department Policy and Procedure Manual.

(b) act as the liaison for external audits of the Board;

(c) maintain the classification of any public record consistent with GRAMA;

(d) be subject to the same penalties under GRAMA as the custodian of a public record;

(e) publish final reports on the Internal Audit department webpage if appropriate; and

(f) make a copy of the USBE Internal Audit Department Policy and Procedure Manual to the general public upon request.

(2) The Audit Director may contract with an LEA or other education entity to provide internal audit services to the LEA or other education entity if the contract is approved by the audit committee in accordance with Board contract policies.

R277-116-4. Superintendent Authority and Responsibilities.

The Superintendent shall:

(1) provide resources necessary to conduct the audit program including adequate funds, staff, tools, and space to support the audit program;

(2) facilitate communications with those charged with governance, management, and staff as requested by the Audit Director or the audit committee to ensure the access necessary to perform an audit;

(3) ensure access to all personnel, records, data, and other agency information that the Audit Director or staff consider necessary to carry out their assigned duties;

(4) notify the Audit Director of external audits of entities governed by the Board;

(5) notify the agency that the Audit Director shall be the liaison for an external audit;

(6) support the audit program as otherwise requested by the audit committee or Audit Director; and

(7) facilitate appropriate action by the Board on issues identified in audits by:

(a) sending the final management response letter and form to the governing board and local administrator of an audited agency in response to the final audit report;

(b) following up on final management response forms sent to the governing board and local administrator of an audited agency in accordance with timelines outlined in the management response letter, as monitored by the Audit Director, to ensure either:

(i) the audited agency took appropriate action;

(ii) the audited agency's lack of action is acceptable; or

(iii) implementation of a corrective action plan in accordance with R277-114; and

(c) sending the closure letter to the governing board and local administrator of an audited agency when the Board accepts the audited agency's management response.

R277-116-5. Agency Authority and Responsibilities.

The agency shall wholly cooperate and provide the Audit Director and the internal audit staff all:

(1) necessary access to those charged with governance, management, and staff; and

(2) personnel, records, data, and other agency information that the Audit Director or staff consider necessary to carry out their assigned duties in a timely manner.

R277-116-6. Audit Process.

(1) The Audit Director shall develop and recommend an audit plan to the Board and the audit committee based on the results of periodic risk assessments and audits.

(2) Once approved and adopted by the Board, the Audit Director shall implement the audit plan.

(3) At the initiation of an audit, the Audit Director shall, as necessary:

(a) send an engagement letter to the governing board and local administrator of the agency subject to the audit; and

(b) hold an entrance conference with the agency's governing board.

(4) After conducting an audit, the Audit Director shall:

(a) submit a preliminary draft audit report directly to:

(i) the audit committee;

(ii) the Superintendent; and

(iii) the governing board of the audited agency;

(b) hold an exit conference, if necessary, with the governing board and local administrator of the audited agency and administration to discuss the preliminary draft audit report; and

(c) edit the preliminary draft audit report, as appropriate, based on feedback received.

(5) The Audit Director shall submit a revised draft audit report directly to:

(a) the audit committee;

(b) the Board;

(c) the governing board and local administrator of the audited agency; and

(d) the Superintendent.

(6) Within fourteen days of the Audit Director's submission of the revised draft audit report to the audited agency governing board, and after the exit conference, if applicable, the auditing agency's governing board shall:

(a) provide a written response or comment on the draft audit report to the Audit Director and audit committee; or

(b) file a written request for an extension to the audit committee setting forth:

(i) the justification for the extension request; and

(ii) the extension time necessary to provide the response;

(7) Upon receiving written response and comment from the audited agency governing board, the Audit Director shall:

(a) incorporate into the draft audit report the written response, if any, received from the audited agency governing board;

(b) prepare Audit concluding remarks, if appropriate; and

(c) submit the amended draft audit report to the audit committee for recommendation.

(8) The audit committee may:

(a) recommend an amended draft audit report for approval and adoption; or

(b) send the amended draft audit report back to the Audit Director with instructions for additional review.

(9) Upon recommendation from the audit committee on the amended draft audit report, the Board may:

(a) approve and adopt an amended draft audit report as the final audit report; or

(b) send the amended draft audit report back to the audit committee with instructions for additional review.

R277-116-7. Audit Reports.

(1) An audit report prepared by the Audit Director and staff shall be based upon audits of agency programs, activities, and functions.

(2) An audit report prepared by the Audit Director shall include identification of any:

(a) abuse;

(b) illegal acts;

(c) errors;

(d) omissions; or

(e) conflicts of interest.

(3) The Audit Director shall provide, upon written request, a copy of an audit report to the Office of Legislative Auditor General or the Office of the State Auditor.

(4) The Audit Director shall ensure that public release of a final audit report complies with the conditions specified by the state laws and rules governing the audited agency.

KEY: educational administration

April 9, 2018	**Art X Sec 3**
Notice of Continuation September 15, 2016	**53E-1-401**
	53E-3-501(1)(e)
	53E-3-603
	53F-2-204
	63I-5-101 through 401

R277. Education, Administration.
R277-117. Utah State Board of Education Protected Documents.
R277-117-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Request for proposal or RFP" means an official application or offer for services provided to the Board/USOE in response to an advertised opportunity to provide goods or services.

C. "RFP-like document" means a grant application or a proposal of any kind offered in response to a Board request for applicants to provide goods or services to public education.

D. "USOE" means the Utah State Office of Education.

R277-117-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and authority over public education in the Board, by Subsection 53E-3-501(1)(c)(iii), which requires the Board to set minimum standards for alternative and pilot programs, Subsection 53E-3-501(1)(c)(iv) which requires the Board to set minimum standards for curriculum and instruction requirements, Subsection 53E-3-501(e)(i), which requires the Board to set minimum standards for school productivity and cost effectiveness measures, Subsection 63G-2-305(6) which allows the Board to protect records if the disclosure would impair government procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity consistent with other provisions of Section 63G-2-305 and Section 63G-2-309, and by Subsection 53E-3-401(4) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purposes of this rule:

(1) is to maintain fairness, objectivity, efficiency and timeliness, as the Board fulfills constitutional and statutory directives to and responsibilities for Utah public schools and public school programs.

(2) to protect the integrity of proposal or bidding processes in order to provide fair and equal opportunities for vendors and service providers.

R277-117-3. Board Procedures in Preparing and Releasing RFP and RFP-like Proposals or Grants.

A. The Board or USOE staff acting for the Board shall act consistent with Section 63G-6a-101 et seq. in advertising and soliciting services for Utah public schools unless the Board is specifically exempt from the procurement process in which case the Board shall continue to protect the integrity of a competitive process with the provisions of this rule.

B. The Board shall develop RFPs or RFP-like requests using the plain language of state statute(s) or federal regulation(s) that directs the Board to seek competitive or non-competitive applications or proposals for services that are funded through a public education appropriation to the Board.

C. The USOE, acting for the Board, shall use legislative intent to develop RFPs or RFP-like requests only when legislative intent is specifically written in state law, is passed by the State Legislature and is specific to the RFP in development.

D. The Board may request written information from legislators or legislative staff to explain the intent of individual bill sponsors; all written information received under R277-117-3 shall be public information.

E. Board members or USOE staff may seek at the Board's or staff's sole discretion, additional information and expertise to facilitate the development of an RFP. All information gathered under this provision shall be public information, including the source of the information, unless the records are specifically protected under Section 63G-2-305.

F. The Board may allow for public comment at Board meetings or Board committee meetings to discuss the legislative intent for RFPs.

R277-117-4. Confidentiality of RFP and RFP-like Proposals or Grants Prior to Release by the USOE.

A. The RFP or RFP-like proposal shall be a protected document under Subsection 63G-2-305(22) until the proposal is released by the USOE or a commercial distributor of an RFP specifically commissioned by the USOE.

B. USOE staff shall stamp or mark all draft RFP documents DRAFT until the final version of an RFP or RFP-like document is officially released for public review and response.

C. If an RFP process for which the Board is responsible is compromised, as determined by a vote of the Board if necessary, the proposal shall be void and the USOE shall begin a new RFP process.

D. A USOE employee who intentionally violates the provisions of this rule may be subject to employment discipline up to and including termination.

KEY: RFPs, grants, confidentiality
April 7, 2014 **53E-3-501(1)(c)(iii)**
Notice of Continuation February 13, 2013 **53E-3-501(1)(c)(iv)**
53E-3-501(e)(i)
53E-3-401(4)

R277. Education, Administration.
R277-119. Discretionary Funds.
R277-119-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Board discretionary funds" means:

(1) Land exchange funds are funds appropriated to the Board from the account described in Section 53C-3-203;

(2) Mineral lease funds are funds identified in Section 59-21-1 and directed to the Board in Section 59-21-2(2)(e); and

(3) State carryover funds are funds appropriated by the Legislature, maintained by the Board, and carried over from one fiscal year to the next for discretionary use.

C. "State Superintendent of Public Instruction (Superintendent)" means the executive officer of the Board and serves at the pleasure of the Board.

R277-119-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities; Subsection 59-21-2(2)(e) in which the Legislature appropriates 2.25 percent of all deposits made to Mineral Lease Account to the Board for use consistent with Subsection 53C-3-203(4)(b)(iii); and Subsection 53C-3-203(4)(b)(iii) in which the Legislature appropriates funds for the Board's use.

B. The purpose of this rule is to provide for Board review and approval of funds received by the Board for identified purposes.

R277-119-3. Board Review and Use of Discretionary Funds.

A. The Superintendent shall present an annual projection of revenues and expenditures of Board discretionary funds as part of the annual budget proposed to the Board.

B. The Superintendent shall submit to the Board for review a quarterly summary of actual versus projected expenditures from Board discretionary funds.

C. The Superintendent shall at least annually make a request to the Board for monies from carry-over funds for the Superintendent's sole discretion but may make additional requests.

D. The Superintendent may make requests to the Board to expend funds, consistent with purposes identified in state law, from the mineral lease or land exchange accounts.

KEY: State Board of Education, discretionary funds
May 8, 2014 **Art X Sec 3**
53E-3-401(4)

R277. Education, Administration.
R277-120. Licensing of Material Developed with Public Education Funds.
R277-120-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Article X, Section 3 of the Utah Constitution, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53E-3-501(1)(e)(i), which directs the Board to encourage school productivity and cost effectiveness measures.

(2) The purpose of this rule is to:

(a) establish requirements for licensing of courseware and materials produced with public education funds; and

(b) promote a policy that education materials produced with public funds be openly, publicly, and freely accessible for use by others.

R277-120-2. Definitions.

(1)(a) "CC-BY license" means a copyright license developed by Creative Commons, which allows other users to:

(i) copy and redistribute the material in any medium or format; and

(ii) remix, transform, and build upon the material.

(b) Under a CC-BY license, a licensee may share the materials in any manner, including commercially.

(c) Under a CC-BY license, a licensee shall:

(i) give appropriate credit to the licensor;

(ii) provide a link to the license; and

(iii) indicate if the licensee made changes to the licensor's work.

(2) "Public education materials" means courseware and materials developed with public education funds and includes:

(a) syllabi;

(b) instructional materials;

(c) modules;

(d) textbooks, including teacher's editions;

(e) student guides;

(f) supplemental materials;

(g) formative and summative assessment supports;

(h) laboratory activities;

(i) simulations;

(j) musical or dramatic compositions;

(k) audio, video or photographic material;

(l) manuals;

(m) codes; and

(n) software.

(3) "Utah Education Network" or "UEN" means an online education materials resource maintained by the Utah Education and Telehealth Network offering services to educators and students throughout the state of Utah.

R277-120-3. Public Education Materials Funded by the Board.

(1) The Superintendent shall share public education materials developed with funds controlled by the Board under a CC-BY license.

(2) The Superintendent shall share materials developed in accordance with Subsection (1) through UEN, where appropriate, or through other appropriate means of making public education materials available to educators and the public.

(3)(a) An individual or entity that shares or adapts public education materials identified in Subsection (1) shall:

(i) provide attribution to the Board;

(ii) provide a link to the license; and

(ii) indicate if any changes were made to the original materials.

(b) An individual or entity may make attribution in any reasonable manner, but not in any way that implies the Board endorses any adaptation of the materials without express authorization of the Board.

(4) The Superintendent may request a copy of shared or adapted public education materials be provided to the Board.

(5) If an employee of the Board develops public education materials as part of the employee's employment, the public education materials shall be the property of the Board, subject to licensing in accordance with this R277-120-3.

R277-120-4. Public Education Materials Funded by an LEA.

(1) An LEA shall develop and maintain a policy regarding public education materials developed with the LEA's funds.

(2) A policy developed in accordance with Subsection (1) shall identify:

(a) whether the LEA will share public education materials with a CC-BY license or another license approved by the LEA's governing board;

(b) whether use of LEA developed public education materials will require attribution to the LEA;

(c) whether the LEA will charge third parties for use of the materials;

(d) whether the LEA reserves the right to review and approve materials developed by employees on contract time; and

(e) whether the LEA restricts employees from sharing materials purchased with LEA funds or specifically licensed for LEA use.

(3) An LEA may not charge an educator in a Utah public school for use of materials developed with LEA funds.

R277-120-5. Classroom Materials Developed by Utah Educators.

(1)(a) A public education employee may not sell public education materials developed in whole or in part with funds from the Board or an LEA.

(b) If a public education employee sells public education materials subject to Subsection (1)(a) for personal gain, the employee may be subject to the provisions of Section 67-16-4.

(2) An LEA may review and approve materials developed by educators on contract time consistent with a policy adopted in accordance with Subsection R277-120-4(d).

(3)(a) A Utah licensed educator need not seek permission from the educator's LEA to share classroom materials developed using the educator's personal time and resources.

(b) An educator may share materials developed in accordance with Subsection (3)(a) through a CC-BY license.

(4)(a) A Utah licensed educator may only share materials that are consistent with the Utah Professional Educator Standards contained in R277-515.

(b) An educator may not share materials that advocate illegal activities or materials that are inconsistent with the educator's legal and role model responsibilities.

(5) The Superintendent may offer professional development programs that offer support, guidance, and instruction to educators who wish to create, use, or continuously improve public education materials shared in accordance with this R277-120.

KEY: licensing, materials
August 7, 2017 **Art X Sec 3**
53E-3-401(4)
53E-3-501(1)(e)(I)

R277. Education, Administration. **August 7, 2017** **Art X Sec 3**
R277-121. Board Waiver of Administrative Rules. **53E-3-401(4)**
R277-121-1. 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) Subsection 53E-3-401(4), 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 procedures for an LEA to request a waiver from a Board rule.

R277-121-2. Procedures for Waiver Requests.

(1)(a) An LEA board may request a waiver from a Board rule by filing a written request with the Superintendent.

(b) A written request under Subsection (1)(a) shall include:

(i) verification that the LEA board voted to request the waiver in an open meeting;

(ii) student achievement data that supports the requested waiver;

(iii) data demonstrating the cost effectiveness of the waiver request;

(iv) a proposed agreement with the Board that includes:

(A) a proposed effective date;

(B) provisions for public review and accountability;

(C) data gathering and reporting timelines;

(D) a sunset date; and

(v) in the case of a charter school, a recommendation from the board of the school's authorizer.

(2) An LEA board may not request a waiver from a Board rule:

(a) that is required by or adopts criteria from a federal statute, federal regulation, or state law;

(b) that would negatively affect the health, safety, or welfare of public education students;

(c) that could reasonably result in discrimination or harassment of public school students or employees;

(d) that would benefit one element of the public education system to the detriment of another; or

(e) when the concerns giving rise to an LEA board's request could be addressed through means other than waiver of Board rules.

R277-121-3. Board Review of Waiver Requests.

(1) The Board Executive Committee may assign a waiver request made under this Rule R277-121 to a Board standing committee.

(2) The standing committee assigned in accordance with Subsection (1):

(a) may solicit additional information or testimony;

(b) shall review the request in an open meeting; and

(c) shall make a recommendation for consideration by the full Board.

(3) The Board Executive Committee may consolidate consideration of duplicate or similar requests.

(4) The Board shall consider available data in evaluating an LEA waiver request and shall make data driven decisions.

R277-121-4. Annual Review of Approved Waivers.

(1) An LEA that receives a waiver from Board rule in accordance with this R277-121 for more than one year shall annually report to a Board committee:

(a) student achievement data that supports continuation of the requested waiver; and

(b) data demonstrating the cost effectiveness of the waiver, if applicable.

KEY: Utah State Board of Education, waivers, administrative rules

R277. Education, Administration.
R277-122. Board of Education Procurement.
R277-122-1. 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 Subsection 53E-3-401(4), 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 63G, Chapter 6a, Utah Procurement Code.

(2) The purpose of this rule is to adopt and incorporate by reference Title R33, Purchasing and General Services, with exceptions as described in this rule.

R277-122-2. Definitions.

(1) "Professional service provider" means a provider of a professional service as defined in Subsection 63G-6a-103(61) and includes an expert in educational instruction and teaching.

(2) "Responsible" means the same as that term is defined in Subsection 63G-6a-103 (75).

(3) "Responsive" means the same as that term is defined in Subsection 63G-6a-103 (76).

R277-122-3. Incorporation of Title R33 With Exceptions.

(1) The Board adopts and incorporates by reference Title R33, Purchasing and General Services, as in effect on April 1, 2017, with the exceptions described in this section.

(2) The Board does not adopt Section R33-8-101b.

(3) The Board adopts Section R277-122-5 in place of Section R33-9-103.

(4) The Board adopts Section R277-122-6 in place of Section R33-12-201.

(5) The Board adopts Section R277-122-8 in place of Section R33-12-608.

(6) The Board adopts Section R277-122-9 in place of Subsections:

(a) R33-16-101a (2)(a); and

(b) R33-16-301 (4).

(7) The Board adopts Section R277-122-10 in place of Sections R33-5-104 and R33-5-107.

(8) The Board adopts Section R277-122-11 in place of Section R33-5-108.

R277-122-4. Head of the Procurement Unit Designated.

The Board designates the Board's Director of Purchasing as the head of the procurement unit.

R277-122-5. Cancellation Before Award.

(1) A solicitation may be cancelled prior to a contract award if the head of the procurement unit determines the cancellation is:

(a) in the best interest of the Board; and

(b) supported by a reasonable and good faith justification.

(2) The head of the procurement unit shall include notice of the Board's right of cancellation described in Subsection (1) in each Board solicitation.

R277-122-6. Establishment of Terms and Conditions.

The head of the procurement unit shall develop standard terms and conditions for use with Board contracts and agreements.

R277-122-7. Requirements for Cost or Pricing Data.

(1) If cost or pricing data is required by Section 63G-6a-1206 or Section R33-12-601, the head of the procurement unit shall require the person who seeks a cost-based contract to submit:

(a) factual and verifiable information related to the contractor's estimated cost for completing a project on:

(i) the date the contract is signed by both parties; or

(ii) an earlier date agreed to by both parties that is:

(A) as close as practicable to the date described in Subsection (1)(a)(i); and

(B) before prudent buyers and sellers would reasonably expect price negotiations to be affected significantly; and

(b) underlying data related to a contractor's estimate that can be reasonably expected to contribute to the soundness of estimates of future costs and the validity of determinations of costs already incurred, including:

(i) vendor quotations;

(ii) nonrecurring costs;

(iii) information on changes in production methods and in production or purchasing volume;

(iv) data supporting projections of business prospects and objectives and related operations costs;

(v) unit-cost trends such as those associated with labor efficiency;

(vi) make-or-buy decisions;

(vii) estimated resources to attain business goals; or

(viii) information on management decisions that could have a significant bearing on costs.

(2) Submission of certified cost or pricing data applies to contracts of $50,000.00 or greater if the contract price is not established by:

(a) adequate price competition;

(b) established catalogue or market prices; or

(c) law or regulation.

R277-122-8. Use of Federal Cost Principles.

The head of the procurement unit shall apply the federal cost principles described in 2 CFR Part 200, Subpart E in determining which costs expended under Board contracts are reasonable, allocable, and allowable.

R277-122-9. Grounds for Protest -- Intervention in a Protest.

(1) A bidder who files a protest shall include in the bidder's submission a concise statement of the grounds for the protest, which shall include the facts leading the protestor to contend that a grievance has occurred, including but not limited to specifically referencing:

(a) the circumstances described in Subsections R33-16-101a(2)(a) (i) through (iii);

(b) a provision of the solicitation alleged to be:

(i) unduly restrictive;

(ii) anticompetitive; or

(iii) unlawful;

(c) an alleged material error made by the evaluation committee or conducting procurement unit; or

(d) the circumstances described in Subsections R33-16-101a(2)(a)(vi) and (vii).

(2) A motion to intervene in a post-award protest may only be made by the announced awardee.

(3) A person may intervene in a pre-award protest, if the person's proposal:

(a) was evaluated;

(b) found to be responsive; and

(c) the head of the procurement unit finds the person to be responsible.

R277-122-10. Small Purchases of Procurement Items Other than Professional Services and Consultants.

(1) The Superintendent shall make small purchases in accordance with the requirements set forth in Section 63G-6a-506 and this Section R277-122-10.

(2) Unless otherwise required as part of another standard procurement process being used in conjunction with a small purchase, the Superintendent need not utilize a solicitation or provide public notice to conduct a small purchase.

(3) The Superintendent may make a small purchase of a procurement item other than a professional service by:

(a) direct award without seeking competitive bids or quotes up

to the following threshold amounts:

(i) $3,500 for one or more procurement items purchased at the same time from one source; and

(ii) $50,000 for multiple procurement items purchased in a 12-month period from one source; and

(b) subject to Rule R33-4-109, obtaining quotes from a minimum of two vendors and purchasing the procurement item from the responsible vendor offering the lowest quote for a purchase of up to $50,000 for one or more procurement items purchased at the same time from a single source.

(4) When conducting a purchase under Subsection (3)(b) in conjunction with an approved vendor list, the Superintendent:

(a)(i) may obtain quotes from all the vendors on the approved vendor list; or

(ii) may obtain quotes from a minimum of two vendors on the approved vendor list, using one or more of the following methods to select vendors from whom to obtain quotes:

(A) a rotation system, organized alphabetically, numerically, or randomly;

(B) the geographic area serviced by each vendor;

(C) each vendor's particular expertise or field;

(D) solicitation of an additional quote from the vendor that provided the lowest quote on the most recently completed procurement conducted by the Board using the approved vendor list; or

(E) another method approved by the head of the procurement unit;

(b) shall document that all vendors on the approved vendor list have a fair and equitable opportunity to obtain a contract; and

(c) shall purchase the procurement item from the responsible vendor on the approved list offering the lowest quote.

(5) Whenever practicable, the Superintendent shall use a rotation system or other system designed to allow for competition when using a small purchase process.

(6) In the process of obtaining a competitive quote, the Superintendent shall record and maintain the following as a government record:

(a) the names of the vendors from whom quotes were requested and received; and

(b) the date of receipt and amount of each quote.

(7) The Superintendent shall comply with all applicable laws and rules in the conduct of small purchases, including:

(a) Subsection 63G-6a-506(8);

(b) Title 63G, Chapter 6a, Part 24, Unlawful Conduct and Penalties; and

(c) Sections R33-24-104 through R33-24-106.

R277-122-11. Small Purchases of Professional Service Providers and Consultants.

(1) The Superintendent shall make small purchases of professional services in accordance with the requirements set forth in Section 63G-6a-506 and this Section R277-122-11.

(2) Unless otherwise required as part of another standard procurement process being used in conjunction with a small purchase, the Superintendent need not utilize a solicitation or provide public notice to conduct a small purchase of professional services.

(3) The Superintendent may procure professional services:

(a) up to a maximum of $3,500 by direct negotiation with any professional services provider or consultant determined in writing by the Superintendent to be qualified to provide the professional service; and

(b) up to a maximum of $100,000 by:

(i) subject to Rule R33-4-109, obtaining quotes from a minimum of three professional services providers or consultants determined in writing by the Superintendent to be qualified to provide the professional services; and

(ii) making the purchase from the professional service provider or consultant determined in writing by the Superintendent to provide the Board with the best value, comparing qualifications and price.

(4) The Superintendent shall comply with all applicable laws and rules in the conduct of small purchases for professional services, including:

(a) Subsection 63G-6a-506(8);

(b) Title 63G, Chapter 6a, Part 24, Unlawful Conduct and Penalties; and

(c) Sections R33-24-104 through R33-24-106.

KEY: procurement, efficiency
April 9, 2018 **Art X Sec 3**
53A-1-401
63G-6a

R277. Education, Administration.
R277-210. Utah Professional Practices Advisory Commission (UPPAC), Definitions.
R277-210-1. 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 53E-6-506, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

(c) Subsection 53E-3-401(4), 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 for terms in UPPAC activities.

(3) The definitions contained in this rule apply to Rules R277-210 through R277-216.

(b) Any calculation of time called for by these rules shall be governed by Utah R. Civ. P. 6.

R277-210-2. Definitions.

(1)(a) "Action" means a disciplinary action taken by the Board adversely affecting an educator's license.

(b) "Action" does not include a disciplinary letter.

(c) "Action" includes:

(i) a letter of reprimand;

(ii) probation;

(iii) suspension; and

(iv) revocation.

(2) "Administrative hearing" or "hearing" has the same meaning as that term is defined in Section 53E-6-601.

(3) "Alcohol related offense" means:

(a) driving under the influence;

(b) alcohol-related reckless driving or impaired driving;

(c) intoxication;

(d) driving with an open container;

(e) unlawful sale or supply of alcohol;

(f) unlawful permitting of consumption of alcohol by minors;

(g) driving in violation of an alcohol or interlock restriction; and

(h) any offense under the laws of another state that is substantially equivalent to the offenses described in Subsections(3)(a) through (g).

(4) "Allegation of misconduct" means a written report alleging that an educator:

(a) has engaged in unprofessional or criminal conduct;

(b) is unfit for duty;

(c) has lost the educator's license in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or

(d) has committed some other violation of standards of ethical conduct, performance, or professional competence as provided in Rule R277-515.

(5) "Answer" means a written response to a complaint filed by the Executive Secretary alleging educator misconduct.

(6) "Applicant" means a person seeking:

(a) a new license;

(b) reinstatement of an expired, surrendered, suspended, or revoked license; or

(c) clearance of a criminal background review from Executive Secretary at any stage of the licensing process.

(7) "Boundary violation" means the same as that term is defined in Rule R277-515.

(8) "Chair" means the Chair of UPPAC.

(9) "Complaint" means a written allegation or charge against an educator filed by the Executive Secretary against the educator.

(10) "Complainant" means the Executive Secretary.

(11) "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file developed by the Superintendent and maintained on all licensed Utah educators.

(12) "Conflict of interest" means the same as that term is defined in Rule R277-101.

(13)(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;

(iii) a plea in abeyance; and

(iv) for purposes of this rule, a conviction that has been expunged.

(14) "Criminal Background Review" means the process by which the Executive Secretary, UPPAC, and the Board review information pertinent to:

(a) a charge revealed by a criminal background check;

(b) a charge revealed by a hit as a result of ongoing monitoring; or

(c) an educator or applicant's self-disclosure.

(15)(a) "Disciplinary letter" means a letter issued to a respondent by the Board as a result of an investigation into an allegation of educator misconduct.

(b) "Disciplinary letter" includes:

(i) a letter of admonishment;

(ii) a letter of warning; and

(iii) any other action that the Board takes to discipline an educator for educator misconduct that does not rise to the level of an action as defined in this section.

(16) "Drug" means controlled substance as defined in Section 58-37-2.

(17) "Drug related offense" means any criminal offense under:

(a) Title 58, Chapter 37;

(b) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(c) Title 58, Chapter 37b, Imitation Controlled Substances Act;

(d) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act;

(e) Title 58, Chapter 37d, Clandestine Drug Lab Act; and

(f) Title 58, Chapter 37e, Drug Dealer's Liability Act. Sections 58-37 through 37e.

(18) "Educator Misconduct" means:

(a) unprofessional or criminal conduct;

(b) conduct that renders an educator unfit for duty; or

(c) conduct that is a violation of standards of ethical conduct, performance, or professional competence as provided in Rule R277-515.

(19) "Executive Committee" means a subcommittee of UPPAC consisting of the following members:

(a) Executive Secretary;

(b) Chair;

(c) Vice-Chair; and

(d) one member of UPPAC at large.

(20) "Executive Secretary" means:

(a) an employee of the Board who:

(i) is appointed by the Superintendent to serve as the UPPAC Director; and

(ii) serves as a non-voting member of UPPAC, consistent with Section 53E-6-502; or

(b) the Executive Secretary's designee.

(21) "Expedited Hearing" means an informal hearing aimed at determining an Educator's fitness to remain in the classroom held as soon as possible following an arrest, citation, or charge for a criminal offense requiring mandatory self-reporting under Section R277-516-3.

(22) "Expedited Hearing Panel" means a panel of the following three members:

(a) the Executive Secretary;

(b) a voting member of UPPAC; and

(c) a UPPAC attorney.

(23) "Final action" means an action by the Board that concludes an investigation of an allegation of misconduct against a licensed educator.

(24) "GRAMA" refers to the Government Records Access and Management Act, Title 63G, Chapter 2, Government Records Access and Management Act.

(25) "Hearing officer" means a licensed attorney who:

(a) is experienced in matters relating to administrative procedures;

(b) is appointed by the Executive Secretary to manage the proceedings of a hearing;

(c) is not an acting member of UPPAC;

(d) has authority, subject to the limitations of these rules, to regulate the course of the hearing and dispose of procedural requests; and

(e) does not have a vote as to the recommended disposition of a case.

(26) "Hearing panel" means a panel of three or more individuals designated to:

(a) hear evidence presented at a hearing;

(b) make a recommendation to UPPAC as to disposition; and

(c) collaborate with the hearing officer in preparing a hearing report.

(27) "Hearing report" means a report that:

(a) is prepared by the hearing officer consistent with the recommendations of the hearing panel at the conclusion of a hearing; and

(b) includes:

(i) a recommended disposition;

(ii) detailed findings of fact and conclusions of law, based upon the evidence presented in the hearing, relevant precedent; and

(iii) applicable law and rule.

(28) "Informant" means a person who submits information to UPPAC concerning the alleged misconduct of an educator.

(29) "Investigator" means an employee of the Board, or independent investigator selected by the Board, who:

(a) is assigned to investigate allegations of educator misconduct under UPPAC supervision;

(b) offers recommendations of educator discipline to UPPAC and the Board at the conclusion of the investigation;

(c) provides an independent investigative report for UPPAC and the Board; and

(d) may also be a UPPAC attorney but does not have to be.

(30) "Investigative report" means a written report of an investigation into allegations of educator misconduct, prepared by an Investigator that:

(a) includes a brief summary of the allegations, the investigator's narrative, and a recommendation for UPPAC and the Board;

(b) may include a rationale for the recommendation, and mitigating and aggravating circumstances;

(c) is maintained in the UPPAC Case File; and

(d) is classified as protected under Subsection 63G-2-305(34).

(31) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.

(32) "Letter of admonishment" is a letter sent by the Board to an educator cautioning the educator to avoid or take specific actions in the future.

(33) "Letter of reprimand" is a letter sent by the Board to an educator:

(a) for misconduct that was longer term or more seriously unethical or inappropriate than conduct warranting a letter of warning, but not warranting more serious discipline;

(b) that provides specific directives to the educator as a condition for removal of the letter;

(c) appears as a notation on the educator's CACTUS file; and

(d) that an educator can request to be removed from the educator's CACTUS file after two years, or after such other time period as the Board may prescribe in the letter of reprimand.

(34) "Letter of warning" is a letter sent by the Board to an educator:

(a) for misconduct that was inappropriate or unethical; and

(b) that does not warrant longer term or more serious discipline.

(35) "License" means a teaching or administrative credential, including an endorsement, which is issued by the Board to signify authorization for the person holding the license to provide professional services in Utah's public schools.

(36) "Licensed educator" means an individual issued a teaching or administrative credential, including an endorsement, issued by the Board to signify authorization for the individual holding the license to provide professional services in Utah's public schools.

(37) "National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator Information Clearinghouse" means a database maintained by NASDTEC for the members of NASDTEC regarding persons who:

(a) had their license suspended or revoked;

(b) have been placed on probation; or

(c) have received a letter of reprimand.

(38) "Notification of Alleged Educator Misconduct" means the official UPPAC form that may be accessed on UPPAC's internet website, and may be submitted by any person, school, or LEA that alleges educator misconduct.

(39) "Party" means a complainant or a respondent.

(40) "Petitioner" means an individual seeking:

(a) an educator license following a denial of a license;

(b) reinstatement following a license suspension; or in the event of compelling circumstances, reinstatement following a license revocation.

(41) "Probation" is an action directed by the Board that:

(a) involves monitoring or supervision for a designated time period, usually accompanied by a disciplinary letter;

(b) may require the educator to be subject to additional monitoring by an identified person or entity;

(c) may require the educator to be asked to satisfy certain conditions in order to have the probation lifted;

(d) may be accompanied by a letter of reprimand, which shall appear as a notation on the educator's CACTUS file; and

(e) unless otherwise specified, lasts at least two years and may be terminated through a formal petition to the Board by the respondent.

(42) "Revocation" means a permanent invalidation of a Utah educator license consistent with Rule R277-517.

(43) "Respondent" means an educator against whom:

(a) a complaint is filed; or

(b) an investigation is undertaken.

(44) "Serve" or "service," as used to refer to the provision of notice to a person, means:

(a) delivery of a written document or its contents to the person or persons in question; and

(b) delivery that may be made in person, by mail, by electronic correspondence, or by any other means reasonably calculated, under all of the circumstances, to notify an interested person or persons to the extent reasonably practical or practicable of the information contained in the document.

(45) "Sexually explicit conduct" means the same as that term is defined in Section 76-5b-103.

(46) "Stipulated agreement" means an agreement between a respondent and the Board:

(a) under which disciplinary action is taken against the educator in lieu of a hearing;

(b) that may be negotiated between the parties and becomes binding:

(i) when approved by the Board; and

(ii) at any time after an investigative letter has been sent;

(c) is a public document under GRAMA unless it contains specific information that requires redaction or separate

classification of the agreement. **53A-6-306**
(47)(a) "Suspension" means an invalidation of a Utah educator license. **53A-1-401**
(b) "Suspension" may:
(i) include specific conditions that an educator must satisfy; and
(ii) may identify a minimum time period that must elapse before the educator may request a reinstatement hearing before UPPAC.
(48) "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, established in Section 53E-6-501.
(49) "UPPAC Attorney File" means a file:
(a) that is kept by the attorney assigned by UPPAC to investigate and/or prosecute a case that contains:
(i) the attorney's notes prepared in the course of investigation; and
(ii) other documents prepared by the attorney in anticipation of an eventual hearing; and
(b) that is classified as protected pursuant to Subsection 63G-2-305(18).
(50) "UPPAC Background Check File" means a file maintained securely by UPPAC on a criminal background review that:
(a) contains information obtained from:
(i) BCI; and
(ii) letters, police reports, court documents, and other materials as provided by an educator; and
(b) is classified as private under Subsection 63G-2-302(2).
(51) "UPPAC Case File" means a file:
(a) maintained securely by UPPAC on an investigation into educator misconduct;
(b) opened following UPPAC's direction to investigate alleged misconduct;
(c) that contains the original notification of misconduct with supporting documentation, correspondence with the Executive Secretary, the investigative report, the stipulated agreement, the hearing report, and the final disposition of the case;
(d) that is classified as protected under Subsection 63G-2-305(10) until the investigation and any subsequent proceedings before UPPAC and the Board are completed; and
(e) that after a case proceeding is closed, is considered public under GRAMA, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA, in which case the file may be redacted or partially or fully restricted.
(52) "UPPAC Evidence File" means a file:
(a) maintained by the attorney assigned by UPPAC to investigate a case containing materials, written or otherwise, obtained by the UPPAC investigator during the course of the attorney's investigation;
(b) that contains correspondence between the Investigator and the educator or the educator's counsel;
(c) that is classified as protected under Subsection 63G-2-305(10) until the investigation and any subsequent proceedings before UPPAC and the Board are completed; and
(d) that is considered public under GRAMA after case proceedings are closed, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA.
(53) "UPPAC investigative letter" means a letter sent by UPPAC to an educator notifying the educator that an allegation of misconduct has been received against him and that UPPAC or the Board has directed that an investigation of the educator's alleged actions take place.

KEY: professional practices, definitions, educators
February 7, 2017 **Art X Sec 3**

R277. Education, Administration.
R277-211. Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions.
R277-211-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53E-6-506, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to provide procedures regarding:

(a) notifications of alleged educator misconduct;

(b) review of notifications by UPPAC; and

(c) complaints, proposed stipulated agreements, approved stipulated agreements, and defaults.

(3) Except as provided in Subsection (4), Title 63G, Chapter 4, Administrative Procedures Act does not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

(4) UPPAC may invoke and use sections or provisions of Title 63G, Chapter 4, Administrative Procedures Act as necessary to adjudicate an issue.

R277-211-2. Initiating Proceedings Against Educators.

(1) The Executive Secretary may refer a case to UPPAC to make a determination if an investigation should be opened regarding an educator:

(a) upon receiving a notification of alleged educator misconduct; or

(b) upon the Executive Secretary's own initiative.

(2) An informant shall submit an allegation to the Executive Secretary in writing, including the following:

(a) the informant's:

(i) name;

(ii) position, such as administrator, teacher, parent, or student;

(iii) telephone number;

(iv) address; and

(v) contact information;

(b) information of the educator against whom the allegation is made:

(i) name;

(ii) position, such as administrator, teacher, candidate; and

(iii) if known, the address and telephone number;

(c) the facts on which the allegation is based and supporting information; and

(d) signature of the informant and date.

(3) If an informant submits a written allegation of misconduct as provided in this rule, the informant may be notified of a final action taken by the Board regarding the allegation.

(4)(a) Proceedings initiated upon the Executive Secretary's own initiative may be based on information received through a telephone call, letter, newspaper article, media information, notice from another state, or by other means.

(b) The Executive Secretary may also recommend an investigation based on an anonymous allegation, notwithstanding the provisions of this rule, if the allegation bears sufficient indicia of reliability.

(5) The Executive Secretary shall maintain all written allegations, subsequent dismissals, actions, or disciplinary letters related to a case against an educator shall be maintained permanently in the UPPAC case file.

R277-211-3. Review of Notification of Alleged Educator Misconduct.

(1)(a) Upon receipt of a notification of alleged educator misconduct, the Executive Secretary shall recommend one of the following to UPPAC:

(i) dismiss the matter if UPPAC determines that alleged misconduct does not involve an issue that UPPAC should address; or

(ii) initiate an investigation if UPPAC determines that the alleged misconduct involves an issue that may be appropriately addressed by UPPAC and the Board.

(b) If the Executive Secretary recommends UPPAC initiate an investigation:

(i) UPPAC shall initiate an investigation; and

(ii) the Executive Secretary shall direct a UPPAC investigator to gather evidence relating to the allegations.

(2)(a) Prior to a UPPAC investigator's initiation of an investigation, the Executive Secretary shall send a letter to the following with information that UPPAC has initiated an investigation:

(i) the educator to be investigated;

(ii) the LEA that employs the educator; and

(iii) the LEA where the alleged activity occurred.

(b) A letter described in Subsection(2)(a) shall inform the educator and the LEA that an investigation shall take place and is not evidence of unprofessional conduct.

(c) UPPAC shall place a flag on the educator's CACTUS file after sending the notices as provided in this rule.

(3)(a) The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations.

(b) The investigator shall prepare an investigative report of the findings of the investigation and a recommendation for appropriate action or disciplinary letter.

(c) If the investigator discovers additional evidence of unprofessional conduct that could have been included in the original notification of alleged educator misconduct, the investigator may include the additional evidence of misconduct in the investigative report.

(d) The investigator shall submit the investigative report to the Executive Secretary.

(e) The Executive Secretary shall review the investigative report described in Subsection(3)(d) with UPPAC.

(f) The investigative report described in Subsection(3)(d) shall become part of the UPPAC case file.

(4) UPPAC shall review the investigative report and take one of the following actions:

(a) UPPAC determines no further action should be taken, UPPAC may recommend that the Board dismiss the case; or

(b) UPPAC may make an initial recommendation of appropriate action or disciplinary letter.

(5) After receiving an initial recommendation from UPPAC for action, the Executive Secretary shall direct a UPPAC attorney to:

(a) prepare and serve a complaint; or

(b) negotiate and prepare a proposed stipulated agreement.

(6)(a) Upon request of an educator, UPPAC will provide an electronic or paper copy of the UPPAC case file and evidence file to the educator.

(b) UPPAC may charge fees in accordance with R277-103-5 if the educator requests a paper copy.

(7)(a) A proposed stipulated agreement shall conform to the requirements set forth in Section R277-211-6.

(b) An educator may stipulate to any recommended disposition for an action.

(8) The Executive Secretary shall forward any proposed stipulated agreement to the Board for approval.

R277-211-4. Expedited Hearings.

(1) In a case involving the report of an arrest, citation, or charge of a licensed educator, which requires self-reporting by the educator under Section R277-516-3, the Executive Secretary, with the consent of the educator, may schedule the matter for an expedited hearing in lieu of initially referring the matter to UPPAC.

(2)(a) The Executive Secretary shall hold an expedited hearing within 30 days of a report of an arrest, citation, or charge, unless otherwise agreed upon by both parties.

(b) The Executive Secretary or the Executive Secretary's designee shall conduct an expedited hearing with the following additional invited participants:

(i) the educator;

(ii) the educator's attorney or representative;

(iii) a UPPAC attorney;

(iv) a voting member of UPPAC; and

(v) a representative of the educator's LEA.

(3) The panel may consider the following matters at an expedited hearing:

(a) an educator's oral or written explanation of the events;

(b) a police report;

(c) a court docket or transcript;

(d) an LEA's investigative report or employment file; and

(e) additional information offered by the educator if the panel deems it probative of the issues at the expedited hearing.

(4) After reviewing the evidence described in Subsection (3), the expedited hearing panel shall make written findings and a recommendation to UPPAC to do one of the following:

(a) close the case;

(b) close the case upon completion of court requirements;

(c) recommend issuance of a disciplinary letter to the Board;

(d) open a full investigation; or

(e) recommend action by the Board, subject to an educator's due process rights under these rules.

(5) An expedited hearing may be recorded, but the testimony from the expedited hearing is inadmissible during a future UPPAC action related to the allegation.

(6) If the Board fails to adopt the recommendation of an expedited hearing panel, UPPAC shall open a full investigation.

R277-211-5. Complaints.

(1) If UPPAC determines that an allegation is sufficiently supported by evidence discovered in the investigation, the Executive Secretary shall direct the UPPAC attorney to serve a complaint upon the educator being investigated.

(2) At a minimum, a complaint shall include:

(a) a statement of legal authority and jurisdiction under which the action is being taken;

(b) a statement of the facts and allegations upon which the complaint is based;

(c) other information that the investigator believes is necessary to enable the respondent to understand and address the allegations;

(d) a statement of the potential consequences if an allegation is found to be true or substantially true;

(e) a statement that the respondent shall answer the complaint and request a hearing, if desired, within 30 days of the date the complaint is mailed to the respondent;

(f) a statement that the respondent is required to file a written answer described in Subsection(2)(e) with the Executive Secretary;

(g) a statement advising the respondent that if the respondent fails to respond within 30 days, a default judgment for revocation or a suspension of the educator's license may occur for a term of five years or more;

(h) a statement that, if a hearing is requested, the hearing will be scheduled no less than 45 days, nor more than 180 days, after receipt of the respondent's answer, unless a different date is agreed to by both parties in writing; and

(i) a copy of the applicable hearing rules as required by Subsection 53E-6-607.

(3) On the Executive Secretary's own motion, the Executive Secretary, or the Executive Secretary's designee, with notice to the parties, may reschedule a hearing date.

(4)(a) A respondent may file an answer to a complaint by filing a written response signed by the respondent or the respondent's representative with the Executive Secretary within 30 days after the complaint is mailed.

(b) The answer may include a request for a hearing, and shall include:

(i) the file number of the complaint;

(ii) the names of the parties;

(iii) a statement of the relief that the respondent seeks; and

(iv) if not requesting a hearing, a statement of the reasons that the relief requested should be granted.

(c) As an alternative to filing an answer, the respondent may file a voluntary surrender pursuant to Rule R277-216.

(5)(a) As soon as reasonably practicable after receiving an answer, or no more than 30 days after receipt of an answer, the Executive Secretary shall schedule a hearing, if requested by the respondent, as provided in Rule R277-212.

(b) If the parties can reach an agreement prior to the hearing consistent with the terms of UPPAC's initial recommendation, the UPPAC attorney may negotiate a proposed stipulated agreement with the respondent.

(c) A proposed stipulated agreement described in Subsection(5)(b) shall be submitted to the Board for the Board's final approval.

(6)(a) If a respondent does not respond to the complaint within 30 days, the Executive Secretary may initiate default proceedings in accordance with the procedures set forth in Section R277-211-7.

(b) Except as provided in Subsection R277-211-7(3), if the Executive Secretary enters an order of default, the Executive Secretary shall make a recommendation to the Board for a revocation or a suspension of the educator's license for five years before the educator may request a reinstatement hearing.

(c) If a default results in a suspension, a default may include conditions that an educator shall satisfy before the educator may qualify for a reinstatement hearing.

(d) An order of default shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Subsection 53E-6-604(5)(b).

R277-211-6. Proposed Consent to Discipline.

(1) At any time after UPPAC has made an initial recommendation, a respondent may accept UPPAC's initial recommendation, rather than request a hearing, by entering into a proposed consent to discipline.

(2) By entering into a proposed consent to discipline, a respondent waives the respondent's right to a hearing to contest the recommended disposition, contingent on final approval by the Board.

(3) At a minimum, the Executive Secretary shall include the following in a proposed consent to discipline:

(a) a summary of the facts, the allegations, the presumption described in Rule R277-215, mitigating or aggravating factors described in Rule R277-215, and the evidence relied upon by UPPAC in its recommendation;

(b) a statement that the respondent admits the facts recited in the proposed consent to discipline as true for purposes of the Board administrative action;

(c) a statement that the respondent:

(i) waives the respondent's right to a hearing to contest the allegations that gave rise to the investigation; and

(ii) agrees to limitations on the respondent's license or surrenders the respondent's license rather than contest the allegations;

(d) a statement that the respondent agrees to the terms of the proposed consent to discipline and other provisions applicable to the case, such as remediation, counseling, restitution, rehabilitation, and other conditions, if any, under which the respondent may request a reinstatement hearing or a removal of the letter of reprimand or termination of probation;

(e) if for suspension or revocation of a license, a statement that

the respondent:

(i) may not seek or provide professional services in a public school in the state;

(ii) may not seek to obtain or use an educator license in the state; or

(iii) may not work or volunteer in a public K-12 setting in any capacity without express authorization from the UPPAC Executive Secretary, unless or until the respondent:

(A) first obtains a valid educator license or authorization from the Board to obtain such a license; or

(B) satisfies other provisions provided in the proposed consent to discipline;

(f) a statement that the action and the proposed consent to discipline shall be reported to other states through the NASDTEC Educator Information Clearinghouse and any attempt to present to any other state a valid Utah license shall result in further licensing action in Utah;

(g) a statement that respondent waives the respondent's right to contest the facts stated in the proposed consent to discipline at a subsequent reinstatement hearing, if any;

(h) a statement that all records related to the proposed consent to discipline shall remain permanently in the UPPAC case file;

(i) a statement reflecting the proposed consent to discipline classification under Title 63G, Chapter 2, Government Records Access and Management Act;

(j) a statement that information regarding the proposed letter of reprimand, suspension, or revocation may be included in an online licensing database that is available for public access in accordance with R277-512.

(k) a statement that a violation of the terms of an approved consent to discipline may result in additional disciplinary action and may affect the reinstatement process; and

(l) a statement that the educator understands that the Board is not bound by UPPAC's recommendation or the negotiated proposed stipulated agreement unless the Board approves the proposed consent to discipline.

(4)(a) The Executive Secretary shall forward a proposed consent to discipline to the Board for approval.

(b) If the Board does not approve a proposed consent to discipline, the Board may:

(i)(A) remand the case to UPPAC and may include issues that need to be addressed;

(B) offer respondent the opportunity for a hearing; or

(C) provide alternative terms and disposition to the Executive Secretary, that would be satisfactory to the Board to be submitted to the educator for consideration;

(ii) direct the Executive Secretary to issue a disciplinary letter or dismiss the matter; or

(iii) take other appropriate action consistent with due process and R277-215.

(5) If the respondent accepts a consent to discipline with alternative terms and disposition proposed by the Board, the consent to discipline, as modified, is a final Board administrative action without further Board consideration.

(6) If the terms approved by the Board are rejected by the respondent, the proceedings shall continue from the point under these procedures at which the agreement was negotiated, as if the stipulated agreement had not been submitted.

(7) If the Board remands to UPPAC to provide respondent the opportunity for a hearing under Subsection (4)(b)(i)(B), the Executive Secretary shall:

(a) notify the parties of the decision;

(b) direct a UPPAC attorney to issue a complaint; and

(c) direct the proceedings as if the proposed consent to discipline had not been submitted.

(8) If the Board approves a proposed consent to discipline, the approval is a final Board administrative action and the Executive Secretary shall:

(a) notify the parties of the decision;

(b) update CACTUS to reflect the action;

(c) report the action to the NASDTEC Educator Information Clearinghouse if the agreement results in:

(i) a revocation;

(ii) a suspension;

(iii) probation; or

(iv) a letter of reprimand;

(d) direct the appropriate penalties to begin; and

(e) notify the LEAs throughout the state.

R277-211-7. Default Procedures.

(1) If a respondent does not respond to a complaint within 30 days from the date the complaint is served, the Executive Secretary may issue an order of default against the respondent consistent with the following:

(a) the Executive Secretary shall prepare and serve on the respondent an order of default including:

(i) a statement of the grounds for default; and

(ii) a recommended disposition if the respondent fails to file a response to a complaint;

(b) ten days following service of the order of default, a UPPAC attorney shall attempt to contact respondent by telephone or electronically;

(c) UPPAC shall maintain documentation of attempts toward written, telephonic, or electronic contact;

(d) the respondent has 20 days following service of the order of default to respond to UPPAC; and

(e) if UPPAC receives a response from respondent to a default order before the end of the 20 day default period, UPPAC shall allow respondent a final ten day period to respond to a complaint.

(2) Except as provided in Subsection (3), if an order of default is issued, the Executive Secretary shall make a recommendation to the Board for discipline in accordance with Rule R277-215.

(3) If an order of default is issued, the Executive Secretary shall make a recommendation to the Board for a revocation of the educator's license if the alleged misconduct is conduct identified in Subsection 53E-6-604(5)(b).

R277-211-8. Disciplinary Letters and Dismissal.

(1) If UPPAC recommends issuance of a disciplinary letter or dismissal, the Executive Secretary shall forward the case to the Board for review.

(2) If the Board does not approve a recommendation for a disciplinary letter or dismissal described in Subsection (1), the Board may:

(a) remand the case to UPPAC with:

(i) direction as to the issues UPPAC should address;

(ii) alternative terms and disposition that should be satisfactory to the Board to be submitted to the educator for consideration; and

(iii) the opportunity for the educator to participate in a hearing;

(b) direct the Executive Secretary to issue a different level of disciplinary letter;

(c) dismiss the matter; or

(d) take other appropriate action consistent with due process and Rule R277-215.

(3) If the Board approves a disciplinary letter, the Executive Secretary shall:

(a) prepare the disciplinary letter and mail it to the educator;

(b) place a copy of the disciplinary letter in the UPPAC case file; and

(c) update CACTUS to reflect that the investigation is closed.

KEY: teacher licensing, conduct, hearings
May 10, 2017 **Art X Sec 3**
53E-6-506
53E-3-401(4)

R277. Education, Administration.
R277-212. UPPAC Hearing Procedures and Reports.
R277-212-1. 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 53E-6-506, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

(c) Subsection 53E-3-401(4), 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 procedures regarding UPPAC hearings and hearing reports.

(3) The standards and procedures of Title 63G, Chapter 4, Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

R277-212-2. Scheduling a Hearing.

(1)(a) Following receipt of an answer by respondent requesting a hearing, or at the direction of the Board to give the respondent an opportunity to have a hearing:

(i) UPPAC shall select panel members;

(ii) the Executive Secretary shall appoint a hearing officer from among a list of hearing officers identified by the state procurement process and approved by UPPAC; and

(iii) UPPAC shall schedule the date, time, and place for the hearing.

(b) The Executive Secretary shall schedule a hearing for a date that is not less than 45 days nor more than 180 days from the date the Executive Secretary receives the answer unless otherwise stipulated by the parties.

(c) The required scheduling periods may be waived by mutual written consent of the parties or by the hearing officer for good cause shown.

(2)(a) Any party may request a change of hearing date by submitting a request in writing that shall:

(i) include a statement of the reasons for the request; and

(ii) be submitted to the hearing officer at least five days prior to the scheduled date of the hearing.

(b) The hearing officer shall determine whether the reason stated in the request is sufficient to warrant a change.

(c) If the hearing officer finds that the reason for the request for a change of hearing date is sufficient, the hearing officer shall promptly notify all parties of the new time, date, and place for the hearing.

(d) If the hearing officer does not find the reason for the request for a change of hearing date to be sufficient, the hearing officer shall immediately notify the parties that the request has been denied.

(e) The hearing officer and the parties may waive the time period required for requesting a change of hearing date for good cause shown.

(3) An educator is entitled to a hearing on any matter in which an action is recommended.

(4) An educator is not entitled to a hearing on a matter in which a disciplinary letter is recommended.

R277-212-3. Appointment and Duties of the Hearing Officer and Hearing Panel.

(1)(a) The Executive Secretary shall appoint a hearing officer to chair the hearing panel and conduct the hearing.

(b) The Executive Secretary shall select a hearing officer on a random basis from a list of available contracted hearing officers, subject to availability and conflict of interest.

(c) The Executive Secretary shall provide such information about the case as necessary to determine whether the hearing officer has a conflict of interest and shall disqualify any hearing officer that cannot serve under the Utah Rules of Professional Conduct.

(d) A hearing officer:

(i) may require the parties to submit a brief and a list of witnesses prior to the hearing;

(ii) presides at the hearing and regulates the course of the proceeding;

(iii) administers an oath to a witness as follows: "Do you swear or affirm that the testimony you will give is the truth?";

(iv) may take testimony, rule on a question of evidence, and ask a question of a witness to clarify a specific issue; and

(v) prepares and submits a hearing report to the Executive Secretary at the conclusion of the proceedings in consultation with panel members and the timelines of this rule.

(2)(a) UPPAC shall select three or more individuals to serve as members of the hearing panel.

(b) The majority of panel members shall be current UPPAC members.

(c) As directed by UPPAC, a licensed educator or member of the community may serve as a panel member, if needed.

(d) UPPAC shall select panel members on a rotating basis to the extent practicable.

(e) UPPAC shall accommodate each prospective panel member based on the availability of the panel member.

(f) If the respondent is a teacher, at least one panel member shall be a teacher.

(g) If the respondent is a non-teacher licensed educator, at least one panel member shall be a non-teacher licensed educator.

(3) The requirements of Subsection (2) may be waived only upon the stipulation of both UPPAC and the respondent.

(4)(a) A UPPAC panel member shall:

(i) assist a hearing officer by providing information concerning professional standards and practices of educators in the respondent's particular field of practice and in the situations alleged;

(ii) ask a question of a witness to clarify a specific issue;

(iii) review all evidence and briefs, if any, presented at the hearing;

(iv) make a recommendation to UPPAC as to the suggested disposition of a complaint; and

(v) assist the hearing officer in preparing the hearing report.

(b) A panel member may only consider the evidence approved for admission by the hearing officer.

(c) The Executive Secretary may make an emergency substitution of a panel member for cause with the consent of the parties.

(d) The agreement to substitute a panel member shall be in writing.

(e) Parties may agree to a two-member UPPAC panel in an emergency situation.

(f) If the parties do not agree to a substitution or to having a two-member panel, the Executive Secretary shall reschedule the hearing.

(5)(a) A party may request that the Executive Secretary disqualify a hearing officer by submitting a written request for disqualification to the Executive Secretary.

(b) A party shall submit a request to disqualify a hearing officer to the Executive Secretary at least 15 days before a scheduled hearing.

(6)(a) The Executive Secretary shall review a request described in Subsection (5) and supporting evidence to determine whether the reasons for the request are substantial and compelling.

(b) If the Executive Secretary determines that the hearing officer should be disqualified, the Executive Secretary shall appoint a new hearing officer and, if necessary, reschedule the hearing.

(7) A hearing officer may recuse himself or herself from a hearing if, in the hearing officer's opinion, the hearing officer's participation would violate any of the Utah Rules of Professional Conduct consistent with the Supreme Court Rules of Professional Practice.

(8)(a) If the Executive Secretary denies a request to disqualify a hearing officer described in Subsection (5), the Executive Secretary shall notify the party within ten days prior to the date of

the hearing.

(b) The requesting party may submit a written appeal of the Executive Secretary's denial to the Superintendent no later than five days prior to the hearing date.

(c) If the Superintendent finds that the appeal is justified, the Superintendent shall direct the Executive Secretary to appoint a new hearing officer and, if necessary, reschedule the hearing.

(d) The decision of the Superintendent described in Subsection (8)(c) is final.

(e) If a party fails to file an appeal within the time requirements of Subsection (8)(b), the appeal shall be deemed denied.

(f) If the Executive Secretary fails to meet the time requirements described in Subsection (6) or (8), the request or appeal is approved.

(9)(a) A UPPAC member shall recuse himself or herself as a panel member due to any known financial or personal interest, prior relationship, personal and independent knowledge of the persons or issues in the case, or other association that the panel member believes would compromise the panel member's ability to make an impartial decision.

(b) A party may request that a UPPAC panel member be disqualified by submitting a written request to the following:

(i) the hearing officer; or

(ii) to the Executive Secretary if there is no hearing officer.

(c) A party shall submit a request described in Subsection (9)(b) no less than 15 days before a scheduled hearing.

(d) The hearing officer, or the Executive Secretary, if there is no hearing officer, shall:

(i) review a request described in Subsection (9)(b) and supporting evidence to determine whether the reasons for the request are substantial and compelling enough to disqualify the panel member; and

(ii) if the reasons for the request described in Subsection (9)(b) are substantial and compelling, disqualify the panel member.

(e) If the panel member's disqualification leaves the hearing panel with fewer than three UPPAC panel members:

(i) UPPAC shall appoint a replacement; and

(ii) the Executive Secretary shall, if necessary, reschedule the hearing.

(f) If a request described in Subsection (9)(b) is denied, the hearing officer or the Executive Secretary if there is no hearing officer, shall notify the party requesting the panel member's disqualification no less than ten days prior to the date of the hearing.

(g) The requesting party may file a written appeal of a denial described in Subsection (9)(f) with the Superintendent no later than five days prior to the hearing date.

(h) If the Superintendent finds that an appeal described in Subsection (9)(g) is justified, the Superintendent shall direct the hearing officer or the Executive Secretary if there is no hearing officer, to replace the panel member.

(i) If a panel member's disqualification leaves the hearing panel with fewer than three UPPAC panel members, UPPAC shall agree upon a replacement and the Executive Secretary shall, if necessary, reschedule the hearing.

(j) The decision of the Superintendent described in Subsection (9)(h) is final.

(k) If a party fails to file an appeal within the time requirements of Subsection (9)(g), the appeal shall be deemed denied.

(l) If the hearing officer, or the Executive Secretary if there is no hearing officer, fails to meet the time requirements described in this Subsection (9), the request or appeal is approved.

(10) The Executive Secretary may, at the time the Executive Secretary selects a hearing officer or panel member, select an alternative hearing officer or panel member following the process for selecting those individuals.

(11) The Executive Secretary may substitute a panel member with an alternative panel member if the Executive Secretary notifies the parties of the substitution.

R277-212-4. Preliminary Instructions to Parties to a Hearing.

(1) A hearing shall be scheduled no less than 45 days after receipt of an answer, unless otherwise stipulated by the parties.

(2) No later than 25 days before the date of a hearing, the Executive Secretary shall provide the parties with the following information:

(a) date, time, and location of the hearing;

(b) names and LEA affiliations of each panel member, and the name of the hearing officer; and

(c) instructions for accessing these rules.

(3) No later than 20 days before the date of the hearing, the respondent and the complainant shall provide the following to the other party and to the hearing officer:

(a) a brief, if requested by the hearing officer containing:

(i) any procedural and evidentiary motions along with the party's position regarding the allegations; and

(ii) relevant laws, rules, and precedent;

(b) the name of the person who will represent the party at the hearing;

(c) a list of witnesses expected to be called, including a summary of the testimony that each witness is expected to present;

(d) a summary of documentary evidence that the party intends to submit; and

(e) following receipt of the other party's witness list, a list of anticipated rebuttal witnesses and evidence no later than ten days prior to the hearing.

(4)(a) Except as provided in Subsection (4)(b), a party may not present a witness or evidence at the hearing if the witness or evidence has not been disclosed to the other party as required in Subsection (3).

(b) A party may present a witness or evidence at the hearing even if the witness or hearing has not been disclosed to the other party if:

(i) the parties stipulate to the presentation of the witness or evidence at the hearing; or

(ii) the hearing officer makes a determination of good cause to allow the witness or evidence.

(5) If a party fails to comply in good faith with a directive of the hearing officer, including time requirements, the hearing officer may prohibit introduction of the testimony or evidence or take other steps reasonably appropriate under the circumstances.

(6) A party shall provide materials to the hearing officer, panel members, and UPPAC as directed by the hearing officer.

R277-212-5. Hearing Parties' Representation.

(1) A UPPAC attorney shall represent the complainant.

(2) A respondent may represent himself or herself or be represented, at the respondent's own cost, by another person.

(3) The informant has no right to:

(a) individual representation at the hearing; or

(b) to be present or heard at the hearing unless called as a witness.

(4) A respondent shall notify the Executive Secretary in a timely manner and in writing if the respondent chooses to be represented by anyone other than the respondent.

R277-212-6. Discovery Prior to a Hearing.

(1) Discovery is permitted to the extent necessary to obtain relevant information necessary to support claims or defenses, as determined by the hearing officer.

(2) Unduly burdensome legalistic discovery may not be used to delay a hearing.

(3) A hearing officer may limit discovery:

(a) at the discretion of the hearing officer; or

(b) upon a motion by either party.

(4) A hearing officer rules on all discovery requests and motions.

(5) The Executive Secretary shall issue a subpoena or other order to secure the attendance of a witness pursuant to Subsection 53E-6-606(1) if:

(a) requested by either party; and

(b) notice of intent to call the witness has been timely provided as required by Section R277-212-4.

(6) The Executive Secretary shall issue a subpoena to produce evidence if timely requested by either party.

(7)(a) A party may not present an expert witness report or expert witness testimony at a hearing unless the requirements of Section R277-212-10 have been met.

(b) A respondent may not subpoena the UPPAC attorney or investigator as an expert witness.

R277-212-7. Burden and Standard of Proof for UPPAC Proceedings.

(1) In matters other than those involving applicants for licensing, and excepting the presumptions under Subsection R277-212-11(11), the Board shall have the burden of proving that an action against the license is appropriate.

(2) An applicant for licensing has the burden of proving that licensing is appropriate.

(3) The standard of proof in all UPPAC hearings is a preponderance of the evidence.

(4) The Utah Rules of Evidence are not applicable to UPPAC proceedings.

(5) The criteria to decide an evidentiary question are:

(a) reasonable reliability of the offered evidence;

(b) fairness to both parties; and

(c) usefulness to UPPAC in reaching a decision.

(6) The hearing officer has the sole responsibility to determine the application of the hearing rules and the admissibility of evidence.

R277-212-8. Deportment.

(1) Parties, their representatives, witnesses, and other persons present during a hearing shall conduct themselves in an appropriate manner during a hearing, giving due respect to members of the hearing panel and complying with the instructions of the hearing officer.

(2) A hearing officer may exclude a person from the hearing room who fails to conduct himself or herself in an appropriate manner and may, in response to extreme instances of noncompliance, disallow the person's testimony.

(3) Parties, attorneys for parties, or other participants in the professional practices investigation and hearing process may not harass, intimidate, or pressure witnesses or other hearing participants, nor may they direct others to harass, intimidate, or pressure witnesses or participants.

R277-212-9. Hearing Record.

(1) A hearing shall be recorded at UPPAC's expense, and the recording shall become part of the UPPAC case file, unless otherwise agreed upon by all parties.

(2) An individual party may, at the party's own expense, make a recording or transcript of the proceedings if the party provides notice to the Executive Secretary.

(3) If an exhibit is admitted as evidence, the record shall reflect the contents of the exhibit.

(4) All evidence and statements presented at a hearing shall become part of the UPPAC case file and may not be removed except by direction of the Executive Secretary or by order of the Board.

(5)(a) Upon request of an educator, UPPAC will provide an electronic or paper copy of the UPPAC case file to the educator.

(b) UPPAC may charge fees in accordance with Rule R277-103-5 if the educator requests a paper copy.

R277-212-10. Expert Witnesses in UPPAC Proceedings.

(1) A hearing officer may allow testimony by an expert witness.

(2) A party may call an expert witness at the party's own expense.

(3) A party shall provide a hearing officer and the opposing party with the following information at least 15 days prior to the hearing date:

(a) notice of intent of a party to call an expert witness;

(b) the identity and qualifications of an expert witness;

(c) the purpose for which the expert witness is to be called; and

(d) any prepared expert witness report.

(4) Defects in the qualifications of an expert witness, once a minimum threshold of expertise is established, go to the weight to be given the testimony and not to its admissibility.

(5) An expert witness who is a member of the complainant's staff or staff of an LEA may testify and have the testimony considered as part of the record in the same manner as the testimony of any other expert.

R277-212-11. Evidence and Participation in UPPAC Proceedings.

(1) A hearing officer may not exclude evidence solely because the evidence is hearsay.

(2) Each party has a right to call witnesses, present evidence, argue, respond, cross-examine witnesses who testify in person at the hearing, and submit rebuttal evidence.

(3) Testimony presented at the hearing shall be given under oath if the testimony is offered as evidence to be considered in reaching a decision on the merits.

(4) On the hearing officer's own motion or upon objection by a party, the hearing officer:

(a) may exclude evidence that the hearing officer determines to be irrelevant, immaterial, or unduly repetitious;

(b) shall exclude evidence that is privileged under law applicable to administrative proceedings in the state unless waived;

(c) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;

(d) may take official notice of any facts that could be judicially noticed under judicial or administrative laws of the state, or from the record of other proceedings before the agency.

(5)(a) In addition to a rebuttable presumption described in Subsection 53E-6-506(3)(e), a rebuttable evidentiary presumption exists that a person has committed a sexual offense against a minor if the person has:

(i) been found, pursuant to a criminal, civil, or administrative action to have committed a sexual offense against a minor; or

(ii) failed to defend himself or herself against the charge when given a reasonable opportunity to do so.

(b) A rebuttable evidentiary presumption exists that a person is unfit to serve as an educator if the person has been found pursuant to a criminal, civil, or administrative action to have exhibited behavior evidencing unfitness for duty, including immoral, unprofessional, or incompetent conduct, or other violation of standards of ethical conduct, performance, or professional competence.

(c) Evidence of behavior described in Subsection (11)(b) may include:

(i) conviction of a felony;

(ii) a felony charge and subsequent conviction for a lesser related charge pursuant to a plea bargain or plea in abeyance;

(iii) an investigation of an educator's license, certificate, or authorization in another state; or

(iv) the expiration, surrender, suspension, revocation, or invalidation of an educator's license for any reason.

R277-212-12. Testimony of a Minor Victim or Witness.

(1) For purposes of this section, a "minor victim or witness" is an individual who is less than 18 years old at the time of hearing.

(2) If a case involves allegations of child abuse or of a sexual offense against a minor under applicable federal or state law, either party, a member of the hearing panel, or the hearing officer, may request that a minor victim or witness be allowed to testify outside of the respondent's presence.

(3) If the hearing officer determines that a minor victim or witness would suffer undue emotional or mental harm, or that the minor victim or witness's testimony in the presence of the respondent would be unreliable, the minor victim or witness's testimony may be admitted as described in this section.

(4) An oral statement of a minor victim or witness that is recorded prior to the filing of a complaint is admissible as evidence in a hearing regarding the offense if:

(a) no attorney for either party is in the minor victim or witness's presence when the statement is recorded;

(b) the recording is visual and aural and is recorded;

(c) the recording equipment is capable of making an accurate recording;

(d) the operator of the equipment is competent;

(e) the recording is accurate and has not been altered; and

(f) each voice in the recording is identified.

(5) The testimony of a minor victim or witness may be taken in a room other than the hearing room, and may be transmitted by closed circuit equipment to another room where it can be viewed by the respondent if:

(a) only the hearing panel members, attorneys for each party, persons necessary to operate equipment, and a person approved by the hearing officer whose presence contributes to the welfare and emotional well-being of the minor victim or witness may be with the minor victim or witness during the testimony;

(b) the respondent is not present during the minor victim or witness's testimony;

(c) the hearing officer ensures that the minor victim or witness cannot hear or see the respondent;

(d) the respondent is permitted to observe and hear, but not communicate with the minor victim or witness; and

(e) only hearing panel members, the hearing officer, and the attorneys question the minor victim or witness.

(6)(a) If a witness testifies under circumstances described in Subsection (5), a pro se educator, may submit written questions to the hearing officer to ask on the educator's behalf.

(b) A hearing officer shall take appropriate recesses to ensure a pro se educator is allowed to ask all needed follow up questions.

(7) If the hearing officer determines that the testimony of a minor victim or witness may be taken consistent with Subsections (2) through (5), the minor victim or witness may not be required to testify in any proceeding where the recorded testimony is used.

R277-212-13. Hearing Report.

(1) Within 20 days after the hearing, or within 20 days after the deadline imposed for the filing of any post-hearing materials as permitted by the hearing officer, the hearing officer shall sign and issue a hearing report consistent with the recommendations of the panel that includes:

(a) detailed findings of fact and conclusions of law based upon the evidence of record or on facts officially noted;

(b) a statement of relevant precedent, if available;

(c) a statement of applicable law and rule;

(d) presumptions applied by UPPAC;

(e) mitigating and aggravating circumstances considered by UPPAC;

(f) a recommended disposition of UPPAC panel members that shall be one or an appropriate combination of the following:

(i) dismissal of the complaint;

(ii) letter of admonishment;

(iii) letter of warning;

(iv) letter of reprimand;

(v) probation, to include the following terms and conditions:

(A) it is the respondent's responsibility to petition UPPAC for removal of probation and letter of reprimand from the respondent's CACTUS file;

(B) a recommended minimum probationary time;

(C) conditions that can be monitored;

(D) if recommended by the panel, a person or entity to monitor a respondent's probation;

(E) a statement providing for costs of probation, if appropriate; and

(F) whether or not the respondent may work in any capacity in public education during the probationary period;

(vi) disciplinary action held in abeyance;

(vii) suspension, to include the following terms and conditions:

(A) a recommended minimum time period consistent with R277-215 after which an educator may request a reinstatement hearing under Rule R277-213; and

(B) any recommended conditions precedent to requesting a reinstatement hearing under Section R277-213-2; or

(viii) revocation; and

(g) notice that UPPAC's recommendation is subject to approval by the Board and judicial review as may be allowed by law.

(2) Findings of fact may not be based solely upon hearsay, and conclusions shall be based upon competent evidence.

(3) Any of the consequences described in Subsection (1)(d) may be imposed in the form of a disciplinary action held in abeyance.

(4)(a) If the respondent's penalty is held in abeyance, the respondent's penalty is stayed subject to the satisfactory completion of probationary conditions.

(b) The decision to impose a consequence in the form of a disciplinary action held in abeyance shall provide for appropriate or presumed discipline if the respondent does not fully satisfy the probationary conditions.

(5)(a) A hearing officer shall circulate a draft report to hearing panel members prior to the 20 day completion deadline of the hearing report.

(b) Hearing panel members shall notify the hearing officer of any changes to the report:

(i) as soon as possible after receiving the report; and

(ii) prior to the 20 day completion deadline of the hearing report.

(c) The hearing officer shall file the completed hearing report with the Executive Secretary, who shall review the report with UPPAC.

(d) The Executive Secretary may participate in UPPAC's deliberation as a resource to UPPAC in explaining the hearing report and answering any procedural questions raised by UPPAC members.

(e) The hearing officer may confer with the Executive Secretary or the panel members or both while preparing the hearing report.

(f) The hearing officer may request the Executive Secretary to confer with the hearing officer and panel following the hearing.

(g) The Executive Secretary may return a hearing report to a hearing officer if the report is incomplete, unclear, or unreadable, or missing essential components or information.

(h) UPPAC shall vote to uphold the hearing officer's and panel's report if UPPAC finds that:

(i) there are no significant procedural errors;

(ii) the hearing officer's recommendations are based upon a preponderance of the evidence presented at the hearing; and

(iii) that all issues explained in the hearing report are adequately addressed in the conclusions of the report.

(i) After the UPPAC review, the Executive Secretary shall send a copy of the hearing report to:

(i) the Board for further action;

(ii) the respondent; and

(iii) the UPPAC case file.

(6)(a) If UPPAC adopts a hearing report that recommends an action, as defined in Subsection R277-210-2(1), either party may request review by the Superintendent within 15 days from the date the Executive Secretary sends a copy of the hearing report to the respondent.

(b) The request for review shall consist of:

(i) the name, position, and address of the appellant;

(ii) the issue being appealed; and

(iii) the signature of the appellant or the appellant's representative.

(c) An appeal to the Superintendent is limited to a question of fairness or a violation of due process.

(d) If the Superintendent finds that a procedural error has occurred that violates fairness or due process, the Superintendent shall:

(i) refer the report back to UPPAC for reconsideration as to whether the findings, conclusions, or decisions are supported by a preponderance of the evidence; or

(ii) direct the UPPAC Executive Secretary to take specific administrative action.

(e) After UPPAC completes reconsideration, the Superintendent shall:

(i) notify all parties; and

(ii) refer the report to the Board, if necessary, for final disposition consistent with this rule.

(7) If the Board does not approve a UPPAC hearing report, the Board may:

(a) remand the case to UPPAC with direction to cure due process issues; or

(b) direct the Executive Secretary to make other evidence available pursuant to Section R277-212-14 before issuing a final decision with official findings; or

(c) issue findings based on the UPPAC hearing record and report:

(i) specifying the reasons, including presumptions and the mitigating and aggravating circumstances the Board considered, why the Board disapproves of the hearing report;

(ii) adopting the Board's decision on the matter; and

(iii) directing the Executive Secretary to include the findings as an addendum to the hearing report, which findings constitute final Board action; or

(d) take other appropriate action consistent with due process and R277-215.

(8) Following Board adoption of a hearing report or the Board's decision under Subsection (7)(b), the Executive Secretary shall:

(a) notify the educator;

(b) notify the educator's employer;

(c) update CACTUS to reflect the Board's action; and

(d) report the action to the NASDTEC Educator Information Clearing house if the action results in:

(i) a revocation;

(ii) a suspension;

(iii) probation; or

(iv) a letter of reprimand.

(9) The hearing report is a public document under Title 63G, Chapter 2, Government Records Access and Management Act after final action is taken in the case, but may be redacted if it is determined that the hearing report contains particular information, the dissemination of which is otherwise restricted under the law.

(10) A respondent's failure to comply with the terms of a final disposition may result in additional discipline against the educator license.

(11) If a hearing officer fails to satisfy the hearing officer's responsibilities under this rule, the Executive Secretary may:

(a) notify the Utah State Bar of the failure;

(b) reduce the hearing officer's compensation consistent with the failure;

(c) take timely action to avoid disadvantaging either party; or

(d) preclude the hearing officer from further employment by the Board for UPPAC purposes.

(12) The Executive Secretary may waive the deadlines within this section if the Executive Secretary finds good cause.

(13) All criteria of letters of warning and reprimand, probation, suspension, and revocation apply to the comparable sections of the final hearing report.

R277-212-14. Additional Relevant Evidence.

(1) If the Board directs the Executive Secretary to make additional relevant evidence available to the Board for review, before the Board issues a final decision with official findings, the Executive Secretary shall give the educator a notice that includes:

(a) what additional relevant evidence the Board directed UPPAC to make available to review;

(b) file a response described in Subsection (2); and

(c) a statement that the educator's failure to file either a timely written response or request for hearing would be a waiver of the right to either respond, or request a hearing.

(2) An educator who receives a notice described in Subsection (1) may submit one of the following within 30 days of the notice described in Subsection (1) was sent:

(a) a written response to the additional relevant evidence that the Board directed the Executive Secretary to make available for review; or

(b) a written request for a hearing before the Board to respond to the additional relevant evidence.

(3) If the educator fails to timely respond as provided in Subsection (2):

(a) the Executive Secretary shall notify the respondent that the respondent waived the right to respond or request a hearing; and

(b) the Board may proceed to view the additional relevant evidence.

(4) If the educator files a timely written response, the Executive Secretary shall submit the written response to the Board for consideration before the Board issues a final decision.

(5) If the educator files a timely hearing request, before the Board issues a final decision, the Executive Secretary shall:

(a) request a hearing before the Board, as described in Subsection (7);

(b) provide the respondent notice of the hearing meeting the requirements of Section 53E-6-607;

(c) include a copy of the Board rules that apply; and

(d) notify the respondent that if the respondent fails to attend or participate in the hearing:

(i) that the respondent has waived the right to appear and respond to the additional relevant evidence; and

(ii) that the Board may proceed to review the additional relevant evidence.

(6) The Board shall schedule a hearing described in Subseciton (5)(b) within no less than 45 days and no more than 90 days from the date the Executive Secretary receives the respondent's written request for a hearing.

(7) If the Board conducts a hearing described in Subsection (6), Sections R277-212-4, R277-212-5, and R277-212-7 through R277-212-12 apply.

(8) The Executive Secretary shall issue a subpoena or other order to secure the attendance of a witness pursuant to Subsection 53E-6-506(3)(c)(i) if:

(a) requested by either party; and

(b) notice of intent to call the witness has been timely provided as required by Section R277-212-4.

(9) Subsection R277-212-3(1) governs the appointment of a hearing officer to conduct hearing, but no hearing report is required.

(10) After the hearing or viewing the additional relevant evidence, the Board will prepare findings that support the reasons for the Board's decision, including the presumptions and mitigating and aggravating circumstances described in R277-215 that the Board applied.

(11) Findings issued by the Board as described in Subsection (11) may not be based solely upon hearsay.

R277-212-15. Default.

(1)(a) The Executive Secretary shall prepare an order of default if:

(i) the respondent fails to file an answer as described in Subsection R277-211-5(4);

(ii) the respondent fails to attend or participate in a properly scheduled hearing after receiving proper notice; or

(iii) the hearing officer recommends default as a sanction as a result of misconduct by the respondent or the respondent's representative during the course of the hearing process.

(b) The hearing officer may determine that the respondent has failed to attend a properly scheduled hearing if the respondent has not appeared within 30 minutes of the appointed time for the hearing to begin, unless the respondent shows good cause for failing to appear in a timely manner.

(2) The recommendation of default may be executed by the Executive Secretary following all applicable time periods, without further action by UPPAC.

(3) Except as provided in Subsection (4), the Executive Secretary shall make a recommendation to the Board for discipline in accordance with Rule R277-215.

(4) An order of default shall result in an Executive Secretary recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Subsection 53E-6-604(5)(b).

R277-212-16. Rights of Victims at Hearings.

(1) If the allegations that gave rise to the underlying allegations involve abuse of a sexual or physical nature, UPPAC shall make reasonable efforts to:

(a) advise the alleged victim that a hearing has been scheduled;

(b) notify the alleged victim of the date, time, and location of the hearing; and

(c) notify the alleged victim of the right to attend the hearing alone or with a victim advocate present.

(2) An alleged victim or guardian entitled to notification of a hearing is permitted, but is not required, to attend the hearing.

(3) An alleged victim or witness may have a criminal justice victim advocate or support person attend the hearing with them.

KEY: hearings, reports, educators
February 7, 2017 **Art X Sec 3**
53E-6-506
53E-3-401(4)

R277. Education, Administration.
R277-213. Request for Licensure Reinstatement and Reinstatement Procedures.
R277-213-1. 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 53E-6-506, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

(c) Subsection 53E-3-401(4), 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 procedures regarding educator license reinstatement.

(3) The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

R277-213-2. Application for Licensing Following Denial or Loss of License.

(1)(a) An individual who has been denied a license or lost the individual's license through suspension, or allowed a license to lapse in the face of an allegation of misconduct, may request a review to consider reinstatement of a license.

(b) A request for review described in Subsection (1)(a) shall:

(i) be in writing;

(ii) be transmitted to the UPPAC Executive Secretary; and

(iii) have the following information:

(A) name and address of the individual requesting review;

(B) the action being requested;

(C) specific evidence and documentation of compliance with terms and conditions of any remedial or disciplinary requirements or recommendations from UPPAC or the Board;

(D) reason(s) that the individual seeks reinstatement; and

(E) signature of the individual requesting review.

(2)(a) The Executive Secretary shall review the request with UPPAC.

(b) If UPPAC determines that the request is incomplete or invalid:

(i) the Executive Secretary shall deny the request; and

(ii) notify the individual requesting reinstatement of the denial.

(c) If UPPAC determines that the request of an individual described in Subsection (1) is complete, timely, and appropriate, UPPAC shall schedule and hold a hearing as provided under Section R277-213-3.

(3)(a) Burden of Persuasion: The burden of persuasion at a reinstatement hearing shall fall on the individual seeking the reinstatement.

(b) An individual requesting reinstatement of a suspended license shall:

(i) show sufficient evidence of compliance with any conditions imposed in the past disciplinary action;

(ii) provide sufficient evidence to the reinstatement hearing panel that the educator will not engage in recurrences of the actions that gave rise to the suspension and that reinstatement is appropriate;

(iii) undergo a criminal background check not more than six months prior to the requested hearing; and

(iv) provide materials for review by the hearing panel that demonstrate the individual's compliance with directives from UPPAC or the Board found in petitioner's original stipulated agreement or hearing report.

(c) An individual requesting licensing following a denial shall show sufficient evidence of completion of a rehabilitation or remediation program, if applicable, when requesting reinstatement.

(4) An individual whose license has been suspended or revoked in another state shall seek reinstatement of the individual's license in the other state before a request for a reinstatement hearing may be approved.

R277-213-3. Reinstatement Hearing Procedures.

(1) A hearing officer shall:

(a) preside over a reinstatement hearing; and

(b) rule on all procedural issues during the reinstatement hearing as they arise.

(2) A hearing panel, comprising individuals as set forth in Subsection (2), shall:

(a) hear the evidence; and

(b) along with the UPPAC attorney and hearing officer, question the individual seeking reinstatement regarding the appropriateness of reinstatement.

(3) An individual seeking reinstatement may:

(a) be represented by counsel; and

(b) may present evidence and witnesses.

(4) A party may present evidence and witnesses consistent with Rule R277-212.

(5) A hearing officer of a reinstatement hearing shall direct one or both parties to explain the background of a case to panel members at the beginning of the hearing to provide necessary information about the initial misconduct and subsequent UPPAC and Board action.

(6) An individual seeking reinstatement shall present documentation or evidence that supports reinstatement.

(7) The Executive Secretary, represented by a UPPAC attorney, shall present any evidence or documentation that explains and supports UPPAC's recommendation in the matter.

(8) Other evidence or witnesses may be presented by either party and shall be presented consistent with Rule R277-212.

(9) The individual seeking reinstatement shall:

(a) focus on the individual's actions, rehabilitative efforts, and performance following license denial or suspension;

(b) explain item by item how each condition of the hearing report or stipulated agreement was satisfied;

(c) provide documentation in the form of evaluations, reports, or plans, as directed by the hearing report or stipulated agreement, of satisfaction of all required and outlined conditions;

(d) be prepared to completely and candidly respond to the questions of the UPPAC attorney and hearing panel regarding:

(i) the misconduct that caused the license suspension;

(ii) subsequent rehabilitation activities;

(iii) counseling or therapy received by the individual related to the original misconduct; and

(iv) work, professional actions, and behavior between the suspension and reinstatement request;

(e) present witnesses and be prepared to question witnesses (including counselors, current employers, support group members) at the hearing who can provide substantive corroboration of rehabilitation or current professional fitness to be an educator;

(f) provide copies of all reports and documents to the UPPAC attorney and hearing officer at least five days before a reinstatement hearing; and

(g) bring eight copies of all documents or materials that an individual seeking reinstatement plans to introduce at the hearing.

(10) The UPPAC attorney, the hearing panel, and hearing officer shall thoroughly question the individual seeking reinstatement as to the individual's:

(a) underlying misconduct which is the basis of the sanction on the educator's license;

(b) specific and exact compliance with reinstatement requirements;

(c) counseling, if required for reinstatement;

(d) specific plans for avoiding previous misconduct; and

(e) demeanor and changed understanding of petitioner's professional integrity and actions consistent with Rule R277-515.

(11) If the individual seeking reinstatement sought counseling as described in Subsection(10)(c), the individual shall state, under oath, that he provided all relevant information and background to

his counselor or therapist.

(12) A hearing officer shall rule on procedural issues in a reinstatement hearing in a timely manner as they arise.

(13) No more than 20 days following a reinstatement hearing, a hearing officer, with the assistance of the hearing panel, shall:

(a) prepare a hearing report in accordance with the requirements set forth in Section R277-213-5; and

(b) provide the hearing report to the UPPAC Executive Secretary.

(14) The Executive Secretary shall submit the hearing report to UPPAC at the next meeting following receipt of the hearing report by the Executive Secretary.

(15) UPPAC may do the following upon receipt of the hearing report:

(a) accept the hearing panel's recommendation as prepared in the hearing report;

(b) amend the hearing panel's recommendation with conditions or modifications to the hearing panel's recommendation which shall be:

(i) directed by UPPAC;

(ii) prepared by the UPPAC Executive Secretary; and

(iii) attached to the hearing report; or

(c) reject the hearing panel's recommendation.

(16) After UPPAC makes a recommendation on the hearing panel report, the UPPAC recommendation will be forwarded to the Board for final action on the individual's reinstatement request.

(17) If the Board denies an individual's request for reinstatement, the individual shall wait at least twenty four (24) months prior to filing a request for reinstatement again, unless a different time is specified by UPPAC or the Board.

(18) If the Board reinstates an educator's license, the Executive Secretary shall:

(a) update CACTUS to reflect the Board's action; and

(b) report the Board's action to the NASDTEC Educator Information Clearing house.

(19) The Executive Secretary shall send notice of the Board's decision no more than 30 days following Board action to:

(a) the educator;

(b) the educator's LEA.

R277-213-4. Rights of a Victim at a Reinstatement Hearing.

(1) If the allegations that gave rise to the underlying suspension involve abuse of a sexual or physical nature, UPPAC shall make reasonable efforts to notify the victim or the victim's family of the reinstatement request.

(2) A UPPAC's notification described in Subsection (1) shall:

(a) advise the victim or the victim's family that a reinstatement hearing has been scheduled;

(b) notify the victim or the victim's family of the date, time, and location of the hearing;

(c) advise the victim or the victim's family of the victim's right to be heard at the reinstatement hearing; and

(d) provide the victim or the victim's family with a form upon which the victim can submit a statement for consideration by the hearing panel.

(3) A victim entitled to notification of the reinstatement proceedings shall be permitted:

(a) to attend the hearing; and

(b) to offer the victim's position on the educator's reinstatement request, either by testifying in person or by submitting a written statement.

(4) A victim choosing to testify at a reinstatement hearing shall be subject to reasonable cross examination in the hearing officer's discretion.

(5) A victim choosing not to respond in writing or appear at the reinstatement hearing waives the victim's right to participate in the reinstatement process.

R277-213-5. Reinstatement Hearing Report.

(1) A hearing officer shall provide the following in a reinstatement hearing report:

(a) a summary of the background of the original disciplinary action;

(b) adequate information, including summary statements of evidence presented, documents provided, and petitioner's testimony and demeanor for both UPPAC and the Board to evaluate petitioner's progress and rehabilitation since petitioner's original disciplinary action;

(c) the hearing panel's conclusions regarding petitioner's appropriateness and fitness to be a public school educator again;

(d) the hearing panel's recommendation; and

(e) a statement indicating whether the hearing panel's recommendation to UPPAC was unanimous or identifying how the panel member's voted concerning reinstatement.

(2)(a) The hearing panel report is a public document under GRAMA following the conclusion of the reinstatement process unless specific information or evidence contained therein is protected by a specific provision of GRAMA, or another provision of state or federal law.

(b) The Executive Secretary shall add the hearing panel report to the UPPAC case file.

(3) If a license is reinstated, an educator's CACTUS file shall be updated to:

(a) remove the flag;

(b) show that the educator's license was reinstated; and

(c) show the date of formal Board action reinstating the license.

R277-213-6. Reinstatement from Revocation of License.

(1) The Executive Secretary shall deny any request for a reinstatement hearing for a revoked license unless the educator's stipulated agreement or revocation order from the Board allows the educator to request a reinstatement hearing.

(2) An educator may request that the Superintendent order a reconsideration of the prior Board licensing action if:

(a) an educator provides:

(i) evidence of mistake or false information that was critical to the revocation action; or

(ii) newly discovered evidence:

(A) that undermines the revocation determination; and

(B) that the educator could not have reasonably obtained during the original disciplinary proceedings; or

(b) an educator identifies material procedural Board error in the revocation process.

(3) A request for reconsideration by the Superintendent must be filed within 30 days of Board action for circumstances identified in Subsection (2)(a)(i) or (b).

(4) A request for reconsideration by the Superintendent must be filed within 90 days of discovery of the new evidence for circumstances identified in Subsection(2)(a)(ii).

(5) The Superintendent:

(a) shall make a determination on a request made under Subsection(2) within 60 days; and

(b) may request briefing from an educator and the Executive Secretary in making a determination.

(6) If the Superintendent finds that the criteria in Subsection (2)(a) have been established, the Superintendent shall make a recommendation to the Board to conduct a new hearing consistent with Rule R277-212.

(7) If the Superintendent finds that the criteria in Subsection (2)(b) have been established, the Superintendent shall recommend to the Board that they reconsider their previous action.

KEY: licensure, reinstatement, hearings
August 12, 2016 **Art X Sec 3**
53E-6-506
53E-3-401(4)

R277. Education, Administration.
R277-214. Utah Professional Practices Advisory Commission Criminal Background Review.
R277-214-1. 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 53E-6-506, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

(c) Subsection 53E-3-401(4), 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:

(a) to establish procedures for an applicant to proceed toward licensing; or

(b) be denied to continue when an application or recommendation for licensing or renewal identifies offenses in the applicant's criminal background check.

(3) The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

R277-214-2. Initial Submission and Evaluation of Information.

(1) The Executive Secretary shall review all information received as part of a criminal background review.

(2) The Executive Secretary may request any of the following information from an educator in determining how to process a criminal background review:

(a) a letter of explanation for each reported offense that details the circumstances, the final disposition, and any explanation for the offense the applicant may want to provide UPPAC, including any advocacy for approving licensing;

(b) official documentation regarding each offense, including court records and police reports for each offense, or if both court records and police reports are not available, a letter on official police or court stationery from the appropriate court or police department involved, explaining why the records are not available; and

(c) any other information that the Executive Secretary considers relevant under the circumstances in a criminal background review.

(3)(a) The Executive Secretary may only process a criminal background review after receipt of all letters of explanation and documentation requested in good faith by the Executive Secretary.

(b) The Executive Secretary shall provide timely notice if the information provided by an applicant is incomplete.

(4) If an applicant is under court supervision of any kind, including parole, informal or formal probation, or plea in abeyance, the Executive Secretary may not process the background check review until the Executive Secretary receives proof that court supervision has terminated.

(5) It is the applicant's sole responsibility to provide any requested material to the Executive Secretary.

(6) The Executive Secretary shall process criminal background reviews subject to the following criteria:

(a) the Executive Secretary may clear a criminal background review without further action if the arrest, citation, or charge resulted in a dismissal, unless the dismissal resulted from a plea in abeyance agreement;

(b) the Executive Secretary shall forward a recommendation to clear the following criminal background reviews directly to the Board:

(i) singular offenses committed by an applicant, excluding offenses identified in Subsection(6)(c), if the arrest occurred more than two years prior to the date of submission to UPPAC for review;

(ii) more than two offenses committed by the applicant, excluding offenses identified in Subsection(6)(c), if at least one arrest occurred more than five years prior to the date of submission to UPPAC for review; or

(iii) more than two offenses committed by the applicant, excluding offenses identified in Subsection(6)(c), if all arrests for the offenses occurred more than 10 years prior to the date of submission to UPPAC for review;

(c) the Executive Secretary shall forward the following criminal background reviews to UPPAC, which shall make a recommendation to the Board for final action:

(i) convictions or pleas in abeyance for any offense where the offense date occurred less than two years prior to the date of submission to UPPAC;

(ii) convictions or pleas in abeyance for multiple offenses where all offenses occurred less than five years prior to the date of submission to UPPAC;

(iii) convictions or pleas in abeyance for felonies;

(vi) arrests, convictions, or pleas in abeyance for sex-related or lewdness offenses;

(v) convictions or pleas in abeyance for alcohol-related offenses or drug-related offenses where the offense date was less than five years prior to the date of submission to UPPAC;

(vi) convictions or pleas in abeyance involving children in any way; and

(vii) convictions or pleas in abeyance involving any other matter which the Executive Secretary determines, in his discretion, warrants review by UPPAC and the Board; and

(d) If the criminal background review involves a conviction for an offense requiring mandatory revocation under Subsection 53E-6-604(5)(b) or meeting the definition of sex offender under Subsection 77-41-102(17), the Executive Secretary shall forward a recommendation directly to the Board that clearance be denied.

(7) The Executive Secretary shall use reasonable discretion to interpret the information received from the Bureau of Criminal Identification to comply with the provisions of this rule.

(8) In Board review of recommendations of the Executive Secretary and UPPAC for criminal background checks, the following shall apply:

(a) the Board shall consider a criminal background review in accordance with the standards described in Section 53E-6-603;

(b) the Board may uphold any recommendation of the Executive Secretary or UPPAC, which action shall be the final agency action of USOE;

(c) the Board may substitute its own judgment in lieu of the recommendation of the Executive Secretary or UPPAC, which action shall be the final agency action of USOE; and

(d) if the Board chooses to substitute its own judgment in a criminal background review, the Board shall adopt findings articulating its reasoning.

(9) If a criminal background review arises as a result of conduct that was cleared in a prior criminal background review by the Executive Secretary, UPPAC, or the Board, the prior action shall be deemed final, and the Executive Secretary shall clear the criminal background review.

(10) If a criminal background review results in an applicant's denial, the applicant may request to be heard, and to have the matter reconsidered by the Board, consistent with the requirements of Subsection 53E-6-603(4).

R277-214-3. Alcohol and Drug Related Offenses of an Individual Who Does Not Hold Licensing.

(1)(a) If as a result of a background check, it is discovered that an applicant has been convicted of an alcohol related offense or a drug related offense within five years of the date of the background check, the minimum conditions described in this Subsection (1) shall apply.

(b) One conviction--the individual shall be denied clearance for a period of one year from the date of the conduct giving rise to the charge.

(c) Two convictions--the individual shall be denied clearance for a period of two years from the date of the conduct giving rise to the most recent charge and the applicant shall present

documentation of clinical assessment and recommended treatment before clearance shall be considered.

(d) Three convictions--the individual shall be denied clearance for a period of five years from the date of the conduct giving rise to the most recent charge, and the applicant shall present documentation of clinical assessment and recommended treatment before clearance shall be considered.

(2) UPPAC or the Board may take action in excess of the minimum conditions specified in Subsection (1) if aggravating circumstances exist as set forth in Subsection R277-215-2(9).

KEY: educator licenses, background reviews, background checks

August 12, 2016 **Art X Sec 3**
53E-6-506
53E-3-401(4)

R277. Education, Administration.
R277-215. Utah Professional Practices Advisory Commission (UPPAC), Disciplinary Rebuttable Presumptions.
R277-215-1. 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 53E-6-506, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

(c) Subsection 53E-3-401(4), 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 rebuttable presumptions for UPPAC and Board review of UPPAC cases.

R277-215-2. Rebuttable Presumptions.

(1) UPPAC and the Board shall consider the rebuttable presumptions in this section when evaluating a case of educator misconduct.

(2) Revocation is presumed appropriate if an educator:

(a) is subject to mandatory revocation under Subsection 53E-6-604(5)(b);

(b) is convicted of, admits to, or is found pursuant to an evidentiary hearing to have engaged in viewing child pornography, whether real or simulated, on or off school property;

(c) is convicted of an offense that requires the educator to register as a sex offender under Subsection 77-41-105(3);

(d) intentionally provides alcohol or illegal drugs to a minor.

(3)(a) Suspension of ten years or more is presumed if an educator is convicted of any felony not specified in Subsection (2).

(b) An educator who is suspended based on a felony conviction under Subsection (3)(a) may apply for a reinstatement hearing early if the educator's felony:

(i) is expunged; or

(ii) is reduced pursuant to Section 76-3-402.

(4) Suspension of three years or more is presumed appropriate if an educator:

(a) engages in a boundary violation of a sexually suggestive nature that is not sexually explicit conduct;

(b) is convicted of child abuse if the conduct results in a conviction of a class A misdemeanor;

(c) is convicted of an offense that results in the educator being placed on court supervision for three or more years; or

(d) is convicted of intentional theft or misappropriation of public funds.

(5) Suspension of one to three years is presumed appropriate, if an educator:

(a) willfully or knowingly creates, views, or gains access to sexually inappropriate material on school property or using school equipment;

(b) is convicted of one or more misdemeanor violence offenses in the last 3 years;

(c) is convicted of using physical force with a minor if the conviction is a class B misdemeanor or lower;

(d) engages in repeated incidents of or a single egregious incident of excessive physical force or discipline to a child or student that:

(i) does not result in a criminal conviction; and

(ii) does not meet the circumstances described in Subsection 53G-8-302(2);

(e) threatens a student physically, verbally, or electronically;

(f) engages in a pattern of boundary violations with a student under a circumstance not described in Subsection (4)(a);

(g) engages in multiple incidents or a pattern of theft or misappropriation of public funds that does not result in a criminal conviction;

(h) attends a school or school-related activity in an assigned employment-related capacity while possessing, using, or under the influence of alcohol or illegal drugs;

(i) is convicted of two drug-related offenses or alcohol-related offenses in the three years previous to the most recent conviction;

(j) engages in a pattern of or a single egregious incident of:

(i) harassing;

(ii) bullying; or

(iii) threatening a co-worker or community member; or

(k) knowingly and deliberately falsifies or misrepresents information on an education-related document.

(6) A suspension of up to one year is presumed appropriate if an educator:

(a) has three or more incidents of inappropriate conduct that would otherwise warrant lesser discipline so long as the educator had notice that such conduct was inappropriate from:

(i) Board rule or LEA policy; or

(ii) verbal or written notice from an LEA or UPPAC;

(b) fails to report to appropriate authorities suspected child or sexual abuse; or

(c) knowingly teaches, counsels, or assists a minor student in a manner that disregards a legal, written directive, such as a court order or an approved college and career ready plan.

(7) A letter of admonition, letter of warning, or letter of reprimand, with or without probation, is presumed appropriate if an educator:

(a) engages in a miscellaneous minimal boundary violation with a student or minor, whether physical, electronic, or verbal;

(b) engages in minimal inappropriate physical contact with a student;

(c) engages in unprofessional communications or conduct with a student, co-worker, community member, or parent;

(d) engages in an inappropriate discussion with a student that violates state or federal law;

(e) knowingly violates a requirement or procedure for special education needs;

(f) knowingly violates a standardized testing protocol;

(g) is convicted of one of the following with or without court probation:

(i) a single driving under the influence of alcohol or drugs offense under Section 41-6a-502;

(ii) impaired driving under Section 41-6a-502.5; or

(iii) a charge that contains identical or substantially similar elements to the state's driving under the influence of alcohol or drugs law or under the law of another state or territory;

(h) carelessly mismanages public funds or fails to accurately account for receipt and expenditure of public funds entrusted to the educator's care;

(i) fails to make a report required by Rule R277-516;

(j) except for a class C misdemeanor under Title 41, Motor Vehicles, is convicted of one or two misdemeanor offenses not otherwise listed;

(k) engages in an activity that constitutes a conflict of interest; or

(l) engages in other minor violations of the Utah Educator Standards in Rule R277-515.

(8) In considering a presumption described in this section, UPPAC or the Board shall consider deviating from the presumptions if:

(a) the presumption does not involve a revocation mandated by statute; and

(b) aggravating or mitigating factors exist that warrant deviation from the presumption.

(9) An aggravating factor may include the following:

(a) the educator has engaged in prior misconduct;

(b) the educator presents a serious threat to a student;

(c) the educator's misconduct directly involved a student;

(d) the educator's misconduct involved a particularly vulnerable student;

(e) the educator's misconduct resulted in physical or psychological harm to a student;

(f) the educator violated multiple standards of professional

conduct;

(g) the educator's attitude does not reflect responsibility for the misconduct or the consequences of the misconduct;

(h) the educator's misconduct continued after investigation by the LEA or UPPAC;

(i) the educator holds a position of heightened authority as an administrator;

(j) the educator's misconduct had a significant impact on the LEA or the community;

(k) the educator's misconduct was witnessed by a student;

(l) the educator was not honest or cooperative in the course of UPPAC's investigation;

(m) the educator was convicted of crime as a result of the misconduct;

(n) any other factor that, in the view of UPPAC or the Board, warrants a more serious consequence for the educator's misconduct; and

(o) the educator is on criminal probation or parole; or

(p) the Executive Secretary has issued an order of default on the educator's case as described in Rules R277-211 or R277-212.

(10) A mitigating factor may include the following:

(a) the educator's misconduct was the result of strong provocation;

(b) the educator was young and new to the profession;

(c) the educator's attitude reflects recognition of the nature and consequences of the misconduct and demonstrates a reasonable expectation that the educator will not repeat the misconduct;

(d) the educator's attitude suggests amenability to supervision and training;

(e) the educator has little or no prior disciplinary history;

(f) since the misconduct, the educator has an extended period of misconduct-free classroom time;

(g) the educator was a less active participant in a larger offense;

(h) the educator's misconduct was directed or approved, whether implicitly or explicitly, by a supervisor or person in authority over the educator;

(i) the educator has voluntarily sought treatment or made restitution for the misconduct;

(j) there was insufficient training or other policies that might have prevented the misconduct;

(k) there are substantial grounds to partially excuse or justify the educator's behavior though failing to fully excuse the violation;

(l) the educator self-reported the misconduct; or

(m) any other factor that, in the view of UPPAC or the Board, warrants a less serious consequence for the educator's misconduct.

(11)(a) UPPAC and the Board have sole discretion to determine the weight they give to an aggravating or mitigating factor.

(b) The weight UPPAC or the Board give an aggravating or mitigating factor may vary in each case and any one aggravating or mitigating factor may outweigh some or all other aggravating or mitigating factors.

KEY: educators, disciplinary presumptions
August 12, 2016 **Art X Sec 3**
53E-6-506
53E-3-401(4)

R277. Education, Administration.
R277-216. Surrender of License with UPPAC Investigation Pending.
R277-216-1. 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 53E-6-506, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

(c) Subsection 53E-3-401(4), 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 procedures for Board consideration of an educator request to surrender a license in the face of a UPPAC investigation.

(3) The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

R277-216-2. Petition to Surrender.

(1) An educator may surrender an educator license prior to the resolution of a UPPAC investigation.

(2) An educator who requests to surrender an educator license under Subsection (1), shall submit a petition or stipulated agreement to UPPAC for submission to the Board, which shall include:

(a) a brief statement of the procedural history of the investigation leading up to the voluntary surrender;

(b) a statement that the educator is entitled to due process in UPPAC's investigation and that the educator freely and voluntarily waives the educator's due process rights, including:

(i) a right to a hearing;

(ii) a right to confront and cross examine witnesses;

(iii) a right to present witnesses;

(iv) a right to an impartial decision based upon evidence presented at the hearing; and

(v) a right to subpoena witnesses; and

(c) a statement that the educator surrenders the educator's license freely and voluntarily and without coercion or duress;

(d) a statement that the educator:

(i) is represented by counsel; or

(ii) understands the educator's right to be represented by counsel and knowingly and voluntarily waives the assistance of counsel in UPPAC's investigation;

(e) a statement that the educator is fully aware of the implications of surrendering the educator's license with an investigation pending, including:

(i) that the educator may not work, consult, or volunteer in any K-12 public school in the state of Utah in any capacity;

(ii) that the educator is not eligible for a reinstatement hearing at any time;

(iii) that UPPAC files and case resolution are subject to public disclosure in accordance with state and federal law;

(iv) that notification of the educator's license surrender will be shared with all states through NASDTEC; and

(v) except as provided in Subsection (3), that notification of the educator's license surrender will be:

(A) classified and reported as a voluntary surrender (UPPAC investigation); and

(B) shared with LEAs throughout the state.

(3) If an educator surrenders a license during an investigation of allegations described in Subsection 53E-6-604(5)(b), the surrender will be:

(a) classified and reported as a revocation; and

(b) shared with LEAs through the state.

(4)(a) Voluntary surrender of a license as set forth in this section is permanent.

(b) An educator who surrenders a license as set forth in this section is not eligible for a reinstatement hearing at any time.

R277-216-3. Review of Petition to Surrender.

(1)(a) Upon receiving a petition or stipulated agreement as provided in Subsection R277-216-2(2), the Executive Secretary shall review the request for surrender to determine if it meets the requirements set forth in the rule.

(b) If the requirements of Subsection R277-216-2(2) are not met, the Executive Secretary shall notify the educator that the request is insufficient and the reasons why the request is insufficient.

(c) If the requirements of Subsection R277-216-2(2) are met, the Executive Secretary shall notify the Board of the voluntary surrender and request direction on whether to continue the investigation.

(2) Upon receipt of a voluntary surrender of an educator license, the Executive Secretary shall:

(a) notify the educator:

(i) that the voluntary surrender was received;

(ii) whether the Board required UPPAC to continue the investigation;

(iii) that the voluntary surrender will be reported in the public record as a voluntary surrender with pending UPPAC investigation except as provided in Subsection R277-216-2(3);

(iv) that the voluntary surrender will be reported to NASDTEC and to LEAs throughout the state; and

(v) that the educator's license cannot be reinstated at any time.

(b) update CACTUS to reflect the disposition;

(c) report the disposition to NASDTEC;

(d) notify the educator's last employer of record;

(e) report the disposition to LEAs through the state; and

(f) provide the educator a copy of the report to LEAs described in Subsection (2)(e).

R277-216-4. Applicability of Rule.

This R277-216 does not apply to an educator's voluntary surrender of the educator's license if the educator is not being investigated by UPPAC.

KEY: educators, license surrender, UPPAC
August 12, 2016 **Art X Sec 3**
53E-6-506
53E-3-401(4)

R277. Education, Administration.
R277-482. Charter School Timelines and Approval Processes.
R277-482-1. 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 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities;

(c) Subsection 53G-6-504(5), which requires the Board to make rules regarding a charter school expansion or satellite campus;

(d) Sections 53G-5-304 through 53G-5-306, which require the Board to make a rule providing a timeline for the opening of a charter school;

(e) Section 53F-2-702, which directs the Board to distribute funds for charter school students directly to the charter school; and

(f) the Charter School Expansion Act of 1998, 20 U.S.C. Sec. 8063, which directs the Board to submit specific information prior to a charter school's receipt of federal funds.

(2) The purpose of this rule is to establish procedures for timelines and approval processes for charter schools.

R277-482-2. Definitions.

(1) "Amendment" means a change or addition to a charter agreement.

(2) "Authorizer" or "charter school authorizer" means the following that authorize the establishment of a charter school:

(a) the State Charter School Board;

(b) a local school board; or

(c) a higher education institution.

(2) "Charter agreement" means the same as that term is defined in Section 53A-1a-501.3.

(3) "Charter school authorizer" means the same as that term is defined in Section 53A-1a-501.3

(4) "Charter school governing board" means the board designated in a charter agreement to make decisions for the governance and operation of a charter school.

(5) "Expansion" means a proposed increase of students or adding a grade level in an operating charter school with the same school number.

(6) "Satellite charter school" means a charter school affiliated with an operating charter school, which has the same charter school governing board and a similar program of instruction, but has a different school number than the affiliated charter school.

(7) "School number" means a number that identifies a school within an LEA that:

(a) receives money from the state;

(b) enrolls or prospectively enrolls a full-time student;

(c) employs an educator as an instructor who provides instruction consistent with Section R277-502-5;

(d) has one or more assigned administrators;

(e) is accredited consistent with Section R277-410-3; and

(f) administers a required statewide assessment to a student.

R277-482-3. State Charter School Board Applicant Training.

(1) A charter school applicant that is seeking to have a charter authorized by the State Charter School Board shall attend:

(a) pre-application training;

(b) planning year training; and

(c) other training sessions designated by the State Charter School Board.

(2) The State Charter School Board shall schedule pre-application training sessions multiple times annually that may be available electronically.

R277-482-4. Charter School Information for Students and Parents.

(1) A charter school shall have a website that contains the following information:

(a) the charter school's governance structure, including the name, qualification, and contact information of all charter school governing board members;

(b) the number of new students that will be admitted into the school by grade;

(c) the school calendar, which shall include:

(i) the first and last days of school;

(ii) scheduled holidays;

(iii) scheduled professional development days; and

(iv) scheduled non-school days;

(d) timelines for acceptance of new students consistent with Section 53G-6-503;

(e) the requirement and availability of a charter school student application;

(f) the application timeline to be considered for enrollment in the charter school;

(g) procedures for transferring to or from a charter school;

(h) timelines for a transfer;

(i) provisions for payment, if required, of a one-time fee per secondary school enrollment, not to exceed $5.00, consistent with Subsection 53G-6-503(9);

(j) the charter school governing board's policies; and

(k) other items required by:

(i) the charter school's authorizer;

(ii) statute; and

(iii) Board rule.

(2) A new or expanding charter school shall have an operative and readily accessible website containing the information described in Subsection (1) at least 180 days before the proposed opening day of school.

R277-482-5. Timelines - Charter School Starting Date and Facilities.

(1) A charter school authorizer may:

(a) accept the proposed starting date from a charter school applicant; or

(b) negotiate and recommend a different starting date to the Board.

(2) A charter school may receive state funds if the charter school is approved as a new charter school by October 1, one fiscal year prior to the state fiscal year the charter school intends to serve students.

(3) A State Charter School Board authorized school shall begin construction on a new or existing facility requiring major renovation, such as requiring a project number consistent with Rule R277-471, no later than January 1 of the year the charter school is scheduled to open.

(4) A State Charter School Board authorized charter school that intends to occupy a facility requiring only minimal renovation, such as renovation not requiring a project number according to Rule R277-471, shall enter into a written agreement no later than May 1 of the calendar year the charter school is scheduled to open.

(5) A charter school shall comply with Rule R277-419 requirements of 180 days and 990 hours of instruction time, unless otherwise exempted by the Board under 53G-7-202.

(6) The Board may, following review of information, approve the recommended starting date or determine a different charter school starting date after giving consideration to the charter school authorizer's recommendation.

R277-482-6. Procedures and Timelines to Change Charter School Authorizers.

(1) A charter school may transfer to another charter school authorizer.

(2) A charter school shall submit an application to the new charter school authorizer at least 90 days prior to the proposed transfer.

(3) The charter school authorizer transfer application shall include:

(a) current governing board members;

(b) financial records that demonstrate the charter school's financial position, including the charter school's:
(i) most recent annual financial report (AFR);
(ii) annual project report (APR); and
(iii) audited financial statement;
(c) test scores, including all state required assessments;
(d) current employees and assignments;
(e) board minutes for the most recent 12 months; and
(f) affidavits, signed by all board members certifying:
(i) the charter school's compliance with all state and federal laws and regulations;
(ii) all information on the transfer application is complete and accurate;
(iii) the charter school is current with all charter school governing board policies;
(iv) the charter school is operating consistent with the charter school's charter agreement; and
(v) there are no outstanding lawsuits or judgments or identifying outstanding lawsuits filed or judgments against the charter school.
(4) A charter school seeking to transfer charter school authorizers shall submit a position statement from the current charter school authorizer about the charter school's status, compliance with the charter school authorizer requirements, and any unresolved concerns to the proposed new charter school authorizer.
(5) A new charter school authorizer shall review an application for transferring a charter school authorizer for acceptance within 60 days of submission of a complete application, including all required documentation.
(6) Final approval or denial of changing chartering entities to the State Charter School Board is final administrative action by the Board.

R277-482-7. Charter School Expansion Requests.
(1) A charter school authorizer shall maintain the final, official, and complete charter agreement.
(2) A charter school may request approval for an expansion if:
(a) the charter school satisfies the requirements of federal and state law, regulations, rule, and the charter agreement; and
(b)(i) the charter school's charter agreement provides for an expansion consistent with the request; or
(ii) the charter school governing board has submitted a formal amendment request to the charter school authorizer consistent with the charter school authorizer's requirements.
(3) If the charter school authorizer approves a charter school expansion, the expansion shall be submitted to the Board for approval before October 1 of the state fiscal year prior to the school's intended expansion date.
(4) For an expansion approved by an authorizer that is not the State Charter School Board, the charter school authorizer that authorizes an expansion of the authorizer's charter school shall provide the total number of students by grade that the charter school is authorized to enroll to the State Charter School Board and to the Superintendent on or before October 1 of the state fiscal year prior to the charter school's intended expansion.
(5) When considering whether to approve a charter school's request for an expansion, an authorizer shall consider the following:
(a) the amount of time the charter school has operated successfully meeting the terms of its charter agreement, giving preference to schools that have been successfully operated for three years or more;
(b) the academic performance data of students at the charter school, giving preference to charter schools with students who are performing on standardized assessments at or above:
(i) the standard established in the charter school's charter agreement; and
(Ii) the average academic performance of other district and charter schools in the area;
(c) the financial position of the charter school, as evidenced by the charter school's financial records, including the charter school's:
(i) most recent annual financial report (AFR);
(ii) annual program report (APR); and
(iii) audited financial statement;
(d) whether the charter school has a waiting list for enrollment;
(e) adequacy of the charter school's facility;
(f) impact to local government entities, including the information described in Section 53E-3-710;
(g) any student safety issues; and
(h) ability to meet state and federal reporting requirements, including whether the charter school has regularly met Board reporting deadlines.
(6) A charter school requesting an expansion shall provide the information described in Subsection (5) to the authorizer and the Board with the charter school's request for expansion.

R277-482-8. Requests for a New Satellite School for an Approved Charter School.
(1) A charter school and its satellite are a single LEA for purposes of public school funding and reporting.
(2) An existing charter school may submit an amendment request to the charter school's charter authorizer for a satellite charter school if:
(a) the charter school satisfies requirements of federal and state law, regulations, and rule;
(b) the charter school has operated successfully for at least three years meeting the terms of its charter agreement;
(c) the students at the charter school are performing on standardized assessments at or above the standard in the charter agreement;
(d) the proposed satellite charter school will provide educational services, assessment, and curriculum consistent with the services, assessment, and curriculum currently being offered at the existing charter school;
(e) adequate qualified administrators, including at least one onsite administrator, and staff are available to meet the needs of the proposed student population at the satellite charter school; and
(f) the charter school provides any additional information or documentation requested by the charter school authorizer or the Board.
(3) a satellite charter school that receives School LAND Trust funds shall have a charter trust land council and satisfy all requirements for charter trust land councils consistent with Rule R277-477.
(4) A satellite charter school may receive state funding if the Board approves the satellite charter school by October 1 of the state fiscal year prior to the year the school intends to serve students.
(5) When considering whether to approve a charter school's request for a satellite charter school, an authorizer shall consider the following:
(a) the amount of time the charter school has operated successfully meeting the terms of its charter agreement;
(b) the academic performance data of students at the charter school, giving preference to charter schools with students who are performing on standardized assessments at or above:
(i) the standard established in the charter school's charter agreement; and
(ii) the average academic performance of other district and charter schools in the area;
(c) the financial position of the charter school, as evidenced by the charter school's financial records, including the charter school's:
(i) most recent annual financial report (AFR);
(ii) annual program report (APR); and
(iii) audited financial statement;
(d) any student safety issues;
(e) whether the charter school has a waiting list for enrollment;
(f) the charter school's governing board performance and

capacity to open and operate a satellite campus;

(g) adequacy of the satellite charter school's facility;

(h) impact to local government entities, including the information described in Section 53E-3-710; and

(i) ability to meet state and federal reporting requirements, including whether the charter school has regularly met Board reporting deadlines.

(6) A charter school requesting a satellite charter school shall provide the information described in Subsection (5) to the authorizer and the Board with the charter school's request for a satellite school.

(7) The approval of a satellite charter school by the charter school authorizer requires ratification by the Board and will expire 24 months following the ratification if a building site is not secured for the satellite charter school.

KEY: training, timelines, expansion, satellite

April 9, 2018	**Art X Sec 3**
Notice of Continuation March 30, 2016	**53A-1-401**
	53A-1a-502.5
	53A-1a-504
	53A-1a-505
	53A-1a-515
	53A-1a-513
	53A-1a-521

R277. Education, Administration.
R277-508. Employment of Substitute Teachers.
R277-508-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes such as:

(1) personal directory information;
(2) educational background;
(3) endorsements;
(4) employment history;
(5) professional development information; and
(6) a record of disciplinary action taken against the educator.

C. "LEA" mean a local education agency, including local school boards/public school districts, charter schools, and for purposes of this rule, the Utah Schools for the Deaf and the Blind.

D. "License" means an authorization issued by the Board which permits the holder to serve in a professional capacity in the public schools.

E. "Substitute teacher" means an individual employed to take the place of a regular teacher temporarily absent.

F. "Temporarily absent" means a period not to exceed eight consecutive weeks.

R277-508-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution, Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(a) which directs the Board to make rules regarding the qualifications of educators and ancillary personnel providing direct student services, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish eligibility requirements and employment procedures for substitute teachers.

R277-508-3. Duration of Teaching Assignment.

A. A substitute teacher may not serve in a teaching position for more than eight consecutive weeks in one academic year in either the same class or with the same group of students. Individuals serving in the same teaching position for longer than eight weeks shall hold an appropriate license or be replaced by a person with an appropriate license.

B. The State Superintendent of Public Instruction may grant exceptions to R277-508-3A, as appropriate, in special circumstances.

R277-508-4. Hiring Priorities and Eligibility.

A. The first priority in hiring substitute teachers shall be given to those who hold a valid license in the subject matter they will be teaching as a substitute. Second priority is to hire persons who have a valid license in a field commonly taught in public schools.

B. It is desirable that a substitute teacher hold a valid license or a college degree. An LEA shall evaluate persons hired as substitutes to ensure that they are capable of managing a class and carrying out the instructional program.

C. Persons seeking employment as a substitute teacher shall furnish evidence as requested from the hiring LEA that they are physically and mentally fit to work.

D. LEAs may not employ any individual as a substitute teacher whose license has been revoked or is currently suspended by the Board or whose license has been revoked or is currently suspended by another state. Individuals whose licenses have been reinstated may be considered for employment as substitute teachers.

R277-508-5. Employment Procedures.

A. LEAs shall establish policies for hiring substitute teachers. An LEA's policy shall include obtaining verification from CACTUS that an applicant's license has not been revoked or suspended.

B. An LEA shall require substitute teachers to have periodic criminal background checks consistent with an LEA's policy under R277-516 for employees that work directly with students.

C. LEAs shall have a policy to evaluate substitute teachers including a salary schedule to pay substitutes according to their training, experience, and competency.

D. Regular teachers shall have lesson plans immediately available for use by substitute teachers.

E. A student teacher may substitute in classes consistent with the instructions and policies from the higher education institution which the student attends.

F. Paraprofessionals and aids may substitute in classes consistent with LEA or school policies.

KEY: teachers, professional competency, school personnel
June 7, 2013 **Art X Sec 3**
Notice of Continuation April 2, 2018 **53A-1-402(1)(a)**
53A-1-401(3)

R277. Education, Administration.
R277-532. Local Board Policies for Evaluation of Non-Licensed Public Education Employees (Classified Employees).
R277-532-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Non-licensed public education employee" means a school district employee who is working for a public education employer in a position that does not require a Utah educator license. School districts typically refer to non-licensed public education employees as classified employees.

R277-532-2. Authority and Purpose.

A. This Rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and by Section 53A-8a-301 which directs the Board to develop rules requiring that school districts evaluate non-licensed public education employees.

B. The purpose of this rule is to direct public school districts to adopt policies for the evaluation, dismissal and compensation of non-licensed public education employees that satisfy the minimum standards of Sections 53A-8a-301 and 302, 53A-8a-501 through 506, and 53A-8a-601. The school district evaluation policies for non-licensed public education employees shall be consistent with Section 53A-8a-301 and in place no later than the 2014-2015 school year.

R277-532-3. School District Policies.

A. School districts shall adopt policies for non-licensed public education employee evaluation and dismissal consistent with minimum standards of Sections 53A-8a-301 and 302 and 53A-8a-501 through 506 and due process and the termination of non-licensed public education employees consistent with Section 53a-8a-501 through 504.

B. School district non-licensed public education employee evaluation policies shall include the following components:

(1) the annual evaluation of non-licensed public education employees;

(2) the use of appropriate tools for non-licensed public education employee evaluations;

(3) non-licensed public education employee evaluation criteria tied to specific non-licensed job descriptions or assignments;

(4) the administration of the evaluation by the school principal, an appropriate administrator or the principal's or administrator's designee; and

(5) an appeals process that allows non-licensed public education employees to appeal procedural violations of the evaluation process.

C. School district evaluation policies for non-licensed public education employees may include additional components.

D. School district non-licensed public education employee termination policies shall be developed as directed in Section 53A-8a-501 through 506.

E. School district non-licensed public education employee termination policies shall be consistent with Sections 53A-8a-501 through 504 and may include other components as determined locally.

F. School district policies may exclude temporary or part-time non-licensed public education employees from performance evaluations, as provided in Section 53A-8a-301(2)(a).

G. School districts shall fully implement evaluation policies for non-licensed public education employees that include components of Section 53A-8a-601(2) no later than the 2016-2017 school year.

KEY: policies, evaluations, non-licensed public education employees
October 9, 2014 Art X, Sec 3
Notice of Continuation April 2, 2018 53A-1-401(3)
53A-8a-301

R277. Education, Administration.
R277-610. Released-Time Classes and Public Schools.
R277-610-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;

(b) Subsection 53E-3-501 which directs the Board to adopt minimum standards for public schools; and

(c) Subsection 53E-3-401(4) which permits 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 specify standards and procedures for public schools regarding released-time classes.

R277-610-2. Definitions.

(1) "Non-entangling criteria" means neutral course instruction and standards that:

(a) are academic as opposed to devotional;

(b) promote awareness as opposed to acceptance of any religion;

(c) expose to as opposed to imposing a particular view;

(d) educate about religion; and

(e) inform but not seek to make students conform to any religion.

(2) "Released-time" means a period of time during the regular school day when a student attending a public school is excused from the school at the request of the student's parent.

R277-610-3. Interaction Between Public Schools and Released-Time Classes.

(1) A student may attend released-time classes during the regular school day only upon the written request of the student's parent or legal guardian.

(2) A public school may not maintain records of attendance for released-time classes or use school personnel or school resources to regulate such attendance.

(3)(a) A teacher of a released-time class is not a member of the public school faculty.

(b) A released-time teacher may participate in school activities as a community member.

(4) A public school teacher, administrator, or other official may not request teachers of released-time classes to exercise functions or assume responsibilities for the public school program which would result in a commingling of the activities of the school and the released-time class sponsor.

(5)(a) A public school class schedule or course catalog may not include a released-time class by name.

(b) At the convenience of the school, a registration form may contain a space for a released-time designation.

(6) A public school publication may not include pictures, reports, or records of released-time classes.

(7) Public school personnel may not participate in released-time classes during work hours.

(8) A released-time class may not use school resources or equipment.

R277-610-4. Additional Conditions for Religious Released-Time Programs.

(1) A religious class may not be held in school buildings or on school property in any way that permits public money or property to be applied to, or that requires public employees to become entangled with, any religious worship, exercise, or instruction.

(2) Religious released-time scheduling shall take place on forms and supplies furnished by the religious institution and by personnel employed or engaged by the institution and shall occur off public school premises.

(3)(a) A public school may not connect bells, telephones, computers or other devices between public school buildings and institutions offering religious instruction, except as a convenience to the public school in the operation of its own programs.

(b) When any connection of devices is permitted, the costs shall be borne by the respective institutions.

(4) Records of attendance at religious released-time classes, grades, marks, or other data may not be included in the correspondence or reports made by a public school to parents.

(5)(a) Institutions offering religious instruction are private programs or schools separate and apart from the public schools.

(b) Those relationships that are legitimately exercised between the public school and any private school are appropriate with institutions offering released-time classes, so long as public property, public funds, or other public resources are not used to aid such institutions.

(6) A public school may grant elective credit for religious released-time classes if the public school establishes neutral, non-entangling criteria with which to evaluate the released-time courses.

KEY: released-time classes

April 9, 2018	**Art X Sec 3**
Notice of Continuation February 26, 2018	**53E-3-401**
	53E-3-501

R277. Education, Administration.
R277-709. Education Programs Serving Youth in Custody.
R277-709-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53E-3-503(2)(b) which requires the Board to adopt rules for the distribution of funds for the education of youth in custody.

(2) The purpose of this rule is to specify operation standards, procedures, and distribution of funds for youth in custody programs.

R277-709-2. Definitions.

(1) "Accreditation" means the formal process for evaluation and approval from a regional accrediting body.

(2) "Custody" means the status of being legally subject to the control of another person or a public agency.

(3)(a) "Youth in custody" means a person for whom the Board is responsible to provide educational services under Subsections 53E-3-503(2)(a) and 62A-15-609(1).

(b) "Youth in custody" does not include a person taken into custody for the primary purpose of obtaining access to education programs provided for youth in custody.

R277-709-3. Student Evaluation, Education Plans, and LEA Programs.

(1) Each student meeting the eligibility definition of youth in custody shall have a written SEOP/plan for college and career readiness defining the student's academic achievement, which shall specify known in-school and extra-school factors which may affect the student's school performance.

(2) A student, school staff and parent/guardian shall annually review the student's SEOP/plan for college and career readiness maintained in the student's file.

(3) A program receiving a youth in custody student is responsible for obtaining the student's evaluation records, and, in cases where the records are not current, for conducting the evaluation, which may include a special education eligibility evaluation, as quickly as possible so that unnecessary delay in developing a student's education program is avoided.

(4) The LEA in which a youth in custody program is located has the responsibility to conduct IDEA child find activities within the program, consistent with Section R277-750-2 and Utah State Board of Education Special Education Rule II.A.

(5)(a) A youth in custody program shall prepare an appropriate SEOP/plan for college and career readiness and, as needed, an Individualized Education Program for each eligible youth in custody based upon the results of the student evaluation.

(b) A youth in custody program shall review and update the plans required under Subsection (5)(a) at least once each year or immediately following transfer of a student from one program to another, whichever is sooner.

(c) A youth in custody program shall develop the plans required under Subsection (5)(a) in cooperation with appropriate representatives of other service agencies working with a student.

(d) The plans required under Subsection (5)(a) shall specify the responsibilities of each of the agencies towards the student and shall be signed by each agency's representative.

(6)(a) All provisions of the IDEA and state special education rules apply to youth in custody programs.

(b) The USBE Special Education Department shall include youth in custody programs in annual general supervision monitoring.

(7)(a) An LEA shall provide an education program for the student which conforms as closely as possible to the student's education plan.

(b) An LEA shall provide educational services in the least restrictive environment appropriate for the student's behavior and educational performance.

(8) An LEA shall consider youth in custody who do not require educational services or supervision beyond students not in custody to be part of the district's regular enrollment and provided education services.

(9) An LEA shall not assign or allow youth in custody to remain in restrictive or non-mainstream programs simply because of:

(a) their custodial status;

(b) past behavior that does not put others at risk; or

(c) the inappropriate behavior of other students.

(10)(a) Education programs to which youth in custody are assigned shall meet the standards which are adopted by the Board for that type program.

(b) The Superintendent shall monitor compliance in periodic review visits.

(11) An LEA shall accept credit earned in youth in custody programs that are accredited at face value in Utah's public schools consistent with Section R277-410-9, Transfer or Acceptance of Credit.

(12) A youth in custody program shall sufficiently coordinate educational services with non-custody programs to enable youth in custody to continue their education with minimal disruption following discharge from custody.

(13)(a) A youth in custody program shall admitt youth in custody to classes within five school days following arrival at a new residential placement.

(b) If a youth in custody program cannot complete an evaluation and SEOP/plan for college and career readiness or IEP development within five school days, the program shall enroll the student temporarily based upon the best information available.

(c) A temporary schedule may be modified to meet the student's needs after the evaluation and planning process is complete.

(14)(a) Following a student's release from custody or transfer to a new program, the sending program shall bring all available school records up to date and forward them to the receiving program consistent with Section 53G-6-604.

(b) An LEA shall maintain all grades, attendance records and special education SCRAM records in the LEA's SIS system in compliance with Rule R277-484, Data Standards.

R277-709-4. Program Fiscal and Accountability Procedures.

(1) The Superintendent shall allocate state funds appropriated for youth in custody, including the Utah State Hospital, in accordance with Section 53E-3-503 and Section 62A-15-609.

(2) Funds appropriated for youth in custody programs shall be subject to Board accounting, auditing, and budgeting rules and policies.

(3) The Superintendent shall, through an annually submitted and approved state application and plan, contract with LEAs to provide educational services for youth in custody.

(a) A contract required by Subsection (3) shall include the respective responsibilities of the Board, LEAs, and other local service providers for education.

(b) An LEA may subcontract with local non-district educational service providers for the provision of educational services.

(4) The Superintendent may only contract through an RFP process with an appropriate entity if the Superintendent determines that the LEA where the facility is located is unable or unwilling to provide adequate education services.

(5) Youth in custody students receiving education services by or through an LEA are students of that LEA.

(6) Notwithstanding the procedures for determining an alternative district of residency in Rule R277-621, an LEA may not create an alternative district of residency for a student who has been

placed in custody primarily in an attempt to receive services in a state funded youth in custody program.

(7) The Superintendent shall allocate state funds appropriated for youth in custody on the basis of an annually submitted and approved application made by the LEA where a youth in custody program resides.

(8) The Superintendent shall base the share of funds distributed to an LEA upon criteria, which include:

(a) the number of youth in custody served by the LEA;

(b) the type of program required for the youth;

(c) the setting for providing services; and

(d) the length of the program.

(9) A youth in custody program shall expend funds approved for youth in custody projects solely for the purposes described in the respective funding application.

(10) The Superintendent may retain no more than five percent of the total youth in custody annual legislative appropriation for administration, oversight, monitoring, and evaluation of youth in custody programs and their compliance with law and this rule.

(11) Up to three percent of the five percent of administrative funds allowed under Subsection (9) may be withheld by the Superintendent and directed to students attending youth in custody programs for short periods of time or to new or beginning youth in custody programs or initiatives benefitting youth in custody students.

(12) The Superintendent may withhold federal or state funds for noncompliance with state policy and procedures and associated reporting timelines in accordance with Rule R277-114.

(13) The Superintendent shall develop uniform forms, deadlines, reporting and accounting procedures and guidelines to govern the youth in custody school-based programs and Utah State Hospital funded programs.

R277-709-5. Youth in Custody Programs and Students with Disabilities.

(1) The youth in custody program is separate from and not conducted under the state's education program for students with disabilities.

(2) Custodial status alone does not qualify a youth in custody student as a student with a disability under laws regulating education for students with disabilities.

(3) Youth in custody students may be eligible for special education funding and services based upon special education rules and regulations.

(4) Youth in custody students qualifying for special education services shall receive educational instruction as defined in Rule R277-750, Education Programs for Students with Disabilities.

(5) Special education procedural safeguards shall apply to all IDEA eligible youth in custody students regardless of instructional location.

(6) The Superintendent shall monitor special education programs provided through youth in custody programs on an annual basis in accordance with special education rules and policies.

R277-709-6. Youth in Custody Program Staffing and Monitoring.

(1) Education staff assigned to youth in custody shall be qualified and appropriate for their assignments in accordance with Board licensing rules.

(2) Youth in custody programs shall maintain accreditation as part of the LEA where the programs are located consistent with Rule R277-410, Accreditation of Schools.

(3) The Superintendent shall evaluate youth in custody programs through regular site monitoring visits and monthly desk monitoring.

(4) Monitored programs shall prepare and submit to the Superintendent a written corrective action plan for each monitoring finding, as requested by the Superintendent.

(5) A youth in custody program's failure to resolve monitoring findings as soon as possible, and, in no case, later than one calendar year from date of notice, may result in the termination of state funding as provided in Rule R277-114.

(6) The Superintendent may review LEA or State Hospital records and practices for compliance with the law and this rule.

R277-709-7. Utah State Hospital.

(1) Funding for the education programs at the Utah State Hospital shall be contingent upon a legislative appropriation.

(2)(a) State education contract funds appropriated for State Hospital youth in custody are allocated to the LEA on a reimbursement basis.

(b) The State Hospital shall annually submit requests for reimbursement.

(3) Funding shall be distributed to the LEA on a reimbursement basis subject to required documentation that supports expenditures.

(4) Funds may be withheld or terminated for noncompliance with state and federal policies and procedures and associated reporting requirements and timelines as defined by the Superintendent and in accordance with Rule R277-114.

(5) The Utah State Hospital shall serve all students qualifying for special education services in accordance with the special education standards adopted in the Special Education Rules and Rule R277-750.

R277-709-8. Youth in Custody/LEA Fiscal Procedures.

(1) Ten percent or $50,000, whichever is less, of state youth in custody funds or educational contract funds not expended in the current fiscal year may be carried over by eligible LEAs and spent in the next fiscal year with written approval of the Superintendent.

(2) An LEA shall submit a request to carry over funds for approval by August 1.

(3) If approved, an LEA shall detail carry over amounts in a revised budget submitted to the Superintendent no later than October 1 in the year requested.

(4) The Superintendent may consider excess funds in determining the LEA's allocation for the next fiscal year.

(5)(a) The Superintendent shall annually recapture fund balances in excess of ten percent or $50,000 no later than February 1.

(b) The Superintendent shall reallocate funds recaptured in accordance with Subsection (5)(a) to the youth in custody programs based on the criteria and procedures provided by this rule.

R277-709-9. Program, Curriculum, Outcomes and Student Mastery.

(1) Youth in custody programs shall offer courses consistent with the Utah Core standards under Rule R277-700.

(2) A youth in custody program may modify or adjust Utah core standards and teaching strategies to meet the individual needs of youth in custody students.

(3) Youth in custody programs shall stress course content mastery rather than completion of predetermined seat time in a classroom.

(4) The Superintendent shall make available written course descriptions for GED Test preparation for youth in custody students who consider pursuing GED Tests as an alternative to traditional Carnegie diploma courses.

R277-709-10. Confidentiality.

(1) An LEA shall issue transcripts and diplomas prepared for youth in custody in the name of an existing LEA, which also serves non-custodial youth and shall not bear references to custodial status.

(2) School records which refer to custodial status, juvenile court records, and related matters shall be kept separate from permanent school records, but are nonetheless student records if retained by the LEA.

(3)(a) Members of the interagency team which design and

oversee student education plans shall have access, through team member representatives of the participating agencies, to relevant records of the various agencies.

(b) The records and information obtained from the records remain the property of the supplying agency and shall not be transferred or shared with other persons or agencies without the permission of the supplying agency, the student's legal guardian, or the eligible student, as defined under 20 U.S.C. 1232g(d).

(4) Youth in custody programs shall comply with all state and federal privacy requirements for student records.

R277-709-11. Coordinating Council.

(1)(a) The Department of Human Services and the Board shall appoint a coordinating council in accordance with Subsection 53E-3-503(6)(a) to plan, coordinate, and recommend budget, policy, and program guidelines for the education and treatment of persons in the custody of the Division of Juvenile Justice Services and the Division of Child and Family Services.

(b) The coordinating council shall operate under guidelines developed and approved by the Department of Human Services and the Board.

(2) Coordinating council membership shall include a representative of the following:

(a) the Department of Human Services;

(b) the Division of Substance Abuse and Mental Health;

(c) the Division of Juvenile Justice Services;

(d) the Division of Child and Family Services;

(e) the Board;

(f) the Administrative Office of the Courts;

(g) school district superintendents; and

(h) a Native American tribe.

R277-709-12. Advisory Councils.

(1)(a) Each LEA serving youth in custody shall establish a local interagency advisory council which shall be responsible for advising member agencies concerning coordination of youth in custody programs.

(b) Members of council required under Subsection (1)(a) shall include, if applicable to the LEA, the following:

(i) a representative of the Division of Child and Family Services;

(ii) a representative of the Division of Juvenile Justice Services;

(iii) directors of agencies located in an LEA such as detention centers, secure lockup facilities, observation and assessment units, and the Utah State Hospital;

(iv) a representative of community-based alternative programs for custodial juveniles; and

(v) a representative of the LEA.

(2) A local interagency advisory council required under Subsection (1)(a) shall:

(a) adopt by-laws for its operation; and

(b) meet at least quarterly.

KEY: students, education, juvenile courts
April 9, 2018 **Art X Sec 3**
Notice of Continuation February 26, 2018 **53A-1-403(1)**
53A-1-401

R277. Education, Administration.
R277-719. Standards for Selling Foods Outside of the Reimbursable Meal in Schools.
R277-719-1. 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 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;

(c) Section 53E-3-510, which allows the Board to set standards relating to the use of school lunch revenues; and

(d) Subsection 53E-3-501(1)(e), which requires the Board to establish rules concerning school productivity and cost effectiveness measures and federal programs.

(2) The purpose of this rule is to outline requirements for LEA policies regarding foods sold outside of the reimbursable meal service.

R277-719-2. Definitions.

(1) "Competitive foods" as provided in 7 CFR 210, means all food and beverages, other than meals reimbursed under programs authorized by federal child nutrition laws available for sale to students on the school campus during the school day.

(2)(a) "Eating area" means the place where the reimbursable meal is served or eaten.

(b) In some schools, the "eating area" may include the entire campus.

(3) "Federal child nutrition laws" means the Richard B. Russell National School Lunch Act, 79 P.L. 396, 60 Stat. 230, and the Child Nutrition Act of 1966, 89 P.L. 642, 80 Stat. 885.

(4) "Nutrition Standards" has the same meaning as contained in 7 CFR 210.11.

(5) "Reimbursable meal" means a meal which meets the requirements set forth in 7 CFR 210, 211, 215, 220 or 225 to be claimed for payment.

(6) "School day" means the period from the midnight before, to 30 minutes after the end of a school's calendared class time.

(7) "School campus" means all areas of the property under the jurisdiction of the school that are accessible to students during the school day.

(8) "Unit" means per container, package or amount served.

(9) "Vending machine" means a self-service device that, upon insertion of a coin, paper currency, token, card or key, dispenses unit servings of food in bulk or in packages.

R277-719-3. LEA Policies Regarding Vending Machines.

(1) Each LEA shall develop and implement a policy for schools that choose to provide vending machines.

(2) A policy implemented in accordance with Subsection (1) shall include:

(a) a requirement that all agreements for vending machines be in writing in a contract form approved by the local board of education or charter school governing board;

(b) accepted uses of vending machine income; and

(c) generally accepted accounting procedures, including periodic reports to the LEA of vending machine receipts and expenditures.

R277-719-4. LEA Policies Regarding Competitive Food Sales on Campus.

(1) Federal nutrition standards apply to the sale of competitive foods in all schools offering programs authorized by federal child nutrition laws on the school campus during the school day.

(2)(a) Profits from competitive foods shall accrue either to a non-profit school account or to the non-profit school food service account.

(b) Profits from competitive foods may not accrue to the benefit of a for-profit account or entity.

(3) If competitive foods were purchased using non-profit school food service funds, the reimbursement shall ensure revenue from the sale of non-program foods generates at least the same proportion of revenue as contributed to the non-profit school food service cost.

(4)(a) A competitive food item that is sold by an LEA or an employee or agent shall meet federal nutrition standards.

(b) An LEA may use a Smart Snacks calculator, available online at https://foodplanner.healthiergeneration.org/calculator, to verify that competitive foods sold meet nutrition standards.

R277-719-5. Fundraising Using Food or Beverages.

(1) An LEA shall comply with the standards set forth in this Section if the LEA has a school that offers programs under federal child nutrition laws on a school campus during the school day.

(2)(a) Competitive food and beverage items sold during the school day shall meet federal nutrition standards.

(b) Notwithstanding Subsection (2)(a), a school may sell food or beverages that do not meet the competitive food standards for the purpose of conducting infrequent school-sponsored fundraisers, subject to the following restrictions:

(i) An LEA may not hold an exempt fundraiser more than three times per year per site;

(ii) An exempt fundraiser may not last more than five consecutive days; and

(iii) The principal of a school holding an exempt fundraiser shall designate an individual to maintain records for the fundraiser.

(3) The Superintendent may grant permission for exempt fundraisers in addition to those allowed under Subsection (2)(b) upon the written request of a career and technical education program.

R277-719-6. LEA Local School Wellness Policies.

Each LEA participating in programs under federal child nutrition laws shall establish a local school wellness policy for all schools under the LEA's jurisdiction, which shall, at a minimum, include all the elements required in 7 CFR 210.30.

R277-719-7. Miscellaneous Provisions.

(1) If a school does not participate in programs under federal child nutrition laws, the school shall adopt a written policy for the sale of all foods that are not part of the meal service, including vending, a la carte or other food sales.

(2) A policy required under Subsection (1):

(a) shall apply to all foods sold anywhere on the school campus during the school day ; and

(b) may use the definitions for competitive foods and wellness policies contained in 7 CFR 210.11 and 7 CFR 210.30.

(3) A local superintendent or school principal or director shall designate an individual who shall maintain documentation of compliance with this R277-719.

KEY: schools, foods, nutrition, vending machines

April 9, 2018	**Art X Sec 3**
Notice of Continuation February 26, 2018	**53A-1-401(3)**
	53A-19-201(1)
	53A-1-402(1)(e)

R277. Education, Administration.
R277-746. Driver Education Programs for Utah Schools.
R277-746-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "USOE" means the Utah State Office of Education.

R277-746-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-13-201(4) which directs the Board to prescribe rules for driver education classes in the public schools and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards and procedures for local school districts conducting automobile driver education.

R277-746-3. Standards and Procedures.

A. Local school boards and school districts shall comply with DRIVER EDUCATION FOR UTAH HIGH SCHOOLS ORGANIZATION, ADMINISTRATION, AND STANDARDS, Revised, August, 2011, as required by R277-100-5C, and available from the USOE Driver Education Specialist and at all school district offices.

B. The Board shall act in accordance with DRIVER EDUCATION FOR UTAH HIGH SCHOOLS ORGANIZATION, ADMINISTRATION, AND STANDARDS, Utah State Office of Education, Revised, August, 2011, to determine and evaluate standards and operating procedures for automobile driver education programs conducted by local school districts.

KEY: driver education
November 8, 2011 53A-13-201(4)
Notice of Continuation April 2, 2018 53A-1-401(3)

R277. Education, Administration.
R277-751. Special Education Extended School Year (ESY).
R277-751-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Extended school year (ESY)" means an extension of the school district or charter school traditional school year to provide special education and related services to a student with a disability, in accordance with the student's IEP, and at no cost to the student's parents. ESY services shall meet the standards of Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401(3) and the State Board of Education Special Education Rules.

C. "ESY services" means the individualized education program provided by the school to a student with a disability during the ESY.

D. "FAPE" means a free appropriate public education which includes special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the USOE and Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401(3), include preschool, elementary school and secondary school education in Utah; and are provided in conformity with an IEP that meets the requirements of Part B of the IDEA and Utah State Board of Education Special Education Rules.

E. "IEP" means a written statement of an individualized education program by an IEP team and developed, reviewed, and revised in accordance with Utah State Board of Education Special Education Rules and the Part B of the IDEA.

F. "IEP team" means a group of individuals that is responsible for developing, reviewing, and revising an IEP for a student with a disability.

G. "LEA" means a local education agency which includes school boards/public school districts, charter schools, and, for the purposes of this rule, the Utah Schools for the Deaf and the Blind.

H. "Procedural Safeguards" means the procedural rights designed to protect the rights of students with disabilities and their parents. Requirements are defined in IDEA and Utah State Board of Education Special Education Rules, and include the parent's right to participate in meetings, review educational records, request an independent educational evaluation, receive written prior notice of actions proposed or refused by the LEA, and consent to evaluations and special education services. Procedural Safeguards also describe dispute resolution options.

I. "Regression" means reversion to a lower level of functioning, evidenced by a decrease in the level of basic behavioral or academic patterns, or both, or skills, which occurs as a result of an interruption in educational programming. These behaviors or skills are specified on a student's current IEP.

J. "Recoupment" means recovery of basic behavioral or academic patterns, or both, or skills, specified on the IEP, to a level demonstrated prior to the interruption of educational programming.

K. "Student with a disability" means a student who meets eligibility criteria for special education and related services, as defined in the Utah State Board of Education Special Education Rules.

L. "USOE" means the Utah State Office of Education.

R277-751-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(c) which directs the Board to adopt rules regarding services to students with disabilities and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify the standards for the special education ESY.

R277-751-3. Determining Eligibility.

A. A student eligible for ESY is:

(1) a student who has been determined as eligible under Utah State Board of Education Special Education Rules and Part B of the IDEA; and

(2) a student whose IEP team has determined, based upon a review of multiple data sources and factors, on an individual basis, an ESY is required to receive FAPE.

B. The student's IEP shall reflect the IEP team's decision regarding need for ESY services.

(1) Parents shall be provided with written prior notice of proposal or refusal to provide ESY services.

(2) If determined as eligible for ESY services, the IEP team shall determine the appropriate ESY services, based on the student's individual needs.

(3) ESY eligibility decisions and written prior notice of ESY services shall be provided to parents in sufficient time to permit accessing dispute resolution options of the Procedural Safeguards, in the event of a dispute.

R277-751-4. ESY Program Standards.

A. The primary goal for a student requiring ESY services is to maintain the current level of the student's academic and functional skills and behavior in areas identified by the student's IEP in order to provide FAPE.

B. LEAs may not:

(1) limit ESY to particular categories of disabilities or particular ages or grade levels of students.

(2) unilaterally limit the type, amount, or duration of ESY services provided for students.

(3) limit data consideration by IEP teams to only an analysis of regression and recoupment.

C. LEAs shall ensure that:

(1) ESY student services are provided in the least restrictive environment.

(2) ESY teachers and paraprofessionals meet IDEA's highly qualified requirements.

R277-751-5. Division of Responsibilities.

A. The duties of the Utah State Office of Education shall include:

(1) monitoring ESY compliance through:

(a) LEA program administrative reviews, such as Utah Program Improvement Planning System (UPIPS) monitoring;

(b) requiring student attendance and membership accountability.

(2) providing technical assistance to LEAs;

(3) collecting data on:

(a) the number, disabilities, and levels of students served;

(b) the types of program delivery models used;

(c) costs of the ESY services in LEAs;

(d) program effectiveness.

(4) developing guidelines for LEAs.

B. The duties of LEAs shall include:

(1) establishing LEA procedures which are in accordance with Board rules;

(2) providing professional development and on-site visits to assure that Board and LEA procedures are appropriately understood and implemented;

(3) establishing timelines to accomplish the purposes of this rule;

(4) analyzing LEA needs, reported by professionals, for ESY services for individual, eligible students;

(5) determining LEA ESY services parameters based upon data received from educators on individual, eligible students. The parameters shall include the personnel required to provide special education and related services, location of services, and budget specifications;

(6) ensuring parents and professionals have received information about dispute resolution procedures for the appeal of ESY eligibility decisions and ESY services parameters;

(7) implementing processes to collect program effectiveness

data.

KEY: exceptional children, extended school year
June 7, 2013 **Art X Sec 3**
Notice of Continuation April 2, 2018 **53A-1-402(1)(c)**
53A-1-401(3)
53A-17a-112(3)

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.
R313-25. License Requirements for Land Disposal of Radioactive Waste - General Provisions.
R313-25-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe the requirements for the issuance of licenses for the land disposal of wastes received from other persons.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4), 19-3-104(7), 19-3-104(10), and 19-3-104(11).

(3) The requirements of Rule R313-25 are in addition to, and not in substitution for, other applicable requirements of these rules.

R313-25-2. Definitions.

As used in Rule R313-25, the following definitions apply:

"Active maintenance" means significant activity needed during the period of institutional control to maintain a reasonable assurance that the performance objectives in Sections R313-25-20 and R313-25-21 are met. Active maintenance may include the pumping and treatment of water from a disposal unit, the replacement of a disposal unit cover, or other episodic or continuous measures. Active maintenance does not include custodial activities like repair of fencing, repair or replacement of monitoring equipment, revegetation, minor additions to soil cover, minor repair of disposal unit covers, and general disposal site upkeep.

"Approval application" means an application by a radioactive waste facility regulated under Title 19, Chapter 3 or Title 19, Chapter 5, for a permit, permit modification, license, license amendment, or other authorization.

"Buffer zone" means a portion of the disposal site that is controlled by the licensee and that lies under the disposal units and between the disposal units and the boundary of the site.

"Competitive site-specific estimate" means a market-based cost estimate identifying and calculating the reasonable closure costs of a land disposal facility, including the cost of each activity in the closure, post-closure and institutional care of such facility, and market-based overhead(s) provided in sufficient detail to allow the Director to review and approve the same.

"Custodial agency" means an agency of the government designated to act on behalf of the government owner of the disposal site.

"Day" for purposes of this Rule means calendar days.

"Disposal" means the isolation of wastes from the biosphere by placing them in a land disposal facility.

"Disposal site" means that portion of a land disposal facility which is used for disposal of waste. It consists of disposal units and a buffer zone.

"Disposal unit" means a discrete portion of the disposal site into which waste is placed for disposal. For near-surface disposal, the disposal unit may be a trench.

"Engineered barrier" means a man-made structure or device intended to improve the land disposal facility's performance under Rule R313-25.

"Groundwater permit" means a groundwater quality discharge permit issued under the authority of Title 19, Chapter 5 and Rule R317-6.

"Hydrogeologic unit" means a soil or rock unit or zone that has a distinct influence on the storage or movement of ground water.

"Inadvertent intruder" means a person who may enter the disposal site after closure and engage in activities unrelated to post closure management, such as agriculture, dwelling construction, or other pursuits which could, by disturbing the site, expose individuals to radiation.

"Intruder barrier" means a sufficient depth of cover over the waste that inhibits contact with waste and helps to ensure that radiation exposures to an inadvertent intruder will meet the performance objectives set forth in Rule R313-25, or engineered structures that provide equivalent protection to the inadvertent intruder.

"Land disposal facility" means the land, buildings and structures, and equipment which are intended to be used for the disposal of radioactive waste. Land disposal facility also includes any land, buildings and structures, and equipment adjacent to such land disposal facility used for the receipt, storage, treatment, or processing of radioactive waste.

"Monitoring" means observing and making measurements to provide data to evaluate the performance and characteristics of the disposal site.

"Near-surface disposal facility" means a land disposal facility in which waste is disposed of within approximately the upper 30 meters of the earth's surface.

"Site closure and stabilization" means those actions that are taken upon completion of operations that prepare the disposal site for custodial care, and that assure that the disposal site will remain stable and will not need ongoing active maintenance.

"Stability" means structural stability.

"Surveillance" means monitoring and observation of the disposal site to detect needs for maintenance or custodial care, to observe evidence of intrusion, and to ascertain compliance with other license and regulatory requirements.

"Tolling period," for purposes of this Rule, means a period during which days are not counted toward the deadlines specified in Subsections R313-25-6(3)(c), (4)(c)(i), (5)(b)(i), and (6)(b)(i).

"Treatment" means the stabilization or the reduction in volume of waste by a chemical or a physical process.

"Unlicensed facility" means a structure, road, or property adjacent to, but outside of, a licensed or permitted area and that is not used for waste disposal or management.

"Waste" means those low-level radioactive wastes containing radioactive material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in (b), (c), and (d) of the definition for byproduct material found in Section R313-12-3.

R313-25-3. Pre-licensing Plan Approval Criteria for Siting of Commercial Radioactive Waste Disposal Facilities.

(1) Persons proposing to construct or operate commercial radioactive waste disposal facilities, including waste incinerators, shall obtain a plan approval from the Director before applying for a license. Plans shall meet the siting criteria and plan approval requirements of Section R313-25-3.

(2) The siting criteria and plan approval requirements in Section R313-25-3 apply to prelicensing plan approval applications.

(3) Treatment and disposal facilities, including commercial radioactive waste incinerators, shall not be located:

(a) within or underlain by:

(i) national, state, and county parks, monuments, and recreation areas; designated wilderness and wilderness study areas; wild and scenic river areas;

(ii) ecologically and scientifically significant natural areas, including wildlife management areas and habitats for listed or proposed endangered species as designated by federal law;

(iii) 100 year floodplains;

(iv) areas 200 feet distant from Holocene faults;

(v) underground mines, salt domes and salt beds;

(vi) dam failure flood areas;

(vii) areas subject to landslide, mud flow, or other earth movement, unless adverse impacts can be mitigated;

(viii) farmlands classified or evaluated as "prime", "unique", or of "statewide importance" by the U.S. Department of Agricultural Soil Conservation Service under the Prime Farmland Protection Act;

(ix) areas five miles distant from existing permanent dwellings, residential areas, and other habitable structures,

including schools, churches, and historic structures;

(x) areas five miles distant from surface waters including intermittent streams, perennial streams, rivers, lakes, reservoirs, and wetlands;

(xi) areas 1000 feet distant from archeological sites to which adverse impacts cannot reasonably be mitigated;

(xii) recharge zones of aquifers containing ground water which has a total dissolved solids content of less than 10,000 mg/l; or

(xiii) drinking water source protection areas designated by the Utah Drinking Water Board;

(b) in areas:

(i) above or underlain by aquifers containing ground water which has a total dissolved solids content of less than 500 mg/l and which aquifers do not exceed state ground water standards for pollutants;

(ii) above or underlain by aquifers containing ground water which has a total dissolved solids content between 3000 and 10,000 mg/l when the distance from the surface to the ground water is less than 100 ft.;

(iii) areas of extensive withdrawal of water, mineral or energy resources.

(iv) above or underlain by weak and unstable soils, including soils that lose their ability to support foundations as a result of hydrocompaction, expansion, or shrinkage;

(v) above or underlain by karst terrains.

(4) Commercial radioactive waste disposal facilities may not be located within a distance to existing drinking water wells and watersheds for public water supplies of five years ground water travel time plus 1000 feet.

(5) The plan approval siting application shall include hydraulic conductivity and other information necessary to estimate adequately the ground water travel distance.

(6) The plan approval siting application shall include the results of studies adequate to identify the presence of ground water aquifers in the area of the proposed site and to assess the quality of the ground water of all aquifers identified in the area of the proposed site.

(7) Emergency response and safety.

(a) The plan approval siting application shall demonstrate the availability and adequacy of services for on-site emergencies, including medical and fire response. The application shall provide written evidence that the applicant has coordinated on-site emergency response plans with the local emergency planning committee (LEPC).

(b) The plan approval siting application shall include a comprehensive plan for responding to emergencies at the site.

(c) The plan approval siting application shall show proposed routes for transportation of radioactive wastes within the state. The plan approval siting application shall address the transportation means and routes available to evacuate the population at risk in the event of on-site accidents, including spills and fires.

(8) The plan approval siting application shall provide evidence that if the proposed disposal site is on land not owned by state or federal government, that arrangements have been made for assumption of ownership in fee by a state or federal agency.

(9) Siting Authority. The Director recognizes that Titles 10 and 17 of the Utah Code give cities and counties authority for local use planning and zoning. Nothing in Section R313-25-3 precludes cities and counties from establishing additional requirements as provided by applicable state and federal law.

R313-25-4. License Required.

(1) Persons shall not receive, possess, store, treat, or dispose of waste at a land disposal facility unless authorized by a license issued by the Director pursuant to the Utah Radiation Control Act and Rules R313-25 and R313-22.

(2) Persons shall file an application with the Director pursuant to Section R313-22-32 and obtain a license as provided in Rule R313-25 before commencement of construction of a land disposal facility. Failure to comply with this requirement may be grounds for denial of a license and other penalties established by law and rules.

R313-25-5. Content of Application.

In addition to the requirements set forth in Section R313-22-33, an application to receive from others, possess, and dispose of wastes shall consist of general information, specific technical information, institutional information, and financial information as set forth in Sections R313-25-7 through R313-25-11.

R313-25-6. Director Review of Application.

(1) The Director shall review each approval application to determine whether it complies with applicable statutory and regulatory requirements. Approval applications will be categorized as Category 1, 2, 3 and 4 applications, as provided in Subsections R313-25-6(2) through (5).

(2) Category 1 applications.

(a) A Category 1 application is an application that:

(i) is administrative in nature;

(ii) requires limited scrutiny by the Director; and

(iii) does not require public comment.

(b) Examples of a Category 1 application include an application to:

(i) correct typographical errors;

(ii) Change the name, address, or phone number of persons or agencies identified in the license or permit;

(iii) change the procedures or location for maintaining records; or

(iv) extend the date for compliance with a permit or license requirement by no more than 120 days.

(c) The Director shall review and approve or deny a Category 1 application within 30 days after the day on which the Director Receives the application.

(3) Category 2 applications:

(a) A Category 2 application is one that is not a Category 1, 3 or 4 application.

(b) Examples of a Category 2 application include:

(i) Increase in process, storage, or disposal capacity

(ii) Change engineering design, construction, or process controls;

(iii) Approve a proposed corrective action plan; or

(iv) Transfer direct control of a license or groundwater permit.

(c)(i) The Director shall review and approve or deny a Category 2 application within 180 days after the day on which the Director receives the application.

(ii) The period described in Subsection R313-25-6(3)(c)(i) shall be tolled as provided in Subsection R313-25-6(7).

(4) Category 3 applications.

(a) Category 3 application is an application for:

(i) a radioactive waste license renewal;

(ii) a groundwater permit renewal;

(iii) an amendment to an existing radioactive waste license or groundwater permit to allow a new disposal cell;

(iv) an amendment to an existing radioactive waste license or groundwater permit that would allow the facility to eliminate groundwater monitoring; or

(v) approval of a radioactive waste disposal facility closure plan.

(b)(i) The Director shall review and approve or deny a Category 3 application within 365 days after the day on which the Director receives the application.

(ii) The period described in Subsection R313-25-6(4)(b)(i) shall be tolled as provided in Subsection R313-25-6(7).

(5) Category 4 applications.

(a) A Category 4 application is an application for:

(i) a new radioactive waste license; or

(ii) a new groundwater permit.

(b)(i) The Director shall review and approve or deny a

Category 4 application within 540 days after the day on which the Director receives the application.

(ii) The period described in Subsection R313-25-6(5)(b)(i) shall be tolled as provided in Subsection R313-25-6(7).

(6)(a) Within 60 days after the day on which the Director receives a Category 2, 3 or 4 approval application, the Director shall determine whether the application is complete and contains all the information necessary to process it for approval and make a finding by issuance of a written:

(i) notice of completeness to the applicant; or

(ii) notice of deficiency to the applicant, including a list of the additional information necessary to complete the application.

(b) The Director shall review written information submitted in response to a notice of deficiency within 30 days after the day on which the Director receives the supplemental information and shall again follow the procedures specified in Subsection R313-25-6(1)(a).

(c) If a document that is submitted as an application is substantially deficient, the Director may determine that it does not qualify as an application. Any such determination shall be made within 45 days of the document's submission and will include the Director's written findings.

(7) Tolling Periods. The periods specified for the Director's review and approval or denial under Subsections R313-25-6(3)(c)(i), (4)(b)(i), and (5)(b)(i) shall be tolled:

(a) while an owner or operator of a facility responds to the Director's request for information;

(b) during a public comment period; and

(c) while the federal government reviews the application.

(8) The Director shall prepare a detailed written explanation of the technical and regulatory basis for the Director's approval or denial of an approval application.

R313-25-7. General Information.

The general information shall include the following:

(1) identity of the applicant including:

(a) the full name, address, telephone number, and description of the business or occupation of the applicant;

(b) if the applicant is a partnership, the names and addresses of the partners and the principal location where the partnership does business;

(c) if the applicant is a corporation or an unincorporated association;

(i) the state where it is incorporated or organized and the principal location where it does business; and

(ii) the names and addresses of its directors and principal officers; and

(d) if the applicant is acting as an agent or representative of another person in filing the application, the applicant shall provide, with respect to the other person, information required under Subsection R313-25-7(1).

(2) Qualifications of the applicant shall include the following;

(a) the organizational structure of the applicant, both offsite and onsite, including a description of lines of authority and assignments of responsibilities, whether in the form of administrative directives, contract provisions, or otherwise;

(b) the technical qualifications, including training and experience of the applicant and members of the applicant's staff, to engage in the proposed activities. Minimum training and experience requirements for personnel filling key positions described in Subsection R313-25-7(2)(a) shall be provided;

(c) a description of the applicant's personnel training program; and

(d) the plan to maintain an adequate complement of trained personnel to carry out waste receipt, handling, and disposal operations in a safe manner.

(3) A description of:

(a) the location of the proposed disposal site;

(b) the general character of the proposed activities;

(c) the types and quantities of waste to be received, possessed, and disposed of;

(d) plans for use of the land disposal facility for purposes other than disposal of wastes; and

(e) the proposed facilities and equipment; and

(4) proposed schedules for construction, receipt of waste, and first emplacement of waste at the proposed land disposal facility.

R313-25-8. Specific Technical Information.

The application shall include certain technical information. The following information is needed to determine whether or not the applicant or licensee can meet the performance objectives and the applicable technical requirements of Rule R313-25:

(1) A description of the natural and demographic disposal site characteristics shall be based on and determined by disposal site selection and characterization activities. The description shall include geologic, geochemical, geotechnical, hydrologic, ecologic, archaeologic, meteorologic, climatologic, and biotic features of the disposal site and vicinity.

(2) Descriptions of the design features of the land disposal facility and of the disposal units for near-surface disposal shall include those design features related to infiltration of water; integrity of covers for disposal units; structural stability of backfill, wastes, and covers; contact of wastes with standing water; disposal site drainage; disposal site closure and stabilization; elimination to the extent practicable of long-term disposal site maintenance; inadvertent intrusion; occupational exposures; disposal site monitoring; and adequacy of the size of the buffer zone for monitoring and potential mitigative measures.

(3) Descriptions of the principal design criteria and their relationship to the performance objectives.

(4) Descriptions of the natural events or phenomena on which the design is based and their relationship to the principal design criteria.

(5) Descriptions of codes and standards which the applicant has applied to the design, and will apply to construction of the land disposal facilities.

(6) Descriptions of the construction and operation of the land disposal facility. The description shall include as a minimum the methods of construction of disposal units; waste emplacement; the procedures for and areas of waste segregation; types of intruder barriers; onsite traffic and drainage systems; survey control program; methods and areas of waste storage; and methods to control surface water and ground water access to the wastes. The description shall also include a description of the methods to be employed in the handling and disposal of wastes containing chelating agents or other non-radiological substances which might affect meeting the performance objectives of Rule R313-25

(7) A description of the disposal site closure plan, including those design features which are intended to facilitate disposal site closures and to eliminate the need for active maintenance after closure.

(8) Identification of the known natural resources at the disposal site whose exploitation could result in inadvertent intrusion into the wastes after removal of active institutional control.

(9) Descriptions of the kind, amount, classification and specifications of the radioactive material proposed to be received, possessed, and disposed of at the land disposal facility.

(10) Descriptions of quality assurance programs, tailored to low-level waste disposal, including audit and managerial controls, for the determination of natural disposal site characteristics and for quality control during the design, construction, operation, and closure of the land disposal facility and the receipt, handling, and emplacement of waste.

(11) A description of the radiation safety program for control and monitoring of radioactive effluents to ensure compliance with the performance objective in Section R313-25-20 and monitoring of occupational radiation exposure to ensure compliance with the requirements of Rule R313-15 and to control contamination of

personnel, vehicles, equipment, buildings, and the disposal site. The applicant shall describe procedures, instrumentation, facilities, and equipment appropriate to both routine and emergency operations.

(12) A description of the environmental monitoring program to provide data and to evaluate potential health and environmental impacts and the plan for taking corrective measures if migration is indicated.

(13) Descriptions of the administrative procedures that the applicant will apply to control activities at the land disposal facility.

(14) A description of the facility electronic recordkeeping system as required in Section R313-25-33.

R313-25-9. Technical Analyses.

(1) The licensee or applicant shall conduct a site-specific performance assessment and receive Director approval prior to accepting any radioactive waste if:

(a) the waste was not considered in the development of the limits on Class A waste and not included in the analyses of the Draft Environmental Impact Statement on 10 CFR Part 61 "Licensing Requirements for Land Disposal of Radioactive Waste," NUREG-0782. U.S. Nuclear Regulatory Commission. September 1981, or

(b) the waste is likely to result in greater than 10 percent of the dose limits in Section R313-25-19 during the time period at which peak dose would occur, or

(c) the waste will result in greater than 10 percent of the total site source term over the operational life of the facility, or

(d) the disposal of the waste would result in an unanalyzed condition not considered in Rule R313-25.

(2) A licensee that has a previously-approved site-specific performance assessment that addressed a radioactive waste for which a site-specific performance assessment would otherwise be required under Subsection R313-25-9(1) shall notify the Director of the applicability of the previously-approved site-specific performance assessment at least 60 days prior to the anticipated acceptance of the radioactive waste.

(3) The licensee shall not accept radioactive waste until the Director has approved the information submitted pursuant to Subsections R313-25-9(1) or (2).

(4) The licensee or applicant shall also include in the specific technical information the following analyses needed to demonstrate that the performance objectives of Rule R313-25 will be met:

(a) Analyses demonstrating that the general population will be protected from releases of radioactivity shall consider the pathways of air, soil, ground water, surface water, plant uptake, and exhumation by burrowing animals. The analyses shall clearly identify and differentiate between the roles performed by the natural disposal site characteristics and design features in isolating and segregating the wastes. The analyses shall clearly demonstrate a reasonable assurance that the exposures to humans from the release of radioactivity will not exceed the limits set forth in Section R313-25-20.

(b) Analyses of the protection of inadvertent intruders shall demonstrate a reasonable assurance that the waste classification and segregation requirements will be met and that adequate barriers to inadvertent intrusion will be provided.

(c) Analysis of the protection of individuals during operations shall include assessments of expected exposures due to routine operations and likely accidents during handling, storage, and disposal of waste. The analysis shall provide reasonable assurance that exposures will be controlled to meet the requirements of Rule R313-15.

(d) Analyses of the long-term stability of the disposal site shall be based upon analyses of active natural processes including erosion, mass wasting, slope failure, settlement of wastes and backfill, infiltration through covers over disposal areas and adjacent soils, surface drainage of the disposal site, and the effects of changing lake levels. The analyses shall provide reasonable assurance that there will not be a need for ongoing active maintenance of the disposal site following closure.

(5)(a) Notwithstanding Subsection R313-25-9(1), any facility that proposes to land dispose of significant quantities of concentrated depleted uranium (more than one metric ton in total accumulation) after June 1, 2010, shall submit for the Director's review and approval a performance assessment that demonstrates that the performance standards specified in 10 CFR Part 61 and corresponding provisions of Utah rules will be met for the total quantities of concentrated depleted uranium and other wastes, including wastes already disposed of and the quantities of concentrated depleted uranium the facility now proposes to dispose. Any such performance assessment shall be revised as needed to reflect ongoing guidance and rulemaking from NRC. For purposes of this performance assessment, the compliance period shall be a minimum of 10,000 years. Additional simulations shall be performed for the period where peak dose occurs and the results shall be analyzed qualitatively.

(b) No facility may dispose of significant quantities of concentrated depleted uranium prior to the approval by the Director of the performance assessment required in Subsection R313-25-9(5)(a).

(c) For purposes of this Subsection R313-25-9(5) only, "concentrated depleted uranium" means waste with depleted uranium concentrations greater than 5 percent by weight.

R313-25-10. Institutional Information.

The institutional information submitted by the applicant shall include:

(1) A certification by the federal or state agency which owns the disposal site that the agency is prepared to accept transfer of the license when the provisions of Section R313-25-17 are met and will assume responsibility for institutional control after site closure and for post-closure observation and maintenance.

(2) Evidence, if the proposed disposal site is on land not owned by the federal or a state government, that arrangements have been made for assumption of ownership in fee by the federal or a state agency.

R313-25-11. Financial Information.

This information shall demonstrate that the applicant is financially qualified to carry out the activities for which the license is sought. The information shall meet other financial assurance requirements of Rule R313-25.

R313-25-12. Requirements for Issuance of a License.

A license for the receipt, possession, and disposal of waste containing radioactive material will be issued by the Director upon finding that:

(1) the issuance of the license will not constitute an unreasonable risk to the health and safety of the public;

(2) the applicant is qualified by reason of training and experience to carry out the described disposal operations in a manner that protects health and minimizes danger to life or property;

(3) the applicant's proposed disposal site, land disposal facility design, land disposal facility operations, including equipment, facilities, and procedures, disposal site closure, and post-closure institutional control, are adequate to protect the public health and safety as specified in the performance objectives of Section R313-25-20;

(4) the applicant's proposed disposal site, land disposal facility design, land disposal facility operations, including equipment, facilities, and procedures, disposal site closure, and post-closure institutional control are adequate to protect the public health and safety in accordance with the performance objectives of Section R313-25-21;

(5) the applicant's proposed land disposal facility operations, including equipment, facilities, and procedures, are adequate to protect the public health and safety in accordance with Rule R313-15;

(6) the applicant's proposed disposal site, land disposal facility design, land disposal facility operations, disposal site closure, and post-closure institutional control plans are adequate to protect the public health and safety in that they will provide reasonable assurance of the long-term stability of the disposed waste and the disposal site and will eliminate to the extent practicable the need for continued maintenance of the disposal site following closure;

(7) the applicant's demonstration provides reasonable assurance that the requirements of Rule R313-25 will be met;

(8) the applicant's proposal for institutional control provides reasonable assurance that control will be provided for the length of time found necessary to ensure the findings in Subsections R313-25-12(3) through (6) and that the institutional control meets the requirements of Section R313-25-29.

(9) the financial or surety arrangements meet the requirements of Rule R313-25.

R313-25-13. Conditions of Licenses.

(1) A license issued under Rule R313-25, or a right thereunder, may not be transferred, assigned, or disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to a person, unless the Director finds, after securing full information, that the transfer is in accordance with the provisions of the Radiation Control Act and Rules and gives his consent in writing in the form of a license amendment.

(2) The Director may require the licensee to submit written statements under oath.

(3) The license will be terminated only on the full implementation of the final closure plan, including post-closure observation and maintenance, as approved by the Director.

(4) The licensee shall submit to the provisions of the Act now or hereafter in effect, and to all findings and orders of the Director. The terms and conditions of the license are subject to amendment, revision, or modification, by reason of amendments to, or by reason of rules, and orders issued in accordance with the terms of the Act and these rules.

(5) Persons licensed by the Director pursuant to Rule R313-25 shall confine possession and use of the materials to the locations and purposes authorized in the license.

(6) The licensee shall not dispose of waste until the Director has inspected the land disposal facility and has found it to conform with the description, design, and construction described in the application for a license.

(7) The Director may incorporate, by rule or order, into licenses at the time of issuance or thereafter, additional requirements and conditions with respect to the licensee's receipt, possession, and disposal of waste as the Director deems appropriate or necessary in order to:

(a) protect health or to minimize danger to life or property;

(b) require reports and the keeping of records, and to provide for inspections of licensed activities as the Director deems necessary or appropriate to effectuate the purposes of the Radiation Control Act and Rules.

(8) The authority to dispose of wastes expires on the expiration date stated in the license. An expiration date on a license applies only to the above ground activities and to the authority to dispose of waste. Failure to renew the license shall not relieve the licensee of responsibility for implementing site closure, post-closure observation, and transfer of the license to the site owner.

R313-25-14. Application for Renewal or Closure.

(1) An application for renewal or an application for closure under Section R313-25-15 shall be filed at least 90 days prior to license expiration.

(2) Applications for renewal of a license shall be filed in accordance with Sections R313-25-5 and R313-25-7 through 25-11. Applications for closure shall be filed in accordance with Section R313-25-15. Information contained in previous applications, statements, or reports filed with the Director under the license may be incorporated by reference if the references are clear and specific.

(3) If a licensee has filed an application in proper form for renewal of a license, the license shall not expire unless and until the Director has taken final action to deny application for renewal.

(4) In evaluating an application for license renewal, the Director will apply the criteria set forth in Section R313-25-12.

R313-25-15. Contents of Application for Site Closure and Stabilization.

(1) Prior to final closure of the disposal site, or as otherwise directed by the Director, the licensee shall submit an application to amend the license for closure. This closure application shall include a final revision and specific details of the land disposal facility closure plan included in the original license application submitted and approved under Section R313-25-8(7). The plan shall include the following:

(a) additional geologic, hydrologic, or other data pertinent to the long-term containment of emplaced wastes obtained during the operational period;

(b) the results of tests, experiments, or other analyses relating to backfill of excavated areas, closure and sealing, waste migration and interaction with emplacement media, or other tests, experiments, or analyses pertinent to the long-term containment of emplaced waste within the disposal site;

(c) proposed revision of plans for:

(i) decontamination or dismantlement of surface facilities;

(ii) backfilling of excavated areas; or

(iii) stabilization of the disposal site for post-closure care.

(d) Significant new information regarding the environmental impact of closure activities and long-term performance of the disposal site.

(2) Upon review and consideration of an application to amend the license for closure submitted in accordance with Subsection R313-25-15(1), the Director shall issue an amendment authorizing closure if there is reasonable assurance that the long-term performance objectives of Rule R313-25 will be met.

R313-25-16. Post-Closure Observation and Maintenance.

The licensee shall observe, monitor, and carry out necessary maintenance and repairs at the disposal site until the site closure is complete and the license is transferred by the Director in accordance with Section R313-25-17. The licensee shall remain responsible for the disposal site for an additional five years. The Director may approve closure plans that provide for shorter or longer time periods of post-closure observation and maintenance, if sufficient rationale is developed for the variance.

R313-25-17. Transfer of License.

Following closure and the period of post-closure observation and maintenance, the licensee may apply for an amendment to transfer the license to the disposal site owner. The license shall be transferred when the Director finds:

(1) that the disposal site was closed according to the licensee's approved disposal site closure plan;

(2) that the licensee has provided reasonable assurance that the performance objectives of Rule R313-25 have been met;

(3) that funds for care and records required by Subsections R313-25-33(4) and (5) have been transferred to the disposal site owner;

(4) that the post-closure monitoring program is operational and can be implemented by the disposal site owner; and

(5) that the Federal or State agency which will assume responsibility for institutional control of the disposal site is prepared to assume responsibility and ensure that the institutional requirements found necessary under Subsection R313-25-12(8) will be met.

R313-25-18. Termination of License.

(1) Following the period of institutional control needed to

meet the requirements of Section R313-25-12, the licensee may apply for an amendment to terminate the license.

(2) This application will be reviewed in accordance with the provisions of Section R313-22-32.

(3) A license shall be terminated only when the Director finds:

(a) that the institutional control requirements of Subsection R313-25-12(8) have been met;

(b) that additional requirements resulting from new information developed during the institutional control period have been met;

(c) that permanent monuments or markers warning against intrusion have been installed; and

(d) that records required by Subsections R313-25-33(4) and (5) have been sent to the party responsible for institutional control of the disposal site and a copy has been sent to the Director immediately prior to license termination.

R313-25-19. General Requirement.

Land disposal facilities shall be sited, designed, operated, closed, and controlled after closure so that reasonable assurance exists that exposures to individuals do not exceed the limits stated in Sections R313-25-20 and 25-23.

R313-25-20. Protection of the General Population from Releases of Radioactivity.

Concentrations of radioactive material which may be released to the general environment in ground water, surface water, air, soil, plants or animals shall not result in an annual dose exceeding an equivalent of 0.25 mSv (0.025 rem) to the whole body, 0.75 mSv (0.075 rem) to the thyroid, and 0.25 mSv (0.025 rem) to any other organ of any member of the public. No greater than 0.04 mSv (0.004 rem)committed effective dose equivalent or total effective dose equivalent to any member of the public shall come from groundwater. Reasonable efforts should be made to maintain releases of radioactivity in effluents to the general environment as low as is reasonably achievable.

R313-25-21. Protection of Individuals from Inadvertent Intrusion.

Design, operation, and closure of the land disposal facility shall ensure protection of any individuals inadvertently intruding into the disposal site and occupying the site or contacting the waste after active institutional controls over the disposal site are removed.

R313-25-22. Protection of Individuals During Operations.

Operations at the land disposal facility shall be conducted in compliance with the standards for radiation protection set out in Rule R313-15 of these rules, except for release of radioactivity in effluents from the land disposal facility, which shall be governed by Section R313-25-20. Every reasonable effort should be made to maintain radiation exposures as low as is reasonably achievable, ALARA.

R313-25-23. Stability of the Disposal Site After Closure.

The disposal facility shall be sited, designed, used, operated, and closed to achieve long-term stability of the disposal site and to eliminate, to the extent practicable, the need for ongoing active maintenance of the disposal site following closure so that only surveillance, monitoring, or minor custodial care are required.

R313-25-24. Disposal Site Suitability Requirements for Land Disposal - Near-Surface Disposal.

(1) The primary emphasis in disposal site suitability is given to isolation of wastes and to disposal site features that ensure that the long-term performance objectives are met.

(2) The disposal site shall be capable of being characterized, modeled, analyzed and monitored.

(3) Within the region where the facility is to be located, a disposal site should be selected so that projected population growth and future developments are not likely to affect the ability of the disposal facility to meet the performance objectives of Rule R313-25.

(4) Areas shall be avoided having known natural resources which, if exploited, would result in failure to meet the performance objectives of Rule R313-25.

(5) The disposal site shall be generally well drained and free of areas of flooding or frequent ponding. Waste disposal shall not take place in a 100-year flood plain, coastal high-hazard area or wetland, as defined in Executive Order 11988, "Floodplain Management Guidelines."

(6) Upstream drainage areas shall be minimized to decrease the amount of runoff which could erode or inundate waste disposal units.

(7) The disposal site shall provide sufficient depth to the water table that ground water intrusion, perennial or otherwise, into the waste will not occur. The Director will consider an exception to this requirement to allow disposal below the water table if it can be conclusively shown that disposal site characteristics will result in molecular diffusion being the predominant means of radionuclide movement and the rate of movement will result in the performance objectives being met. In no case will waste disposal be permitted in the zone of fluctuation of the water table.

(8) The hydrogeologic unit used for disposal shall not discharge ground water to the surface within the disposal site.

(9) Areas shall be avoided where tectonic processes such as faulting, folding, seismic activity, vulcanism, or similar phenomena may occur with such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of Rule R313-25 or may preclude defensible modeling and prediction of long-term impacts.

(10) Areas shall be avoided where surface geologic processes such as mass wasting, erosion, slumping, landsliding, or weathering occur with sufficient such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of Rule R313-25, or may preclude defensible modeling and prediction of long-term impacts.

(11) The disposal site shall not be located where nearby facilities or activities could adversely impact the ability of the site to meet the performance objectives of Rule R313-25 or significantly mask the environmental monitoring program.

R313-25-25. Disposal Site Design for Near-Surface Land Disposal.

(1) Site design features shall be directed toward long-term isolation and avoidance of the need for continuing active maintenance after site closure.

(2) The disposal site design and operation shall be compatible with the disposal site closure and stabilization plan and lead to disposal site closure that provides reasonable assurance that the performance objectives will be met.

(3) The disposal site shall be designed to complement and improve, where appropriate, the ability of the disposal site's natural characteristics to assure that the performance objectives will be met.

(4) Covers shall be designed to minimize, to the extent practicable, water infiltration, to direct percolating or surface water away from the disposed waste, and to resist degradation by surface geologic processes and biotic activity.

(5) Surface features shall direct surface water drainage away from disposal units at velocities and gradients which will not result in erosion that will require ongoing active maintenance in the future.

(6) The disposal site shall be designed to minimize to the extent practicable the contact of water with waste during storage, the contact of standing water with waste during disposal, and the contact of percolating or standing water with wastes after disposal.

R313-25-26. Near Surface Land Disposal Facility Operation and Disposal Site Closure.

(1) Wastes designated as Class A pursuant to Section R313-15-1009 of these rules shall be segregated from other wastes by placing them in disposal units which are sufficiently separated from disposal units for the other waste classes so that any interaction between Class A wastes and other wastes will not result in the failure to meet the performance objectives of Rule R313-25. This segregation is not necessary for Class A wastes if they meet the stability requirements of Subsection R313-15-1009(2)(b).

(2) Wastes designated as Class C pursuant to Section R313-15-1009 shall be disposed of so that the top of the waste is a minimum of five meters below the top surface of the cover or shall be disposed of with intruder barriers that are designed to protect against an inadvertent intrusion for at least 500 years.

(3) Except as provided in Subsection R313-25-1(1), only waste classified as Class A, B, or C shall be acceptable for near-surface disposal. Wastes shall be disposed of in accordance with the requirements of Subsections R313-25-26(4) through 11.

(4) Wastes shall be emplaced in a manner that maintains the package integrity during emplacement, minimizes the void spaces between packages, and permits the void spaces to be filled.

(5) Void spaces between waste packages shall be filled with earth or other material to reduce future subsidence within the fill.

(6) Waste shall be placed and covered in a manner that limits the radiation dose rate at the surface of the cover to levels that at a minimum will permit the licensee to comply with all provisions of Sections R313-15-301 and 302 at the time the license is transferred pursuant to Section R313-25-17.

(7) The boundaries and locations of disposal units shall be accurately located and mapped by means of a land survey. Near-surface disposal units shall be marked in such a way that the boundaries of the units can be easily defined. Three permanent survey marker control points, referenced to United States Geological Survey or National Geodetic Survey control stations, shall be established on the site to facilitate surveys. The United States Geological Survey or National Geodetic Survey control stations shall provide horizontal and vertical controls as checked against United States Geological Survey or National Geodetic Survey record files.

(8) A buffer zone of land shall be maintained between any buried waste and the disposal site boundary and beneath the disposed waste. The buffer zone shall be of adequate dimensions to carry out environmental monitoring activities specified in Subsection R313-25-27(4) and take mitigative measures if needed.

(9) Closure and stabilization measures as set forth in the approved site closure plan shall be carried out as the disposal units are filled and covered.

(10) Active waste disposal operations shall not have an adverse effect on completed closure and stabilization measures.

(11) Only wastes containing or contaminated with radioactive material shall be disposed of at the disposal site.

(12) Proposals for disposal of waste that are not generally acceptable for near-surface disposal because the wastes form and disposal methods shall be different and, in general, more stringent than those specified for Class C waste, may be submitted to the Director for approval.

R313-25-27. Environmental Monitoring.

(1) At the time a license application is submitted, the applicant shall have conducted a preoperational monitoring program to provide basic environmental data on the disposal site characteristics. The applicant shall obtain information about the ecology, meteorology, climate, hydrology, geology, geochemistry, and seismology of the disposal site. For those characteristics that are subject to seasonal variation, data shall cover at least a 12-month period.

(2) During the land disposal facility site construction and operation, the licensee shall maintain an environmental monitoring program. Measurements and observations shall be made and recorded to provide data to evaluate the potential health and environmental impacts during both the construction and the operation of the facility and to enable the evaluation of long-term effects and need for mitigative measures. The monitoring system shall be capable of providing early warning of releases of waste from the disposal site before they leave the site boundary.

(3) After the disposal site is closed, the licensee responsible for post-operational surveillance of the disposal site shall maintain a monitoring system based on the operating history and the closure and stabilization of the disposal site. The monitoring system shall be capable of providing early warning of releases of waste from the disposal site before they leave the site boundary.

(4) The licensee shall have plans for taking corrective measures if the environmental monitoring program detects migration of waste which would indicate that the performance objectives may not be met.

R313-25-28. Alternative Requirements for Design and Operations.

The Director may, upon request or on the Director's own initiative, authorize provisions other than those set forth in Sections R313-25-25 and 25-27 for the segregation and disposal of waste and for the design and operation of a land disposal facility on a specific basis, if it finds reasonable assurance of compliance with the performance objectives of Rule R313-25.

R313-25-29. Institutional Requirements.

(1) Land Ownership. Disposal of waste received from other persons may be permitted only on land owned in fee by the Federal or a State government.

(2) Institutional Control. The land owner or custodial agency shall conduct an institutional control program to physically control access to the disposal site following transfer of control of the disposal site from the disposal site operator. The institutional control program shall also include, but not be limited to, conducting an environmental monitoring program at the disposal site, periodic surveillance, minor custodial care, and other equivalents as determined by the Director, and administration of funds to cover the costs for these activities. The period of institutional controls will be determined by the Director, but institutional controls may not be relied upon for more than 100 years following transfer of control of the disposal site to the owner.

R313-25-30. Applicant Qualifications and Assurances.

The applicant shall show that it either possesses the necessary funds, or has reasonable assurance of obtaining the necessary funds, or by a combination of the two, to cover the estimated costs of conducting all licensed activities over the planned operating life of the project, including costs of construction and disposal.

R313-25-31. Funding for Disposal Site Closure and Stabilization.

(1) The applicant shall provide assurances prior to the commencement of operations, and a licensee shall provide assurances annually, that sufficient funds are or will be available to carry out land disposal facility closure and stabilization, including:

(a) decontamination or dismantlement of land disposal facility structures, and

(b) closure and stabilization of the disposal site so that following transfer of the disposal site to the site owner, the need for ongoing active maintenance is eliminated to the extent practicable and only minor custodial care, surveillance, and monitoring are required. These assurances shall be based on Director approved cost estimates reflecting the Director approved plan for disposal site closure and stabilization. The applicant's or the licensee's cost estimates shall take into account total costs that would be incurred if an independent contractor were hired to perform the closure and stabilization work, in accordance with R313-25-31.5.

(2) In order to avoid unnecessary duplication and expense, the Director will accept financial sureties that have been consolidated

with earmarked financial or surety arrangements established to meet requirements of Federal or other State agencies or local governmental bodies for decontamination, closure, and stabilization as to any unlicensed facility. The Director will accept these arrangements only if they are considered adequate to satisfy the requirements of Section R313-25-31 and if they clearly identify the portion of the surety which covers the closure of such unlicensed facility and is committed for use in accomplishing these activities.

(3) The licensee's financial or surety arrangement shall be submitted annually for review by the Director to assure that sufficient funds will be available for completion of the closure plan.

(4) The amount of the licensee's financial or surety arrangement shall change in accordance with changes in the predicted costs of closure and stabilization. Factors affecting closure and stabilization cost estimates include inflation, increases in the amount of disturbed land, changes in engineering plans, closure and stabilization that have already been accomplished, and other conditions affecting costs. The financial or surety arrangement shall be sufficient at all times to cover the costs of closure and stabilization of the disposal units that are expected to be used before the next license renewal.

(5) The financial or surety arrangement shall be written for a specified period of time and shall be automatically renewed unless the person who issues the surety notifies the Director; the beneficiary, the site owner; and the principal, the licensee, not less than 90 days prior to the renewal date of its intention not to renew. In such a situation, the licensee shall submit a replacement surety within 30 days after notification of cancellation. If the licensee fails to provide a replacement surety acceptable to the Director, the beneficiary may collect on the original surety.

(6) Proof of forfeiture shall not be necessary to collect the surety so that, in the event that the licensee could not provide an acceptable replacement surety within the required time, the surety shall be automatically collected prior to its expiration. The conditions described above shall be clearly stated on surety instruments.

(7) Financial or surety arrangements generally acceptable to the Director include surety bonds, cash deposits, certificates of deposit, deposits of government securities, escrow accounts, irrevocable letters or lines of credit, trust funds, and combinations of the above or other types of arrangements as may be approved by the Director. Self-insurance, or an arrangement which essentially constitutes self-insurance, will not satisfy the surety requirement for private sector applicants.

(8) The licensee's financial or surety arrangement shall remain in effect until the closure and stabilization program has been completed and approved by the Director, and the license has been transferred to the site owner.

(9) The financial assurance shall be based on an annual estimate and shall include closure and post-closure costs in all areas subject to the licensed or permitted portions of the facility;

(10) Financial assurance for an unlicensed facility that supports the operation of a licensed or permitted facility shall include the estimated cost of:

(a) the removal of structures;

(b) the testing of structures, roads, and property to ensure no radiological contamination has occurred outside of the licensed area; and

(c) stabilization and water infiltration control;

(11) Financial assurance cost estimates for a single approved waste disposal unit for which the volume of waste already placed and proposed to be placed in the unit within the surety period is less than the full waste capacity of the unit shall reflect the closure and post-closure costs for a waste disposal unit smaller than the approved waste disposal unit, if the unit could be reduced in size, meet closure requirements, and reduce closure costs;

(12) Financial assurance cost estimates for two approved adjacent waste disposal units that have been approved to be combined into a single unit and for which the combined volume of waste already placed and proposed to be placed in the units within the surety period is less than the combined waste capacity for the two separate units shall reflect either two separate waste disposal units or a single combined unit, whichever has the lowest closure and post-closure costs;

(13) The licensee or permittee shall annually propose closure and post-closure costs upon which financial assurance amounts are based, including costs of potential remediation at the licensed or permitted facility and, notwithstanding the obligations described in Subsection R313-25-31(10), any unlicensed facility;

(14) To provide the information in Subsection R313-25-31(13), the licensee or permittee shall provide:

(a) a proposed annual cost estimate using the current edition of RS Means Facilities Construction Cost Data or using a process, including an indirect cost multiplier, previously agreed to between the licensee or permittee and the Director; or

(b)(i) for an initial financial assurance determination and for each financial assurance determination every five years thereafter, a proposed competitive site-specific estimate for closure and post-closure care of the facility at least once every five years; and

(ii) for each year between a financial assurance determination described in Subsection R313-25-31(14)(b)(i), a proposed financial assurance estimate that accounts for current site conditions and that includes an annual inflation adjustment to the financial assurance determination using the Gross Domestic Product Implicit Price Deflator of the Bureau of Economic Analysis, United States Department of Commerce, calculated by dividing the latest annual deflator by the deflator for the previous year; and

(15) The Director shall:

(a) annually review the licensee's or permittee's proposed closure and postclosure estimate; and

(b) approve the estimate if the Director determines that the estimate would be sufficient to provide for closure and post-closure costs.

R313-25-31.5. Calculation of Closure Costs.

(1) In order to demonstrate the adequacy of closure, stabilization, post-closure, and institutional control funding in compliance with Section 19-3-104 and Subsection R313-25-31(1)(b), the applicant or licensee shall establish the level of costs that an independent contractor would incur by reliance on one of two methods, as follows:

(a) using the current edition of RS Means Facility Construction Cost Data; or

(b) using a competitive site-specific estimate.

(2) Any proposed competitive site-specific estimate submitted pursuant to Subsection R313-25-31(14)(b)(i) shall:

(a) be certified by a professional engineer or geologist licensed in Utah; and

(b) include sufficient detail so that the Director can determine that the cost estimate would be sufficient to provide for closure, post closure costs, and institutional control costs in compliance with Chapter 19-3 and Section R313-25-31.

(3) In the intervening four years following Director approval of a competitive site-specific estimate, a proposed cost estimate that accounts for current site conditions or changes to site conditions under Subsection R313-25-31(14)(b)(ii) shall be submitted by using either:

(a) the current edition of RS Means Facility Construction Cost Data; or

(b) the cost estimating rationale developed in the approved competitive site-specific estimate.

R313-25-32. Financial Assurances for Institutional Controls.

(1) Prior to the issuance of the license, the applicant shall provide for Director approval, a binding arrangement, between the applicant and the disposal site owner that ensures that sufficient funds will be available to cover the costs of monitoring and required maintenance during the institutional control period. The binding

arrangement shall be reviewed annually by the Director to ensure that changes in inflation, technology, and disposal facility operations are reflected in the arrangements.

(2) Subsequent changes to the binding arrangement specified in Subsection R313-25-32(1) relevant to institutional control shall be submitted to the Director for prior approval.

R313-25-33. Maintenance of Records, Reports, and Transfers.

(1) Licensees shall maintain records and make reports in connection with the licensed activities as may be required by the conditions of the license or by the rules and orders of the Director.

(2) Records which are required by these rules or by license conditions shall be maintained for a period specified by the appropriate rules or by license condition. If a retention period is not otherwise specified, these records shall be maintained and transferred to the officials specified in Subsection R313-25-33(4) as a condition of license termination unless the Director otherwise authorizes their disposition.

(3) Records which shall be maintained pursuant to Rule R313-25 may be the original or a reproduced copy or microfilm if this reproduced copy or microfilm is capable of producing copy that is clear and legible at the end of the required retention period.

(4) Notwithstanding Subsections R313-25-33(1) through (3), copies of records of the location and the quantity of wastes contained in the disposal site shall be transferred upon license termination to the chief executive of the nearest municipality, the chief executive of the county in which the facility is located, the county zoning board or land development and planning agency, the State Governor, and other state, local, and federal governmental agencies as designated by the Director at the time of license termination.

(5) Following receipt and acceptance of a shipment of waste, the licensee shall record the date that the shipment is received at the disposal facility, the date of disposal of the waste, a traceable shipment manifest number, a description of any engineered barrier or structural overpack provided for disposal of the waste, the location of disposal at the disposal site, the condition of the waste packages as received, discrepancies between the materials listed on the manifest and those received, the volume of any pallets, bracing, or other shipping or onsite generated materials that are contaminated, and are disposed of as contaminated or suspect materials, and evidence of leakage or damaged packages or radiation or contamination levels in excess of limits specified in U.S. Department of Transportation and Director regulations or rules. The licensee shall briefly describe repackaging operations of the waste packages included in the shipment, plus other information required by the Director as a license condition.

(6) Licensees authorized to dispose of waste received from other persons shall file a copy of their financial report or a certified financial statement annually with the Director in order to update the information base for determining financial qualifications.

(7)(a) Licensees authorized to dispose of waste received from other persons, pursuant to Rule R313-25, shall submit annual reports to the Director. Reports shall be submitted by the end of the first calendar quarter of each year for the preceding year.

(b) The reports shall include:

(i) specification of the quantity of each of the principal contaminants released to unrestricted areas in liquid and in airborne effluents during the preceding year;

(ii) the results of the environmental monitoring program;

(iii) a summary of licensee disposal unit survey and maintenance activities;

(iv) a summary, by waste class, of activities and quantities of radionuclides disposed of;

(v) instances in which observed site characteristics were significantly different from those described in the application for a license; and

(vi) other information the Director may require.

(c) If the quantities of waste released during the reporting period, monitoring results, or maintenance performed are significantly different from those predicted, the report shall cover this specifically.

(8) In addition to the other requirements in Section R313-25-33, the licensee shall store, or have stored, manifest and other information pertaining to receipt and disposal of radioactive waste in an electronic recordkeeping system.

(a) The manifest information that must be electronically stored is:

(i) that required in Appendix G of 10 CFR 20.1001 to 20.2402, (2006), which is incorporated into these rules by reference, with the exception of shipper and carrier telephone numbers and shipper and consignee certifications; and

(ii) that information required in Subsection R313-25-33(5).

(b) As specified in facility license conditions, the licensee shall report the stored information, or subsets of this information, on a computer-readable medium.

R313-25-34. Tests on Land Disposal Facilities.

Licensees shall perform, or permit the Director to perform, any tests the Director deems appropriate or necessary for the administration of the rules in Rule R313-25, including, but not limited to, tests of;

(1) wastes;

(2) facilities used for the receipt, storage, treatment, handling or disposal of wastes;

(3) radiation detection and monitoring instruments; or

(4) other equipment and devices used in connection with the receipt, possession, handling, treatment, storage, or disposal of waste.

R313-25-35. Director Inspections of Land Disposal Facilities.

(1) Licensees shall afford to the Director, at reasonable times, opportunity to inspect waste not yet disposed of, and the premises, equipment, operations, and facilities in which wastes are received, possessed, handled, treated, stored, or disposed of.

(2) Licensees shall make available to the Director for inspection, upon reasonable notice, records kept by it pursuant to these rules. Authorized representatives of the Director may copy and take away copies of, for the Director's use, any records required to be kept pursuant to Rule R313-25.

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R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-15. Standards for the Management of Used Oil.
R315-15-1. Applicability, Prohibitions, and Definitions.

1.1 APPLICABILITY

This section identifies those materials that are subject to regulation as used oil under R315-15. This section also identifies some materials that are not subject to regulation as used oil under R315-15, and indicates whether these materials may be a hazardous waste as defined under R315-261.

(a) Used oil. It is presumed that used oil is to be recycled unless a used oil handler disposes of used oil or sends used oil for disposal. Except as provided in R315-15-1.2, the requirements of R315-15 apply to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in R315-261-20 through 24.

(b) Mixtures of used oil and hazardous waste.

(1) Listed hazardous waste.

(i) Mixtures of used oil and hazardous waste which are listed in R315-261-30 through 33 and 35 are subject to regulation as hazardous waste under R315-261 rather than as used oil under R315-15.

(ii) Rebuttable presumption for used oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-261-30 through 33 and 35. A person may rebut this presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III, Update IV to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-261, Appendix VIII.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in R315-15-2.5(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(2) Characteristic hazardous waste. A mixture of used oil and hazardous waste that solely exhibits one or more of the hazardous waste characteristics identified in R315-261-20 through 24 and a mixtures of used oil and hazardous waste that is listed in R315-261-30 through 33 and 35 solely because it exhibits one or more of the characteristics of hazardous waste identified in R315-261-20 through 24 are subject to:

(i) Except as provided in R315-15-1(b)(2)(iii), regulation as hazardous waste under R315-260 through 266, 268, 270, and 273 rather than as used oil under R315-15, if the resultant mixture exhibits any characteristics of hazardous waste identified in R315-261-20 through 24; or

(ii) Except as specified in R315-15-1.1(b)(2)(iii), regulation as used oil under R315-15, if the resultant mixture does not exhibit any characteristics of hazardous waste identified under R315-261-20 through 24.

(iii) Regulation as used oil under R315-15, if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability, e.g., mineral spirits, provided that the mixture does not exhibit the characteristic of ignitability under R315-261-21.

(3) Very small quantity generator hazardous waste. Mixtures of used oil and very small quantity generator hazardous waste regulated under Section R315-262-14 are subject to regulation as used oil under R315-15.

(c) Materials containing or otherwise contaminated with used oil.

(1) Except as provided in R315-15-1.1(c)(2) materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

(i) Are not used oil and thus not subject to R315-15, and

(ii) If applicable, are subject to the hazardous waste regulations R315-260 through 266, 268, 270, and 273, and R315-101 and 102.

(2) Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under R315-15.

(3) Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under R315-15.

(d) Mixtures of used oil with products.

(1) Except as provided in (d)(2) mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under R315-15.

(2) Mixtures of used oil and diesel fuel mixed on site by the generator of the used oil for use in the generator's own vehicles are not subject to R315-15 after the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of R315-15-2.

(e) Materials derived from used oil.

(1) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal, e.g., re-refined lubricants, are:

(i) Not used oil and thus are not subject to R315-15, and

(ii) Not solid wastes and are thus not subject to the hazardous waste regulations of R315-260 through 266, 268, 270, and 273 as provided in R315-261-3(c)(2)(i).

(2) Materials produced from used oil that are burned for energy recovery, e.g., used oil fuels, are subject to regulation as used oil under R315-15.

(3) Except as provided in R315-15.1.1(e)(4), materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(i) Not used oil and thus are not subject to R315-15, and

(ii) Are solid wastes and thus are subject to the hazardous waste regulations R315-260 through 266, 268, 270, and 273 if the materials are listed or identified as hazardous wastes.

(4) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to R315-15.

(f) Wastewater. Wastewater contaminated with de minimis quantities of used oil, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act, including wastewaters at facilities that have eliminated the discharge of wastewater, are not subject to the requirements of Rule R315-15. For purposes of this paragraph only, "de minimis" quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception does not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

(g) Used oil introduced into crude oil pipelines or a petroleum refining facility.

(1) Used oil mixed with crude oil or natural gas liquids, e.g., in a production separator or crude oil stock tank, for insertion into a crude oil pipeline is exempt from the requirements of R315-15. The used oil is subject to the requirements of R315-15 prior to the mixing of used oil with crude oil or natural gas liquids.

(2) Mixtures of used oil and crude oil or natural gas liquids containing less than 1% used oil that are being stored or transported

to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of R315-15.

(3) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of R315-15, provided that the used oil constitutes less than 1% of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of R315-15.

(4) Except as provided in R315-15-1.1 (g)(5), used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of R315-15 only if the used oil meets the specification of R315-15-1.2. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of R315-15.

(5) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of R315-15. This exemption does not extend to used oil that is intentionally introduced into a hydrocarbon recovery system, e.g., by pouring collected used oil into the waste water treatment system.

(6) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of R315-15.

(h) Used oil on vessels. Used oil produced on vessels from normal shipboard operations is not subject to Rule R315-15 until it is transported ashore.

(i) Used oil containing PCBs. In addition to the requirements of R315-15, marketers and burners of used oil who market used oil containing PCBs at concentrations greater than or equal to 2 ppm are subject to the requirements found in R315-15-18 and 40 CFR 761.20(e).

(j) Inspections. Any duly authorized employee of the Director, may, at any reasonable time and upon presentation of credentials, have access to and the right to copy any records relating to used oil, and inspect, audit, or sample. Any authorized employee obtaining samples shall give to the owner, operator or agent a receipt describing the sample obtained and, if requested, a portion of each sample of waste equal in volume or weight to the portion retained. The employee may also make record of the inspection by photographic, electronic, audio, video, or any other reasonable means.

(k) Violations, Orders, and Hearings. If the Director has reason to believe a person is in violation of any provision of R315-15, procedural requirements for compliance shall follow Utah Code Annotated 19-6-721 and Utah Administrative Code R305-7.

1.2 USED OIL SPECIFICATIONS

Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under R315-15 until:

(a) It has been demonstrated not to exceed any allowable levels of the constituents and properties shown in Table 1;

(b) The person making that claim complies with R315-15-7.3, R315-15-7.4, and R315-15-7.5(b); and

(c) The used oil is delivered to a used oil burner.

TABLE 1
USED OIL NOT EXCEEDING ANY ALLOWABLE LEVEL IS NOT SUBJECT TO R315-15-6 WHEN BURNED FOR ENERGY RECOVERY(1)

Constituent/property	Allowable level
Arsenic	5 ppm maximum
Cadmium	2 ppm maximum
Chromium	10 ppm maximum
Lead	100 ppm maximum
Flash point	100 degrees F minimum
Total halogens	4,000 ppm maximum(2)

(1) The allowable levels in Table 1 do not apply to mixtures of used oil and hazardous waste that continue to beregulated as hazardous waste. See R315-15-1.1(b).

(2) Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption described in R315-15-1.1(b)(1). Such used oil is subject to R315-266-100 through 112, rather than R315-15 when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

Note: Applicable standards for the marketing and burning of used oil containing any quantifiable level (2 ppm) of PCBs are found in 40 CFR 761.20(e), 2013 edition, incorporated by reference, and R315-15-18. Prohibition of PCB oil dilution is described in 40 CFR 279.10 and 40 CFR 761.20(e).

1.3 PROHIBITIONS

Except as authorized by the Director, a person may not place, discard, or otherwise dispose of used oil in any of the following manners:

(a) Surface impoundment and waste piles. Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under R315-264 or R315-265.

(b) Use as a dust suppressant, weed suppressant, or for road oiling. The use of used oil as a dust suppressant, weed suppressant, or for road oiling or other similar use is prohibited. Any disposal of used oil on the ground is prohibited under Utah Code Annotated 19-6-706(1)(a)(iii).

(c) A person may not mix or commingle used oil with the following substances, except as incidental to the normal course of processing, mechanical, or industrial operations:

(1) Solid waste that is to be disposed of in any solid waste treatment, storage, or disposal facility, except as authorized by the Director; or

(2) Any hazardous waste so the resulting mixture may not be recycled or used for other beneficial purpose as authorized under R315-15.

(d) Used oil shall not be disposed in a solid waste treatment, storage, or disposal facility, except for the disposal of hazardous used oil as authorized under R315-261.

(e) Used oil shall not be disposed in sewers, drainage systems, septic tanks, surface or ground waters, watercourses, or any body of water.

1.4 BURNING IN PARTICULAR UNITS

Burning in particular units. Off-specification used oil fuel may be burned for energy recovery only in the devices described in R315-15-6.2(a).

1.5 DISPOSAL OF DE MINIMIS USED OIL

(a) R315-15-1.3 does not apply to release of de minimis quantities of used oil identified under Utah Code Annotated 19-6-706(4)(a) except for the requirements of 19-6-706(i) and (ii).

(b) A person may dispose of an item or substance that contains de minimis amounts of oil in disposal facilities in accordance with Utah Code Annotated 19-6-706 (2) (a) if:

(1) To the extent that all oil has been reasonably removed from the item or substance; and

(2) No free flowing oil remains in the item or substance.

1.6 USED OIL FILTERS

(a) Disposal of Used Oil Filters. A person may dispose of a nonterne plated used oil filter as a non-hazardous solid waste when that filter is gravity hot-drained by one of the methods described in R315-15-1.6(b) and is not mixed with hazardous waste defined in R315-261.

(b) "Gravity hot-drained" means drained for not less than 12 hours near operating temperature but above 60 degrees Fahrenheit. A nonterne used oil filter is a container of used oil and is subject to R315-15 until it is gravity hot-drained by one of the following methods:

(1) puncturing the filter anti-drain back valve or the filter dome end and gravity hot-draining;

(2) gravity hot-draining and crushing;

(3) dismantling and gravity hot-draining; or

(4) any other equivalent gravity hot-draining method

authorized by the Director that will remove used oil from the filter at least as effectively as the methods listed in R315-15-1.6(b)(1) through (3).

1.7 DEFINITIONS

(a) Definitions of terms used in R315-15 are found in: R315-15-1.7(b) through (h) and R315-260.

(b) The term "de minimis quantities of used oil" defined in Utah Code Annotated 19-6-706(4)(b), and 19-6-708(3)(a) means small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations and does not apply to used oil discarded as a result of abnormal operations resulting in substantial leaks, spills, or other releases. Nor does it apply to accumulations of quantities of used oil that pose a potential threat to human health or the environment.

(c) "Financial responsibility" means the mechanism by which a person who has a financial obligation satisfies that obligation.

(d) "Used oil" means any oil, refined from crude oil or synthetic oil, that has been used and as a result of that use is contaminated by physical or chemical impurities. Used oil includes engine oil, transmission fluid, compressor oils, metalworking oils, hydraulic oil, brake fluid, oils used as buoyants, lubricating greases, electrical insulating, and dialectic oils.

(e) "Polychlorinated biphenyl (PCB)" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance.

(f) "On-specification used oil" means used oil that does not exceed levels of constituents and properties specified in R315-15-1.2.

(g) "Off-specification used oil" means used oil that exceeds levels of constituents and properties specified in R315-15-1.2.

(h) "Parts per million (ppm)" means a weight-per-weight ratio used to describe concentrations. Parts per million (ppm) is the number of units of mass of a contaminant per million units of total mass (e.g., micrograms per gram).

1.8 LABORATORY ANALYSES

Laboratory analyses used to satisfy the requirements of R315-15 shall be performed by a laboratory that holds a current Utah Certification for environmental laboratories issued by the Utah Department of Health, Laboratory Improvement under R444-14 Utah Administrative Code. The laboratory shall be certified for the method(s) and analyte(s) applied to generate the environmental data.

R315-15-2. Standards for Used Oil Generators.

2.1 APPLICABILITY

(a) General. Except as provided in paragraphs (a)(1) through (a)(4) of this section, R315-15-2 applies to all used oil generators. A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

(1) Household "do-it-yourselfer" used oil generators. Household "do-it-yourselfer" used oil generators are not subject to regulation under R315-15, except for the prohibitions of R315-15-1.3 and cleanup requirements of R315-15-9.

(2) Vessels. Vessels at sea or at port are not subject to R315-15-2. For purposes of R315-15-2, used oil produced on vessels from normal shipboard operations is considered to be generated at the time it is transported ashore. The owner or operator of the vessel and the person(s) removing or accepting used oil from the vessel are co-generators of the used oil and are both responsible for managing the used oil in compliance with R315-15-2 once the used oil is transported ashore. The co-generators may decide among themselves which party will fulfill the requirements of R315-15-2.

(3) Diesel fuel. Mixtures of used oil and diesel fuel mixed by the generator of the used oil for use in the generator's own vehicles are not subject to R315-15 once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil fuel is subject to the requirements of R315-15-2.

(4) Farmers. Farmers who generate an average of 25 gallons per month or less of used oil from vehicles or machinery used on the farm in a calendar year are not subject to the requirements of R315-15, except for the prohibitions of R315-15-1.3 and cleanup requirements of R315-15-9.

(b) Other applicable provisions. Used oil generators who conduct the following activities are subject to the requirements of other applicable provisions of R315-15 as indicated in R315-15.2.1(b)(1) through (5):

(1) Generators who transport used oil, except under the self-transport provisions of R315-15-2.5(a) and (b), shall also comply with R315-15-4.

(2)(i) Except as provided in R315-15-2.1(b)(2)(ii), generators who process or re-refine used oil must also comply with R315-15-5.

(ii) Generators who perform the following activities are not processors, provided that the used oil is generated onsite and is not being sent offsite to a burner of on- or off-specification used oil fuel.

(A) Filtering, cleaning, or otherwise reconditioning used oil before returning it for reuse by the generator;

(B) Separating used oil from wastewater generated onsite to make the wastewater acceptable for discharge or reuse in accordance with section 402 or section 307(b) of the Clean Water Act or other applicable Federal or state regulations governing the management or discharge of wastewater;

(C) Using oil mist collectors to remove small droplets of used oil from in-plant air to make plant air suitable for continued recirculation;

(D) Draining or otherwise removing used oil from materials containing or otherwise contaminated with used oil in order to remove excessive used oil to the extent possible in accordance with R315-15-1.1(c); or

(E) Filtering, separating or otherwise reconditioning used oil before burning it in a space heater in accordance with R315-15-2.4.

(3) Generators who burn off-specification used oil for energy recovery, shall also comply with R315-15-6.

(4) Generators who direct shipments of off-specification used oil from their facility to a used oil burner or first certify that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in R315-15-1.2 shall also comply with R315-15-7.

(5) Generators who dispose of used oil shall also comply with R315-15-8.

2.2 HAZARDOUS WASTE MIXING

(a) Mixtures of used oil and hazardous waste shall be managed in accordance with R315-15-1.1(b).

(b) The rebuttable presumption for used oil found in R315-15-1.1(b)(1)(ii) applies to used oil managed by generators. Under this rebuttable presumption, used oil containing greater than 1,000 ppm total halogens is presumed to be a hazardous waste and thus shall be managed as hazardous waste and not as used oil unless the presumption is rebutted. However, the rebuttable presumption does not apply to certain metalworking oil or fluids containing chlorinated paraffins, if they are processed through a tolling agreement to reclaim the metalworking oils or fluids, and certain used oils removed from refrigeration units described in R315-15-1.1(b)(1)(ii)(B).

2.3 USED OIL STORAGE

Used oil generators are subject to all applicable Spill Prevention, Control and Countermeasures, 40 CFR 112, in addition to the requirements of R315-15-2. Used oil generators are also subject to the standards and requirements of R311-200 through R311-209, Underground Storage Tanks, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste. In addition, used oil generators are subject to the requirements of R315-15-2.

(a) Storage units. Used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under R315-264 and R315-265.

(b) Condition of units. Containers and aboveground tanks used to store used oil at generator facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects or deterioration; and

(2) Not leaking.

(3) Tanks and containers for storage of used oil must be closed during storage except when adding or removing used oil.

(4) Tanks and containers storage areas shall be managed to prevent releases of used oil to the environment.

(c) Labels.

(1) Containers and aboveground tanks used to store used oil at generator facilities shall be labeled or marked clearly with the words "Used Oil".

(2) Fill pipes used to transfer used oil into underground storage tanks at generator facilities shall be labeled or marked clearly with the words "Used Oil."

(d) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of Section R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, a generator shall comply with Section R315-15-9.

2.4 ON-SITE BURNING

On-site burners shall comply with R315-15-6 and, if applicable, shall obtain an Air Quality permit.

(a) Generators may burn used oil in used oil-fired space heaters without a used oil permit provided that:

(1) The heater burns only used oil that the owner or operator generates;

(2) The heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour;

(3) The combustion gases from the heater are vented to the outside ambient air;

(4) The generator has knowledge that the used oil has not been mixed with hazardous waste; and

(5) The used oil is being legitimately burned to utilize its energy content.

(b) Used Oil Collection Center(UOCC). If it is registered as a Used Oil Collection Center as authorized in R315-15-3, the UOCC may burn used oil in used oil fired space heaters without a used oil permit under the provision described in R315-15-2.4(a) provided that the used oil is received from household do-it-yourselfer generators or farmers described in R315-15-2.1(a)(4) or the used oil is received from other generators and has been certified to meet the used oil fuel specifications of R315-15-1.2 by a registered used oil marketer in accordance with R315-15-7.

2.5 OFF-SITE SHIPMENTS

Except as provided in R315-15-2.5(a) through (c), a generator shall ensure that its used oil is transported only by a transporter who has obtained a Utah used oil transporter permit and has a current used oil handler certificate issued by the Director and an EPA identification number.

(a) Self-transportation of small amounts to approved collection centers. A generators may transport, without an EPA identification number, a used oil transporter permit, or a current used oil handler certificate, used oil that is generated at the generator's site and used oil collected from household do-it-yourselfers to a used oil collection center provided that:

(1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(2) The generator transports no more than 55 gallons of used oil at any time; and

(3) The generator transports the used oil to a used oil collection center that is registered or permitted to manage used oil.

(b) Self-transportation of small amounts to aggregation points owned by the generator. A generator may transport, without an EPA identification number, a used oil transporter permit, or used oil handler certificate, used oil that is generated at the generator's site to an aggregation point provided that:

(1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(2) The generator transports no more than 55 gallons of used oil at any time; and

(3) The generator transports the used oil to an aggregation point that is owned, operated, or both by the same generator.

(c) Tolling arrangements. Used oil generators may arrange for used oil to be transported by a transporter without an EPA identification number, a used oil transporter permit, or a current used oil handler certificate if the used oil is reclaimed under a contractual agreement under which reclaimed oil is returned by the processor/re-refiner to the generator for use as a lubricant, cutting oil, or coolant. The contract, known as a "tolling arrangement," shall indicate:

(1) The type of used oil and the frequency of shipments;

(2) That the vehicle used to transport the used oil to the processing/re-refining facility and to deliver recycled used oil back to the generator is owned and operated by the used oil processor/re-refiner; and

(3) That reclaimed oil will be returned to the generator.

R315-15-3. Standards for Used Oil Collection Centers and Aggregation Points.

3.1 DO-IT-YOURSELFER USED OIL COLLECTION CENTERS TYPES A and B

(a) Applicability. R315-15-3.1 applies to owners or operators of Type A and B used oil collection centers:

(1) Type A used oil collection center. Type A and B is any site or facility that accepts/aggregates and stores used oil collected only from household do-it-yourselfers (DIYers) in quantities not exceeding five gallons per visit.

(2) Type B used oil collection center. Type B used oil collection center is any site or facility that accepts/aggregates and stores used oil collected from farmers as required by R315-15-2.1(a)(4) in quantities not exceeding 55 gallons per visit from farmers and not exceeding five gallons per visit from household do-it-yourselfers.

(b) Type A or B used oil collection center requirements. Owners or operators of Type A or B used oil collection centers shall:

(1) Comply with the generator standards in R315-15-2.

(2) Be registered with the Division of Waste Management and Radiation Control to manage used oil as a used oil collection center as required by R315-15-13.1; and

(3) Keep records of used oil collected by the collection center. This does not include used oil generated on site from maintenance and servicing operations. These records shall be kept for a minimum of three years and shall contain the following information:

(i) Name and address of generator or if unavailable, a written description of how the used oil was received;

(ii) Quantity of used oil received;

(iii) Date the used oil is received; and

(iv) Volume of used oil picked up by a permitted transporter and the transporter's name and EPA identification number.

(4) A Type A or B used oil collection center shall not accept used oil from generators other than those specified in R315-15-3.1(1) and (2).

(c) Reimbursements. Type A or B used oil collection centers are classified as DIYer used oil collection centers and may be reimbursed as described in R315-15-14.

3.2 USED OIL COLLECTION CENTERS - TYPES C AND D

(a) Applicability. R315-15-3.2 applies to owners or operators of Type C and D used oil collection centers.

(1) Type C used oil collection center is any site or facility that accepts/aggregates and stores used oil collected from used oil generators regulated under R315-15-2 who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of R315-15-2.5(a). Type C used oil collection centers may also accept used oil from household do-it-yourselfers and farmers described in R315-15-2.1(a)(4).

(2) A Type D used oil collection center is any site or facility

that only accepts/aggregates and stores used oil collected from used oil generators regulated under R315-15-2 who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of R315-15-2.5(a). Type D used oil collection centers do not qualify for reimbursement.

(b) Used oil collection center Type C and D requirements. Owners or operators of Types C and D used oil collection centers shall:

(1) Comply with the generator standards in R315-15-2;

(2) Be registered with the Division of Waste Management and Radiation Control to manage used oil; and

(3) Keep records of used oil received from off-site sources and transported from the collection center. This does not include used oil generated onsite from maintenance and servicing operations. These records shall be kept for a minimum of three years and shall contain the following information:

(i) Name and address of generator or, if unavailable, a written description of how the used oil was received;

(ii) Quantity of used oil received;

(iii) Date the used oil is received; and

(iv) Volumes of used oil collected by a permitted transporter and the transporter's name and federal EPA identification number.

(c) Reimbursements. Type C used oil collection centers may be reimbursed as described in R315-15-14 for household do-it-yourselfer and used oil generated by farmers as defined in R315-15-3.1. Other generator used oil does not meet the reimbursement criteria as do-it-yourselfer used oil and does not qualify for reimbursement.

3.3 USED OIL AGGREGATION POINTS OWNED BY THE GENERATOR

(a) Applicability. R315-15-3.3 applies to owners or operators of all used oil aggregation points. A used oil aggregation point is any site or facility that accepts, aggregates, or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of 55 gallons or less under the provisions of R315-15-2.5(b). Used oil aggregation points may also accept used oil from household do-it-yourselfers as long as they register as do-it-yourselfer collection centers, as described in R315-15-13.1, and comply with do-it-yourselfer collection center standards in R315-15-3.1. Used oil aggregation points that accept used oil from other generators shall register as collection centers, as described in R315-15-13.2, and comply with collection center standards in R315-15-3.2.

(b) Used oil aggregation point requirements. Owners or operators of all used oil aggregation points shall comply with the generator standards in R315-15-2.

R315-15-4. Standards for Used Oil Transporter and Transfer Facilities.

4.1 APPLICABILITY

(a) General. R315-15-4 applies to all used oil transporters, except as provided in R315-15-4.1(a)(1) through (4). Persons who transport used oil, persons who collect used oil from more than one generator and transport the collected used oil, and owners and operators of used oil transfer facilities are used oil transporters. Except as provided by R315-15-13.4(f), used oil transporters or operators of used oil transfer facilities shall obtain a permit from the Director prior to accepting any used oil for transportation or transfer. The application for a permit shall include the information required by R315-15-13.4. Used oil transporters and operators of used oil transfer facilities shall obtain and maintain a used oil handler certificate in accordance with R315-15-13.8.

(1) R315-15-4 does not apply to on-site transportation.

(2) R315-15-4 does not apply to generators who transport shipments of used oil totaling 55 gallons or less from the generator to a used oil collection center as specified in Subsection R315-15-2.5(a).

(3) R315-15-4 does not apply to generators who transport shipments of used oil totaling 55 gallons or less from the generator to a used oil aggregation point owned or operated by the same generator as specified in R315-15-2.5(b).

(4) R315-15-4 does not apply to transportation of used oil from household do-it-yourselfers to a regulated used oil generator, collection center, aggregation point, processor/re-refiner, or burner subject to the requirements of R315-15. Except as provided in R315-15-4.1(a)(1) through (a)(3), R315-15-4 does, apply to transportation of collected household do-it-yourselfer used oil from regulated used oil generators, collection centers, aggregation points, or other facilities where household do-it-yourselfer used oil is collected.

(b) Imports and exports. Transporters are subject to the requirements of R315-15-4 from the time the used oil enters and until the time it exits Utah.

(c) Vehicles used to transport hazardous waste. Unless vehicles previously used to transport hazardous waste are emptied as described in R315-261-7 prior to transporting used oil, the used oil is considered to have been mixed with the hazardous waste and shall be managed as hazardous waste unless, under the provisions of R315-15-1.1(b), the hazardous waste/used oil mixture is determined not to be hazardous waste.

(d) Vehicles used to transport PCB-contaminated material. Unless vehicles previously used to transport PCB-contaminated material are decontaminated as described in 40 CFR 761 Subpart S, (2013 edition, incorporated by reference), prior to transporting used oil, the used oil is considered to have been mixed with PCB-contaminated material and shall be managed as PCB-contaminated material in accordance with R315-15-18 and 40 CFR 761.

(e) Tanks, containers, and piping that contained PCB-contaminated material. Unless tanks, containers, and piping that previously contained PCB-contaminated material are decontaminated as described in 40 CFR 761 Subpart S prior to transferring used oil, the used oil is considered to have been mixed with PCB-contaminated material in accordance with R315-15-18 and 40 CFR 761 Subpart S.

(f) Other applicable provisions. Used oil transporters who conduct the following activities are also subject to other applicable provisions of R315-15 as indicated in R315-15-4.1 (f)(1) through (5):

(1) Transporters who generate used oil shall also comply with R315-15-2;

(2) Transporters who process or re-refine used oil, except as provided in R315-15-4.2, shall also comply with R315-15-5;

(3) Transporters who burn off-specification used oil for energy recovery shall also comply with R315-15-6;

(4) Transporters who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in R315-15-1.2 shall also comply with R315-15-7; and

(5) Transporters who dispose of used oil shall also comply with R315-15-8.

4.2 RESTRICTIONS ON TRANSPORTERS WHO ARE NOT ALSO PROCESSORS OR RE-REFINERS

(a) Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation. However, except as provided in R315-15-4.2(b), used oil transporters may not process used oil unless they also comply with the requirements for processors/re-refiners in R315-15-5.

(b) Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation, e.g., settling and water separation, but that are not designed to produce, or make more amenable for production of, used oil derived products unless they also comply with the processor/re-refiner requirements in R315-15-5.

(c) Transporters of used oil that is removed from oil-bearing electrical transformers and turbines and filtered by the transporter or at a transfer facility prior to being returned to its original use are not

subject to the processor/re-refiner requirements in R315-15-5.

4.3 NOTIFICATION

(a) Identification numbers. Used oil transporters who have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. A used oil transporter who has not received an EPA identification number may obtain one by notifying the Director of his used oil activity by submitting either:

(1) A completed EPA Form 8700-12 or

(2) A letter to the Division requesting an EPA identification number. The letter shall include the following information:

(i) Transporter company name;

(ii) Owner of the transporter company;

(iii) Mailing address for the transporter;

(iv) Name and telephone number for the transporter point of contact;

(v) Type of transport activity, i.e., transport only, transport and transfer facility, transfer facility only;

(vi) Location of all transfer facilities at which used oil is stored; and

(vii) Name and telephone number for a contact at each transfer facility.

4.4 USED OIL TRANSPORTATION

(a) Deliveries. A used oil transporter shall deliver all used oil received to:

(1) Another used oil transporter, provided that the transporter has obtained an EPA identification number transporter, permit number, and current used oil handler certificate issued by the Director;

(2) A used oil processing/re-refining facility that has obtained an EPA identification number, processing/refining permit, and current used oil handler certificate issued by the Director;

(3) An off-specification used oil burner facility that has obtained an EPA identification number, off-specification used oil burner permit, and current used oil handler certificate issued by the Director;

(4) A used oil transfer facility that has obtained an EPA identification number, transfer facility permit, and current used oil handler certificate issued by the Director; or

(5) An on-specification used oil burner facility.

(b) DOT Requirements. Used oil transporters shall comply with all applicable requirements under the U.S. Department of Transportation regulations in 49 CFR 171 through 180. Persons transporting used oil that meets the definition of a hazardous material in 49 CFR 171.8 shall comply with all applicable regulations in 49 CFR 171 through 180.

(c) Used oil discharges. In the event of a used oil discharge, a transporter shall comply with R315-15-9.

(d) The words "Used Oil" shall be clearly visible, in letters at least two inches high, on all vehicles transporting bulk used oil.

4.5 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil is not a hazardous waste under the rebuttable presumption of R315-15-1.1(b)(1)(ii), the used oil transporter shall determine whether the total halogen content of used oil being transported or stored at a transfer facility is below 1,000 ppm.

(b) The transporter shall make this determination by:

(1) Testing the used oil; or

(2) Applying and documenting generator knowledge of the halogen content of the used oil in light of the materials or processes used.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-261-30 through 33 and 35. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III, update IV to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-261 Appendix VIII.

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in R315-15-2.5(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units if the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(d) Record retention. Records of analyses conducted or information used to comply with R315-15-4.5(a), (b), and (c) shall be maintained by the transporter for at least three years.

4.6 USED OIL STORAGE AT TRANSFER FACILITIES

Used oil transporters are subject to all applicable Spill Prevention, Control and Countermeasures, in accordance with 40 CFR 112, in addition to the requirements of R315-15-4. Used oil transporters are also subject to the standards of R311, which incorporates by reference 40 CFR 280, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of R315-15-4.

(a) Applicability. R315-15-4 applies to used oil transfer facilities. Used oil transfer facilities are transportation-related facilities including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days. Transfer facilities that store used oil for more than 35 days are subject to the processor/re-refiner requirements found in R315-15-5.

(b) Storage units. Owners or operators of used oil transfer facilities may not store used oil in units other than tanks, containers, or units subject to regulation under R315-264 or R315-265.

(c) Condition of units. Containers and aboveground tanks and tank systems, including their associated pipes and valves, used to store used oil at transfer facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects, or deterioration; and

(2) Not leaking.

(3) Tanks and containers for storage of used oil must be closed during storage except when adding or removing used oil.

(4) Tanks and container storage areas shall have a containment system that is designed and operated in accordance with R315-264-170 through 178.

(d) Secondary containment. Containers and aboveground tanks used to store used oil at transfer facilities, including their pipe connections and valves, shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of:

(i) Dikes, berms, or retaining walls; and

(ii) A floor. The floor shall cover the entire area within the dikes, berms, or retaining walls except areas where existing portions of existing aboveground tanks meet the ground.

(iii) An equivalent secondary containment system approved by the Director.

(2) The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(3) The secondary system shall be of sufficient extent to prevent any used oil releases from tanks and containers in R315-15-4.6(b), from migrating out of the system to the soil, groundwater, or surface water.

(4) Water, used oil, or other liquids shall be removed from secondary containment, including sumps, within 24 hours of

discovery.

(5) Used oil shall not be stored or allowed to accumulate in sumps and similar water containment structures at the facility. Any used oil in such sumps beyond a surface sheen shall be removed within 24 hours of discovery.

(6) Transporters loading to or from rail tanker cars shall also comply with secondary containment requirements of R315-15-4.10.

(e) Labels.

(1) Containers and aboveground tanks used to store used oil at transfer facilities shall be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at transfer facilities shall be labeled or marked clearly with the words "Used Oil."

(f) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, the owner/operator of a transfer facility shall comply with R315-15-9.

4.7 TRACKING

(a) Acceptance. Used oil transporters and transfer facilities shall keep a written record of each used oil shipment accepted for transport. These records shall take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Written records for each shipment shall include:

(1) The name and address of the generator, transporter, transfer facility, burner, or processor/re-refiner who provided the used oil for transport;

(2) The EPA identification number, if applicable, of the generator, transporter, or processor/re-refiner who provided the used oil for transport;

(3) Documentation demonstrating the transporter has met the halogen determination requirements of R315-15-4.5 and, where applicable, the PCB testing requirements of R315-15-18;

(4) The quantity of used oil accepted;

(5) The date of acceptance; and

(6)(i) Except as provided in R315-15-4.7(a)(6)(ii), the signature, dated upon receipt of the used oil, of a representative of the generator, transporter, transfer facility, burner, or processor/re-refiner who provided the used oil for transport.

(ii) Intermediate rail transporters are not required to sign the record of acceptance.

(b) Deliveries. Used oil transporters and transfer facilities shall keep a written record of each shipment of used oil that is delivered to another used oil transporter, a transfer facility, burner, processor/re-refiner, or disposal facility. Records of each delivery shall include:

(1) The name and address of the receiving facility or transporter;

(2) The EPA identification number of the receiving facility or transporter;

(3) The quantity of used oil delivered;

(4) The date of delivery; and

(5)(i) Except as provided in R315-15-4.7(a)(6)(ii), the signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter.

(ii) Intermediate rail transporters are not required to sign the record of delivery.

(c) Exports of used oil. Used oil transporters shall maintain the records described in R315-15-4.7(b)(1) through (b)(4) for each shipment of used oil exported outside of Utah.

(d) Record retention. The records described in R315-15-4.7(a), (b), and (c) shall be maintained for at least three years at a specified facility approved by the Director.

(e) Reporting. Used oil transporter and transfer facilities shall report annually by March 1 to the Director. The report shall be consistent with the requirements of R315-15-13.4(d).

4.8 MANAGEMENT OF RESIDUES

Transporters who generate residues from the storage or transport of used oil shall manage the residues as specified in R315-15-1.1(e).

4.9 ACCEPTANCE OF OFF-SITE USED OIL

Used oil transporters and transfer facilities accepting used oil from off-site shall ensure that the transporters delivering the used oil have obtained a current used oil transporter permit and an EPA identification number.

4.10 TRANSFER OF USED OIL TO OR FROM RAIL CARS

(a) Spill prevention. Facilities or transporters loading or unloading used oil from rail cars shall:

(1) Use spill pans beneath rail cars being loaded or unloaded with used oil. These spill pans shall be placed inside and outside of the track below the rail car loading port in such a way as to capture releases that might occur during the loading and unloading operations;

(2) Securely park used oil transportation trucks on a loading pad during the loading and unloading of used oil between those trucks and the rail tanker car. The loading pad shall be constructed of asphalt or concrete, or an equivalent system approved by the Director, and shall be sloped or bermed in such a way as to contain used oil spills;

(3) Be loaded and unloaded through a valve or port located on top of the rail car unless otherwise approved by the Director; and

(4) Transporter personnel shall actively monitor the transfer during the entire loading and unloading process.

(b) Storage at rail loading and unloading facilities. If, during the normal course of transportation, used oil remains at the loading and unloading facility for more than 24 hours but less than 35 days, the facility is subject to regulation as a used oil transfer facility as defined in R315-15-4.6 and is required to apply for a permit as a used oil transfer facility as defined in R315-15-13.4. A transfer facility that stores used oil for more than 35 days is subject to the processor/re-refiner requirements as defined in R315-15-5.

R315-15-5. Standards for Used Oil Processors and Re-Refiners.

5.1 APPLICABILITY

(a) The requirements of R315-15-5 apply to owners and operators of facilities that process used oil. Processing means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived products. Processing includes: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining. The requirements of R315-15-5 do not apply to:

(1) Transporters that conduct incidental processing operations that occur during the normal course of transportation as provided in R315-15-4.2; or

(2) Burners that conduct incidental processing operations that occur during the normal course of used oil management prior to burning as provided in R315-15-6.2(b).

(b) Other applicable provisions. Used oil processors/re-refiners who conduct the following activities are also subject to the requirements of other applicable provisions of R315-15 as indicated in R315-15-5.1(b)(1) through (b)(7).

(1) Processors/re-refiners who generate used oil shall also comply with R315-15-2.

(2) Processors/re-refiners who transport used oil shall also comply with R315-15-4.

(3) Processor/re-refiners who burn off-specification used oil for energy recovery shall also comply with R315-15-6 except where:

(i) The used oil is only burned in an on-site space heater that meets the requirements of R315-15-2.4; or

(ii) The used oil is only burned for purposes of processing used oil, which is considered burning incidentally to used oil processing.

(4) Processors/re-refiners who direct shipments of off-specification used oil from their facility to a used oil burner or first

claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in R315-15-1.2 shall also comply with R315-15-7.

(5) Processors/re-refiners who dispose of used oil shall also comply with R315-15-8.

(6) Tanks, containers, and piping that contained hazardous waste. Unless tanks, containers, and piping that previously contained hazardous waste are emptied as described in R315-261-7 prior to storing or transferring used oil, the used oil is considered to have been mixed with the hazardous waste and shall be managed as hazardous waste unless, under the provisions of R315-15-1.1(b), the hazardous waste and used oil mixture is determined not to be hazardous waste.

(7) Tanks, containers, and piping that previously contained PCB-contaminated material. Unless tanks, containers, and piping that previously contained PCB-contaminated material are decontaminated as described in 40 CFR 761 Subpart S prior to storing or transferring of used oil, the used oil is considered to have been mixed with the PCB-contaminated material and shall be managed in accordance with R315-15-18 and 40 CFR 761 Subpart S, as applicable.

(c) Processors/re-refiners shall obtain a permit from the Director prior to processing or re-refining used oil. An application for a permit shall contain the information required by R315-15-13.5.

5.2 NOTIFICATION

(a) Identification numbers. Used oil processors/re-refiners who have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. A used oil processor or re-refiner who has not received an EPA identification number may obtain one by notifying the Director of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12; or

(2) A letter to the Division requesting an EPA identification number. The letter shall include the following information:

(i) Processor or re-refiner company name;

(ii) Owner of the processor or re-refiner company;

(iii) Mailing address for the processor or re-refiner;

(iv) Name and telephone number for the processor or re-refiner point of contact;

(v) Type of used oil activity, i.e., process only, process and re-refine;

(vi) Location of the processor or re-refiner facility.

5.3 GENERAL FACILITY STANDARDS

(a) Preparedness and prevention. Owners and operators of used oil processor/re-refiner facilities shall comply with the following requirements:

(1) Maintenance and operation of facility. Facilities shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of used oil to air, soil, surface water, or groundwater that could threaten human health or the environment.

(2) Required equipment. All facilities shall be equipped with the following:

(i) An internal communications or alarm system capable of providing immediate emergency instruction, voice and signal, to facility personnel;

(ii) A device, such as a telephone, immediately available at the scene of operations, or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(iii) Portable fire extinguishers, fire control equipment, including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals, spill control equipment, and decontamination equipment; and

(iv) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(3) Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency. Records of such testing and maintenance shall be kept for three years.

(4) Access to communications or alarm system.

(i) Whenever used oil is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required in R315-15-5.3(a)(2).

(ii) If there is ever just one employee on the premises while the facility is operating, the employee shall have immediate access to a device, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required in R315-15-5.3(a)(2).

(5) Required aisle space. The owner or operator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(6) Arrangements with local authorities.

(i) The owner or operator shall attempt to make the following arrangements, as appropriate for the type of used oil handled at the facility and the potential need for the services of these organizations:

(A) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of used oil handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(B) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(C) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

(D) Arrangements to familiarize local hospitals with the properties of used oil handled at the facility and the types of injuries or illnesses that could result from fires, explosions, or releases at the facility.

(ii) Where State or local authorities decline to enter into such arrangements, the owner or operator shall document the refusal in the facility's operating record.

(b) Contingency plan and emergency procedures. Owners and operators of used oil processor and re-refiner facilities shall comply with the following requirements:

(1) Purpose and implementation of contingency plan.

(i) Each owner or operator shall have a contingency plan for the facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, soil, groundwater, or surface water.

(ii) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of used oil that could threaten human health or the environment.

(2) Content of contingency plan.

(i) The contingency plan shall describe the actions facility personnel shall take to comply with R315-15-5.3(b)(1) and (6) in response to fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, soil, groundwater, or surface water at the facility.

(ii) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in

accordance with 40 CFR 112 or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate used oil management provisions necessary to comply with the requirements of R315-15.

(iii) The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, in accordance with R315-15-5.3(a)(6).

(iv) The plan shall list names, addresses, and phone numbers, of all persons qualified to act as 24-hour emergency coordinator. This list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates. See also R315-15-5.3(b)(5).

(v) The plan shall include a list of all emergency equipment at the facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems, internal and external, and decontamination equipment, where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(vi) The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes, in cases where the primary routes could be blocked by releases of used oil or fires.

(3) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan shall be:

(i) Maintained at the facility; and

(ii) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

(4) Amendment of contingency plan. The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(i) Applicable regulations are revised;

(ii) The plan fails in an emergency;

(iii) The facility changes its design, construction, operation, maintenance, or other circumstances in a way that materially increases the potential for fires, explosions, or releases of used oil, or changes the response necessary in an emergency;

(iv) The list of emergency coordinators changes; or

(v) The list of emergency equipment changes.

(5) Emergency coordinator. At all times, there shall be at least one employee either on the facility premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristic of used oil handled, the location of all records within the facility, and facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan.

(6) Emergency procedures.

(i) Whenever there is an imminent or actual emergency situation, the emergency coordinator, or the designee when the emergency coordinator is on call, shall immediately:

(A) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(B) Notify appropriate State or local agencies with designated response roles if their help is needed.

(ii) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of facility records of manifests and, if necessary, by chemical analysis.

(iii) Concurrently, the emergency coordinator shall assess possible hazards to human health and to the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion, e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions.

(iv) If the emergency coordinator determines that the facility has had a release, fire, or explosion that could threaten human health, or the environment, outside the facility, the coordinator shall report the findings as follows:

(A) If the emergency coordinator assessment indicates that evacuation of local areas may be advisable, he shall immediately notify appropriate local authorities. The coordinator shall be available to help appropriate officials decide whether local areas should be evacuated; and

(B) The emergency coordinator shall implement the actions as required in Section R315-15-9.

(v) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other used oil or hazardous waste at the facility. These measures shall include, where applicable, stopping processes and operation, collecting and containing released used oil, and removing or isolating containers.

(vi) If the facility stops operation in response to a fire, explosion, or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(vii) Immediately after an emergency, the emergency coordinator shall provide for recycling, storing, or disposing of recovered used oil, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

(viii) The emergency coordinator shall ensure that, in the affected area(s) of the facility:

(A) No waste or used oil that may be incompatible with the released material is recycled, treated, stored, or disposed of until cleanup procedures are completed; and

(B) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(C) The owner or operator shall notify the Director, and appropriate local authorities that the facility is in compliance with R315-15-5.3(b)(6)(viii)(A) and (B) before operations are resumed in the affected area(s) of the facility.

(ix) The owner or operator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, the owner or operator shall submit a written report on the incident to the Director. The report shall include:

(A) Name, address, and telephone number of the owner or operator;

(B) Name, address, and telephone number of the facility;

(C) Date, time, and type of incident, e.g., fire, explosion;

(D) Name and quantity of material(s) involved;

(E) The extent of injuries, if any;

(F) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(G) Estimated quantity and disposition of recovered material that resulted from the incident.

5.4 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil managed at a processing/re-refining facility is not hazardous waste under the rebuttable presumption of R315-15-1.1(b)(1)(ii), the owner or operator of a used oil processing/re-refining facility shall determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The owner or operator shall make this determination by:

(1) Testing the used oil; or

(2) Applying and documenting generator knowledge of the halogen content of the used oil in light of the materials and

processes used.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-261-30 through 33 and 35. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from EPA SW-846, Edition III, Update IV to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-261 Appendix VIII.

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

5.5 USED OIL MANAGEMENT

Used oil processor/re-refiners are subject to all applicable Spill Prevention, Control and Countermeasures, found in 40 CFR 112, in addition to the requirements of R315-15-5. Used oil processors/re-refiners are also subject to the standards and requirements found in R311-200 through R311-209, Underground Storage Tanks, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of R315-15-5.

(a) Management units. Used oil processors/re-refiners may not store used oil in units other than tanks, containers, or units subject to regulation under R315-264 or R315-265.

(b) Condition of units. Containers and aboveground tanks including their associated pipes and valves used to store or process used oil at processing and re-refining facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects, or deterioration;

(2) Not leaking; and

(3) Closed during storage except when used oil is being added or removed.

(c) Secondary containment. Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities including their pipe connections and valves shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of:

(i) Dikes, berms, or retaining walls; and

(ii) A floor. The floor shall cover the entire area within the dike, berm, or retaining wall, except areas where existing portions of aboveground tanks meet the ground; or

(iii) An equivalent secondary containment system approved by the Director.

(2) The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(3) The secondary containment system shall be of sufficient size and volume to prevent any used oil released from tanks and containers described in R315-15-5.5(a), from migrating out of the system to the soil, groundwater, or surface water.

(4) Water, used oil, or other liquids shall be removed from secondary containment within 24 hours of their discovery.

(5) Used oil shall not be stored or allowed to accumulate in sumps and similar water-containment structures at the facility. Any used oil in such sumps shall be removed within 24 hours of its discovery.

(d) Labels.

(1) Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities shall be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at processing and re-refining facilities shall be labeled or marked clearly with the words "Used Oil."

(e) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, an owner/operator shall comply with R315-15-9.

(f) Closure.

(1) Aboveground tanks. Owners and operators who store or process used oil in aboveground tanks shall comply with the following requirements:

(i) At closure of a tank system, the owner or operator shall remove or decontaminate used oil residues in tanks, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under this chapter. Nonhazardous solid waste must be managed in accordance with R315-301-4.

(ii) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in R315-15-5.5(f)(1)(i), then the owner or operator shall close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to hazardous waste landfills, 40 CFR 265.310 which is adopted by reference.

(2) Containers. Owners and operators who store used oil in containers shall comply with the following requirements:

(i) At closure, containers holding used oils or residues of used oil shall be removed from the site;

(ii) The owner or operator shall remove or decontaminate used oil residues, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under R315-261.

5.6 ANALYSIS PLAN

Owners or operators of used oil processing/re-refining facilities shall develop and follow a written used oil analysis plan describing the procedures that will be used to comply with the analysis requirements of R315-15-5.4, R315-15-18, and, if applicable, the marketer requirements in R315-15-7.3. The owner or operator shall keep the plan at the facility.

(a) Rebuttable presumption for used oil in R315-15-5.4. The plan shall specify the following:

(1) Whether sample analyses documented generator knowledge of the halogen content of the used oil, or both, will be used to make this determination.

(2) If sample analyses are used to make this determination, the plan shall specify:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in R315-261 Appendix I; or

(B) A method shown to be equivalent under R315-260-21;

(ii) The frequency of sampling to be performed, and whether the analysis will be performed onsite or offsite; and

(iii) The methods used to analyze used oil for the parameters specified in R315-15-5.4; and

(3) The type of information that will be used to determine the halogen content of the used oil.

(b) On-specification used oil fuel in R315-15-7.3. At a minimum, the plan shall specify the following if R315-15-7.3 is applicable:

(1) Whether sample analyses or other information will be used to make this determination;

(2) If sample analyses are used to make this determination:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in R315-261, Appendix I; or

(B) A method shown to be equivalent under R315-260-21;

(ii) Whether used oil will be sampled and analyzed prior to or after any processing/re-refining;

(iii) The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site; and

(iv) The methods used to analyze used oil for the parameters specified in R315-15-7.3.

(3) The type of information that will be used to make the on-specification used oil fuel determination.

5.7 TRACKING

(a) Acceptance. Used oil processors/re-refiners shall keep a written record of each used oil shipment accepted for processing/re-refining. These records shall take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivered the used oil to the processor/re-refiner;

(2) The name and address of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining;

(3) The EPA identification number of the transporter who delivered the used oil to the processor/re-refiner;

(4) The EPA identification number, if applicable, of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining;

(5) The quantity of used oil accepted;

(6) The date of acceptance; and

(7) Written documentation that the processor/re-refiner has met the rebuttable presumption requirements of R315-15-5.4 and the PCB testing requirements of R315-15-18.

(b) Delivery. Used oil processor/re-refiners shall keep a written record of each shipment of used oil that is shipped to a used oil burner, processor/re-refiner, or disposal facility. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivers the used oil to the burner, processor/re-refiner, or disposal facility;

(2) The name and address of the burner, processor/re-refiner, or disposal facility that will receive the used oil;

(3) The EPA identification number of the transporter who delivers the used oil to the burner, processor/re-refiner, or disposal facility;

(4) The EPA identification number of the burner, processor/re-refiner, or disposal facility that will receive the used oil;

(5) The quantity of used oil shipped; and

(6) The date of shipment.

(c) Record retention. The records described in paragraphs (a) and (b) of this section shall be maintained for at least three years at the permitted facility or other location approved by the Director.

5.8 OPERATING RECORD AND REPORTING

(a) Operating record.

(1) The owner or operator of the processor/re-refiner facility shall keep a written operating record at the facility.

(2) The following information shall be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(i) Records and results of used oil analyses performed as described in the analysis plan required under R315-15-5.6;

(ii) Summary reports and details of all incidents that require implementation of the contingency plan as specified in R315-15-5.3(b); and

(iii) Records detailing the mass balance of wastewater entering and leaving the facility. This includes wastewater discharge records. This does not include water used in non-contact cooling processes.

(b) Reporting. A used oil processor/re-refiner shall report annually March 1 to the Director. The report shall be consistent with the requirements of R315-15-13.5(d).

5.9 OFF-SITE SHIPMENTS OF USED OIL

Used oil processors/re-refiners who initiate shipments of used oil offsite shall ship the used oil using a used oil transporter who has obtained an EPA identification number, a permit, and current used oil handler certificate issued by the Director.

5.10 ACCEPTANCE OF OFF-SITE USED OIL

Processors accepting used oil from off site shall ensure that transporters delivering used oil to their facility have obtained a current used oil transporter permit and an EPA identification number.

5.11 MANAGEMENT OF RESIDUES

Owners and operators who generate residues from the storage, processing, or re-refining of used oil shall manage the residues as specified in R315-15-1.1(e).

R315-15-6. Standards for Used Oil Burners Who Burn Used Oil for Energy Recovery.

6.1 APPLICABILITY

(a) General. A used oil burner is a person who burns used oil for energy recovery. An on-specification used oil burner is a person who only burns used oil that meets the specifications of R315-15-1.2. Used oil that has not been determined to be on-specification used oil by a Utah-registered marketer shall be managed as off-specification used oil except as described R315-15-2.4. An off-specification used oil burner is a person who burns used oil not meeting the specifications found in R315-15-1.2 for energy recovery. Facilities burning used oil for energy recovery under the following conditions are subject to R315-15-6.1(a) and (b) and R315-15-6.2(b) and (c), but not other portions of R315-15-6:

(1) The used oil is burned by the generator in an on-site space heater under the provisions of R315-15-2.4;

(2) The used oil is burned by a processor/re-refiner for purposes of processing used oil, which is considered burning incidentally to used oil processing; or

(3) The used oil burned by the facility is obtained from a Utah-registered marketer who claims and has demonstrated that the used oil meets the used oil fuel specifications set forth in R315-15-1.2 and who delivers the used oil in the manner set forth in R315-15-7.5(b).

(b) Other applicable provisions. In addition to the requirements of R315-15-6.1(a), used oil burners who conduct the following activities are subject to the requirements of R315-15 as indicated below.

(1) Burners who generate used oil shall comply with R315-15-2;

(2) Burners who transport used oil shall comply with R315-15-4;

(3) Except as provided in R315-15-6.2(b)(2), burners who process or re-refine used oil shall comply with Section R315-15-5;

(4) Burners who direct shipments of off-specification used oil from their facility to an off-specification used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in R315-15-1.2 shall comply with R315-15-7 and R315-15-13.7;

(5) Burners who dispose of used oil shall comply with R315-15-8; and

(6) Burners who collect used oil shall also comply with the collection center requirements in R315-15-3. Burners may only burn used oil collected from other generators if that used oil has been certified to be on-specification used oil by a Utah-registered used oil marketer in compliance with R315-15-7. Burners who collect and burn used oil that is not "do-it-yourselfer" or farmer-generated as described in R315-15-2.1(a)(1) and (4), shall obtain a used oil marketer registration before burning such oil and shall comply with the provisions of R315-15-7.

(7) Tanks, containers, and piping that previously contained listed hazardous waste. Unless tanks, containers, and piping that previously contained listed hazardous waste are decontaminated as

described in R315-261-7 prior to storing used oil, the used oil is considered to have been mixed with the hazardous waste and shall be managed as hazardous waste unless, under the provisions of R315-15-1.1(b), the hazardous waste and used oil mixture is determined not to be hazardous waste.

(8) Tanks, containers, and piping that previously contained PCB-contaminated material. Unless tanks, containers, and piping that previously contained PCB-contaminated material are decontaminated as described in 40 CFR 761 Subpart S prior to transfer of used oil, the used oil is considered to have been mixed with the PCB-contaminated material and shall be managed as PCB-contaminated material in accordance with R315-15-18.

(c) Off-specification used oil burner permit. Off-specification used oil burners shall obtain a permit from the Director prior to burning off-specification used oil unless exempted by R315-15-13.6(b)(5). An application for a permit shall contain the information required by R315-15-13.6(b). Off-specification used oil burners shall also obtain a used oil handler certificate in accordance with R315-15-13.8.

(d) Testing of used oil fuel for PCBs. Used oil to be burned for energy recovery is presumed to contain quantifiable levels, 2 ppm or greater, of PCBs unless a used oil marketer obtains laboratory analyses that the used oil fuel does not contain quantifiable levels of PCBs. The person who first claims that the used oil fuel does not contain a quantifiable level of PCBs shall obtain analyses or other information to support the claim, as described in R315-15-18.

6.2 RESTRICTIONS ON BURNING

(a) Off-specification used oil fuel may be burned for energy recovery in only the following devices:

(1) Industrial furnaces identified in R315-260-10;

(2) Boilers, as defined in R315-260-10, that are identified as follows:

(i) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;

(ii) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale;

(iii) Used oil-fired space heaters provided that the burner meets the provisions of R315-15-2.4; or

(3) Hazardous waste incinerators subject to regulation under R315-264-340 through 351 or 40 CFR 265.340 through 352 which are adopted by reference.

(b)(1) With the exception of the aggregation activity described in R315-15-6.2(b)(2), used oil burners may not process used oil unless they also comply with R315-15-5.

(2) Off-specification used oil burners may aggregate off-specification used oil with virgin oil or on-specification used oil for purposes of burning, but may not aggregate for purposes of marketing on-specification used oil without also complying with the processor/re-refiner requirements in R315-15-5.

(c) Burning of hazardous waste. Used oil burners may only burn hazardous waste if they are permitted to do so by the Director.

6.3 NOTIFICATION FOR OFF-SPECIFICATION USED OIL BURNERS

(a) Identification numbers. Off-specification used oil burners who have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. An off-specification used oil burner who has not received an EPA identification number may obtain one by notifying the Director of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12.; or

(2) A letter to the Director requesting an EPA identification number. The letter shall include the following information:

(i) Burner company name;

(ii) Owner of the burner company;

(iii) Mailing address for the burner;

(iv) Name and telephone number for the burner point of contact;

(v) Type of used oil activity; and

(vi) Location of the burner facility.

6.4 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil managed at a used oil burner facility is not hazardous waste under the rebuttable presumption of Subsection R315-15-1.1(b)(1)(ii), a used oil burner shall determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The used oil burner shall determine if the used oil contains above or below 1,000 ppm total halogens by

(1) Testing the used oil;

(2) Applying documented generator knowledge of the halogen content of the used oil in light of the materials and processes used; or

(3) Using information provided by the processor/re-refiner, if the used oil has been received from a processor/re-refiner subject to regulation under R315-15-5.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-261-30 through 33 and 35. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III update IV, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-261 Appendix VIII.

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed through a tolling arrangement, as described in R315-15-2.5(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner or disposed.

(2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(d) Record retention. Records of analyses conducted or information used to comply with R315-15-6.4(a), (b), and (c) shall be maintained at the burner facility or another facility approved by the Director for at least 3 years.

6.5 USED OIL STORAGE AT OFF-SPECIFICATION USED OIL BURNER FACILITIES

Off-specification used oil burners are subject to all applicable Spill Prevention, Control and Countermeasures, 40 CFR part 112, in addition to the requirements of R315-15-6. Used oil burners are also subject to the standards and requirements of R311-200 through R311-209, Underground Storage Tanks, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of R315-15-6.

(a) Storage units. Off-specification used oil burners may not store used oil in units other than tanks, containers or units subject to regulation under R315-264 and R315-265.

(b) Condition of units. Containers and aboveground tanks used to store oil at off-specification used oil burner facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects, or deterioration; and

(2) Not leaking.

(c) Secondary containment. Containers and aboveground tanks used to store off-specification used oil at burner facilities, including their pipe connections and valves, shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of:

(i) Dikes, berms, or retaining walls; and

(ii) A floor. The floor shall cover the entire area within the dike, berm, or retaining wall, except areas where existing portions of aboveground tanks meet the ground.

(iii) Other equivalent secondary containment approved by the Director.

(2) The entire containment system, including walls and floor, shall be of sufficient extent and sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(3) Any accumulation of water, used oil, or other liquid shall be removed from secondary containment within 24 hours of discovery.

(4) Used oil shall not be stored or allowed to accumulate in sumps and similar water-containment structures at the facility. Any used oil in sumps and similar water-containment structures shall be removed within 24 hours of its discovery.

(d) Labels.

(1) Containers and aboveground tanks used to store off-specification used oil at burner facilities shall be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer off-specification used oil into underground storage tanks at burner facilities shall be labeled or marked clearly with the words "Used Oil."

(e) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of R311-202-1, a burner shall comply with R315-15-9.

6.6 TRACKING FOR OFF-SPECIFICATION USED OIL FACILITIES

(a) Acceptance. Off-specification used oil burners shall keep a record of each off-specification used oil shipment accepted for burning. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivered the used oil to the burner;

(2) The name and address of the generator or processor/re-refiner from whom the used oil was sent to the burner;

(3) The EPA identification number of the transporter who delivered the used oil to the burner;

(4) The EPA identification number, if applicable, of the generator or processor/re-refiner from whom the used oil was sent to the burner;

(5) The quantity of used oil accepted;

(6) The date of acceptance; and

(7) Documentation demonstrating that the transporter has met the rebuttable presumption requirements of R315-15-6.4 and, where applicable, the PCB testing requirements of R315-15-18;

(b) Record retention. The records described in paragraph (a) of this section shall be maintained for at least three years.

6.7 NOTICES

(a) Certification. Before a burner accepts the first shipment of off-specification used oil fuel from a generator, transporter, or processor/re-refiner, the burner shall provide to the generator, transporter, or processor/re-refiner a one-time written and signed notice certifying that:

(1) The burner has notified the Director of the location and general description of the burner's used oil management activities; and

(2) The burner will burn the off-specification used oil only in an industrial furnace or boiler identified in R315-15-6.2(a).

(b) Certification retention. The certification described in R315-15-6.7(a) shall be maintained, at the permitted facility or other location approved by the Director, for three years from the date the burner last receives shipment of off-specification used oil from that generator, transporter, or processor/re-refiner.

6.8 MANAGEMENT OF RESIDUES AT OFF-SPECIFICATION USED OIL BURNER FACILITIES

Off-specification used oil burners who generate residues from the storage or burning of used oil shall manage the residues as specified in R315-15-1.1(e).

6.9 ACCEPTANCE OF OFF-SITE USED OIL

Off-specification used oil burners accepting used oil from off-site shall ensure that transporters delivering used oil to their facility have obtained a current used oil transporter permit and an EPA identification number.

R315-15-7. Standards for Used Oil Fuel Marketers.

7.1 APPLICABILITY

(a) Any person who conducts either of the following activities is a used oil fuel marketer and is subject to the requirements of R315-15-7 and R315-15-13.7:

(1) Directs a shipment of off-specification used oil from their facility to a used oil burner; or

(2) First determines and claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in R315-15-1.2.

(b) The following persons are not used oil fuel marketers subject to R315-15-7:

(1) Used oil generators, and transporters who transport used oil received only from generators, unless the generator or transporter directs a shipment of off-specification used oil from their facility to a used oil burner. However, processors/re-refiners who burn some used oil fuel for purposes of processing are considered to be burning incidentally to processing. Thus, generators and transporters who direct shipments of off-specification used oil to processors/re-refiners who incidentally burn used oil are not marketers subject to R315-15-7;

(2) Persons who direct shipments of on-specification used oil and who are not the first person to claim the oil meets the used oil fuel specifications of R315-15-1.2.

(c) Any person subject to the requirements of R315-15-7 shall also comply with one of the following:

(1) R315-15-2 - Standards for Used Oil Generators;

(2) R315-15-4 - Standards for Used Oil Transporters and Transfer Facilities;

(3) R315-15-5 - Standards for Used Oil Processors and Re-refiners; or

(4) R315-15-6 - Standards for Used Oil Burners who Burn Off-Specification Used Oil for Energy Recovery.

(d) A person may not act as a used oil fuel marketer without receiving a registration number and a used oil handler certificate, both issued by the Director as required by R315-15-13.7 and R315-15-13.8.

7.2 PROHIBITIONS

A used oil fuel marketer may initiate a shipment of off-specification used oil only to a used oil burner who:

(a) Has an EPA identification number; and

(b) Burns the used oil in an industrial furnace or boiler identified in R315-15-6.2(a).

7.3 ON-SPECIFICATION USED OIL FUEL

(a) Analysis of used oil fuel. A used oil fuel marketer who is a used oil generator, transporter, transfer facility, processor/re-refiner, or burner may determine that used oil that is to be burned for energy recovery meets the fuel specifications of R315-15-1.2 and the PCB requirements of R315-15-18 by performing analyses or obtaining copies of analyses or other information approved by the Director documenting that the used oil fuel meets the specifications. Used oil is not considered to be on-specification until it has been certified as such by a registered used oil fuel marketer in accordance with the used oil fuel marketer's analysis plan, approved by the Director.

(b) Record retention. A generator, transporter, transfer facility, processor/re-refiner, or burner who first certifies that used oil that is to be burned for energy recovery meets the specifications for used oil fuel under R315-15-1.2 and the PCB requirements of R315-15-18 shall keep copies of analyses of the used oil, or other

information used to make the determination, for three years.

7.4 NOTIFICATION

(a) Identification numbers. A used oil fuel marketer subject to the requirements of R315-15-7 who has not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) A marketer who has not received an EPA identification number may obtain one by notifying the Director of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12; or

(2) A letter to the Director requesting an EPA identification number. The letter shall include the following information:

(i) Marketer company name;

(ii) Owner of the marketer;

(iii) Mailing address for the marketer;

(iv) Name and telephone number for the marketer point of contact; and

(v) Type of used oil activity, e.g., generator directing shipments of off-specification used oil to a burner.

7.5 TRACKING

(a) Off-specification used oil delivery. Any used oil marketer who directs a shipment of off-specification used oil to a burner shall keep a record of each shipment of used oil to a used oil burner. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivers the used oil to the burner;

(2) The name and address of the burner who will receive the used oil;

(3) The EPA identification number of the transporter who delivers the used oil to the burner;

(4) The EPA identification number of the burner;

(5) The quantity of used oil shipped; and

(6) The date of shipment.

(b) On-specification used oil delivery. A generator, transporter, transfer facility, processor/re-refiner, or burner who first certifies that used oil that is to be burned for energy recovery meets the fuel specifications under R315-15-1.2 shall keep a record of each shipment of used oil to an on-specification used oil burner. Records for each shipment shall include the following information:

(1) The name and address of the facility receiving the shipment;

(2) The quantity of used oil fuel delivered;

(3) The date of shipment or delivery; and

(4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specifications required under R315-15-7.3(a) and the PCB requirements of R315-15-18.

(c) Record retention. The records described in R315-15-7.5(a) and (b) shall be maintained for at least three years.

7.6 NOTICES

(a) Certification. Before a used oil generator, transporter, transfer facility, or processor/re-refiner directs the first shipment of off-specification used oil fuel to a burner, he shall obtain a one-time written and signed notice from the burner certifying that:

(1) The burner has notified the Director stating the location and general description of used oil management activities; and

(2) The burner has obtained an EPA identification number and, if the off-specification used oil is burned in Utah, an off-specification used oil burner permit and current used oil handler certificate from the Director; and

(3) The burner will burn the off-specification used oil only in an industrial furnace or boiler identified in R315-15-6.2(a).

(b) Certification retention. The certification described in R315-15-7.6(a) of this section shall be maintained for three years, at the permitted facility or other location approved by the Director, from the date the last shipment of off-specification used oil is shipped to the burner.

7.7 LABORATORY ANALYSES

Used oil marketers shall use a Utah-certified laboratory, as specified in R315-15-1.8, to satisfy the analytical requirements of R315-15-7.

R315-15-8. Standards for the Disposal of Used Oil.

8.1 APPLICABILITY

The requirements of R315-15-8 apply to all used oils that cannot be recycled and are therefore being disposed.

8.2 DISPOSAL

(a) Disposal of hazardous used oils. Used oils that are identified as a hazardous waste and that cannot be recycled in accordance with R315-15 shall be managed in accordance with the hazardous waste management requirements of R315-260 through 266, 268, 270, and 273.

(b) Disposal of nonhazardous used oils. Used oils that are not hazardous wastes and cannot be recycled under Rule R315-15 shall be disposed in a solid waste disposal facility meeting the applicable requirements of Rules R315-301 through R315-318.

8.3 USE AS A DUST SUPPRESSANT, WEED SUPPRESSANT, OR FOR ROAD OILING

The use of used oil as a dust suppressant, weed suppressant, or for road oiling or other similar use is prohibited.

R315-15-9. Emergency Controls.

9.1 IMMEDIATE ACTION

In the event of a release of used oil, the person responsible for the material at the time of the release shall immediately:

(a) Take appropriate action to minimize the threat to human health and the environment.

(1) Stop the release;

(2) Contain the release;

(3) Clean up and manage properly the released material as described in R315-15-9.3; and

(4) If necessary, repair or replace any leaking used oil tanks, containers, and ancillary equipment prior to returning them to service.

(b) Notify the Utah State Department of Environmental Quality, 24-hour Answering Service, 801-536-4123 for used oil releases exceeding 25 gallons, or smaller releases that pose a potential threat to human health or the environment. Small leaks and drips from vehicles are considered de minimis and are not subject to the release clean-up provisions of R315-15-9.

(c) Provide the following information when reporting the release:

(1) Name, phone number, and address of person responsible for the release.

(2) Name, title, and phone number of individual reporting.

(3) Time and date of release.

(4) Location of release--as specific as possible including nearest town, city, highway, or waterway.

(5) Description contained on the manifest and the amount of material released.

(6) Cause of release.

(7) Possible hazards to human health or the environment and emergency action taken to minimize that threat.

(8) The extent of injuries, if any.

(d) An air, rail, highway, or water transporter who has discharged used oil shall:

(1) Give notice, if required by 49 CFR 171.15 to the National Response Center, http://nrc.uscg.mil/nrchp.html, 800-424-8802 or 202-426-2675; and

(2) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

(e) A water, bulk shipment, transporter who has discharged used oil shall give the same notice as required by 33 CFR 153.203

for oil and hazardous substances.

9.2 EMERGENCY CONTROL VARIANCE

If a release of used oil requires immediate removal to protect human health or the environment, as determined by the Director, a variance to the used oil transporter permit and used oil handler certificate requirement and the US EPA identification number requirement for used oil transporters may be granted by the Director until the released material and any residue or contaminated soil, water, or other material resulting from the release no longer presents an immediate hazard to human health or the environment, as determined by the Director.

9.3 RELEASE CLEAN-UP

The person responsible for the material at the time of the release shall clean up all the released material and any residue or contaminated soil, water or other material resulting from the release or take action as may be required by the Director so that the released material, residue, or contaminated soil, water, or other material no longer presents a hazard to human health or the environment. The Director may require releases to be cleaned up to standards found in US EPA Regional Screening Levels. The cleanup or other required actions shall be at the expense of the person responsible for the release.

9.4 REPORTING

Within 15 days after any release of used oil that is reported under R315-15-9.1(b), the person responsible for the material at the time of the release shall submit to the Director a written report that contains the following information:

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

(b) Date, time, location, and nature of the incident;

(c) Name and quantity of material(s) involved;

(d) The extent of injuries, if any;

(e) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(f) The estimated quantity and disposition of recovered material that resulted from the incident.

R315-15-10. Financial Requirements.

(a) Used oil activities. An owner or operator of an off-specification burner facility, transportation facility, processing/re-refining facility, or transfer facility, or a group of such facilities, is financially responsible for:

(1) cleanup and closure costs;

(2) general liabilities, including operation of motor vehicles, worker compensation and contractor liability; and

(3) environmental pollution legal liability for bodily injury or property damage to third parties resulting from sudden or non-sudden used oil releases.

(i)(A) The owner or operator of a permitted used oil facility or operation shall present evidence satisfactory to the Director of its ability to meet these financial requirements.

(B) The owner or operator shall present with its permit application the information the Director requires to demonstrate its general comprehensive liability coverage.

(C) The owner or operator shall use the financial mechanisms described in R315-15-12 to demonstrate its ability to meet the financial requirements of R315-15-10(a)(1) and (a)(3).

(ii) In approving the financial mechanisms used to satisfy the financial requirements, the Director will take into account existing financial mechanisms already in place by the facility if required by R315-264-140 through 151, R315-265-140 through 150, and R311-201-6. Additionally, the Director will consider other relevant factors in approving the financial mechanisms, such as the volumes of used oil handled and existing secondary containment.

(iii) Financial responsibility, environmental pollution legal liability and general liability coverage shall be provided to the Director as part of the permit application and approval process and shall be maintained until released by Director.

(iv) Changes in extent, type, or amount of the environmental pollution legal liability and financial responsibility shall be considered a permit modification requiring notification to and approval from the Director.

(b)(1) Environmental pollution legal liability coverage for third party damages at used oil facilities. Each used oil processor, re-refiner, transfer facility, and off-specification burner shall obtain and maintain environmental pollution liability coverage for bodily injury and property damage to third parties resulting from sudden accidental releases, non-sudden accidental releases, or both, of used oil at its facility. This liability coverage shall be maintained for the duration of the permit or until released by the Director as provided for in R315-15-10.

(2) Changes in extent, type, or amount of the financial mechanism will be considered a permit modification requiring notification to and approval from the Director. The minimum amount of environmental pollution legal liability coverage using an assurance mechanism as specified in this section for third-party damages shall be:

(i) For operations where individual volumes of used oil are greater than 55 gallons, such as tanks, storage vessels, used oil processing equipment, and that are raised above grade-level sufficiently to allow for visual inspection of the underside for releases shall be required to obtain coverage in the amount of $1 million per occurrence for sudden releases, with an annual aggregate coverage of $2 million, exclusive of legal defense costs; and

(ii) For operations in whole or part that do not qualify under Subsection R315-15-10(b)(2)(i), coverage shall be in the amount of $1 million per occurrence for sudden releases, with an annual aggregate coverage of $2 million, and $3 million per occurrence for non-sudden releases, with an annual aggregate coverage of $6 million, exclusive of legal defense costs;

(iii) For operations covered under Subsection R315-15-10(b)(2)(ii), the owner or operator may choose to use a combined liability coverage for sudden and non-sudden accidental releases in the amount of $4 million per occurrence, with an annual aggregate coverage of $8 million, exclusive of legal defense costs.

(c) Used oil transporter environmental pollution legal liability coverage for third party damages. Each used oil transporter shall obtain environmental pollution legal liability coverage for bodily injury and property damage to third parties covering sudden accidental releases of used oil from its vehicles and other equipment and containers used during transit, loading, and unloading in Utah, and shall maintain this coverage for the duration of the permit or until released by the Director as provided for R315-15-10. The minimum amount of the coverage for used oil transporters shall be $1 million per occurrence for sudden releases, with an annual aggregate coverage of $2 million, exclusive of legal defense costs. Changes in extent, type, or amount of the liability coverage shall be considered a permit modification requiring notification to and approval from the Director.

(d) An owner or operator responsible for cleanup and closure under R315-15-11 or environmental pollution legal liability for bodily injury and property damage to third parties under R315-15-10(b) and (c) shall demonstrate its ability to satisfy its responsibility to the Director through the use of an acceptable financial assurance mechanism indicated under R315-15-12.

(e) Used Oil Collection Centers. Except for DIYers, who are subject to Utah Code Annotated 19-6-718, an owner of a used oil collection center shall be subject to the same liability requirements as a permitted facility under R315-15-10(a) and (b) unless these requirements are waived by the Director. In accordance with Utah Code Annotated 19-6-710, the Director may waive the requirement of proof of liability insurance or other means of financial responsibility that may be incurred in collecting or storing used oil if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or

container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system;

(3) The storage tank or container is clearly labeled with the words "Used Oil";

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received; and

(5) Oil sorbent material is readily available on site for immediate cleanup of spills.

(f) The Director shall waive an owner or operator from its existing financial responsibility mechanism as described in R315-15-10 when:

(1) The Director approves an alternative mechanism;

(2) The owner or operator has achieved cleanup and closure according to R315-15-11; or

(3) The Director determines that financial responsibility is no longer applicable under R315-15.

(g) State of Utah and Federal government used oil permittees are exempt from the requirements of R315-15-10.

R315-15-11. Cleanup and Closure.

11.1 The owner or operator of a used oil collection, aggregation, transfer, processing/re-refining, or off-specification used oil burning facility shall remove all used oil and used oil residues from the site of operation and return the site to a post-operational land use in a manner that:

(a) Minimizes the need for further maintenance;

(b) Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of used oil, used oil constituents, leachate, contaminated run-off, or used oil decomposition products to the ground or surface waters, or to the atmosphere; and

(c) Complies with the closure requirements of R315-15-11 or supplies evidence acceptable to the Director demonstrating a closure mechanism meeting the requirements of R315-264-140 through 151 and R315-265-140 through 150.

(d) The permittee shall be responsible for used oil, used oil contaminants, or used oil residual materials that have been discharged or migrate beyond the facility property boundary. The permittee is not relieved of all or any responsibility to cleanup, remedy or remediate a release that has discharged or migrated beyond the facility boundary where off-site access is denied. When off-site access is denied, the permittee shall demonstrate to the satisfaction of the Director that, despite the permittee's best efforts, the permittee was unable to obtain the necessary permission to undertake the actions to cleanup, remedy or remediate the discharge or migration. The responsibility for discharges or migration beyond the facility property boundary does not convey any property rights of any sort, or any exclusive privilege to the permittee.

11.2 CLEANUP AND CLOSURE PLAN

(a) Written plan.

(1) The owner or operator of a used oil transfer, off-specification burner, or processing/re-refining facility shall have a written cleanup and closure plan. The cleanup and closure plan shall be submitted to the Director for approval as part of the permit application.

(2) When physical or operational conditions at the facility change that result in a change in the nature or extent of cleanup and closure or an increase in the estimated costs of cleanup and closure, the owner or operator shall submit a modified plan for review and approval by the Director.

(3) Changes in the amount or face value of a financial mechanism that are the result of the annual inflation update from the application of the implicit price deflator multiplier to a permit cleanup and closure plan cost estimate shall not require approval by the Director.

(4) The adjustment shall be made by recalculating the cleanup closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross Domestic Product published by the U.S. Department of Commerce, Bureau of Economic Analysis in its Survey of Current Business as specified in R315-264-145(b)(1) and (2). The inflation factor is the incremental increase of the latest published annual Deflator to the Deflator for the previous year divided by the previous year Deflator. The first adjustment is made by multiplying the cleanup closure cost estimate by the inflation factor. The result is the adjusted cleanup closure cost estimate. Subsequent adjustments are made by multiplying the latest adjusted cleanup closure cost estimate by the latest inflation factor.

(b) Content of plan. The plan shall identify steps necessary to perform partial or final cleanup and closure of the facility at any point during its active life.

(1) The cleanup and closure plan shall be based on third-party, direct-estimated costs or on third-party costs using RS Means methods, applications, procedures, and use cost values applicable to the location of the facility and include, at least:

(i) A description of how each used oil management unit at the facility will be closed.

(ii) A description of how final cleanup and closure of the facility will be conducted. The description shall identify the maximum extent of the operations that will be cleaned, closed, or both during the active life of the facility.

(iii) The highest cost estimate of the maximum inventory of used oil to be stored onsite at any one time during the life of the facility and a detailed description of the methods to be used during partial cleanup and closure final cleanup and closure, or both, including, but not limited to, methods for removing, transporting, or disposing of all used oil, and identification of the off-site used oil facilities to be used, if applicable.

(iv) A detailed description of the steps needed to remove or decontaminate all used oil and used oil residues and contaminated containment system components, equipment, structures, and soils during partial or final cleanup and closure, including procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy closure. This description shall address the management and disposal of all residues resulting from the decontamination activity, including, but not limited to, rinse waters, rags, personal protective equipment, small hand implements, vehicles, and mechanized equipment.

(v) A detailed description of other activities necessary during the cleanup and closure period to ensure that all partial closures shall satisfy the final cleanup and closure plan.

(vi) A cleanup and closure cost estimate and a mechanism for financial responsibility to cover the cost of cleanup and closure

(vii) State of Utah and Federal government used oil permittees are exempt from the requirements of R315-15-11(b)(1)(vi).

(2) The owner or operator shall update its cleanup and closure plan cost estimate and provide the updated estimate to the Director, in writing, within 60 days following a facility modification that causes an increase in the amount of the financial responsibility required under R315-15-10. Within 30 days of the Director's approval of a permit modification for the cleanup and closure plan that would result in an increased cost estimate, the owner or operator shall provide to the Director:

(i) evidence that the financial assurance mechanism amount or value includes the cleanup and closure cost estimate increase; or

(ii) other mechanisms covering the increased closure plan cost estimate and a summary document indicating the multiple financial mechanisms, by mechanism name, account number, and the amounts to satisfy R315-15-10 and 11.

(c) The owner or operator shall update the cleanup and closure cost estimate to adjust for inflation and include the updated estimate in the permitted facility's annual report due by March 1st of each year, using either:

(1) the multiplier formed from the gross domestic product implicit price deflator ratio of the current calendar year to the past

calendar year as published by the federal government Bureau of Economic Analysis; or

(2) new cleanup and closure cost estimate from the recalculation of the cleanup and closure plan costs to account for all changes in scope and nature of the facility or facilities, in current dollars.

11.3 TIME ALLOWED TO INITIATE CLOSURE

(a) The owner or operator shall initiate closure in accordance with the approved cleanup and closure plan and notify the Director that closure has been initiated:

(1) Within 90 days after the owner or operator receives the final volume of used oil; or

(2) Within 90 days after the Director revokes the facility's used oil permit.

(b) During the cleanup and closure period or at any other time, if the Director determines that the owner or operator has failed to comply with R315-15, the Director may, after 30 days following written notice to the owner or operator, draw upon the financial mechanism associated with the cleanup and closure plan for the facility or facilities covered by the financial responsibility requirements of R315-15-10.

11.4 CERTIFICATION OF CLOSURE

(a) Within 60 days of completion of cleanup and closure, the owner or operator of a permitted used oil facility shall submit to the Director, by registered mail, a certification that the used oil facility has been cleaned and closed in accordance with the specifications in the approved cleanup and closure plan. The certification shall be signed by the owner or operator and by an independent, Utah-registered professional engineer.

(b) The Director shall make the determination of whether cleanup and closure has been completed according to the cleanup and closure plan and R315-15.

R315-15-12. Financial Assurance.

12.1 DEFINITIONS

For the purposes of R315-15-12, the following definitions apply:

(a) "Existing used oil facility" means any used oil transfer facility, off-specification burner, or used oil processing/re-refining facility in operation on July 1, 1993 under a used oil operating permit issued by the Division of Oil, Gas and Mining and in effect on or before June 30, 1993. An existing used oil facility is also required to obtain a permit from the Director in accordance with R315-15-13.

(b) "New used oil facility" means any used oil transfer, off-specification burner, or used oil processing/re-refining facility that was not in operation as a used oil facility on July 1, 1993, and received an operating permit in accordance with R315-15-13 from the Director after July 1, 1993.

(c) "Financial assurance mechanism" means "reclamation surety" as used in Utah Code Annotated 19-6-709 and 19-6-710 of the Used Oil Management Act.

12.2 APPLICABILITY

(a) The owner or operator of an existing or new used oil facility requiring a permit under R315-15-13 shall establish a financial assurance mechanism as evidence of financial responsibility under R315-15-10 sufficient to assure cleanup and closure of the facility in conformance with R315-15-11.1 with one or more of the financial assurance mechanisms of R315-15-12.3 prior to receiving a permit from the Director.

(b) Any increase in capacity to store or process used oil at a used oil facility permitted by the Director, above the storage or processing capacity identified in the permit application approved by the Director, shall require the owner or operator of the permitted used oil facility to increase the amount or face value of the financial assurance mechanism to meet the additional capacity. The additional amount or increase in face value of financial assurance mechanism shall be in place and effective before operation of the increased storage or processing capacity and shall meet the requirements of R315-15-12.3 and R315-15-12.4.

(c) DIYer used oil collection centers, generator used oil collection centers, and used oil aggregation points are not required to post a financial assurance mechanism, but are subject to the cleanup and closure requirements of R315-15-10 and R315-15-11 unless they have received a waiver in writing from the Director as identified in R315-15-10(e).

12.3 FINANCIAL ASSURANCE MECHANISMS

(a) Any financial assurance mechanism used to show financial responsibility under R315-15-10 and 11 for an existing or new used oil facility shall:

(1) be legally valid, binding, and enforceable under Utah and federal law;

(2) be approved by the Director;

(3) ensure that funds will be available in a timely fashion for:

(i) completing all cleanup and closure activities indicated in the closure plan of the permit approved by the Director; and

(ii) environmental pollution legal liability for third party damages for bodily injury and property damage resulting from a sudden or non-sudden accidental release of used oil from or arising from permitted operations; and

(4) require a written notice sent by certified mail to the Director 120 days prior to cancellation or termination of the financial mechanism.

(5) be updated each year to adjust for inflation, using either:

(i) the gross domestic product implicit price deflator ratio of the increase of the current calendar year to the past calendar year or

(ii) a new estimated cleanup and closure cost estimate recalculated to account for all changes in scope and nature of the permitted operation.

(b) The owner or operator of an existing or new used oil facility shall establish a financial assurance mechanism for cleanup and closure by one of the following mechanisms and shall submit a signed original or an original signed duplicate of the financial assurance mechanism to the Director for approval as part of the permit application:

(1) Trust Fund.

(i) The trustee shall be an entity that has the authority to act as a trustee and whose operations are regulated and examined by a federal or state agency.

(ii) A signed original or an original signed duplicate of the trust agreement and accompanied by a formal certification of acknowledgement shall be submitted to the Director.

(iii) For trust funds that are fully funded at the time of permit approval, an annual trust valuation shall be certified and submitted to the Director. The permittee shall provide evidence annually, upon the anniversary of the trust agreement, that the trust remains fully funded.

(iv) For trust funds not fully funded at the time of permit approval by the Director, incremental payments into the trust fund shall be made annually by the owner or operator to fully fund the trust within five years of the Director's approval of the permit as follows:

(A) initial payment value shall be the initial cleanup and closure cost estimate value divided by the pay-in period, not to exceed five years, and

(B) next payment value shall be the difference of the approved current cleanup and closure cost estimate less the trust fund value, all divided by the remaining number of years in the pay-in period, and

(C) subsequent next payments shall be made into the trust fund annually on or before the anniversary date of the initial payment made into the trust fund and reported in accordance with the approved trust agreement, and

(D) no later than 30 days after the last incremental payment to fully fund the trust, the permittee shall provide proof to the Director that the trust fund has been fully funded according to the current permitted cleanup and closure cost estimate.

(E) The facility shall submit an annual valuation of the trust to

the Director on or before the anniversary date of the trust.

(v) For a new used oil facility, the payment into the trust fund shall be made before the initial receipt of used oil.

(vi) The owner or operator, or other person authorized to conduct cleanup and closure activities may request reimbursement from the trustee for cleanup and closure completed when approved in writing by the Director.

(vii) The request for reimbursement may be granted by the trustee as follows:

(A) only if sufficient funds exist to cover the reimbursement request; and

(B) if justification and documentation of the cleanup and closure expenditures are submitted to and approved by the Director in writing prior to the trustee granting reimbursement.

(viii) The Director may cancel the incremental trust funding option at any time and require the permittee to provide either a fully funded trust or other cleanup and closure financial mechanism as provided in R315-15-12 under the following conditions:

(A) upon the insolvency of the permittee, or

(B) when a violation of R315-15-10, 11 or 12 has been determined.

(ix) The trust agreement shall follow the wording provided by the Director as identified in R315-15-17.2.

(2) Surety Bond Guaranteeing Payment.

(i) The bond shall be effective before the initial receipt of used oil.

(ii) The surety company issuing the bond shall, 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 shall notify the Director that a copy of the bond has been placed in the operating record.

(iii) The penal sum of the bond shall be in an amount at least equal to the cleanup and closure cost estimate developed under R315-15-11.2.

(iv) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(v) The owner or operator shall establish a standby trust agreement at the time the bond is established.

(A) The standby trust agreement shall meet the requirements of R315-15-12.3(b)(1), except for R315-15-12.3(b)(1)(iii), (viii), and (ix) and the standby trust agreement shall follow the wording provided by the Director as identified in R315-15-17.14.

(B) Payment made under the terms of the bond shall be deposited by the surety directly into the standby trust agreement and payments from the standby trust fund shall be approved by the trustee with the written concurrence of the Director.

(vi) The surety bond shall automatically be renewed on the expiration date unless cancelled by the surety company 120 days in advance by sending both the bond applicant and the Director a written cancellation notice by certified mail.

(vii) The bond applicant may terminate the bond for nonpayment of fee by providing written notice, by certified mail, to the Director 120 days prior to termination.

(viii) Any change to the form or content of the surety bond shall be submitted to the Director for approval and acceptance.

(ix) The surety bond shall follow the language provided by the Director found in R315-15-17.3.

(3) Letter of Credit

(i) The letter of credit shall be effective before the initial receipt of used oil

(ii) The financial institution issuing the letter of credit shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a state or federal agency.

(iii) The letter of credit shall be issued in an amount at least equal to the cleanup and closure cost estimate developed under R315-15-11.2.

(iv) The owner or operator shall establish a standby trust agreement at the time the letter of credit is established.

(A) The standby trust agreement shall meet the requirements of R315-15-12.3(b)(1), except for Subsections R315-15-12.3(b)(1)(iii), (viii), and (ix) and the standby trust agreement shall follow the language incorporated by reference in R315-15-17.14.

(B) Payment made under the terms of the letter of credit shall be deposited by the surety directly into the standby trust and payments from the standby trust fund shall be approved by the trustee with the written concurrence of the Director.

(v) The letter of credit shall follow the wording provided by the Director as identified in R315-15-17.4.

(4) Insurance.

(i) The insurance shall be effective before the initial receipt of used oil.

(A) Insurance coverage period shall be the earliest date of permit issuance or a retroactive date established by the earliest period of coverage for any financial assurance mechanism.

(ii) At a minimum, the insurer shall 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.

(iii) The insurance policy shall guarantee that funds will be available to perform the cleanup and closure activities approved by the Director.

(iv) The policy shall guarantee that the insurer will be responsible for the paying out of funds to the owner or operator or person authorized to conduct the cleanup and closure activities, as approved by the Director, up to an amount equal to the face amount of the policy. Payment of any funds by the insurer shall be made with the written concurrence of the Director.

(A) The Insurer shall establish at a standby trust agreement for only the benefit of the Director when the Director notifies the Insurer that the Director is making a claim, as provided for in R315-15, for cleanup and closure of a permitted used oil transfer, processor, re-refiner, or off-specification burner facility.

(B) The Insurer shall place the face value of the applicable coverage in the trust within 30 days of establishing the standby trust agreement.

(C) The standby trust agreement shall meet the requirements of R315-15-12.3(b)(1), except for R315-15-12.3(b)(1)(iii), (iv), (v), (viii), and (xi), and the standby trust agreement shall follow the language provided by the Director incorporated by reference in R315-15-17.14.

(v) The insurance policy shall be issued for a face amount at least equal to the cleanup and closure cost estimate developed under R315-15-11.2.

(vi) An owner or operator, or other person authorized by the Director, may receive reimbursements for cleanup and closure activities completed if:

(A) the value of the policy is sufficient to cover the reimbursement request; and

(B) justification and documentation of the cleanup and closure expenditures are submitted to and approved by the Director, prior to receiving reimbursement.

(vii) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator.

(viii) The insurance policy shall 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 shall obtain an alternate financial assurance mechanism meeting the requirements for financial responsibility under R315-15-10 and of this subsection within 60 days of notice of cancellation of the policy.

(ix) The policy coverage amount for cleanup and closure is exclusive of legal and defense costs.

(x) Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.

(xi) The Insurer as first-payer is liable for the payment of amounts within any deductible, retention, self-insured retention (SIR), or reserve applicable to the policy, with a right of reimbursement by the Insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible, retention, self-insured retention, or reserve for which coverage is otherwise demonstrated as specified in R315-15-12.

(xii) Whenever requested by the Director, the Insurer agrees to furnish to the Director a signed duplicate original of the policy and all endorsements.

(xiii) Cancellation of the policy, whether by the Insurer, the Insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the used oil management facility, will be effective only upon written notice and only after the expiration of 120 days after a copy of such written notice is received by the Director for those facilities that are located in Utah.

(xiv) Any other termination of the policy will be effective only upon written notice and only after the expiration of 120 days after a copy of such written notice is received by the Director for those facilities that are located in Utah.

(xv) All policy provisions related to R315-15 shall be construed in accordance with the laws of the State of Utah. In the event of the failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer and the Insured will submit to the jurisdiction of the appropriate court of the State of Utah, and will comply with all the requirements necessary to give such court jurisdiction. All matters arising hereunder, including questions related to the interpretation, performance and enforcement of this policy, shall be determined in accordance with the law and practice of the State of Utah (notwithstanding Utah conflicts of law rules).

(xvi) Endorsement(s) added to, or removed from the policy that have the effect of affecting the environmental pollution liability language, directly or indirectly, shall be approved in writing by the Director before said endorsement(s) become effective.

(xvii) Neither the Insurer nor the Insured shall contest the state of Utah's use of the drafting history of the insurance policy in a judicial interpretation of the policy or endorsement(s) to said policy.

(xviii) The Insurer shall establish a standby trust fund for the benefit of the Director at the time the Director first makes a claim against the insurance policy.

(A) The standby trust fund shall meet the requirements of R315-15-12.3(b)(1), except for item R315-15-12.3(b)(1)(iii), (iv), (v), (viii), and (ix) and the standby trust agreement shall follow the wording found in R315-15-17.14.

(B) Payment made under the terms of the insurance policy shall be deposited by the Insurer as grantor directly into the standby trust fund and payments from the trust fund shall be approved by the trustee with the written concurrence of the Director.

(5) The owner or operator of an existing or new used oil facility may establish a financial assurance mechanism by a combination of the above mechanisms as approved by the Director.

(c) The owner or operator of an existing or new used oil facility or operation shall establish a financial assurance mechanism for bodily injury and property damage to third parties resulting from sudden and/or non-sudden accidental releases of used oil from a permitted used oil facility or operation as follows:

(1) An owner or operator that is a used oil processor, transfer facility, or off-specification burner, or a group of such facilities regulated under R315-15 shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden and/or non-sudden accidental release of used oil arising from operations or operations of the facility or group of facilities shall have and maintain liability coverage in the amount as specified in R315-15-10(b). This liability coverage shall be demonstrated by one or more of the financial mechanisms in R315-15-12.3(c)(3).

(2) An owner or operator that is a used oil transporter regulated under R315-15, must demonstrate financial responsibility for bodily injury and property damage to third-parties resulting from sudden release of used oil arising from transit, loading and unloading, to or from facilities within Utah. The owner or operator shall maintain liability coverage for sudden accidental occurrences in the amount specified in R315-15-10(c). This liability coverage shall be demonstrated by one or more of the financial mechanisms in R315-15-12.3(c)(3).

(3) The owner or operator shall demonstrate compliance with R315-15-10(b) or (c) by using one or more of the following financial assurance mechanisms:

(i) Insurance. The owner or operator shall follow the wording provided by the Director identified in R315-15-17.5 through R315-15-17.9, as may be applicable.

(ii) Trust. The owner or operator shall follow the wording provided by the Director identified in R315-15-17.12.

(iii) Surety Bond. The owner or operator shall follow the wording provided by the Director identified in R315-15-17.11.

(iv) Letter of Credit. The owner or operator shall follow the wording provided by the Director identified in R315-15-17.10.

(d) Adjustments by the Director. If the Director determines that the levels of financial responsibility required by R315-15-10(b) or (c), as applicable are not consistent with the degree and duration of risk associated with used oil operations or facilities, the Director may adjust the level of financial responsibility required under R315-15-10(b) or (c), as applicable, as may be necessary to protect human health and the environment. This adjusted level will be based on the Director's assessment of the degree and duration of risk associated with the used oil operations or facilities. In addition, if the Director determines that there is a significant risk to human health and the environment from non-sudden release of used oil resulting from the used oil operations or facilities, the Director may require that an owner or operator of the used oil facility or operation comply with R315-15-10(b) and (c), as applicable. An owner or operator must furnish, within a reasonable time to the Director when requested in writing, any information the Director requests to determine whether cause exists for an adjustment to the financial responsibility under R315-15-10(b) or (c) with the used oil operations or facilities. Failure to provide the requested information as and when requested under this section may result in the Director revoking the owner's or operator's used oil permit(s). Any adjustment of the level or type of coverage for a facility that has a permit will be treated as a permit modification.

(e) When the owner or operator of a permitted used oil facility or operation believes that its responsibility for cleanup and closure or for environmental pollution liability as described in R315-15-10(d) has changed, it may submit a written request to the Director to modify its permit to reflect the changed responsibility.

(f) The Director may release the requirement for cleanup and closure financial assurance after the owner or operator has clean-closed the facility according to R315-15-11.

(g) The owner or operator of a permitted used oil facility or operation may request the Director to modify its permit to change its financial assurance mechanism or mechanisms as described in R315-15-12.

(h) The Director may modify the permit to change financial assurance mechanism or mechanisms after the owner or operator has established a replacement financial assurance mechanism or mechanisms acceptable to the Director.

(i) Incapacity of owners or operators, guarantor, or financial institution. An owner or operator of a permitted used oil facility or operation shall notify the Director by certified mail within ten days of the commencement of a bankruptcy proceeding naming the owner or operator as debtor.

(1) An owner or operator who fulfills the financial responsibility requirements by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be considered to be without the required financial responsibility or liability coverage in the event of:

(i) bankruptcy of the trustee or issuing institution; or

(ii) a suspension or revocation of the authority of the trustee institution to act as trustee; or

(iii) a suspension or revocation of the authority of the institution to issue a surety bond, a letter of credit, or an insurance policy.

(2) The owner or operator of a permitted used oil facility or operation must establish other financial responsibility or liability coverage within 60 days after such an event.

12.4 ANNUAL UPDATE OF CLOSURE COST ESTIMATE AND FINANCIAL ASSURANCE MECHANISM

(a) The financial responsibility information required by R315-15-10, 11, and 12 and submitted to the Director with the initial permit application for a used oil facility or operation, or information provided as part of subsequent modifications to the permit made thereafter, shall be updated annually.

(b) The following annual updated financial responsibility information for the previous calendar year shall be submitted to the Director by March 1 of each year for each permitted facility or operation:

(1) The cleanup and closure cost estimate shall be based on a third party performing cleanup and closure of the facility to a post-operational land use in accordance with R315-15-11.1.

(2) The financial assurance mechanism shall be adjusted to reflect the new cleanup and closure cost estimate.

(3) The type of financial assurance mechanism, its current face value, and corresponding financial institution's instrument control number shall be provided.

(4) The type of environmental pollution liability financial responsibility for third-party damage mechanism shall be provided, including:

(i) policy number or other mechanism control number,

(ii) effective date of policy or other mechanism, and

(iii) coverage types and amounts.

(5) The type of general liability insurance information shall be provided, including:

(i) policy number,

(ii) date of policy, effective date of policy, retroactive date of coverage, if applicable, and

(iii) coverage types and amounts.

(c) Other type of information deemed necessary to evaluate compliance with a permitted used oil facilities or operations and R315-15-10, 11, and 12, shall be provided upon request by the Director.

R315-15-13. Registration and Permitting of Used Oil Handlers.

13.1 DO-IT-YOURSELFER USED OIL COLLECTION CENTERS TYPES A AND B

(a) Applicability. A person may not operate a do-it-yourselfer (DIYer) Type A or B used oil collection center without holding a registration number issued by the Director.

(b) General. The application for a registration number shall include the following information regarding the DIYer used oil collection center:

(1) the name and address of the operator;

(2) the location of the center;

(3) the type of storage and secondary containment to be used;

(4) the status of the business, zoning, or other licenses and permits if required by federal, state and local governmental entities;

(5) a spill containment plan in the event of a release of used oil; and

(6) proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil.

(c) Waiver of proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil. In accordance with Utah Annotated 19-6-710, the Director may waive the requirement of proof of liability insurance or other means of financial responsibility if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system to the soil, groundwater or surface water;

(3) The storage tank or container is clearly labeled with the words "Used Oil;"

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received;

(5) EPA-approved test kits for total halogens are readily available and operators are trained to perform halogen tests on any used oil received that may have been mixed with hazardous waste; and

(6) Oil sorbent material is readily available on site for immediate clean-up of spills.

(d) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a registration number within 20 days of the change.

13.2 GENERATOR USED OIL COLLECTION CENTERS TYPES C AND D

(a) Applicability. A person may not operate a generator used oil collection center Type C or D without holding a registration number issued by the Director.

(b) General. The application for registration shall include the following information regarding the generator used oil collection center:

(1) the name and address of the operator;

(2) the location of the center;

(3) whether the center will accept DIYer used oil;

(4) the type of storage and secondary containment to be used;

(5) the status of the business, zoning, or other licenses and permits if required by federal, state and local governmental entities;

(6) a spill containment plan in the event of a release of used oil; and

(7) proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil.

(c) Permit. Waiver of proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil. In accordance with Utah Code Annotated 19-6-710, the Director may waive the requirement of proof of liability insurance or other means of financial responsibility if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system to the soil, groundwater or surface water;

(3) The storage tank or container is clearly labeled with the words "Used Oil;"

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received;

(5) EPA-approved test kits for total halogens are readily available and operators are trained to perform halogen tests on any used oil received that may have been mixed with hazardous waste; and

(6) Oil sorbent material is readily available on site for immediate clean up of spills.

(d) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a registration number within 20 days of the change.

13.3 USED OIL AGGREGATION POINTS

(a) Applicability. A person may operate a used oil aggregation point without holding a registration number issued by the Director unless that aggregation point also accepts used oil from household do-it-yourselfers (DIYers) or other generators.

(b) If an aggregation point accepts used oil from household DIYers, it must register with the Director as a DIYer collection center and comply with the DIYer standards in Section R315-15-3.1.

(c) If an aggregation point accepts used oil from other generators it must register with the Director as a generator collection center and comply with the standards in R315-15-3.2.

13.4 USED OIL TRANSPORTERS AND USED OIL TRANSFER FACILITIES

(a) Applicability. Except as provided by R315-15-13.4(f), a person may not operate as a used oil transporter without holding a used oil transporter permit issued by the Director. A person shall not operate a used oil transfer facility without holding a used oil transfer facility permit specific to that facility, issued by the Director.

(b) General. The application for a permit shall include the following information:

(1) The name and address of the operator;

(2) The location of the transporter's base of operations and the location of any transfer facilities, if applicable;

(3) Maps of all transfer facilities, if applicable;

(4) The methods to be used for collecting, storing, and delivering used oil;

(5) The methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification and how the transporter will comply with the rebuttable requirements of R315-15-4.5;

(6) The type of containment and the volume, including type and number of storage vessels to be used and the number and type of transportation vehicles, if applicable;

(7) The methods of disposing of any waste by-products;

(8) The status of business, zoning, and other applicable licenses and permits if required by federal, state, and local government entities;

(9) An emergency spill containment plan, including a list of spill containment equipment to be carried in vehicles used to transport used oil and spill containment equipment maintained at the used oil transfer facility, and how the transporter shall comply with the requirements of R315-15-9;

(10) Proof of liability insurance or other means of financial responsibility for liabilities that may be incurred in collecting, transporting, or storing used oil;

(11) Proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil;

(12) A closure plan meeting the requirements of R315-15-11;

(13) Proof of applicant's ownership of any property and facility used for storage of used oil or, if the property and facility is not owned by the applicant, the owners' written statement acknowledging the activities specified in the application;

(14) For transfer facility permit applications, tank certification in accordance with R315-264-190 through 200 for used oil storage tanks at the transfer facility;

(15) For transfer facility permit applications, a facility piping and instrument drawing certified by a Professional Engineer;

(16) If rail transport is part of the application, a loading/off-loading plan for rail tanker cars used to transport used oil. This plan shall include detailed procedures to be followed to minimize the potential for releases and on-site accidents. At a minimum, the following items shall be addressed:

(i) Personal safety equipment;

(ii) Coordination with railroad to ensure exclusive rights to the loading track during the entire period of loading/offloading;

(iii) A minimum number and qualification of workers involved in the loading or off-loading operations;

(iv) Braking and blocking of rail car wheels;

(v) Procedures for Depressurizing tank car prior to opening manhole covers and outlet valves;

(vi) The sequence of valve openings and closings on any hosing or piping involved in the loading or off-loading process,

(vii) A description of how and where pipe and hose fitting will be attached, including a description of which rail car valves/openings will be used;

(viii) Use of catchment container to collect any used oil released from hoses, valves, and pipes during and following the loading/offloading operation;

(ix) Measures to insure ignition sources are not present;

(x) Procedures for cleanup of any spills that occur during the loading/offloading operations; and

(xi) Other site-specific requirements required by the Director to protect human health and the environment.

(c) Permit fees. Registration and permitting fees are established under the terms and conditions of Utah Code Annotated 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of permit approvals and annual used oil handler certificates.

(d) Annual Reporting. Each transporter and transfer facility shall submit an annual report to the Director of its activities during the calendar year. The annual report shall be submitted to the Director no later than March 1, of the year following the reported activities. The Annual report shall either be submitted on a form provided by the Director or shall contain the following information:

(1) the EPA identification number, name, and address of the transporter/transfer facility;

(2) the calendar year covered by the report;

(3) the total amount of used oil transported;

(4) the itemized amounts and types of used oil transferred to permitted transporters and transfer facilities, used oil processors/re-refiners, off-specification used oil burners, and used oil fuel marketers; and

(5) the itemized amounts and types of used oil transferred inside and outside the state, indicating the state to which used oil is transferred, and the specific name, address and telephone number of the operations or facility to which used oil was transferred.

(e) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(f) Transporter and Transfer Facility Permit by rule. Notwithstanding any other provisions of R315-15-13.4, a used oil generator who self-transports used oil generated by that generator at a non-contiguous operation to a central collection facility in the generator's own service vehicles in quantities exceeding 55 gallons shall be deemed to have an approved used oil transporter permit or used oil transfer facility permits, or both if the generator meets all applicable requirements of R315-15-13.4(f)(1) through (4).

(1) All used oil transporters or transfer facilities who qualify for a permit by rule shall submit a notification to the Director of their intent to operate under R315-15-13.4(f) and comply with the following conditions:

(i) The generator's facility is defined under the North American Industry Classification System (NAICS), published, in 2017 Revision, by the US Economic Classification Policy Committee, with a NAICS code of 21 (Mining), 22 (Utilities), 23 (Construction), 485111 (Mixed Mode Transit Systems), or 541360 (Geophysical Surveying and Mapping Services);

(ii) The generator self-transports and delivers the used oil to facilities that the generator owns, operates, or both.

(iii) The generator notifies the Director with the information required by R315-15-13.4(b)(1) through (10); and

(iv) The generator complies with R315-15-4.3, R315-15-4.4(b) through (d), R315-15-4.6(b) through (f), R315-15-4.7(b) and (d), and R315-15-4.8.

(2) A generator who self-transports used oil in accordance

with R315-15-13.4(f)(1)and who burns all the collected used oil for energy recovery is deemed to be approved by rule to operate as a used oil transporter for that activity if the following additional conditions are met:

(i) The generator only burns the self-collected used oil for energy recovery at that generator's own central collection facility.

(ii) The generator registers as a used oil fuel marketer in accordance with R315-15-13.7 and complies with R315-15-7.

(3) A generator who self-transports used oil in accordance with R315-15-13.4(f)(1) and only stores the used oil for subsequent collection by permitted used oil transporters is deemed to be approved by rule to operate as a used oil transporter and transfer facility for that activity if the following additional conditions are met:

(i) The generator arranges for permitted used oil transporters to collect the generator's used oil.

(ii) The self-transported used oil is not stored at the generator's facility longer than 35 days. If the self-transported used oil is stored longer than 35 days, the generator becomes a used oil processor in accordance with R315-15-4.6(a) and shall obtain a used oil processor permit in accordance with R315-15-13.5.

(4) A generator who self-transports used oil in accordance with R315-15-13.4(f)(1), and who both burns their collected used oil for energy recovery and arranges for permitted use oil transporters to collect that used oil, is deemed to be approved by rule to operate as a used oil transporter and transfer facility for that activity if the following additional conditions are met:

(i) The self-transported used oil burned for energy recovery is only burned at the generator's central collection facility;

(ii) The generator registers as a used oil fuel marketer in accordance with R315-15-13.7 and complies with R315-15-7; and

(iii) The generator arranges for permitted used oil transporters to collect the generator's used oil not burned on site.

(iv) The self-transported used oil is not stored at the generator's facility longer than 35 days. If the self-transported used oil is stored longer than 35 days, the generator becomes a used oil processor in accordance with R315-15-4.6(a) and shall obtain a used oil processor permit in accordance with R315-15-13.5.

(g) All used oil transporters and transfer facilities shall obtain and maintain a used oil handler certificates in accordance with R315-15-13.8.

13.5 USED OIL PROCESSORS/RE-REFINERS

(a) Applicability. A person may not operate as a used oil processing/re-refining facility without holding a permit issued by the Director.

(b) General. The application for a permit shall include the following information:

(1) The name and address of the operator;

(2) The location of the facility;

(3) A map of the facility;

(4) The grades of oil to be produced;

(5) The methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification;

(6) The type of containment and the volume, including type and number of storage vessels to be used and the number and type of transportation vehicles, if applicable;

(7) The methods of disposing of any waste by-products;

(8) The status of business, zoning, and other applicable licenses and permits if required by federal, state, and local government entities;

(9) An emergency spill containment plan, including a list of spill containment equipment to be maintained at the used oil processor facility;

(10) Proof of liability insurance or other means of financial responsibility for liabilities that may be incurred in processing or rerefining used oil;

(11) Proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil;

(12) Any other information the Director finds necessary to ensure the safe handling of used oil;

(13) A closure plan meeting the requirements of R315-15-11.

(14) A contingency plan meeting the requirements of R315-15-5.3(b);

(15) Proof of applicant's ownership of the property and facility or, if the property and facility is not owned by the applicant, the owner's written statement acknowledging the activities specified in the application;

(16) Tank certification in accordance with R315-264-190 through 200 for used oil storage tanks at the processor facility; and

(17) A facility piping and instrument drawing certified by a Professional Engineer.

(c) Permit fees. Registration and permitting fees are established under the terms and conditions of Department fee schedule 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of permit approvals and annual used oil handler certificates.

(d) Annual Reporting. Each used oil processing or rerefining facility shall submit an annual report to the Director of its activities during the calendar year. The annual report shall be submitted to the Director no later than March 1 of the year following the reported activities. The annual report shall either be submitted on a form provided by the Director or shall contain the following information:

(1) the EPA identification number, name, and address of the processor/re-refiner facility;

(2) the calendar year covered by the report;

(3) the quantities of used oil accepted for processing/rerefining and the manner in which the used oil is processed/rerefined, including the specific processes employed;

(4) the average daily quantities of used oil processed at the beginning and end of the reporting period;

(5) an itemization of the total amounts of used oil processed or rerefined during the reporting period year specifying the type and amounts of products produced, i.e., lubricating oil, fuel oil, etc.; and

(6) the amounts of used oil prepared for reuse as a lubricating oil, as a fuel, and for other uses, specifying each type of use, the amounts of used oil consumed or used in the process of preparing used oil for reuse, specifying the amounts and types of waste by-products generated including waste, water, and the methods and specific locations utilized for disposal.

(e) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(f) Used oil processors and re-refiners shall obtain and maintain a current used oil handler certificate in accordance with R315-15-13.8.

13.6 USED OIL BURNERS

(a) On-specification used oil fuel burners. Facilities burning only on-specification used oil fuel are not required to register as used oil burners with the Director for the purpose of R315-15-13.6, if they hold a valid air quality operating order or are exempt under R315-15-2.4.

(b) Off-specification used oil fuel burners

(1) Applicability. The permitting requirements of this section apply to used oil burners who burn off-specification used oil for energy recovery except as specified in R315-15-6.1(a)(1) through (3). A person may not burn off-specification used oil fuel for energy recovery without holding a permit issued by the Director.

(2) Permit application. The application for a permit shall include the following information regarding the facility:

(i) The name and address of the operator;

(ii) The location of the facility;

(iii) The type of containment and type and capacity of storage;

(iv) The type of burner to be used;

(v) The methods of disposing of any waste by-products;

(vi) The status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities;

(vii) An emergency spill containment plan; including a list of spill containment equipment to be maintained at the used oil processor facility.

(viii) Proof of insurance or other means of financial responsibility for liabilities that may be incurred in storing and burning off-specification used oil fuels.

(ix) Proof of form and amount of reclamation surety for any facility receiving and burning off-specification used oil.

(x) A closure plan meeting the requirements of R315-15-11;

(xi) Proof of applicant's ownership of the property and facility or, if the property and facility is not owned by the applicant, the owner's written statement acknowledging the activities specified in the application;

(xii) Tank certification in accordance with R315-264-190 through 200 for used oil storage tanks at the processor facility; and

(xiii) A facility piping and instrument drawing certified by a Professional Engineer.

(3) Permit fees. Registration and permitting fees are established under the terms and conditions of Utah Code Annotated 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of permit approvals and annual used oil handler certificates.

(4) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted during permit application within 20 days of the change.

(5) Permits by rule. Any facility permitted by rule is not required to obtain a permit as required by R315-15-13.6(b)(1), but may be required to follow operational practices, as determined by the Director, to minimize risk to human health or the environment. A permit by rule is conditional upon continued compliance with the requirements of R315-15-13.6(b), as determined by the Director. Notwithstanding any other provisions of R315-15-13.6, a hazardous waste incinerator facility that has been issued a final permit under R315-270-1, and that implements the requirements of R315-264-340 through 351, shall be deemed to have an approved off-specification used oil burner permit if that facility meets all of the following conditions:

(i) It burns off-specification used oil only in devices specified in R315-15-6.2(a);

(ii) It stores used oil in the manner described in R315-15-6.5;

(iii) It tracks off-specification used oil shipments as described in R315-15-6.6;

(iv) It complies with R315-15-6.3 and R315-15-6.7;

(v) It modifies its closure plan required under R315-264-110 through 120 (Closure and Post Closure), to include used oil storage and burning devices, taking into account any used oil activities at this facility;

(vi) It modifies its financial mechanism or mechanisms required R315-264-140 Through 151 (Financial Requirements), using a mechanism other than a corporate financial test/corporate written guarantee, to reflect the used oil activities at the facility; and

(vii) It submits to the Director the information required by R315-15-13.6(b)(2)(i) through (vi), and a one-time declaration that the facility intends to burn off-specification used oil.

(6) Annual Reporting. Each off-specification used oil burner, including those permitted by rule under R315-15-13.6(b)(5), shall submit an annual report to the Director of their activities during the calendar year. The annual report shall be submitted to the Director no later than March 1, of the year following the reported activities. The annual report shall either be submitted on a form provided by the Director or shall contain the following information:

(i) The EPA identification number, name, and address of the burner facility;

(ii) The calendar year covered by the report; and

(iii) The total amount of used oil burned.

(c) Off-specification used oil burners shall obtain and maintain a current used oil handler certificate in accordance with R315-15-13.8.

13.7 USED OIL FUEL MARKETERS

(a) Applicability. A person may not act as a used oil fuel marketer, as defined in R315-15-7, without holding a registration number issued by the Director.

(b) General. The application for a registration number shall include the following information regarding the facility acting as a used oil fuel marketer:

(1) The name and address of the marketer.

(2) The location of any facilities used by the marketer to collect, transport, process, or store used oil subject to separate permits, or registrations under this section.

(3) The status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities, including registrations or permits required under this part to collect, process/re-refine, transport, or store used oil.

(4) Sampling and Analysis Plan. Marketers shall develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of R315-15, including the applicable portions of R315-15-1.2, R315-15-5.4, R315-15-7.3, and R315-15-18. The owner or operator shall keep the plan at the facility. The plan shall address at a minimum the following:

(i) Specification used oil fuel. The analysis plan shall describe how the marketer will comply with R315-15-1.2, R315-15-5.6, and R315-15-7.3, as applicable.

(ii) Analytical methods. The plan shall specify the preparation and analytical methods for each parameter.

(iii) PCBs. The analysis plan shall describe how the marketer will comply with R315-15-18.

(iv) Generator knowledge. The plan shall describe the requirements for generator knowledge, if applicable.

(v) Sample Quality Control. The plan shall specify the quality control parameters and acceptance limits.

(vi) Rebuttable presumption for used oil. The analysis plan shall describe how the marketer will comply with R315-15-1.1(b)(ii) and R315-15-5.4, if applicable.

(vii) Sampling. The analysis plan shall describe the sampling protocol used to obtain representative samples, including:

(A) Sampling methods. The marketer shall use one of the sampling methods in R315-261 Appendix I, or a method shown to be equivalent under R315-260-21.

(B) Sample frequency. The plan shall specify the frequency of sampling to be performed, and whether the analysis will be performed on site or off site.

(c) Registration fees. Registration and permitting fees are established under the terms and conditions of Utah Code Annotated 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of registration numbers and annual used oil handler certificates.

(d) A person who acts as used oil fuel marketer shall annually obtain a used oil handler certificate in accordance with R315-15-13.8. A used oil fuel marketer shall not operate without a used oil handler certificate.

(e) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a registration within 20 days of the change.

13.8 USED OIL HANDLER CERTIFICATES

(a) Applicability. As well as obtaining permits and registration described in R315-15-13.4 through 13.7, a person shall not act as a used oil transporter, operator of a transfer facility, processor/re-refiner, off-specification burner, or marketer without applying for, receiving, and maintaining a current used oil handler certificate issued by the Director for each applicable activity. Each used oil permit and marketer registration described in R315-15-13.4

through 13.7 above requires a separate used oil handler certificate.

(b) General. Each application for a used oil handler certificate shall include the following information:

(1) business name;

(2) address to include:

(i) mailing address; and

(ii) site address if different from mailing address

(3) telephone number

(4) name of business owner;

(5) name of business operator;

(6) permit/registration number; and

(7) type of permit/registration number (i.e., processor, transporter, transfer facility, off-specification burner, or marketer).

(c) Changes in information. A used oil handler certificate holder shall notify the Director of any changes in the information provided in Subsection R315-15-13.8(b) within 20 days of implementation of the change.

(d) A used oil handler certificate will be issued to an applicant following the:

(1) completion and approval of the application required by R315-15-13.8(a); and

(2) payment of the fee required by the Annual Appropriations Act.

(e) A used oil handler certificate is not transferable and shall be valid January 1 through December 31 of the year issued. The certificate shall become void if the permit or registration associated with the used oil activity described in the certificate, in accordance with R315-15-13.8(b)(6) in the application, is revoked under R315-15-15.2 or if the Director, upon the written request of the permittee or registration holder, cancels the certificate.

(f) The certificate registration fee shall be paid prior to operation within any calendar year.

R315-15-14. DIYer Reimbursement.

14.1 DIYER USED OIL COLLECTION CENTER INCENTIVE PAYMENT APPLICABILITY

(a) The Director shall pay a quarterly recycling fee incentive to registered DIYer used oil collection centers and curbside programs approved by the Director for each gallon of used oil collected from DIYer used oil generators, and transported by a permitted used oil transporter to a permitted used oil processor/re-refiner, burner, registered marketer or burned in accordance with R315-15-2.4(b).

(b) All registered DIYer used oil collection centers can qualify for a recycling incentive payment of up to $0.16 per gallon, subject to availability of funds and the priorities of Utah Code Annotated 19-6-720.

14.2 REIMBURSEMENT PROCEDURES

In order for DIYer collection centers to qualify for the recycling incentive payment they are required to comply with the following procedures.

(a) Submit a copy of all records and receipts of DIYer and farmer, as defined in R315-15-2.1(a)(4), used oil collected during the quarter for which the reimbursement is requested. These records shall be submitted within 30 days following the end of the calendar quarter in which the DIYer oil was collected and for which reimbursement is requested.

(b) Reimbursements will be issued by the Director within 30 days following the report filing period.

(c) Reports received later than 30 days after the end of the calendar quarter for which reimbursement is requested will be paid during the next quarterly reimbursement period.

(d) Any reimbursement requests outside the timeframe outlined in R315-15-14.2(a) will not be granted unless approved by the Director.

R315-15-15. Issuance, Renewal, and Revocation of Permits and Registrations.

15.1 PUBLIC COMMENTS AND HEARING.

(a) The Director shall:

(1) determine if the permit application or modification request is complete and meets all requirements of R315-15-13;

(2) publish notice of the proposed permit in a newspaper of general circulation in the state and also in a newspaper of general circulation in the county in which the proposed permitted facility is located;

(3) provide a 15-day public comment period from the date of publication to allow the public time to submit written comments;

(4) consider submitted public comments received within the comment period; and

(5) send a written decision to the applicant and to persons submitting comments,

(b) The Director's decision under R315-15-15.1(a) may be appealed in accordance with Utah Administrative Code R305-7.

(c) Duration of Permits. Used oil permits shall be effective for a fixed term not to exceed ten years. Any Permittee holding a permit issued on or before January 1, 2005 who wants to continue operating shall submit an application for a new permit not later than 180 days after January 1, 2015. The term of a permit shall not be extended by modification to the permit.

(d) The conditions of an expired permit continue in force until the effective date of a new permit if:

(1) The permittee has submitted a timely application under R315-15-13, at least 180 days prior to the expiration date of the current permit. The permit application shall contain all the materials required by R315-15-13.

(2) The Director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(e) Effect. Permits continued under this section remain fully effective and enforceable.

(f) Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit, the Director may choose to do any or all of the following;

(1) Initiate enforcement action based upon the permit that has been continued;

(2) Issue a notice of intent to deny the new permit under R315-15-15.2. If the permit is denied, the owner or operator is required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(3) Issue a new permit under R315-15-15.2 with appropriate conditions;

(4) Take other actions authorized by these rules

(g) Five-Year Review of Permit. Each used oil permit, including the costs of closure and post closure care issued under R315-15-13, shall be reviewed by the Director five years after the permit's issuance, or when the Director determines that a permit requires review and modification.

15.2 MODIFICATION AND REVOCATION OF PERMITS, REGISTRATIONS AND HANDLER CERTIFICATES.

(a) 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 statues 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. The permit modification requests shall not be implemented until approval of the Director.

Violation of any permit or registration conditions or failure to comply with any provisions of the applicable statutes and rules, shall be grounds for imposing statutory sanctions, including denial of an application for permit, registration, or used oil handler certificate.

(b) Request for agency action. The owner or operator of a facility may contest an order associated with modification, renewal, or termination in accordance with Utah Administrative Code R305-

7.

R315-15-16. Grants.

16.1 STATUTORY AUTHORITY.

Utah Code Annotated 19-6-720 authorizes the Division of Waste Management and Radiation Control to award grants, as funds are available, for the following:

(a) Used oil collection centers; and

(b) Curbside used oil collection programs, including costs of retrofitting trucks, curbside containers, and other costs of collection programs.

16.2 ELIGIBILITY AND APPLICATION.

(a) The establishment of new or the enhancement of existing used oil collection centers or curbside collection programs that address the proper management of used lubricating oil may be eligible for grant assistance.

(b) A Used Oil Recycling Block Grant Package, published by the Director, shall be completed and submitted to the Director for consideration.

16.3 LIMITATIONS.

(a) The grantee must commit to perform the permitted used oil handling activity for a minimum of two years.

(b) If the two-year commitment is not fulfilled, the grantee may be required to repay all or a portion of the grant amount.

R315-15-17. Wording of Financial Assurance Mechanisms.

17.1 APPLICABILITY

R315-15-17 presents the standard wording forms to be used for the financial assurance mechanisms found in R315-15-12. The following forms are hereby incorporated by reference and are available at the Division of Waste Management and Radiation Control located at 195 North 1950 West, Salt Lake City, Utah, during normal business hours or on the Division's web site, http://www.hazardouswaste.utah.gov/.

(a) The Division requires that the forms described in R315-15-17.2 through R315-15-17.14 shall be used for all financial assurance filings and shall be signed original documents. The wording of the forms shall be identical to the wording specified in R315-15-17.2 through R315-15-17.14.

(b) The Director may substitute new wording for the wording found in any of the financial assurance mechanism forms when such language changes are necessary to conform to applicable financial industry changes, when industry-wide consensus language changes are submitted to the Director.

17.2 TRUST AGREEMENTS

The trust agreement for a trust fund must be worded as found in the Trust Agreement Form approved by the Director.

17.3 SURETY BOND GUARANTEEING PAYMENT INTO A STANDBY TRUST AGREEMENT TRUST FUND

The surety bond guaranteeing payment into a standby trust agreement trust fund must be worded as found in the Surety Bond Guaranteeing Payment into a Standby Trust Agreement Trust Fund Form approved by the Director.

17.4 IRREVOCABLE STANDBY LETTER OF CREDIT WITH STANDBY TRUST AGREEMENT

The letter of credit must be worded as found in the Irrevocable Standby Letter of Credit with Standby Trust Agreement Form approved by the Director.

17.5 UTAH USED OIL POLLUTION LIABILITY INSURANCE ENDORSEMENT FOR CLEANUP AND CLOSURE

The insurance endorsement of cleanup and closure must be worded as found in the Utah Used Oil Pollution Liability Insurance Endorsement for Cleanup and Closure Form approved by the Director.

17.6 UTAH USED OIL TRANSPORTER POLLUTION LIABILITY ENDORSEMENT FOR SUDDEN OCCURRENCE

The used oil transporter pollution liability endorsement for sudden occurrence must be worded as found in the Utah Used Oil Transporter Pollution Liability Endorsement for Sudden Occurrence Form approved by the Director.

17.7 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR SUDDEN OCCURRENCE

The used oil pollution liability endorsement for sudden occurrence for permitted facilities other than permitted transporters must be worded as found in the Utah Used Oil Pollution Liability Endorsement for Sudden Occurrence Form approved by the Director.

17.8 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR NON-SUDDEN OCCURRENCE

The used oil pollution liability endorsement for non-sudden occurrence must be worded as found in the Utah Used Oil Pollution Liability Endorsement Non-Sudden Occurrence Form approved by the Director.

17.9 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR COMBINED SUDDEN AND NON-SUDDEN OCCURRENCES

The used oil pollution liability endorsement combined for sudden and non-sudden occurrence must be worded as found in the Utah Used Oil Pollution Liability Endorsement for Combined Sudden and Non-Sudden Occurrences Form approved by the Director.

17.10 LETTER OF CREDIT FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY WITH OPTIONAL STANDBY TRUST AGREEMENT TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

The letter of credit must be worded as found in the Letter of Credit for Third Party Damages from Environmental Pollution Liability with Optional Standby Trust Agreement to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form approved by the Director.

17.11 PAYMENT BOND FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

A surety bond must be worded as found in the Payment Bond for Third Party Damages from Environmental Pollution Liability to be used by Transfer/Processor/Re-refiner/Off-specification burner Facility Form approved by the Director.

17.12 TRUST AGREEMENT FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

A trust agreement must be worded as found in the Trust Agreement for Third Party Damages from Environmental Pollution Liability to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form approved by the Director.

17.13 STANDBY TRUST AGREEMENT ASSOCIATED WITH THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY REQUIRING A STANDBY TRUST AGREEMENT TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

A standby trust agreement must be worded as found in the Standby Trust Agreement Associated with Third Party Damages from Environmental Pollution Liability Requiring Standby Trust Agreement to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form approved by the Director.

17.14 STANDBY TRUST AGREEMENT, OTHER THAN LIABILITY, FOR TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

The standby trust agreement for a trust fund must be worded as found in the Standby Trust Agreement, other than Liability for Transfer/Processor/Re-refiner/Off-specification Burner Facility Form approved by the Director.

R315-15-18. Polychlorinated Biphenyls (PCBs).

(a) Used oil containing polychlorinated biphenyl (PCB) concentrations of 50 ppm and above is subject to TSCA regulations in 40 CFR 761. Used oil containing PCB concentrations greater than or equal to 2 ppm but less than 50 ppm is subject to both R315-15 and 40 CFR 761.

(b) Used oil transporter PCB testing. Used oil transporters shall determine the PCB content of used oil being transported is less than 50 ppm prior to transferring the oil into the transporter's vehicles. The transporter shall make this determination as follows:

(1) Used dielectric oil. Dielectric oil used in transformers and other high voltage devices shall be certified to be less than 50 ppm prior to loading to the transporter's vehicle through laboratory testing following the procedures described in R315-15-18(d).

(2) Other used oils shall be certified to be less than 50 ppm prior to transfer through either:

(A) Laboratory testing following the procedures described in R315-15-18(d) below, or

(B) Written certification from the generator that the PCB content of the used oil is less than 50 ppm based on manufacturing specifications and process knowledge.

(c) Used oil marketer PCB testing. To ensure that used oil destined to be burned for energy recovery is not a regulated waste under the TSCA regulations, used oil fuel marketers shall determine whether the PCB content of used oil being burned for energy recovery is below 2 ppm. A marketer shall make this determination in a manner consistent with the used oil marketer's sampling and analysis plan.

(d) Laboratory testing for PCBs. Used oil testing for total PCBs shall include the following Aroclors: 1016, 1221, 1232, 1242, 1248, 1254, and 1260. If plasticizers (used in polyvinyl chloride plastic, neoprene, chlorinated rubbers, laminating adhesives, sealants and caulk and joint compounds etc.) are present, then the used oil shall also be analyzed for Aroclors 1262 and 1268. If other Aroclors are known or suspected to be present, then the used oil shall be analyzed for those additional Aroclors.

(e) The following Utah Certified Laboratory SW-846 methodologies shall be used for PCBs:

(1) Preparation method 3580A, clean up method 3665A, and analytical method 8082A.

(2) Individual Aroclors shall be reported with a reporting limit of 1 ppm or less.

(3) If the source of the PCBs is known to be an Aroclor, and the Aroclor is unlikely to be significantly altered in homologue composition such as weathering, Aroclors listed in R315-15-18(d) shall be reported. Analytical results from all 209 individual congeners or ten homologue groups shall be submitted for any sample that has an altered homologue composition such as weathering unless prior approval is obtained from the Director.

KEY: financial assurance, hazardous waste, registration, used oil
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Notice of Continuation March 10, 2016

R356. Governor, Criminal and Juvenile Justice (State Commission on).

R356-2. Judicial Nominating Commissions.

R356-2-1. Definitions.

As used in R356-2:

(1) "Application period" means the period of time during which applications for a judicial vacancy may be submitted and begins with the posting of a notice of vacancy and ends with the closing period for submitting applications as identified in the notice of vacancy. The application period is part of the recruitment period.

(2) "CCJJ" means the staff of the Commission on Criminal and Juvenile Justice.

(3) "Commission" means the judicial nominating commission having authority over the judicial vacancy.

(4) "Commission staff" means the individuals assigned by the governor to provide staff support to the commission pursuant to Utah Code Annotated Section 78A-10-203(2) or 78A-10-303(2).

(5) "Notice of vacancy" means the announcement of a current or pending judicial vacancy by CCJJ to the public as provided in R356-2-3.

(6) "Organizational meeting" means the first meeting of a commission after the close of the recruitment period.

(7) "Recruitment period" means the period of time beginning with the posting of a notice of vacancy and ending with the completion of all tasks necessary to convene the commission. The recruitment period includes the application period.

R356-2-2. Recruitment Period.

(1) CCJJ shall begin the recruitment period for a judicial vacancy 235 days before the effective date of the judicial vacancy unless sufficient notice is not given, in which case CCJJ shall begin the recruitment period within 10 days of receipt of notice of the judicial vacancy by the governor.

(2) The application period for a judicial vacancy shall be a minimum of 30 days.

(3) The recruitment period for a judicial vacancy shall be a minimum of 30 days but not more than 90 days unless fewer than nine applications are received for a judicial vacancy in which case the recruitment period may be extended up to an additional 30 days.

R356-2-3. Notice of Vacancy.

(1) As part of the recruitment period, CCJJ shall post a notice of vacancy on its website and shall provide a notice of vacancy to:

(a) the Utah State Bar to be distributed to its members;

(b) members of the media;

(c) the Administrative Office of the Courts;

(d) the president of the Utah Senate; and

(e) other offices and associations as CCJJ determines appropriate.

(2) The notice of vacancy shall include:

(a) the jurisdiction of the court in which the vacancy occurs;

(b) the constitutional minimum requirements for judicial office;

(c) a brief description of the work of the court;

(d) the method for obtaining application forms;

(e) the application deadline; and

(f) the method for submitting oral or written comments at a meeting of the commission.

R356-2-4. Applications.

(1) Applications for a judicial vacancy shall include:

(a) an application form established by CCJJ which shall require applicants to provide:

(i) education history;

(ii) work history;

(iii) evidence of constitutional qualifications;

(iv) information regarding litigation as a party;

(v) attorney and judicial references as provided in R395-2-5; and

(vi) other information relevant to fitness to serve as a judge as determined by CCJJ;

(b) a waiver of the right to review the records in the nomination and appointment processes;

(c) a waiver of confidentiality of records which are the subject of investigation by the commission;

(d) an authorization for CCJJ to obtain consumer reports about the applicant; and

(e) a one paragraph summary of professional qualifications that will be made available to the public if the applicant's name is released for public comment prior to nomination.

(2) Applicants shall submit:

(a) an original and eight copies of the complete application;

(b) an original and eight copies of the applicant's resume; and

(c) a check made payable to CCJJ in an amount specified by CCJJ to cover the cost of a credit check.

(3) If the applicant has applied for another judicial position within the prior year, the applicant may satisfy the application requirements by submitting:

(a) a letter to CCJJ expressing interest in applying for the judicial vacancy and in using the previously submitted application; and

(b) a check made payable to CCJJ in an amount specified by CCJJ to cover the cost of a credit check.

(4) CCJJ shall establish application forms and make the forms available electronically and in hard copies.

(5) Applications are considered timely submitted if CCJJ receives all application materials prior to the application deadline. Applications mailed, but not received by CCJJ, prior to the application deadline are not considered timely submitted. Partial applications are not considered timely submitted.

(6) Following receipt of applications, CCJJ shall conduct investigations in the following areas for each applicant:

(a) criminal background;

(b) disciplinary actions taken by the Utah State Bar;

(c) disciplinary actions taken by the Judicial Conduct Commission; and

(d) consumer credit.

R356-2-5. References.

(1) Applicants who are engaged in an adversarial practice shall submit the following types of references as specified in the application:

(a) lawyers adverse to the applicant in litigation or negotiations;

(b) lawyers with whom the applicant has had a substantial professional interaction within the previous two years;

(c) judges assigned to cases in which the applicant acted as a lawyer; and

(d) judges who know the applicant.

(2) Applicants who are engaged in a non-adversarial practice and who are not judges shall submit the following types of references as specified in the application:

(a) lawyers with whom the applicant has had a substantial professional interaction within the previous two years; and

(b) judges who know the applicant.

(3) Applicants who are judges shall submit the following types of references as specified in the application:

(a) lawyers with whom the applicant has had a substantial professional interaction within the previous two years;

(b) judges who know the applicant; and

(c) lawyers who represented parties in cases over which the applicant presided as judge.

(4) CCJJ shall select which references will be contacted and requested to complete a standard reference form established by CCJJ.

R356-2-6. Pre-Screening of Applications.

(1) CCJJ shall review the applications upon the passing of the application deadline and remove all applications submitted by applicants who do not meet the constitutional qualifications.

(2) CCJJ shall provide to all members of the commission a list of all applicants identified as not meeting the constitutional qualifications.

R356-2-7. Meetings of the Commission.

(1) The commission shall convene an organizational meeting within 10 days of the end of the recruitment period.

(2) During the organizational meeting the commission shall:

(a) allow public comment concerning:

(i) the nominating process;

(ii) qualifications for judicial office;

(iii) issues facing the judiciary; and

(iv) other issues as determined appropriate by the commission; and

(b) following public comment, close the meeting to the public to:

(i) establish a timeframe for certifying a list of nominees to the governor;

(ii) discuss applicants; and

(iii) discuss conflicts of interest as provided in R356-2-9.

(3) The Commission may meet as necessary to certify the list of nominees to the governor, but shall certify the list of nominees no later than 45 days after convening the organizational meeting.

(4) The chair of the commission presides at all meetings and ensures that each commissioner has the opportunity to be a full participant in the commission process.

(5) The member of the Judicial Council appointed by the chief justice of the Utah Supreme Court pursuant to Utah Code Annotated Section 78A-10-202(6) or 78A-10-302(8) shall be a full participant in discussions of the commission, but may not vote.

(6) The commission staff shall:

(a) ensure that the commission follows the rules promulgated by CCJJ;

(b) resolve any questions regarding the rules promulgated by CCJJ;

(c) take summary minutes of commission meetings which shall include:

(i) the date, time and place of the meeting;

(ii) a list of the commission members present and a list of those absent or excused;

(iii) a list of commission staff present;

(iv) a general description of the decisions made;

(v) any declarations by commission members of a relationship, interest or bias concerning any applicant;

(vi) a record of the total tally of all votes, but not the vote of individual commission members;

(vii) written statements submitted to the commission; and

(viii) any other matter desired by the commission to be included; and

(d) perform other tasks assigned by the commission that are consistent with governing statutes and rules.

(7)(a) The commission shall determine which applicants will be invited to interview.

(b) Each commission member shall have the opportunity to question applicants during interviews and to discuss the qualifications of applicants.

(c) In questioning applicants and discussing the qualifications of applicants, the chair shall speak last and the member of the Judicial Council appointed by the chief justice of the Utah Supreme Court shall speak next to last.

(8)(a) If a commission member refuses to follow governing statutes or rules, the commission member is disqualified from the commission and the governor shall appoint a replacement.

(b) The commission staff determines whether a commission member refuses to follow governing statutes or rules.

(9)(a) Following all applicant interviews, commission members shall determine by confidential ballot which applicants

will be certified to the governor as nominees.

(b) The Appellate Court Nominating Commission shall certify a list of seven names to the governor.

(c) Trial Court Nominating Commissions shall certify a list of five names to the governor.

(10)(a) Prior to certifying the list of nominees to the governor, the commission shall allow public comment on the nominees for a minimum of 10 days.

(b) Following the public comment, the commission may remove an applicant from the list of nominees if:

(i) the commission receives new information about an applicant that demonstrates the applicant is unfit to serve as a judge;

(ii) provides to the applicant being considered for removal from the list of nominees a copy of any written comments received during the public comment period about that applicant;

(iii) allows the applicant being considered for removal from the list the opportunity to respond to the information received during the public comment period; and

(iv) not less than one fewer than the total number of commission members at the meeting vote in favor of removing the applicant from the list of nominees.

(d) If the commission removes an applicant from the list of nominees the commission shall select another nominee from among the interviewed applicants and again allow public comment on the nominees for a minimum of 10 days.

R356-2-8. Certifying the List of Nominees.

(1) After the commission has determined which applicants to include in the list of nominees, it shall deliver the list of nominees to the governor, the president of the Senate and the Office of Legislative Research and General Counsel by letter from the chair of the commission.

(2) Commission staff shall deliver to the governor a copy of the complete application and all related documents for each nominee.

(3)(a) If a nominee withdraws before the governor has made an appointment, the commission may, at the request of the governor, nominate a replacement if it can do so before the expiration of the commission's original 45-day deadline.

(b) Unless time permits, the commission does not need to publish the name of the replacement nominee for public comment.

R356-2-9. Conflicts of Interest.

(1) Commission members shall disclose during the organizational meeting the existence and nature of a relationship with an applicant that may impact the commission member's ability to fairly and impartially evaluate the applicant or any other applicant.

(2)(a) A commission member who believes they have a relationship with an applicant that will impact their ability to fairly and impartially evaluate an applicant shall recuse themself from the nominating process.

(b) If a commission member discloses a relationship with an applicant and does not recuse themself from the nominating process, the commission may, by majority vote, disqualify the commission member from participation if the commission believes the relationship will impact the commission member's ability to fairly and impartially evaluate an applicant.

(c) A commission member who has recused themself or been disqualified by the commission may rejoin the nominating process if:

(i) the applicant with whom the commission member has a relationship is no longer being considered by the commission; and

(ii) the commission decides, by majority vote, to allow the commission member to participate.

(3) A commission member who is related to an applicant within the third degree shall be disqualified from the nominating process.

R356-2-10. Evaluation Criteria.

(1) In addition to criteria established by the Utah Constitution and the Utah Code Annotated, commission members shall during the nomination process consider the applicants':

(a) integrity;
(b) legal knowledge and ability;
(c) professional experience;
(d) judicial temperament;
(e) work ethic;
(f) financial responsibility;
(g) public service;
(h) ability to perform the work of a judge; and
(i) impartiality.

(2) When evaluating applicants for a juvenile court judge position, commission members shall consider the applicants' interest in, understanding of, and experience with the issues and problems facing children and families.

(3) When evaluating applicants for an appellate court position, commission members shall consider the applicants' ability to give and receive criticism of opinions and arguments without taking offense.

(4) When deciding among applicants for any judicial position whose qualifications, taken as a whole, appear in all other respects to be comparable, it is relevant to consider the background and experience of the applicants in relation to the current composition of the bench for which the appointment is being made.

(5) Unless otherwise provided by statute, members of trial court nominating commissions may not decline to interview an applicant or decline to nominate an applicant based primarily on the geographic location of the applicant's residence or the geographic location of the applicant's employment.

R356-2-11. Confidentiality.

(1) All applications and related documents for a judicial vacancy, names of applicants and all discussions during commission meetings are confidential.

(2)(a) Except as provided in R356-2-8(2) and in this Subsection (2) or as otherwise required by law, commission members and commission staff shall not disclose the details of applications or the details of commission discussions to any person other than commission members or commission staff.

(b) Commission members may disclose the names of applicants only as necessary to make inquiries regarding the qualifications of applicants.

(3)(a) Commission members shall return all applications and related documents to commission staff at the conclusion of the nomination process.

(b) Notes taken by a commission member are not returned to commission staff.

(c) Commission staff shall retain one copy of the application materials in accordance with an approved retention schedule and shall destroy other copies of the application materials.

(4) Commission staff shall destroy all ballots used during the nomination process.

R356-2-12. Notice that a Judge is Removed or Intends to Resign or Retire.

The Administrative Office of the Courts shall immediately notify the governor and CCJJ if it learns that a state judge:

(1) has submitted formal notice of intent to retire;
(2) has submitted formal notice of intent to resign;
(3) has been removed from office: or
(4) has otherwise vacated the judicial office.

KEY: judicial nominating commissions, judges
April 2, 2018 78A-10-103(1)
Notice of Continuation June 26, 2015

R380. Health, Administration.
R380-250. HIPAA Privacy Rule Implementation.
R380-250-1. Authority and Purpose.

(1) This rule implements provisions required by 45 CFR Part 164, subpart E, dealing with the treatment of certain individually identifiable health information held by the Department of Health.

(2) This rule is authorized by Utah Code Sections 26-1-5 and 26-1-17.

R380-250-2. Definitions.

As used in this rule:

(1) "Access" means an eligibility query either telephonically or electronically. This does not include direct access to databases.

(2) "Covered program" means the smallest agency or program unit within the Department responsible for carrying out a covered function as that term is used in 45 CFR 164.501.

(3) "HIPAA Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information found in 45 CFR Part 160 and Subparts A and E of Part 164.

(4) "Individual" means a natural person. In the case of a individual without legal capacity or a deceased person, the personal representative of the individual.

R380-250-3. General Compliance.

(1) This rule applies only to those functions of the Department that are covered functions as that term is used in 45 CFR Part 164.

(2) Covered programs shall comply with the privacy requirements of 45 CFR Part 164, Subpart E in dealing with individually identifiable health information and the subjects of that information.

R380-250-4. Changes to Rule.

The Department reserves the right to alter this rule and its notices of privacy practices required by the HIPAA Privacy Rule.

R380-250-5. Sanctions, Retaliation.

(1) An employee of a covered program may be disciplined for failure to comply with the HIPAA Privacy Rule requirements found in 45 CFR Part 164, Subpart E. Discipline may include termination and civil or criminal prosecution.

(2) An employee of a covered program may not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against any person for exercising any right established by the HIPAA Privacy Rule or for opposing in good faith any act or practice made unlawful by the HIPAA Privacy Rule.

R380-250-6. Waiver of Rights Prohibited.

A covered program may not require individuals to waive their rights under 45 CFR 160.306 or 45 CFR Part 164, Subpart E as a condition of the provision of treatment, payment, health plan enrollment, or eligibility for benefits.

R380-250-7. Complaints.

(1) An individual may seek a review of a covered program's policies and procedures or its compliance with such policies and procedures through informal contact with the covered program.

(2) An individual may file a formal complaint concerning a covered program's policies and procedures implementing 45 CFR Part 164, Subpart E or its compliance with such policies and procedures or the requirements of 45 CFR Part 164, Subpart E by filing with the Office of the Executive Director of the Department a request for program action meeting the requirements of the Utah Administrative Procedures Act.

R380-250-8. Right to Request Privacy Protection.

(1) An individual may request restrictions on use and disclosure of protected health information as permitted in 45 CFR 164.522 by submitting a written request to the designated privacy officer for the covered program.

(2) The decision whether to grant the request, documentation of any restrictions, alternate communication methods, and conditions on providing confidential communications shall be in accordance with 45 CFR 164.522.

R380-250-9. Individual Access to Protected Health Information.

(1) An individual may request access to protected health information as permitted in 45 CFR 164.524 by submitting a written request to the designated privacy officer for the covered program.

(2) The right to access, decision whether to grant access, review of denials, timeliness of responses, form of access, time and manner of access, documentation and other required responses shall be in accordance with 45 CFR 164.524.

R380-250-10. Amendment of Protected Health Information.

(1) An individual may request amendment to protected health information about that individual that the individual believes is incorrect as permitted in 45 CFR 164.526 by submitting a written request to the designated privacy officer for the covered program.

(2) The decision whether to grant the request, the time frames for action by the covered program, amendment of the record, requirements for denial, and acting on notices of amendment from third parties shall be in accordance with 45 CFR 164.526.

R380-250-11. Accounting for Disclosures.

(1) An individual may request an accounting of disclosures of protected health information as permitted in 45 CFR 164.528 by submitting a written request to the designated privacy officer for the covered program.

(2) The content of the accounting and the provision of the accounting, shall be in accordance with 45 CFR 164.528.

R380-250-12. Provider Notice of Privacy Practices.

A Medicaid provider or a Children's Health Insurance Program (CHIP) provider shall not access the Medicaid database or the CHIP eligibility database, unless the provider's notice of privacy practices contains a statement that the provider either has, or may submit personally identifiable information about the patient to the Medicaid eligibility database or to the CHIP eligibility database.

KEY: HIPAA, privacy

August 7, 2013	**26-1-5**
Notice of Continuation April 10, 2018	**26-1-17**

R382. Health, Children's Health Insurance Program.
R382-1. Benefits and Administration.
R382-1-1. Authority and Purpose.

This rule implements the Children's Health Insurance Program under Title XXI of the Social Security Act, as adopted in the state under Title 26, Chapter 40. It is authorized by Section 26-40-103.

R382-1-2. Definitions.

The definitions found in Title 26, Chapter 40 apply to this rule. In addition,

(1) "Applicant" means a child under the age of 19 on whose behalf an application has been made for benefits under the Children's Health Insurance Program (CHIP), but who is not an enrollee.

(2) "Department" means the Utah Department of Health.

(3) "Enrollee" means a child under the age of 19 who has applied for and has been found eligible for benefits under CHIP.

R382-1-3. Nature of Program and Benefits.

(1) CHIP provides reimbursement to medical providers for the services they render to a child who meets the eligibility and application requirements of Rule R382-10. CHIP provides limited benefits as described in this rule. The Department provides reimbursement coverage under the program only for benefits and levels of coverage for each program benefit:

(a) as provided in rule governing CHIP;

(b) as described and limited in Section 6.2 of the State Plan for the Children's Health Insurance Program, April 17. 2009 ed., which is adopted and incorporated by reference.

(2) CHIP is not health insurance. A relationship with the Department as the insurer and the enrollee as the insured does not exist under this program.

R382-1-4. Limitation of Abortion Benefits.

The Department may only cover abortion in accordance with the provisions of 42 U.S.C. Sec. 1397ee.

R382-1-5. Providers.

The Department requires a child to enroll in one of the managed care organizations (MCO) that contracts with the Department under the program.

R382-1-6. Reimbursement.

(1) The Department shall reimburse only for benefits as limited in its contracts with the MCOs.

(2) Payment for services by the contracted MCO and enrollee co-payment, if any, constitutes full payment for services. A provider may not bill or collect any additional monies for services rendered.

R382-1-7. Cost Sharing.

A provider may require an enrollee to pay a co-payment equal to that listed in Section 8 of the State Plan for the Children's Health Insurance Program, April 17, 2009 ed., which is adopted and incorporated by reference.

R382-1-8. Agency Conferences, Fair Hearings and Appeals.

(1) An applicant or enrollee may request an agency conference in accordance with Section R414-301-5 at any time to resolve a problem without requesting an agency action under the Utah Administrative Procedures Act (UAPA).

(2) The applicant or enrollee, parent, legal guardian, or authorized representative may request an agency action, also called a fair hearing, if he disagrees with an agency decision regarding the individual's eligibility. The request for a fair hearing must be in accordance with the provisions and time limits of Section R414-301-6.

(3) The Department of Workforce Services (DWS) shall conduct fair hearings on eligibility in accordance with the provisions of Section R414-301-6.

(4) If an enrollee disagrees with a decision of the MCO regarding a covered benefit or service, the enrollee may appeal the decision through the MCO.

(a) An enrollee must exhaust grievance remedies with the MCO before he requests an agency action from the Department.

(b) The enrollee may file an appeal with the Department if the enrollee disagrees with the MCO's resolution. The enrollee must file the appeal within 60 days of the date that the MCO sends the resolution notice.

(c) The Department shall conduct a review of the MCO's decision in accordance with the provisions of 42 CFR 438.408 and issue a final decision to the enrollee and the MCO.

(d) The Department shall conduct all appeals in accordance with UAPA.

(e) The enrollee may continue to receive benefits if the enrollee meets the conditions of 42 CFR 438.420.

KEY: children's health benefits, fair hearings
June 16, 2011 26-1-5
Notice of Continuation April 11, 2018 26-40-103

R382. Health, Children's Health Insurance Program.
R382-10. Eligibility.
R382-10-1. Authority.

(1) This rule is authorized by Title 26, Chapter 40.

(2) The purpose of this rule is to set forth the eligibility requirements for coverage under the Children's Health Insurance Program (CHIP).

R382-10-2. Definitions.

(1) The Department adopts and incorporates by reference the definitions found in Subsections 2110(b) and (c) of the Compilation of Social Security Laws, in effect January 1, 2015.

(2) The Department adopts the definitions in Section R382-1-2. In addition, the Department adopts the following definitions:

(a) "American Indian or Alaska Native" means someone having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

(b) "Best estimate" means the eligibility agency's determination of a household's income for the upcoming eligibility period, based on past and current circumstances and anticipated future changes.

(c) "Children's Health Insurance Program" (CHIP) means the program for benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40.

(d) "Co-payment and co-insurance" means a portion of the cost for a medical service for which the enrollee is responsible to pay for services received under CHIP.

(e) "Due process month" means the month that allows time for the enrollee to return all verification, and for the eligibility agency to determine eligibility and notify the enrollee.

(f) "Eligibility agency" means the Department of Workforce Services (DWS) that determines eligibility for CHIP under contract with the Department.

(g) "Employer-sponsored health plan" means a health insurance plan offered by an employer either directly or through Utah's Health Marketplace (Avenue H).

(h) "Ex parte review" means a review process the agency conducts without contacting the recipient for information as defined in 42 CFR 457.343.

(i) "Federally Facilitated Marketplace" (FFM) means the entity individuals can access to enroll in health insurance and apply for assistance from insurance affordability programs such as Advanced Premium Tax Credits, Medicaid and CHIP.

(j) "Modified Adjusted Gross Income" (MAGI) means the income determined using the methodology defined in 42 CFR 435.603(e).

(k) "Presumptive eligibility" means a period of time during which a child may receive CHIP benefits based on preliminary information that the child meets the eligibility criteria.

(l) "Quarterly Premium" means a payment that enrollees must pay every three months to receive coverage under CHIP.

(m) "Review month" means the last month of the eligibility certification period for an enrollee during which the eligibility agency determines an enrollee's eligibility for a new certification period.

(n) "Utah's Premium Partnership for Health Insurance" or "UPP" means the program described in Rule R414-320.

R382-10-3. Actions on Behalf of a Minor.

(1) A parent, legal guardian or an adult who assumes responsibility for the care or supervision of a child who is under 19 years of age may apply for CHIP enrollment, provide information required by this rule, or otherwise act on behalf of a child in all respects under the statutes and rules governing the CHIP program.

(2) If the child's parent, responsible adult, or legal guardian wants to designate an authorized representative, he must so indicate in writing to the eligibility agency.

(3) A child who is under 19 years of age and is independent of a parent or legal guardian may assume these responsibilities. The eligibility agency may not require a child who is independent to have an authorized representative if the child can act on his own behalf; however, the eligibility agency may designate an authorized representative if the child needs a representative but cannot make a choice either in writing or orally in the presence of a witness.

(4) Where the statutes or rules governing the CHIP program require a child to take an action, the parent, legal guardian, designated representative or adult who assumes responsibility for the care or supervision of the child is responsible to take the action on behalf of the child. If the parent or adult who assumes responsibility for the care or supervision of the child fails to take an action, the failure is attributable as the child's failure to take the action.

(5) The eligibility agency shall consider notice to the parent, legal guardian, designated representative, or adult who assumes responsibility for the care or supervision of a child to be notice to the child. The eligibility agency shall send notice to a child who assumes responsibility for himself.

R382-10-4. Applicant and Enrollee Rights and Responsibilities.

(1) A parent or an adult who assumes responsibility for the care or supervision of a child may apply or reapply for CHIP benefits on behalf of a child. A child who is independent may apply on his own behalf.

(2) If a person needs assistance to apply, the person may request assistance from a friend, family member, the eligibility agency, or outreach staff.

(3) The applicant must provide verification requested by the eligibility agency to establish the eligibility of the child, including information about the parents.

(4) Anyone may look at the eligibility policy manuals located on-line or at any eligibility agency office, except at outreach or telephone locations.

(5) If the eligibility agency determines that the child received CHIP coverage during a period when the child was not eligible for CHIP, the parent, child, or legal guardian who arranges for medical services on behalf of the child must repay the Department for the cost of services.

(6) The parent or child, or other responsible person acting on behalf of a child must report certain changes to the eligibility agency.

(a) The following changes are reportable within 10 calendar days of the day of the change:

(i) An enrollee begins to receive coverage or to have access to coverage under a group health plan or other health insurance coverage;

(ii) An enrollee leaves the household or dies;

(iii) An enrollee or the household moves out of state;

(iv) Change of address of an enrollee or the household; and

(v) An enrollee enters a public institution or an institution for mental diseases.

(b) Certain changes are reportable as part of the review process if these changes occurred anytime during the certification period and before the 10-day notice due date in the review month. A change in the following must be reported as part of the review process for any household member:

(i) Income source;

(ii) Gross income of $25 or more;

(iii) Tax filing status;

(iv) Pregnancy or termination of a pregnancy;

(v) Number of dependents claimed as tax dependents;

(vi) Earnings of a child;

(vii) Marital status; and

(viii) Student status of a child under 24 years of age.

(7) An applicant and enrollee may review the information that the eligibility agency uses to determine eligibility.

(8) An applicant and enrollee have the right to be notified about actions that the agency takes to determine their eligibility or

continued eligibility, the reason the action was taken, and the right to request an agency conference or agency action as defined in Section R414-301-6 and Section R414-301-7.

(9) An enrollee in CHIP must pay quarterly premiums to the agency, and co-payments or co-insurance amounts to providers for medical services that the enrollee receives under CHIP.

R382-10-5. Verification and Information Exchange.

(1) The provisions of Section R414-308-4 apply to applicants and enrollees of CHIP.

(2) The Department and the eligibility agency shall safeguard applicant and enrollee information in accordance with Section R414-301-4.

(3) The Department or the eligibility agency may release information concerning applicants and enrollees and their households to other state and federal agencies to determine eligibility for other public assistance programs.

(4) The Department adopts and incorporates by reference 42 CFR 457.348, 457.350, and 457.380, October 1, 2012 ed.

(5) The Department shall enter into an agreement with the Centers for Medicare and Medicaid Services (CMS) to allow the FFM to screen applications and reviews submitted through the FFM for CHIP eligibility.

(a) The agreement must provide for the exchange of file data and eligibility status information between the Department and the FFM as required to determine eligibility and enrollment in insurance affordability programs, and eligibility for advance premium tax credits and reduced cost sharing.

(b) The agreement applies to agencies under contract with the Department to provide CHIP eligibility determination services.

(6) The Department and the eligibility agency shall release information to the Title IV-D agency and Social Security Administration to determine benefits.

R382-10-6. Citizenship and Alienage.

(1) To be eligible to enroll in CHIP, a child must be a citizen or national of the United States (U.S.) or a qualified alien.

(2) The provisions of Section R414-302-3 regarding citizenship and alien status requirements apply to applicants and enrollees of CHIP.

(3) The Department elects to cover applicants and recipients who are under 19 years of age and lawfully present as defined in 42 U.S.C. 1396b(v) and 42 U.S.C. 1397gg(e)(1), and referenced in Section CS18 of the Utah CHIP State Plan.

R382-10-7. Utah Residence.

(1) The Department adopts and incorporates by reference, 42 CFR 457.320(d), October 1, 2012 ed. A child must be a Utah resident to be eligible to enroll in the program.

(2) An American Indian or Alaska Native child in a boarding school is a resident of the state where his parents reside. A child in a school for the deaf and blind is a resident of the state where his parents reside.

(3) A child is a resident of the state if he is temporarily absent from Utah due to employment, schooling, vacation, medical treatment, or military service.

(4) The child need not reside in a home with a permanent location or fixed address.

R382-10-8. Residents of Institutions.

(1) Residents of institutions described in Section 2110(b)(2)(A) of the Compilation of Social Security Laws are not eligible for the program.

(2) A child under the age of 18 is not a resident of an institution if he is living temporarily in the institution while arrangements are being made for other placement.

(3) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.

R382-10-9. Social Security Numbers.

(1) The eligibility agency may request an applicant to provide the correct Social Security Number (SSN) or proof of application for a SSN for each household member at the time of application for the program. The eligibility agency shall use the SSN in accordance with the requirements of 42 CFR 457.340(b), October 1, 2012 ed., which is incorporated by reference.

(2) The eligibility agency shall require that each applicant claiming to be a U.S. citizen or national provide their SSN for the purpose of verifying citizenship through the Social Security Administration in accordance with Section 2105(c)(9) of the Compilation of the Social Security Laws.

(3) The eligibility agency may request the SSN of a lawful permanent resident alien applicant, but may not deny eligibility for failure to provide an SSN.

(4) The Department may assign a unique CHIP identification number to an applicant or beneficiary who meets one of the exceptions to the requirement to provide an SSN.

R382-10-10. Creditable Health Coverage.

(1) To be eligible for enrollment in the program, a child must meet the requirements of Sections 2110(b) of the Compilation of Social Security Laws.

(2) A child who is covered under a group health plan or other health insurance that provides coverage in Utah, including coverage under a parent's or legal guardian's employer, as defined in 29 CFR 2590.701-4, July 1, 2013 ed., is not eligible for CHIP assistance.

(3) A child who has access to health insurance coverage, where the cost to enroll the child in the least expensive plan offered by the employer is less than 5% of the countable MAGI-based income for the individual, is not eligible for CHIP. The child is considered to have access to coverage even when the employer only offers coverage during an open enrollment period, and the child has had at least one chance to enroll.

(4) An eligible child who has access to an employer-sponsored health plan, where the cost to enroll the child in the least expensive plan offered by the employer equals or exceeds 5% of the countable MAGI-based income for the individual may choose to enroll in either CHIP or UPP.

(a) To enroll in UPP, the child must meet UPP eligibility requirements.

(b) If the UPP eligible child enrolls in the employer-sponsored health plan or COBRA coverage, but the plan does not include dental benefits, the child may receive dental-only benefits through CHIP.

(c) If the employer-sponsored health plan or COBRA coverage includes dental, the applicant may choose to enroll the child in the dental plan and receive an additional reimbursement from UPP, or receive dental-only benefits through CHIP.

(d) A child enrolled in CHIP who gains access to or enrolls in an employer-sponsored health plan may switch to the UPP program if the child meets UPP eligibility requirements.

(5) The cost of coverage includes the following:

(a) the premium;

(b) a deductible, if the employer-sponsored plan has a deductible; and

(c) the cost to enroll the employee, if the employee must be enrolled to enroll the child.

(6) Subject to the provisions published in 42 CFR 457.805(b), October 1, 2015 ed., which the Department adopts and incorporates by reference, the eligibility agency shall deny eligibility and impose a 90-day waiting period for enrollment under CHIP if the applicant or a custodial parent voluntarily terminates health insurance that provides coverage in Utah within the 90 days before the application date. In addition, the agency may not apply a 90-day waiting period in the following situations:

(a) a non-custodial parent voluntarily terminates coverage;

(b) the child is voluntarily terminated from insurance that does not provide coverage in Utah;

(c) the child is voluntarily terminated from a limited health insurance plan;

(d) a child is terminated from a custodial parent's insurance because ORS reverses the forced enrollment requirement due to the insurance being unaffordable;

(e) voluntary termination of COBRA;

(f) voluntary termination of Utah Comprehensive Health Insurance Pool coverage; or

(g) voluntary termination of UPP reimbursed, employer-sponsored coverage.

(7) If the 90-day ineligibility period for CHIP ends in the month of application, or by the end of the month that follows, the eligibility agency shall determine the applicant's eligibility.

(a) If eligible, enrollment in CHIP begins the day after the 90-day ineligibility period ends.

(b) If the 90-day ineligibility period does not end by the end of the month that follows the application month, the eligibility agency shall deny CHIP eligibility.

(8) The Department shall comply with the provisions of enrollment after the waiting period in accordance with 42 CFR 457.340, October 1, 2015 ed., which the Department adopts and incorporates by reference.

(9) A child with creditable health coverage operated or financed by Indian Health Services is not excluded from enrolling in CHIP.

(10) A child who has access to state-employee health insurance as defined in 42 CFR 457.310 is not eligible for CHIP assistance.

R382-10-11. Household Composition and Income Provisions.

(1) The Department adopts and incorporates by reference, 42 CFR 457.315 (October 1, 2015), regarding the household composition and income methodology to determine eligibility for CHIP.

(a) The eligibility agency shall count in the household size, the number of unborn children that a pregnant household member expects to deliver.

(b) The Department elects the option in 42 CFR 435.603(f)(3)(iv)(B).

(c) The eligibility agency will treat separated spouses, who are not living together, as separate households.

(2) Any individual described in Subsection R382-10-11(1) who is temporarily absent solely by reason of employment, school, training, military service, or medical treatment, or who will return home to live within 30 days from the date of application, is part of the household.

(3) The eligibility agency may not count as income any payments from sources that federal law specifically prohibits from being counted as income to determine eligibility for federally-funded programs.

(4) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(5) The eligibility agency shall count as income cash support received by an individual when:

(a) it is received from the tax filer who claims a tax exemption for the individual;

(b) the individual is not a spouse or child of the tax filer; and

(c) the cash support exceeds a nominal amount set by the Department.

(6) The eligibility agency determines eligibility by deducting an amount equal to 5% of the federal poverty guideline, as defined in 42 CFR 435.603(d)(4).

R382-10-12. Age Requirement.

(1) A child must be under 19 years of age sometime during the application month to enroll in the program. An otherwise eligible child who turns 19 years of age during the application month may receive CHIP for the application month and the four-day grace period.

(2) The month in which a child turns 19 years of age is the last month of eligibility for CHIP enrollment.

R382-10-13. Budgeting.

(1) The eligibility agency determines countable household income according to MAGI-based methodology as required by 42 CFR 457.315.

(2) The eligibility agency shall determine a child's eligibility and cost sharing requirements prospectively for the upcoming eligibility period at the time of application and at each renewal for continuing eligibility.

(a) The eligibility agency determines prospective eligibility by using the best estimate of the household's average monthly income expected to be received or made available to the household during the upcoming eligibility period.

(b) The eligibility agency shall include in its estimate, reasonably predictable income changes such as seasonal income or contract income, to determine the average monthly income expected to be received during the certification period.

(c) The eligibility agency prorates income that is received less often than monthly over the eligibility period to determine an average monthly income.

(3) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The eligibility agency may use a combination of methods to obtain the most accurate best estimate. The best estimate may be a monthly amount that is expected to be received each month of the eligibility period, or an annual amount that is prorated over the eligibility period. Different methods may be used for different types of income received in the same household.

(4) The eligibility agency determines farm and self-employment income by using the individual's recent tax return forms or other verifications the individual can provide. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the eligibility agency may request income information from a recent time period during which the individual had farm or self-employment income. The eligibility agency deducts the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses to determine net self-employment income, if those expenses are expected to occur in the future.

R382-10-14. Assets.

An asset test is not required for CHIP eligibility.

R382-10-15. Application and Eligibility Reviews.

(1) The Department adopts and incorporates by reference 42 CFR 457.330, 457.340, 457.343, and 457.348, October 1, 2013 ed.

(2) The provisions of Section R414-308-3 apply to applicants for CHIP, except for Subsection R414-308-3(10) and the three months of retroactive coverage.

(3) Individuals can apply without having an interview. The eligibility agency may interview applicants and enrollee's, the parents or spouse, and any adult who assumes responsibility for the care or supervision of the child, when necessary to resolve discrepancies or to gather information that cannot be obtained otherwise.

(4) The eligibility agency shall complete a periodic review of an enrollee's eligibility for CHIP medical assistance in accordance with the requirements of 42 CFR 457.343.

(5) If an enrollee fails to respond to a request for information to complete the review during the review month, the agency shall end the enrollee's eligibility effective at the end of the review month and send proper notice to the enrollee.

(a) If the enrollee responds to the review or reapplies within three calendar months of the review closure date, the eligibility agency shall treat the response as a new application without

requiring the enrollee to reapply. The application processing period then applies for this new request for coverage.

(b) If the enrollee is determined eligible based on this reapplication, the new certification period begins the first day of the month in which the enrollee contacts the agency to complete the review if verification is provided within the application processing period. The four day grace period may apply. If the enrollee fails to return verification within the application processing period, or if the enrollee is determined ineligible, the eligibility agency shall send a denial notice to the enrollee.

(c) The eligibility agency may not continue eligibility while it makes a new eligibility determination.

(6) Except as defined in R382-10-15(5), the enrollee must reapply for CHIP if the enrollee's case is closed for one or more calendar months.

(7) If the eligibility agency sends proper notice of an adverse decision during the review month, the agency shall change eligibility for the month that follows.

(8) If the eligibility agency does not send proper notice of an adverse change for the month that follows, the agency shall extend eligibility to that month. The eligibility agency shall send proper notice of the effective date of an adverse decision. The enrollee does not owe a premium for the due process month.

(9) If the enrollee responds to the review in the review month and the verification due date is in the month that follows, the eligibility agency shall extend eligibility to the month that follows. The enrollee must provide all verification by the verification due date.

(a) If the enrollee provides all requested verification by the verification due date, the eligibility agency shall determine eligibility and send proper notice of the decision.

(b) If the enrollee does not provide all requested verification by the verification due date, the eligibility agency shall end eligibility effective at the end of the month in which the eligibility agency sends proper notice of the closure.

(c) If the enrollee returns all verification after the verification due date and before the effective closure date, the eligibility agency shall treat the date that it receives all verification as a new application date. The eligibility agency shall determine eligibility and send a notice to the enrollee.

(d) The eligibility agency may not continue eligibility while it determines eligibility. The new certification date for the application is the day after the effective closure date if the enrollee is found eligible.

(10) The eligibility agency shall provide ten-day notice of case closure if the enrollee is determined to be ineligible or if the enrollee fails to provide verification by the verification due date.

(11) If eligibility for CHIP enrollment ends, the eligibility agency shall review the case for eligibility under any other medical assistance program without requiring a new application. The eligibility agency may request additional verification from the household if there is insufficient information to make a determination.

(12) An applicant must report at application and review whether any of the children in the household for whom enrollment is being requested have access to or are covered by a group health plan, other health insurance coverage, or a state employee's health benefits plan.

(13) The eligibility agency shall deny an application or review if the enrollee fails to respond to questions about health insurance coverage for children whom the household seeks to enroll or renew in the program.

R382-10-16. Eligibility Decisions.

(1) The Department adopts and incorporates by reference 42 CFR 457.350, October 1, 2013, ed., regarding eligibility screening.

(2) The eligibility agency shall determine eligibility for CHIP within 30 days of the date of application. If the eligibility agency cannot make a decision in 30 days because the applicant fails to take a required action and requests additional time to complete the application process, or if circumstances beyond the eligibility agency's control delay the eligibility decision, the eligibility agency shall document the reason for the delay in the case record.

(3) The eligibility agency may not use the time standard as a waiting period before determining eligibility, or as a reason for denying eligibility when the agency does not determine eligibility within that time.

(4) The eligibility agency shall complete a determination of eligibility or ineligibility for each application unless:

(a) the applicant voluntarily withdraws the application and the eligibility agency sends a notice to the applicant to confirm the withdrawal;

(b) the applicant died; or

(c) the applicant cannot be located or does not respond to requests for information within the 30-day application period.

(5) The eligibility agency shall redetermine eligibility every 12 months.

(6) At application and review, the eligibility agency shall determine if any child applying for CHIP enrollment is eligible for coverage under Medicaid.

(a) A child who is eligible for Medicaid coverage is not eligible for CHIP.

(b) An eligible child who must meet a spenddown to receive Medicaid and chooses not to meet the spenddown may enroll in CHIP.

(7) If an enrollee asks for a new income determination during the CHIP certification period and the eligibility agency finds the child is eligible for Medicaid, the agency shall end CHIP coverage and enroll the child in Medicaid.

R382-10-17. Effective Date of Enrollment and Renewal.

(1) Subject to the limitations in Section R414-306-6, Section R382-10-10, and the provisions in Subsection R414-308-3(7), the effective date of CHIP enrollment is the first day of the application month.

(2) If the eligibility agency receives an application during the first four days of a month, the agency shall allow a grace enrollment period that begins no earlier than four days before the date that the agency receives a completed and signed application.

(a) If the eligibility agency allows a grace enrollment period that extends into the month before the application month, the days of the grace enrollment period do not count as a month in the 12-month enrollment period.

(b) During the grace enrollment period, the individual must receive medical services, meet eligibility criteria, and have an emergency situation that prevents the individual from applying. The Department may not pay for any services that the individual receives before the effective enrollment date.

(3) For a family who has a child enrolled in CHIP and who adds a newborn or adopted child, the effective date of enrollment is the date of birth or placement for adoption if the family requests the coverage within 60 days of the birth or adoption. If the family makes the request more than 60 days after the birth or adoption, enrollment in CHIP becomes effective the first day of the month in which the date of report occurs, subject to the limitations in Section R414-306-6, Section R382-10-10, and the provisions of Subsection R382-10-17(2).

(4) For an individual who transfers from the Federally Facilitated Marketplace (FFM), the effective date of enrollment to add a newborn or adopted child is the date of birth or placement for adoption if the individual requests FFM coverage within 60 days of the birth or adoption. If the request is more than 60 days after the birth or adoption, enrollment in CHIP becomes effective the first day of the month in which the date of report occurs, subject to the limitations in Section R414-306-6, Section R382-10-10, and the provisions of Subsection R382-10-17(2).

(5) The effective date of enrollment for a new certification period after the review month is the first day of the month after the

review month, if the review process is completed by the end of the review month. If a due process month is approved, the effective date of enrollment for a renewal is the first day of the month after the due process month if the review process is completed by the end of the due process month. The enrollee must complete the review process and continue to be eligible to be reenrolled in CHIP at review.

R382-10-18. Enrollment Period and Benefit Changes.

(1) Subject to the provisions in Subsection R382-10-18(2), a child determined eligible for CHIP receives 12 months of coverage that begins with the effective month of enrollment.

(2) CHIP coverage may end or change before the end of the 12-month certification period if the child:

(a) turns 19 years of age;

(b) moves out of the state;

(c) becomes eligible for Medicaid;

(d) leaves the household;

(e) is not eligible, or is eligible for a different plan due to a change described in Subsection R382-10-4(6)(b);

(f) begins to be covered under a group health plan or other health insurance coverage;

(g) gains access to state-employee health benefits as defined in 42 CFR 457.310;

(h) enters a public institution or an institution for mental disease;

(i) fails to respond to a request to verify access to employer-sponsored health coverage;

(j) fails to respond to a request to verify reportable changes as described in Subsection R382-10-4(6)(b); or

(k) does not pay the quarterly premium.

(3) The agency evaluates changes and may re-determine eligibility when it receives a change report as described in Subsection R382-10-4(6). If the agency requests verification of the change, the agency shall give the client at least 10 days to provide verification. The agency shall provide proper notice of an adverse action.

(4) If a client reports a change that occurs during the certification period and requests a redetermination, the agency shall re-determine eligibility.

(a) If an enrollee gains access to health insurance under an employer-sponsored plan or COBRA coverage, the enrollee may switch to UPP. The enrollee must report the health insurance within 10 calendar days of enrolling, or within 10 calendar days of when coverage begins, whichever is later. The employer-sponsored plan must meet UPP criteria.

(b) If the change would cause an adverse action, eligibility shall remain unchanged through the end of the certification period.

(c) If the change results in a better benefit, the agency shall take the following actions:

(i) If the change makes the enrollee eligible for Medicaid, the eligibility agency shall end CHIP eligibility and enroll the child in Medicaid.

(ii) If the change results in a lower premium, the decrease is effective as follows:

(A) The premium change is effective the month of report if income decreased that month and the family provides timely verification of income;

(B) The premium change is effective the month following the report month if the decrease in income is for the following month and the family provides timely verification of income;

(C) The premium change is effective the month in which verification of the decrease in income is provided, if the family does not provide timely verification of income.

(5) Failure to make a timely report of a reportable change may result in an overpayment of benefits and case closure.

R382-10-19. Quarterly Premiums.

(1) Each family with children enrolled in the CHIP program must pay a quarterly premium based on the countable income of the family during the first month of the quarter.

(a) The eligibility agency may not charge a premium to a child who is American Indian or Alaska Native.

(b) A family with countable income up to 150% of the federal poverty level must pay a quarterly premium of $30.

(c) A family with countable income greater than 150% and up to 200% of the federal poverty level must pay a quarterly premium of $75.

(d) The agency shall charge the family the lowest premium amount when the family has two or more children, and those children qualify for different quarterly premium amounts.

(2) The eligibility agency shall end CHIP coverage and assess a $15 late fee to a family who does not pay its quarterly premium by the premium due date.

(3) The agency may reinstate coverage if the family pays the premium and the late fee by the last day of the month immediately following the termination.

(4) A child is ineligible for CHIP for three months if CHIP is terminated for failure to pay the quarterly premium. The child must reapply at the end of the three months. If eligible, the agency shall approve eligibility without payment of the past due premiums or late fee.

(5) The eligibility agency may not charge the household a premium during a due process month associated with the periodic eligibility review.

(6) The eligibility agency shall assess premiums that are payable each quarter for each month of eligibility.

R382-10-20. Termination and Notice.

(1) The eligibility agency shall notify an applicant or enrollee in writing of the eligibility decision made on the application or periodic eligibility review.

(2) The eligibility agency shall notify an enrollee in writing ten calendar days before the effective date of an action that adversely affects the enrollee's eligibility.

(3) Notices under Section R382-10-20 shall provide the following information:

(a) the action to be taken;

(b) the reason for the action;

(c) the regulations or policy that support the action when the action is a denial, closure or an adverse change to eligibility;

(d) the applicant's or enrollee's right to a hearing;

(e) how an applicant or enrollee may request a hearing; and

(f) the applicant's or enrollee's right to represent himself, use legal counsel, a friend, relative, or other spokesperson.

(4) The eligibility agency need not give ten-day notice of termination if:

(a) the child is deceased;

(b) the child moves out-of- state and is not expected to return;

(c) the child enters a public institution or an institution for mental diseases; or

(d) the child's whereabouts are unknown and the post office has returned mail to indicate that there is no forwarding address.

R382-10-21. Case Closure or Withdrawal.

(1) The eligibility agency shall end a child's enrollment upon enrollee request or upon discovery that the child is no longer eligible. An applicant may withdraw an application for CHIP benefits any time before the eligibility agency makes a decision on the application.

(2) The eligibility agency shall comply with the requirements of 42 CFR 457.350(i), regarding transfer of the electronic file for the purpose of determining eligibility for other insurance affordability programs.

KEY: children's health benefits
January 17, 2017 26-1-5
Notice of Continuation April 11, 2018 26-40

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-52. Optometry Services.
R414-52-1. Introduction.

The Optometry Services Program provides a scope of services for Medicaid recipients in accordance with the Vision Care Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.

KEY: Medicaid, optometry
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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-53. Eyeglasses Services.
R414-53-1. Introduction.

The Eyeglasses Services Program provides a scope of services for Medicaid recipients in accordance with the Vision Care Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.

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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-60. Medicaid Policy for Pharmacy Program.
R414-60-1. Introduction.

The Medicaid Pharmacy program reimburses for covered outpatient drugs dispensed to eligible Medicaid clients by a pharmacy enrolled with Utah Medicaid pursuant to a prescription from an enrolled prescriber operating within the scope of the prescriber's license.

R414-60-2. Definitions.

(1) "Covered outpatient drug" means a drug that meets all of the following criteria:

(a) Requires a prescription for dispensing;

(b) Has a National Drug Code number;

(c) Is eligible for Federal Medical Assistance Percentages funds;

(d) Has been approved by the Food and Drug Administration; and

(e) Is listed in the nationally recognized drug pricing index under contract with the Department.

(2) "Full-benefit dual eligible beneficiary" means an individual who has Medicare and Medicaid benefits.

(3) "Rural pharmacy" means a pharmacy located in the state of Utah, which is outside of Weber County, Davis County, Utah County, and Salt Lake County.

(4) "Urban pharmacy" means a pharmacy located in Weber County, Davis County, Utah County, Salt Lake County, or in another state.

(5) "Usual and customary charge" is the lowest amount a pharmacy charges the general public for a covered outpatient drug, which reflects all advertised savings, discounts, special promotions, or any other program available to the general public.

R414-60-3. Client Eligibility Requirements.

(1) Medicaid covers prescription drugs for individuals who are categorically and medically needy under the Medicaid program.

(2) Outpatient drugs included in the Medicare Prescription Drug Benefit-Part D for full-benefit dual eligible beneficiaries will not be covered under Medicaid in accordance with Subsection 1935(a) of the Social Security Act. Certain limited drugs provided in accordance with Subsection 1927(d)(2) of the Social Security Act to all Medicaid recipients, but not included in the Medicare Prescription Drug Benefit-Part D, are payable by Medicaid.

(3) Outpatient drugs included in contracts with the Accountable Care Organization (ACO) must be obtained through the ACO for clients enrolled in an ACO.

R414-60-4. Program Coverage.

(1) Covered outpatient drugs eligible for Federal Medical Assistance Percentages funds are included in the pharmacy benefit; however, covered outpatient drugs may be subject to limitations and restrictions.

(2) In accordance with Subsection 58-17b-606(4), when a multi-source A-rated legend drug is available in the generic form, Medicaid will only reimburse for the generic form of the drug unless:

(a) reimbursing for the non-generic brand-name legend drug will result in a financial benefit to the State; or

(b) the treating physician demonstrates a medical necessity for dispensing the non-generic, brand-name legend drug.

(3) Prescriptions that are not executed electronically must be written on tamper-resistant prescription forms. Tamper-resistant prescription forms must include all of the following:

(a) One or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form;

(b) One or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription by the prescriber; and

(c) One or more industry-recognized features designed to prevent the use of counterfeit prescription forms.

(d) Documentation by the pharmacy of verbal confirmation of a prescription not written on a tamper resistant prescription form by the prescriber or the prescriber's agent satisfies the tamper-resistant requirement. Documentation of the verbal confirmation must include the date, time, and name of the individual who verified the validity of the prescription.

(e) Pharmacies must maintain documentation of receipt of a prescription by a Medicaid client or the client's authorized representative. The documentation must clearly identify the covered outpatient drug received by the client, the date the covered outpatient drug was received, and who received the covered outpatient drug.

(f) Claims for covered outpatient drugs not dispensed to a Medicaid client or the client's authorized representative within 10 days must be reversed and any payment from Medicaid must be returned.

R414-60-5. Limitations.

(1) Limitations may be placed on drugs in accordance with 42 U.S.C. 1396r-8 or in consultation with the Drug Utilization Review (DUR) Board. Limitations are included in the Pharmacy Services Provider Manual and attachments, incorporated by reference in Section R414-1-5, and may include:

(a) Quantity limits or cumulative limits for a drug or drug class for a specified period of time;

(b) Therapeutic duplication limits may be placed on drugs within the same or similar therapeutic categories;

(c) Step therapy, including documentation of therapeutic failure with one drug before another drug may be used; or

(d) Prior authorization.

(2) A covered outpatient drug that requires prior authorization may be dispensed for up to a 72-hour supply without obtaining prior authorization during a medical emergency.

(3) Drugs listed as non-preferred on the Preferred Drug List may require prior authorization as authorized by Section 26-18-2.4.

(4) Drugs may be restricted and are reimbursable only when dispensed by an individual pharmacy or pharmacies.

(5) Medicaid does not cover drugs not eligible for Federal Medical Assistance Percentages funds.

(6) Medicaid does not cover outpatient drugs included in the Medicare Prescription Drug Benefit-Part D for full-benefit dual eligible beneficiaries.

(7) Drugs provided to clients during inpatient hospital stays are not covered as an outpatient pharmacy benefit nor separately payable from the Medicaid payment for the inpatient hospital services.

(8) Medicaid covers only the following prescription cough and cold preparations meeting the definition of a covered outpatient drug:

(a) Guaifenesin with Dextromethorphan (DM) 600mg/30mg tablets;

(b) Guaifenesin with Hydrocodone 100mg/5mL liquid;

(c) Promethazine with Codeine liquid;

(d) Guaifenesin with Codeine 100mg/10mg/5mL liquid;

(e) Carbinoxamine with Pseudoephedrine 1mg/15mg/5mL liquid; and

(f) Carbinoxamine/Pseudoephedrine/DM 15mg/1mg/4mg/5mL liquid.

(9) Medicaid will pay for no more than a one-month supply of a covered outpatient drug per dispensing, except for the following:

(a) Medications included on the Utah Medicaid Three-Month Supply Medication List attachment to the Pharmacy Services Provider Manual may be covered for up to a three-month supply per dispensing. Medicaid clients eligible for Primary Care Network services under Rule R414-100 are not eligible to receive more than a one-month supply per dispensing.

(b) Prenatal vitamins for pregnant women, multiple vitamins with or without fluoride for children through five years of age, and fluoride supplements may be covered for up to a 90-day supply per dispensing.

(c) Medicaid may cover contraceptives for up to a three-month supply per dispensing.

(d) Medicaid may cover long-acting injectable antipsychotic drugs in accordance with Section R414-60-12 for up to a 90-day supply per dispensing.

(10) Medicaid will pay for a prescription refill only when 80% of the previous prescription has been exhausted, with the exception of narcotic analgesics. Medicaid will pay for a prescription refill for narcotic analgesics after 100% of the previous prescription has been exhausted.

(11) Medicaid does not cover the following drugs:

(a) Drugs not eligible for Federal Medical Assistance Percentages funds;

(b) Drugs for anorexia, weight loss or weight gain;

(c) Drugs to promote fertility;

(d) Drugs for the treatment of sexual or erectile dysfunction;

(e) Drugs for cosmetic purposes or hair growth;

(f) Vitamins; except for prenatal vitamins for pregnant women, vitamin drops for children through five years of age, and fluoride supplements;

(g) Over-the-counter drugs not included in the Utah Medicaid Over-the-Counter Drug List attachment to the Pharmacy Services Provider Manual;

(h) Drugs for which the manufacturer requires, as a condition of sale, that associated tests and monitoring services are purchased exclusively from the manufacturer or its designee;

(i) Drugs given by a hospital to a patient at discharge;

(j) Breast milk, breast milk substitutes, baby food, or medical foods, except for prescription metabolic products for congenital errors of metabolism;

(k) Drugs available only through single-source distribution programs, unless the distributor is enrolled with Medicaid as a pharmacy provider.

(12) Medicaid may only cover hemophilia clotting factor when it is dispensed by a single-contracted provider in accordance with the Utah Medicaid State Plan.

R414-60-6. Copayment Policy.

Medicaid clients are to pay any applicable copayment amount that complies with the requirements of the Utah Medicaid State Plan and Rule R414-1.

R414-60-7. Reimbursement.

(1) A pharmacy may not submit a charge to Medicaid that exceeds the pharmacy's usual and customary charge.

(2) Covered-outpatient drugs are reimbursed at the lesser of the following:

(a) The Wholesale Acquisition Cost;

(b) The Federal Upper Limit assigned by the Centers for Medicare and Medicaid Services;

(c) The Utah Maximum Allowable Cost; and

(d) The submitted ingredient cost.

(e) If a prescriber obtains prior authorization for a brand-name version of a multi-source drug in accordance with 42 CFR 447.512 or if a brand-name drug is covered because a financial benefit will accrue to the State in accordance with Section 58-17b-606, then Medicaid will not apply the Utah Maximum Allowable Cost or Federal Upper Limit to the claim.

(f) Pharmacies participating in the 340B program and using medications obtained through the 340B program to bill Medicaid must submit the actual acquisition cost of the medication on the claim.

(g) Pharmacies that participate in the Federal Supply Schedule and use medications obtained through the schedule to bill Utah Medicaid, must submit the actual acquisition cost of the medication on the claim unless the claim is reimbursed as a bundled charge or All Inclusive Rate.

(h) Pharmacies that obtain and use medications at a nominal price must submit the actual acquisition cost of the medication on the claim.

(i) The Utah Maximum Allowable Cost (UMAC) for drugs for which the Centers for Medicare and Medicaid Services (CMS) publishes a National Average Drug Acquisition Cost (NADAC), is the NADAC itself. The UMAC for which CMS does not publish a NADAC is calculated by the Department.

(3) Dispensing fees are as outlined in the Utah State Plan, Attachment 4.19-B as approved by CMS and as follows:

(a) Medicaid will pay the lesser of the assigned dispensing fee or the submitted dispensing fee;

(b) Medicaid will only pay one dispensing fee per 24 days per covered outpatient drug per pharmacy.

(4) Medicaid will pay the lesser of the sum of the allowed amount for the covered outpatient drug and dispensing fee or the billed charges.

(5) Immunizations provided to Medicaid clients who are at least 19 years of age will be paid for the cost of the immunization plus a dispensing fee. Medicaid will pay the lesser of the allowed or submitted charges.

(6) Immunizations provided to Medicaid clients who are 18 years old or younger will only be eligible for a dispensing fee with no reimbursement for the immunization. Immunizations for Medicaid clients who are 18 years old or younger must be obtained through the Vaccines for Children program.

(7) Blood glucose test strips listed as preferred on the Utah Medicaid Preferred Drug List will be reimbursed at the lesser of the Wholesale Acquisition Cost with no dispensing fee or the billed charges.

(8) In accordance with the Utah Medicaid State Plan, the Department may only reimburse a single-contracted provider for the purchase of hemophilia clotting factor.

R414-60-8. Mandatory Patient Counseling.

(1) Medicaid clients, or their representatives, must receive counseling that fulfills the requirements of 42 U.S.C. 1396r-8 each time a covered outpatient medication is dispensed.

(2) Counseling is not required if a Medicaid client, or their representative, refuses the offer to counsel.

(3) The offer to counsel must be documented and producible upon request.

R414-60-9. New Drug Products.

A new drug product, including a new size or strength of an existing approved product, may be reviewed by the DUR Board to determine whether the drug should be subject to restrictions or limitations. New drugs may be withheld from coverage for no more than twelve weeks while restrictions or limitations are being evaluated.

R414-60-10. Over-the-Counter Drugs.

Medicaid covers over-the-counter drugs when the drug is listed on the Utah Medicaid Over-the-Counter Drug List attachment to the Pharmacy Services Provider Manual, incorporated by reference in Section R414-1-5.

R414-60-11. Compounds.

(1) Compounded non-sterile prescriptions are a covered benefit if at least one ingredient is a covered-outpatient drug that would otherwise qualify for coverage.

(2) Compounded sterile prescriptions are a covered benefit if at least one ingredient is a covered-outpatient drug that would otherwise qualify for coverage, and is prepared by a pharmacy that has certified to Utah Medicaid that it adheres to the United States Pharmacopeia/National Formulary chapter <797> standard, and tests the final product for sterility, potency and purity.

R414-60-12. Provider-Administered Long-Acting Injectable Antipsychotic Drugs and Drugs for the Treatment of Opioid Use Disorders.

A pharmacy may bill Medicaid for any covered, provider-administered drug not directly dispensed to a patient for a long-acting injectable antipsychotic drug or for the treatment of an opioid use disorder. The pharmacy may only release the drug to the administering provider or the provider's staff for treatment.

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R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-1. General Definitions.
R426-1-100. Authority and Purpose.

This rule establishes uniform definitions for all R426 rules. It also provides administration standards applicable to all R426 rules.

R426-1-200. General Definitions.

The definitions in Title 26, Chapter 8a are adopted and incorporated by reference into this rule, in addition:

(1) "Advanced Emergency Medical Technician" or "AEMT" means an individual who has completed an AEMT training program, approved by the Department, who is licensed by the Department as qualified to render services enumerated in this rule.

(2) "Affiliated Provider" means a licensed EMS individual's secondary employer or employers.

(3) "Air Ambulance" means a specially equipped and permitted aircraft, especially a helicopter or fixed wing airplane, for transporting patients.

(4) "Air Ambulance Personnel" mean the pilot and patient care personnel who are involved in an air medical transport.

(5) "Air Ambulance Service" means any publicly or privately owned organization that is licensed or applies for licensure under R426-3 and provides transportation and care of patients by air ambulance.

(6) "Air Ambulance Service Medical Director" means a physician knowledgeable of potential medical complications which may arise because of air medical transport, and is responsible for overseeing and assuring that the appropriate air ambulance, medical personnel, and equipment are provided for patients transported by the air ambulance service.

(7) "Categorization" means the process of identifying and developing a stratified profile of Utah hospital trauma critical care capabilities in relation to the standards defined under R426-5-7.

(8) "Certify," "Certification," and "Certified" mean the official Department recognition that an individual has completed a specific level of training and has the minimum skills required to provide emergency medical care at the level for which he is certified.

(9) "Competitive Grant" means a grant awarded through the Emergency Medical Services Grants Program on a competitive basis for a share of available funds.

(10) "Complaint, Compliance, and Enforcement Unit or CCEU" means the investigative unit of the Department.

(11) "Continuing Medical Education" means a Department-approved training relating specifically to the appropriate level of certification designed to maintain or enhance an individual's emergency medical skills.

(12) "County or Multi-County EMS Council or Committee" means a group of persons recognized as the legitimate entity within the county to formulate policy regarding the provision of EMS.

(13) "Course Coordinator" means an individual who has completed a Department course coordinator course and is certified by the Department as capable to conduct Department-authorized EMS courses.

(14) "Department" means the Utah Department of Health.

(15) "Emergency Medical Dispatcher" or "EMD" means an individual who has completed a Department approved EMD training program, and is licensed by the Department as qualified to render services enumerated in this rule.

(16) "Emergency Medical Service Dispatch Center" means a call center designated by the Department for the routine acceptance of calls for emergency assistance, staffed by trained operators who utilize a selective medical dispatch system to dispatch licensed ambulance and paramedic services.

(17) "Emergency Medical Responder" or "EMR" means an individual who has completed a Department approved EMR training program, and is licensed by the Department as qualified to render services enumerated in this rule.

(18) "Emergency Medical Technician" or "EMT" means an individual who has completed a Department approved EMT training program and is licensed by the Department as qualified to render services enumerated in this rule.

(19) "Emergency Medical Technician Intermediate Advanced" means an individual who has completed a Department approved EMT- IA training program and is licensed by the Department as qualified to render services enumerated in this rule.

(20) "Emergency vehicle operator" means an individual on the roster of an EMS provider who may, in the normal course of the individual's duties, drive an ambulance or an emergency medical response vehicle.

(21) "EMS" means Emergency Medical Services.

(22) "Emergency Medical Incident" means any instance in which an Emergency Medical Services Provider is requested to provide or potentially provide emergency medical services.

(23) "EMS Instructor" means an individual who has completed a Department EMS instructor course and is certified by the Department as capable to teach EMS personnel.

(24) "EMS stand-by event" means the on-site licensed ambulance, paramedic service, or designated quick response unit at a scheduled event or activity provided by the local 911 exclusive license provider or their designee.

(25) "Exclusive License" means the sole right to perform the licensed act in a defined geographic service area, and that prohibits the Department of Health from performing the licensed act, and from granting the right to anyone else.

(26) "Grants Review Subcommittee" means a subcommittee appointed by the EMS Committee to review, evaluate, prioritize and make grant funding recommendations to the EMS Committee.

(27) "Ground Ambulance" means a vehicle which is properly equipped, maintained, permitted and used to transport a patient to a patient destination such as a patient receiving facility or resource hospital.

(28) "Inclusive Trauma System" means the coordinated component of the State emergency medical services (EMS) system composed of all general acute hospitals licensed under Title 26, Chapter 21, trauma centers, and pre-hospital providers which have established communication linkages and triage protocols to provide for the effective management, transport and care of all injured patients from initial injury to complete rehabilitation.

(29) "Inter-facility Transfer" means an ambulance transfer of a patient, who does not have an emergency medical condition as defined in UCA 26-8a-102(6)(a), and the ambulance transfer of the patient originates at a hospital, nursing facility, patient receiving facility, mental health facility, or other licensed medical facility.

(30) "Individual" means a human being.

(31) "Level of Care" means the capabilities and commitment to the care of the trauma patient available within a specified facility.

(32) "Level of License" means the official Department recognized step in the licensure process in which an individual has attained as an EMS provider.

(33) "Licensed EMS Individual" means a person licensed by the Bureau of Emergency Medical Services and Preparedness to perform an EMS function.

(34) "Meritorious Complaint" means a complaint against a licensed ambulance provider, designated agency, or licensed provider(s) that is made by a patient, a member of the immediate family of a patient, or health care provider, that the Department determines is substantially supported by the facts or a licensed ambulance provider, designated agency, or licensed provider(s):

(a) has repeatedly failed to provide service at the level or in the exclusive geographic service area required licensee;

(b) has repeatedly failed to follow operational standards established by the EMS Committee;

(c) has committed an act in the performance of a professional duty that endangered the public or constituted gross negligence; or

(d) has otherwise repeatedly engaged in conduct that is adverse to the public health, safety, morals or welfare, or would adversely affect the public trust in the emergency medical service

system.

(35) "Matching Funds" means that portion of funds, in cash, contributed by the grantee to total project expenditures.

(36) "On-line Medical Control" which refers to physician medical direction of pre-hospital personnel during a medical emergency; and

(37) "Off-line Medical Control" which refers to physician oversight of local EMS services and personnel to assure their medical accountability.

(38) "Medical Director" means a physician certified by the Department to provide off-line medical control.

(39) "Mid-level Provider" means a licensed nurse practitioner or a licensed physician assistant.

(40) "Net Income" means the sum of net service revenue, plus other regulated operating revenue and subsidies of any type, less operating expenses, interest expense, and income.

(41)"Paramedic" means an individual who has completed a Department approved Paramedic training program and is licensed by the Department as qualified to render services enumerated in this rule.

(42) "Paramedic Ground Ambulance" means the provision of advanced life support patient care and transport by licensed paramedic personnel in a licensed ambulance.

(43) "Paramedic Rescue Service" means the provision of advanced life support patient care by licensed paramedic personnel without the ability to transport patients.

(44) "Paramedic Unit" means a vehicle which is properly equipped, maintained and used to transport licensed paramedics to the scene of emergencies to perform paramedic services without the ability to transport patients to a designated hospital or designated patient receiving facility.

(45) "Paramedic Tactical Service" means the retrieval and field treatment of injured peace officers or victims of traumatic confrontations by licensed paramedics who are trained in combat medical response.

(46) "Paramedic Tactical Unit" means a vehicle which is properly equipped, maintained, and used to transport licensed paramedics to the scene of traumatic confrontations to provide paramedic tactical services.

(47) "Patient Care Report" means a record of the response by each responding Emergency Medical Services Provider unit to each patient during an EMS Incident.

(48) "Patient Receiving Facility" means a Department designated medical clinic or designated resource hospital that is approved to receive patients transported by a licensed ambulance provider.

(49) "Per Capita grants" mean block grants determined by prorating available funds on a per capita basis as delineated in 26-8a-207, as part of the Emergency Medical Services Grants Program.

(50) "Permit" means the document issued by the Department that authorizes a vehicle to be used in providing emergency medical services.

(51) "Person" means an individual, firm, partnership, association, corporation, company, or group of individuals acting together for a common purpose, agency, or organization of any kind public or private.

(52) "Physician" means a medical doctor licensed to practice medicine in Utah.

(53) "Pilot" means any individual licensed under Federal Aviation Regulations, Part 135.

(54) "Pre-hospital Care" means medical care given to an ill or injured patient by a designated or licensed EMS provider outside of a hospital setting.

(55) "Primary Affiliated Provider" or "PAP" means a licensed EMS individual's primary or main employer or provider.

(56) "Primary emergency medical services" means an organization that is the only licensed or designated service in a geographical area.

(57) "Provider" means a Department licensed or designated entity that provides emergency medical services.

(58) "Provisional License" means temporary terms and conditions placed on a licensed EMS individual's license until completion of an investigation or a final adjudication or conclusion of the pending matter.

(59) "Quick Response Unit" or "QRU" means an entity that provides emergency medical services to supplement local licensed ambulance providers or provide unique services.

(60) "Quick Response Vehicle" or "QRV" means a vehicle which is properly equipped, maintained, permitted and used to perform assistive services at a scene. A QRV may transport or deliver a patient to a licensed ambulance provider access point. The QRV may include an automobile, an all-terrain vehicle or a watercraft.

(61) "Resource Hospital" means a facility designated by the EMS Committee to provide on-line medical control for the provision of pre-hospital emergency care.

(62) "Restricted License" means a licensed EMS individual may not function in their EMS capacity for an interim period of time.

(63) "Scene" means the location of initial contact with the patient.

(64) "Selective Medical Dispatch System" means a Department-approved reference system used by a designated local dispatch agency to dispatch aid to medical emergencies which includes:

(a) systemized caller interrogation questions;

(b) systemized pre-arrival instructions; and

(c) protocols matching the dispatcher's evaluation of injury or illness severity with vehicle response mode and configuration.

(65) "Specialized Life Support Air Ambulance Service" means a level of care which requires equipment or specialty patient care by one or more medical personnel in addition to the regularly scheduled air medical team.

(66) "Training Officer" means an individual who has completed a department Training Officer Course and is certified by the Department to be responsible for an EMS provider organization's continuing medical education, license renewal records, and testing.

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R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-2. Emergency Medical Services Provider Designations for Pre-Hospital Providers, Critical Incident Stress Management and Quality Assurance Reviews.
R426-2-100. Authority and Purpose.

(1) This rule establishes types of providers that require a designation, the application process for a obtaining a designation and minimum designation requirements. The rule also establishes criteria for critical incident stress management and the process for quality assurance reviews.

R426-2-200. Pre-hospital Provider Designation Types.

The following type of provider shall obtain a designation from the Department:

(1) Quick Response Unit.

(2) Emergency Medical Service Dispatch Center.

R426-2-300. Quick Response Unit Minimum Designation Requirements.

A quick response unit shall meet the following minimum designation requirements:

(1) Have vehicle(s), equipment, and supplies that meet the current requirements of the Department for licensed and designated providers as found on the Bureau of EMS and Preparedness' web-site to carry out its responsibilities under its designation;

(2) Have location(s) for stationing its vehicle(s), equipment and supplies;

(3) Have a current dispatch agreement with a designated Emergency Medical Service Dispatch Center;

(4) Have a Department-certified training officer;

(5) Have a current plan of operations, which shall include:

(a) the names, EMS ID Number, and license level of all personnel;

(b) operational procedures; and

(c) a description of how the designee proposes to interface with other EMS agencies;

(6) Have a current agreement with a Department-certified off-line medical director who will perform the following:

(a) develop and implement patient care standards which include written standing orders and triage, treatment, pre-hospital protocols, and/or pre-arrival instructions to be given by designated emergency medical dispatch centers;

(b) ensure the qualification of field EMS personnel involved in patient care and dispatch through the provision of ongoing continuing medical education programs and appropriate review and evaluation;

(c) develop and implement an effective quality improvement program, including medical audit, review, and critique of patient care;

(d) annually review triage, treatment, and transport protocols and update them as necessary;

(e) suspend from patient care, pending Department review, a field EMS personnel or dispatcher who does not comply with local medical triage, treatment and transport protocols, pre-arrival instruction protocols, or who violates any of the EMS rules, or who the medical director determines is providing emergency medical service in a careless or unsafe manner. The medical director shall notify the Department within one business day of the suspension; and

(f) attend meetings of the local EMS Council, if one exists, to participate in the coordination and operations of local EMS providers.

(7) Have current treatment protocols approved by the agencies off-line medical director for the designated service level;

(8) Provide the Department with a copy of its certificate of insurance;

(9) Provide the Department with a letter of support from the licensed provider(s) in the geographical service area; and

(10) Not be disqualified for any of the following reasons:

(a) violation of Subsection 26-8a-504; or

(b) a history of disciplinary action relating to an EMS license, permit, designation or certification in this or any other state.

R426-2-400. Emergency Medical Service Dispatch Center Minimum Designation Requirements.

An emergency medical service dispatch center shall meet the following minimum designation requirements:

(1) Have in effect a selective medical dispatch system approved by the Department which includes:

(a) systemized caller interrogation questions;

(b) systemized pre-arrival instructions;

(c) a systemized method which produces consistent results to assist a dispatcher in categorizing incoming calls so that dispatcher can notify the proper licensed provider for the level of care, whether an emergency response or an inter-facility patient transfer is needed, as defined in R426-1-200(29); and

(d) protocols matching the dispatcher's evaluation of injury or illness severity with vehicle response mode and configuration.

(2) Provide pre-hospital arrival instructions by a licensed Emergency Medical Dispatcher.

(3) Have a current updated plan of operations, which shall include:

(a) plan of operations to be used in a disaster or emergency;

(b) communication systems, and

(c) aid agreements with other designated medical service dispatch centers.

(4) Have a current agreement with a Department-certified off-line medical director.

(5) Have an ongoing medical call review quality assurance program; and

(6) Have a licensed emergency medical dispatcher roster, which shall include:

(a) licensed staff names, Department license numbers and expiration dates; and

(b) dispatch system training certification number and expiration dates.

R426-2-500. Designation Applications.

Any provider applying for designation shall submit to the Department: applications fees, complete application on Department approved forms, and documentation verifying that the provider meets the minimum requirements for the designation, as listed in this rule. The Department may determine other information is necessary for processing, and will provide a list of those requirements to the applicant. Additional items specific to the designation type are required as outlined below. A provider applying for re-designation shall submit an application as described above 90 days prior to the expiration of its designation.

R426-2-600. Quick Response Unit Designation Applications.

A Quick Response Unit shall provide:

(1) Name of the organization and its principles.

(2) Name of the person or organization financially responsible for the service and documentation from that entity accepting responsibility.

(3) If the applicant is privately owned, they shall submit certified copies of the document creating the entity.

(4) A description of the geographical area of service.

(5) A demonstrated need for the service.

R462-2-700. Emergency Medical Service Dispatch Center Designation Applications.

An Emergency Medical Service Dispatch Center shall provide:

(1) Name of the organization and its principles.

(2) Name of the person or organization financially responsible for the service provided by the designee and

documentation from that entity accepting responsibility.

(3) If the applicant is privately owned, they shall submit certified copies of the document creating the entity.

(4) A description of the geographical area of service.

(5) A demonstrated need for the service.

R426-2-800. Criteria for Denial or Revocation of Designation.

(1) The Department may deny an application for a designation for any of the following reasons:

(a) failure to meet requirements as specified in the rules governing the service;

(b) failure to meet vehicle, equipment, or staffing requirements;

(c) failure to meet requirements for renewal or upgrade;

(d) conduct during the performance of duties relating to its responsibilities as an EMS provider that is contrary to accepted standards of conduct for EMS personnel described in Sections 26-8a-502 and 26-8a-504;

(e) failure to meet agreements covering training standards or testing standards;

(f) a history of disciplinary action relating to a license, permit, designation, or certification in this or any other state;

(g) a history of criminal activity by the licensed or designated provider or its principals while licensed or designated as an EMS provider or while operating as an EMS service with permitted vehicles;

(h) falsifying or misrepresenting any information required for licensure or designation or by the application for either;

(i) failure to pay the required designation or permitting fees or failure to pay outstanding balances owed to the Department;

(j) failure to submit records and other data to the Department as required by statute or rule;

(k) misuse of grant funds received under Section 26-8a-207; and

(l) violation of OSHA or other federal standards that it is required to meet in the provision of the EMS service.

(2) An applicant who has been denied a designation may request a Department review by filing a written request for reconsideration within thirty calendar days of the issuance of the Department's denial.

R426-2-900. Application Review and Award.

(1) If the Department finds that an application for designation is complete and that the applicant meets all requirements, it may approve the designation.

(2) Issuance of a designation by the Department is contingent upon the applicant's demonstration of compliance with all applicable rules and a successful Department quality assurance review.

(3) A designation may be issued for up to a four-year period. The Department may alter the length of the designation to standardize renewal cycles.

R426-2-1000. Change in Designated Service Level.

(1) A quick response unit may apply to provide a higher designated level of service by:

(a) submitting the applicable fees; and

(b) submitting an application on Department-approved forms to the Department.

(2) As part of the application, the applicant shall provide:

(a) a copy of the new treatment protocols for the higher level of service approved by the off-line medical director;

(b) an updated plan of operations demonstrating the applicant's ability to provide the higher level of service;

(c) a written assessment of the performance of the applicant's field performance by the applicant's off-line medical director; and

(d) provide the Department with a letter of support from the licensed provider(s) in the geographical service area.

(3) If the Department finds that the applicant has demonstrated the ability to provide the upgraded service, it shall issue a new designation reflecting the higher level of service.

R426-2-1100. Critical Incident Stress Management.

(1) The Department may establish a critical incident stress management (CISM) team to meet its public health responsibilities under Utah Code Section 26-8a-206.

(2) The CISM team may conduct stress debriefings, defusings, demobilizations, education, and other critical incident stress interventions upon request for persons who have been exposed to one or more stressful incidents in the course of providing emergency services.

(3) Individuals who serve on the CISM team shall complete initial and ongoing training.

(4) While serving as a CISM team member, the individual is acting on behalf of the Department. All records collected by the CISM team are Department records. CISM team members shall maintain all information in strict confidence as provided in Utah Code Title 26, Chapter 3.

(5) The Department may reimburse a CISM team member for travel expenses incurred in performing his or her duties in accordance with state finance mileage reimbursement policy.

R426-2-1200. Quality Assurance Reviews.

(1) The Department may conduct quality assurance reviews of licensed and designated organizations and training programs on an annual basis or more frequently as necessary to enforce this rule;

(2) The Department shall conduct a quality assurance review prior to issuing a new license or designation.

(3) The Department may conduct quality assurance reviews on all personnel, vehicles, facilities, communications, equipment, documents, records, methods, procedures, materials and all other attributes or characteristics of the organization, which may include audits, surveys, and other activities as necessary for the enforcement of the Emergency Medical Services System Act and the rules promulgated pursuant to it.

(a) The Department shall record its findings and provide the organization with a copy.

(b) The organization shall correct all deficiencies within 30 days of receipt of the Department's findings.

(c) The organization shall immediately notify the Department on a Department-approved form when the deficiencies have been corrected.

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R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-3. Licensure.
R426-3-100. Authority and Purpose.

(1) This Rule is established under Chapter 8, Title 26a, Chapter 8a. It establishes standards for the licensure of an air ambulance, ground ambulance, and paramedic services.

(2) The purpose of this rule is to set forth air and ground ambulance policies, rules, and standards adopted by the Utah Emergency Medical Services Committee, which promotes and protects the health and safety of the people of this state.

(3) The definitions in Title 26, Chapter 8a are adopted and incorporated by reference into this rule.

R426-3-200. Requirement for Licensure.

(1) A person who provides or represents that it provides air ambulance, ground ambulance, paramedic ground ambulance, or paramedic services shall first be licensed by the Department.

R426-3-300. Licensure Types.

(1) The Department may issue exclusive ground ambulance transport licenses for the following types of service at the given levels:

(a) emergency medical technician (EMT);

(b) advanced emergency medical technician (AEMT); and

(c) paramedic.

(2) Current emergency medical technician intermediate advanced (EMT-IA) licenses will remain in effect, no new EMT-IA ground ambulance licenses will be issued.

(3) The Department may issue exclusive ground ambulance inter-facility transport licenses for the following types of service at the given levels:

(a) emergency medical technician (EMT);

(b) advanced emergency medical technician (AEMT); and

(c) paramedic.

(4) The Department may issue exclusive paramedic, non-transport licenses.

(5) The Department may issue a paramedic tactical license that is a designation of function not geographical location.

R426-3-310. Air Ambulance Licensure Types.

(1) The Department may issue an Air Ambulance provider a license in accordance with services accredited by a Department approved accreditation vendor.

R426-3-400. Scope of Operations.

(1) A ground ambulance or paramedic licensed provider as described in R426-3-300 may only provide service to its specific licensed geographic service area and is responsible to provide all services to its entire specific geographic service area except as provided by R426-3-900 Aid Agreements. It will provide emergency medical services for its category of licensure that corresponds to the licensed levels in R426-5 Emergency Medical Services Training, Licensure and Certification Standards.

(2) A ground ambulance provider or paramedic service provider as described in R426-3-300 shall provide services 24 hours a day, every day of the year.

(3) Air ambulance services shall provide services 24 hours a day, every day of the year as allowed by weather conditions.

(4) A ground ambulance provider or paramedic service provider as described in R426-3-300 shall provide all standby services for any special event that requires ground ambulance or paramedic services within its geographic service area. The licensed provider may arrange for those services through R426-3-900 aid agreements. Designated quick response units may also support licensed ground ambulance or paramedic services at special events. If a licensed provider refuses to provide service, or is non-responsive in a timely manner to a request for a special event, the event organizer may use a licensed or designated provider of their choice.

R426-3-500. Minimum Licensure Requirements Air Ambulance, Ground Ambulance, and Paramedic Services.

A licensed provider conforming to R426-3-200 shall meet the following minimum requirements:

(1) sufficient air or ground ambulances, emergency response vehicle(s), equipment, and supplies that meet the requirements of this rule and as may be necessary to carry out its responsibilities under its license or proposed license without relying upon aid agreements with other licensed provider;

(2) locations or staging areas for stationing its vehicles;

(3) a current written dispatch agreement with a designated emergency medical dispatch center;

(4) ground ambulances may have current written aid agreements with other ground ambulance licensed providers to give assistance in times of unusual demand;

(5) a Department certified EMS training officer that is responsible for continuing education;

(6) a current plan of operations.

(7) a description of how the licensed provider or applicant proposes to interface with other licensed and designated EMS providers.

(8) demonstrate fiscal viability;

(9) medical personnel roster which includes level of licensure to ensure there is sufficient trained and licensed staff who meet the requirements of R426-4-200 Staffing, and operational procedures.

(10) all permitted vehicles shall be equipped to allow field EMS personnel to be able to:

(a) communicate with hospital emergency departments, dispatch centers, EMS providers, and law enforcement services; and

(b) communicate on radio frequencies assigned to the Department for EMS use by the Federal Communications Commission.

(11) a current written agreement with a Department-certified off-line medical director or a medical director certified in the state where the service is based pursuant to R426-3-700.

(12) provide the Department with a copy of its certificate of insurance or if seeking application, provide proof of the ability to obtain insurance to respond to damages due to operation of a vehicle or air ambulance in the manner and following minimum amounts:

(a) liability insurance in the amount of $1,000,000 for each individual claim; and

(b) liability insurance in the amount of $1,000,000 for property damage from any one occurrence;

(c) the licensed provider as described in R426-3-300 shall obtain the insurance from an insurance company authorized to write liability coverage in Utah or through a self-insurance program and shall:

(i) provide the Department with a copy of its certificate of insurance demonstrating compliance with this section; and

(ii) direct the insurance carrier or self-insurance program to notify the Department of all changes in insurance coverage within 60 days.

(13) not be disqualified for any of the following reasons:

(a) violation of Subsection 26-8a-504; or

(b) disciplinary action relating to an EMS license, permit, designation, or certification in this or any other state that adversely affect its service under its license; and

(14) A paramedic tactical service as described in R426-3-300 shall be a public safety agency or have a letter of recommendation from a county or city law enforcement agency within the paramedic tactical service's geographic service area.

(15) In areas that are served by more than one transport provider, both providers shall have an agreement addressing first response and transport responsibilities for all types of facilities listed in R426-1-200(29) in effect by June 30, 2018 and shall provide copies to the Department and all impacted PSAP's and dispatch centers. The Department may act as mediator if needed to reach agreement.

R426-3-600. Cost, Quality, and Access Goals for Ground Ambulance Providers.

(1) A local government shall establish emergency medical service goals pursuant to Title 26-8a-408(7).

(2) Goals shall be renewed every four years in concurrence with the licensure process for the EMS licensed ground ambulance provider. All local governments in a licensed service area are required to participate.

(3) Goals may be amended, if necessary, due to:

(a) unforeseen changes in service delivery,

(b) community impacts, or

(c) significant unforeseen impact in the geographical service area.

(4) Goals shall be written, approved by local governments, and submitted to the Department with licensure and re-licensure application by the EMS licensed ground ambulance provider for the geographical service area.

(5) Local governments may choose to recognize EMS providers who have achieved accreditation by a Department approved accreditation organization as meeting the cost, quality, and access goals.

(6) Cost goals shall indicate the expected financial cost to the local government(s) and patients for the level of service provided.

(7) Quality goals shall indicate the expected level of service plus any additional foreseen improvements or advancements in service expectations.

(8) Access goals shall indicate the local government's expectation for access to the EMS system by any individual within the local government's geographic area.

R426-3-700. Ground Ambulance or Paramedic Service Application.

(1) An applicant desiring to obtain a new license for ground ambulance, or paramedic services shall submit the applicable fees and application on Department-approved forms to the Department. As part of the application, the applicant shall submit documentation that it meets the requirements listed in R426-3-500 along with the following:

(a) a detailed description and detailed map of the exclusive geographical areas that will be served;

(b) if the requested geographical service area is for less than all ground ambulance or paramedic services, the applicant shall include a written description and detailed map showing how the areas not included will receive ground ambulance or paramedic services;

(c) if an applicant is responding to a public bid as described in 26-8a-405.2 the applicant shall include detailed maps and descriptions for all geographical areas served in accordance with 26-8a-405.2(2);

(d) documentation showing that the applicant meets all local zoning and business licensing standards within the exclusive geographical service area that it will serve;

(e) a written description of how the applicant will communicate with dispatch centers, law enforcement agencies, on-line medical control, and patient transport destinations;

(f) patient care protocols, medications, and equipment approved by the provider's medical director based on licensure level according to Department policies; and

(g) applicant's plans for operations during times of unusual demand.

(2) An applicant desiring to renew an existing license shall submit documentation that it meets the requirements listed in R426-3-500, along with the following:

(a) a written assessment of field performance from the applicant's off-line medical director; and

(b) other information that the Department determines necessary for the processing of the application and the oversight of the licensed entity.

(3) An applicant desiring to obtain a new license or renew an existing license shall submit written cost, quality, and access goals as described in R426-3-600, if available.

(4) A ground ambulance or paramedic service holding a license under 26-8a-404, including any political subdivision that is part of a special district may respond to a request for proposal if it complies with 26-8a-405(2).

(5) Upon receipt of an appropriately completed application, ground ambulance or paramedic service license and submission of license fees, the Department shall collect supporting documentation and review each application.

(6) If, upon Department review, the application for a new license is complete and meets all the requirements, the Department shall issue a notice of approved application as required by 26-8a-405 and 406.

(7) Award of a new license or a renewal license is contingent upon the applicant's demonstration of compliance with all applicable statute and rules and a successful Department quality assurance review.

(8) After review and before issuing a license to a new service, the Department shall directly inspect the ground vehicle(s), equipment, and required documentation.

(9) A license may be issued for up to a four-year period unless revoked or suspended by the Department. The Department may alter the length of the license to standardize renewal cycles.

R426-3-710. Air Ambulance Application.

An applicant desiring to obtain a new license or to renew its license for air ambulance services shall submit the applicable fees and application on Department-approved forms to the Department. As part of the application, the applicant shall submit documentation that it meets the requirements listed in R426-3-500 and the following:

(1) certified articles of incorporation, if incorporated;

(2) a statement summarizing the training and experience of the applicant in the air transportation and care of patients;

(3) a copy of current Federal Aviation Administration (FAA) Air Carrier Operating Certificate authorizing FAR, Part 135, operations;

(4) a copy of the current certificates of insurance demonstrating coverage for medical malpractice;

(5) a description and location of each dedicated and back-up air ambulance(s) procured for use in the air ambulance service, including the make, model, and year of manufacture, FAA-N number, insignia, name or monogram, or other distinguishing characteristics;

(6) successful completion of a Department approved accreditation process and such accreditation decision shall exclude Federal Aviation Agency or Aviation Deregulation Act regulated activities;

(7) for new air ambulance services licensed under R426-3-200, the applicant shall submit an application for accreditation by a Department approved accreditation process within one year of receiving a license under this rule; and

(8) licensed air ambulance services shall achieve accreditation and maintain accreditation.

(9) Any new air ambulance providers applying for a license who have been licensed and operating in any other state for at least one year shall provide the Department with a copy of a successful accreditation decision, or an application sent to a Department approved accreditation vendors prior to receiving an air ambulance license.

(10) Upon receipt of an appropriately completed application for air ambulance provider license and submission of license fees, the Department shall collect supporting documentation and review each application.

(11) After review and before issuing a license to a new service, the Department shall directly inspect the air vehicle(s), equipment, and required documentation.

(12) Department approved accreditation vendors shall allow a Department representative to accompany accreditation surveyors

on site surveys or during any accreditation inspections at the request of the Department.

(13) If, upon Department review, the application for a new license is complete and meets all the requirements, the Department shall issue a notice of approved application as required by 26-8a-405 and 406.

(14) Award of a new license or a renewal license is contingent upon the applicant's demonstration of compliance with all applicable statute and rules and a successful Department quality assurance review.

(15) Any events impacting patient safety including death, permanent harm, or severe temporary harm, or requiring intervention to sustain life shall be reported to the Department and the associated Department approved accreditation vendor(s) by the licensed air ambulance provider within 30 days or the event.

(16) A license may be issued for up to a four-year period unless revoked or suspended by the Department. The Department may alter the length of the license to standardize renewal cycles.

R426-3-800. Medical Control.

(1) All licensed providers shall enter into a written agreement with a physician to serve as its off-line medical director to supervise the medical care or instructions provided by the field EMS personnel and dispatchers. The physician shall be familiar with:

(a) the design and operation of the local pre-hospital EMS system; and

(b) local dispatch and communication systems and procedures.

(2) The off-line medical director shall:

(a) develop and implement patient care standards which include written standing orders and triage, treatment, and transport protocols;

(b) ensure the qualification of field EMS personnel involved in patient care through the provision of ongoing continuing medical education programs and appropriate review and evaluation;

(c) develop and implement an effective quality improvement program, including medical audit, review, and critique of patient care;

(d) annually review triage, treatment, and transport protocols and update them as necessary;

(e) suspend from patient care, pending Department review, a field EMS personnel who does not comply with local medical triage, treatment and transport protocols, or who violates any of the EMS rules, or who the medical director determines is providing emergency medical service in a careless or unsafe manner. The medical director shall notify the Department within one business day of the suspension;

(f) attend meetings of the local EMS Council, if one exists, to participate in the coordination and operations of local EMS providers; and

(g) licensed providers shall notify the Department if an off-line medical director is replaced, within thirty days.

(3) It is the responsibility of the air ambulance medical director to:

(a) authorize written protocols for the use by air medical attendants and review policies and procedures of the Air ambulance service; and

(b) develop and review treatment protocols, assess field performance, and critique at least 10% of the Air ambulance service runs.

R426-3-900. Ground Ambulance or Paramedic Service Provider Aid Agreements.

(1) All licensed ground ambulance providers are expected to render mutual aid support for adjoined geographical service areas. Mutual aid support means that they may be called upon to provide assistance during times of unusual demand. Exceptions for this expectation should be submitted as part of a license application.

(2) Other types of aid agreements shall be in writing, signed by both parties, and detail the:

(a) purpose of the agreement;

(b) type of assistance required;

(c) circumstances under which the assistance would be given; and

(d) duration of the agreement.

(3) The parties shall provide a copy of any aid agreement(s) except for mutual aid support as described in R426-3-900(1) to the Department and to the designated emergency medical dispatch center(s) that dispatch the licensed ground ambulance providers.

(4) When mutual aid support is given as described in R426-3-900(1), the licensed ground ambulance provider rendering support will be responsible for the following, unless otherwise stated in writing, and approved by the Department prior to the event:

(a) billing or other financial reimbursements;

(b) liability for EMS operations related to staff and patient care, and;

(c) patient care protocols for licensure level.

R426-3-1100. Application Review and Award for Ground Ambulance Providers Selected by Public Bid.

(1) Upon receipt of an appropriately completed application, for ground ambulance or paramedic service license and submission of license fees, the Department shall collect supporting documentation and review each application.

(2) If, upon Department review, the application is complete and meets all the requirements, the Department shall:

(a) for a new license application, issue a notice of approved application as required by 26-8a-405 and 406;

(b) issue a renewal license to an applicant in accordance with 26-8a-413(1) and (2) or 26-8a-405.1(3), whichever is applicable.

(c) issue a four-year renewal license to a license selected by a political subdivision if the political subdivision certified to the Department that the licensed provider has met all of the specifications of the original bid and requirements of 26-8a-413(1) through 26-8a-313(3); or

(d) issue a second four-year renewal license to a licensed provider selected by a political subdivision if:

(i) the political subdivision certified to the Department that the licensed provider has met all of the specifications of the original bid and requirements of 26-8a(1) through (3); and

(ii) if the Department or the political subdivision has not received, prior to the expiration date, written notice from an approved applicant desiring to submit a bid for ambulance or paramedic services.

(3) Upon the request of the political subdivision and the agreement of all interested parties and the Department that the public interest would be served, the renewal license may be issued for a period of less than four years or a new request for the proposal process may be commenced at any time.

R426-3-1200. Criteria for Denial or Revocation of Licensure.

(1) The Department may deny an application for a license, a renewal of a license, or revoke, suspend or restrict a license without reviewing whether a license shall be granted or renewed to meet public convenience and necessity for any of the following reasons:

(a) failure to meet substantial requirements as specified in the rules governing the service;

(b) failure to meet vehicle, equipment, staffing, or insurance requirements;

(c) failure to meet agreements covering training standards or testing standards;

(d) substantial violation of Subsection 26-8a-504(1);

(e) a history of disciplinary action relating to a license, permit, designation, or certification in this or any other state;

(f) a history of serious or substantial public complaints;

(g) a history of criminal activity by the licensee or its principals while licensed or designated as an EMS provider or while operating as an EMS service with permitted vehicles;

(h) falsification or misrepresentation of any information in the application or related documents;

(i) failure to pay the required licensing or permitting fees or other fees or failure to pay outstanding balances owed to the Department;

(j) failure to submit records and other data to the Department as required by R426-7;

(k) a history of inappropriate billing practices, such as:

(i) charging a rate that exceeds the maximum rate allowed by rule;

(ii) charging for items or services for which a charge is not allowed by statute or rule; or

(iii) Medicare or Medicaid fraud.

(l) misuse of grant funds received under Section 26-8a-207; or

(m) violation of OSHA or other federal standards that it is required to meet in the provision of the EMS service.

(2) An applicant or licensed provider that has been denied, revoked, suspended or issued a restricted license may appeal by filing a written appeal within thirty calendar days of the receipt of the issuance of the Department's denial.

R426-3-1300. Change of Owner.

(1) A license and the vehicle permits cannot be transferred to another party.

(2) As outlined in 26-8a-415, a new owner shall submit within 10 (ten) calendar days prior to acquisition of property, applications and fees for a new license and vehicle permits.

KEY: emergency medical services, licensure
April 19, 2018 26-8a

R434. Health, Family Health and Preparedness, Primary Care and Rural Health.
R434-150. Adverse Events from the Administration of Sedation or Anesthesia; Recording and Reporting.
R434-150-1. Purpose and Authority.

(1) To establish reporting requirements to the Utah Department of Health Anesthesia Adverse Events Database that include:

(a) the format of the reports; and

(b) what constitutes a reportable adverse event.

R434-150-2. Definitions.

(1) "Adverse event" means a reportable event that includes:

(a) the administration of sedation or anesthesia;

(b) in an outpatient, non-emergency room setting;

(c) that results in escalation of care, harm to, or rescue of the patient; and

(d) while under the direct care of the provider at the facility or within 24 hours of discharge.

(2) "Department" means the Utah Department of Health.

(3) "Escalation of care or rescue of a patient" means rescuing a patient from levels of sedation deeper than intended in order to prevent harm or death to a patient. This may include but is not limited to the use of:

(a) a rescue or reversal agent;

(b) aborting a procedure secondary to complications of sedation or anaesthesia;

(c) unplanned assisted airway management;

(d) 911 call for Emergency Medical Services;

(e) transfer to a higher level of care; or

(f) any other intervention.

(4) "Harm scale" means a systematic method of designating a patient's level of harm that includes:

(a) unsafe conditions;

(b) near miss;

(c) no harm;

(d) additional monitoring or treatment to prevent harm;

(e) temporary harm requiring intervention;

(f) temporary harm requiring hospitalization;

(g) permanent patient harm;

(h) intervention to sustain life; or

(i) patient death.

(5) "Healthcare Providers" means any healthcare provider who uses sedation or anaesthesia and is located in any outpatient location (e.g., office, urgent care, dentists, podiatrist, etc.) who is not currently required to report under Rule R380-200.

(6) "Levels of sedation" means physiologic states that are induced through the administration of medication by any route. Standards associated with differing levels of sedation are defined in the Centers for Medicare and Medicaid Conditions of Participation Interpretive Guidelines 482.51(b)(5) Interpretive Guidelines (https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_a_hospitals.pdf. These interpretive guidelines are the expected standards of practice, unless otherwise specified by the individual practitioner's scope of practice as defined in the Utah Licensure Practice Act and Title 58 of the Utah Code.

(7) "Near miss" means stopping or aborting a procedure for the safety of the patient due to the administration of anaesthesia or sedation.

(8) "Unprofessional Conduct" is defined in statute for each Utah Department of Professional licensure category. See Utah Code Sctions 58-5a-502, 58-31b-502.5, 58-67-502.5, 58-68-502.5, and 58-69-502.5.

R434-150-3. Anesthesia Adverse Event Database.

(1) The Anesthesia Adverse Event Database is managed through the Department's anesthesia reporting system.

(2) The Department shall establish the event report format.

R434-150-4. Event Reporting.

(1) Once an adverse event has been determined by a licensed healthcare provider, and the provider(s) who administered the sedation or anesthesia involved in the event have been notified, the adverse event shall be reported to the Department within 72 hours.

(2) To report an event:

(a) The individual reporting the event must:

(i) register with the State of Utah to get a state ID; and

(ii) notify the program manager that they have registered.

(b) The program manager shall:

(a) verify the reporting registrant's Utah state ID; and

(b) give the reporting registrant access to report their case to the Anesthesia Adverse Event Database.

(3) The reporting individual shall submit the following data and information at the time of the report:

(a) The person who reports the event;

(b) The healthcare provider(s) and facility type who conducted the procedure;

(c) The healthcare provider(s) and facility type who administered the anesthesia;

(d) Description of the event;

(e) Description of the sedation used;

(f) Level of harm experienced;

(g) Patient demographics (birthdate, gender, and weight), to give context to the event;

(h) Surgical classification of the procedure, using American Society of Anesthesiologist physical status classification system;

(i) Description of rescue activities;

(j) Description of monitoring that took place:

(k) Description of escalation of care;

(l) Description of emergency equipment and supplies available at the time of the event; and

(m) Any additional or concluding remarks.

R434-150-5. Confidentiality.

(1) Information received and stored by the Department under this Rule may only be disclosed with Department approval under specific, enumerated conditions provided by Utah Code Section 26-3-7. Because of the public interest in fostering health care systems improvements, the Department is authorized Utah Code Section 26-3-8 to exercise its discretion to disclose information under those conditions.

(a) However, the Department shall not release information collected under this Rule to any person pursuant to the provisions of Subsections (1) or (8) of Section 26-3-7.

(2) Information provided by a facility to the Department under this Rule is privileged, as provided by Utah Code Title 26, Chapter 25, and is not subject to discovery, use, or receipt in evidence in any legal proceeding of any kind or character.

R434-150-6. Extensions and Waivers.

(1) The Department may grant an extension of any reporting time requirement of this rule, if the facility demonstrates that:

(a) the delay is due to factors beyond its control,

(b) the delay will not adversely affect the purposes of this rule; or

(c) any other reason acceptable to the Department.

(2) A facility requesting a waiver shall submit its request to the Department representative prior to the deadline for the required action.

(3) The Department may grant a waiver of any other provision of this Rule if the facility demonstrates that the waiver will not adversely affect the Department's root cause analysis and the purposes of this Rule.

R434-150-7. Annual Aggregate Reports.

(1) The Department's Anesthesia Adverse Event Database program manager shall report the following information to the legislature and public annually:

(a) Number of deaths and adverse events;
(b) Distribution of provider types involved in events by license category and specialty;
(c) Types of facility where events occurred;
(d) Number of non-provider reports;
(e) Procedures being performed when events occurred; and
(f) An analysis of the impact of these reporting requirements in reducing adverse events.

R434-150-8. Penalties.
(1) As provided in Utah Code Section 26-23-6, an entity or person who violates any provision of this rule may be:
(a) assessed a civil penalty not to exceed $10,000;
(b) subject to criminal prosecution for:
(i) a first violation as a class B misdemeanor;
(ii) each subsequent similar violation within two years of the first violation as class A misdemeanor; and
(c) reported to DOPL for investigation of unprofessional conduct.

KEY: anesthesia adverse events, patient safety, sedation related events
April 14, 2018 26-1-40

R495. Human Services, Administration.
R495-881. Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule Implementation.
R495-881-1. Authority and Purpose.

(1) This rule implements provisions required by 45 CFR Part 164, subpart E, dealing with the treatment of certain individually identifiable health information held by the Department of Human Services.

(2) This rule is authorized by Section 62A-1-111.

R495-881-2. Definitions.

As used in this rule:

(1) "Covered entity" means a program within the Department responsible for carrying out a covered function as that term is used in 45 CFR 164.501.

(2) "HIPAA" means the federal Health Insurance Portability and Accountability Act of 1997 and its implementing regulations.

(3) "Individual" means a natural person. In the case of an individual without legal capacity or a deceased person, the personal representative of the individual.

R495-881-3. General Compliance.

(1) This rule applies only to those functions of the Department that are covered functions as that term is used in 45 CFR Part 164.

(2) Covered entities shall comply with the privacy requirements of 45 CFR Part 164, Subpart E in dealing with individually identifiable health information and the subjects of that information.

R495-881-4. Changes to Rule.

The Department reserves the right to alter this rule and its notices of privacy practices required by HIPAA.

R495-881-5. Sanctions, Retaliation.

(1) An employee of a covered entity may be disciplined for failure to comply with the HIPAA requirements found in 45 CFR Part 164, Subpart E. Discipline may include termination and civil or criminal prosecution.

(2) An employee of a covered entity may not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against any person for exercising any right established by HIPAA or for opposing in good faith any act or practice made unlawful by HIPAA.

R495-881-6. Waiver of Rights Prohibited.

A covered entity may not require individuals to waive their rights under 45 CFR 160.306 or 45 CFR Part 164, Subpart E as a condition of the provision of treatment, payment, health plan enrollment, or eligibility for benefits.

R495-881-7. Complaints.

(1) An individual may seek a review of a covered entity's policies and procedures or its compliance with such policies and procedures through informal contact with the covered entity.

(2) An individual may file a formal complaint concerning a covered entity's policies and procedures implementing 45 CFR Part 164, Subpart E or its compliance with such policies and procedures or the requirements of 45 CFR Part 164, Subpart E by filing a complaint with the Office of the Executive Director of the Department requesting an agency action meeting the requirements of the Utah Administrative Procedures Act or with the Office of Civil Rights, U.S. Department of Health and Human Services.

R495-881-8. Right to Request Privacy Protection.

(1) An individual may request restrictions on use and disclosure of protected health information as permitted in 45 CFR 164.522 by submitting a written request to the designated privacy officer for the covered entity.

(2) The decision whether to grant the request, documentation of any restrictions, alternate communication methods, and conditions on providing confidential communications shall be in accordance with 45 CFR 164.522.

R495-881-9. Individual Access to Protected Health Information.

(1) An individual may request access to protected health information as permitted in 45 CFR 164.524 by submitting a written request to the designated privacy officer for the covered entity.

(2) The right to access, decision whether to grant access, review of denials, timeliness of responses, form of access, time and manner of access, documentation and other required responses shall be in accordance with 45 CFR 164.524.

R495-881-10. Amendment of Protected Health Information.

(1) An individual may request an amendment to the protected health information about that individual that the individual believes is incorrect as permitted in 45 CFR 164.526 by submitting a written request to the designated privacy officer for the covered entity.

(2) The decision whether to grant the request, the time frames for action by the covered entity, amendment of the record, requirements for denial, and acting on notices of amendment from third parties shall be in accordance with 45 CFR 164.526.

R495-881-11. Accounting for Disclosures.

(1) An individual may request an accounting of disclosures of protected health information as permitted in 45 CFR 164.528 by submitting a written request to the designated privacy officer for the covered entity.

(2) The content of the accounting and the provision of the accounting, shall be in accordance with 45 CFR 164.528.

KEY: HIPAA, privacy
July 23, 2008 62A-1-111
Notice of Continuation April 2, 2018

R590. Insurance, Administration.
R590-276. Record Retention for Foreign Insurers, Alien Insurers, Commercially Domiciled Insurers, Foreign Title Insurers and Foreign Fraternals.
R590-276-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201, 31A-14-205.5(5)(a), and 31A-23a-412(5), which authorize the commissioner to adopt a rule to specify the length of time a foreign insurer, alien insurer, commercially domiciled insurer, foreign title insurer, or foreign fraternal must maintain books and records for inspection by the commissioner.

R590-276-2. Scope.

This rule applies to all foreign insurers, alien insurers, commercially domiciled insurers, foreign title insurers, and foreign fraternals licensed to do business in Utah.

R590-276-3. Purpose.

The purpose of this rule is to notify foreign insurers, alien insurers, commercially domiciled insurers, foreign title insurers and foreign fraternals of the books and records retention requirements.

R590-276-4. Retention Requirements.

(1) Except as provided in Subsection (2), the retention requirement for the books and records of an insurer or fraternal subject to Title 31A, Chapter 14, Foreign Insurers, is three years plus the current year.

(2)(a) The retention requirement for foreign title insurers books and records, including records related to title search, examination and underwriting used for determining insurability, is 15 years, pursuant to Subsection 31A-20-110(1).

(b) The retention requirement for books and records related to escrow transactions involving real property is 3 years plus the current year, pursuant to Section 31A-23a-412(5).

(3) All books and records shall be made available during normal business hours.

(4) Nothing in this section prohibits electronically stored books and records.

R590-276-5. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 45 days from the rule's effective date.

R590-276-6. Severability.

If any provision of this rule or its application to any persons or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

KEY: insurance, record retention
April 23, 2018 **31A-2-201**
31A-14-205.5(5)(a)
31A-23a-412(5)

R612. Labor Commission, Industrial Accidents.
R612-300. Workers' Compensation Rules - Medical Care.
R612-300-1. Purpose, Scope and Definitions.

A. Purpose and scope. Pursuant to authority granted the Utah Labor Commission under Subsection 34A-2-407(9) and Subsection 34A-2-407.5(1) of the Utah Workers' Compensation Act, these rules establish:

1. Reasonable fees for medical care necessary to treat workplace injuries;

2. Standards for disclosure of medical records;

3. Reporting requirements; and

4. Treatment protocols and quality care guidelines.

B. Definitions. The following definitions apply within Rule R612-300:

1. "Heath care provider" is defined by Subsection 34A-2-111(1)(a) as "a person who furnishes treatment or care to persons who have suffered bodily injury" and includes hospitals, clinics, emergency care centers, physicians, nurses and nurse practitioners, physician's assistants, paramedics and emergency medical technicians.

2. "Injured worker" is an individual claiming workers' compensation medical benefits for a work-related injury or disease.

3. "Payor" is the entity responsible for payment of an injured worker's medical expenses';

4. "Physician" is defined by Subsection 34A-2-111(1)(b) to include any licensed podiatrist, physical therapist, physician, osteopath, dentist or dental hygienist, physician's assistant, naturopath, acupuncturist, chiropractor, or advance practice registered nurse.

5. "Workplace injury" is an injury or disease compensable under either the Utah Workers' Compensation Act or the Utah Occupational Disease Act.

R612-300-2. Obtaining Medical Care for Injured Workers.

A. Right of payor to designate initial health care provider.

1. A Payor may adopt managed health care programs. Such programs may designate specific health care providers as "preferred providers" for providing initial medical care for injured workers.

2. A preferred provider program must allow an injured worker to select from two or more health care providers to obtain necessary medical care. At the time a preferred provider program is established, the payor must notify employees of the requirements of the program.

3. If the requirement of subsection A.2. are met, an injured worker subject to a preferred provider program must seek initial medical care from a preferred provider unless:

a. No preferred provider is available;

b. The injured worker believes in good faith that his or her medical condition is not a workplace injury; or

c. Travel to a preferred provider is unduly burdensome.

4. If an injured worker who is subject to a preferred provider program fails to obtain initial medical care from a preferred provider, the payor's liability for the cost of such initial medical care is limited to the amount the payor would have paid a preferred provider. The injured worker may be held personally liable for the remaining balance.

B. Liability for medical expense incurred at payor's direction. If a payor directs an injured worker to obtain an initial medical assessment of a possible work injury, the payor is liable for the cost of such assessment.

1. A medical provider performing an initial assessment must obtain the payor's preauthorization for any diagnostic studies beyond plain x-rays.

C. Injured worker's right to select provider after initial medical care. After an injured worker has received initial care from a preferred provider, the injured worker may obtain subsequent medical care from a qualified provider of his or her choice. The payor is liable for the expense of such medical care.

1. An injured worker's right to select medical providers is subject to subsection D. of this rule, "Limitations to Injured Worker's Right to Change Physicians."

D. Limitations on injured worker's right to change physicians.

1. An injured worker may change health care providers one time without obtaining permission from the payor. The following circumstances DO NOT constitute a change of health care provider:

a. A treating physician's referral of the injured worker to another health care provider for treatment or consultation;

b. Transfer of treatment from an emergency room to a private physician, unless the emergency room was designated as the payor's preferred provider;

c. Medically necessary emergency treatment;

d. A change of physician necessitated by the treating physician's failure or refusal to rate a permanent partial impairment.

2. The injured worker shall promptly report any change of provider to the payor.

3. After an injured worker has exercised his or her one-time right to change health care providers, the worker must request payor approval of any subsequent change of provider. If the payor denies or fails to respond to the request, the injured worker may request approval from the Director of the Division of Industrial Accidents. The Director will authorize a change of provider if necessary for the adequate medical treatment of the injured worker or for other reasonable cause.

4. An injured worker who changes health care providers without payor or Division approval may be held personally liable for the non-approved provider's fees.

E. Hospital or surgery pre-authorization. Except when immediate surgery or hospitalization is medically necessary on an emergency basis, surgery or hospitalization must be pre-authorized by the payor.

1. Within two working days of receipt of a request for authorization, the payor shall notify the physician and injured worker that the request is either approved or denied, or is undergoing medical review.

2. Any medical review of a pending request for authorization must be conducted promptly.

F. Notification required from injured workers leaving Utah. Section 34A-2-604 of the Workers' Compensation Act requires injured workers receiving medical care for a workplace injury to notify the Industrial Accidents Division before leaving the state or locality. Division forms 043 and Form 044 are to be used to provide such notice.

G. Injured worker's right to privacy. No agent of the payor may be present during an injured worker's medical care without the consent of the injured worker. However, if the payor's agent is excluded from a medical visit, the physician and the injured worker shall meet with the agent at the conclusion of the visit or at some other reasonable time so as to communicate regarding medical care and return-to-work issues.

H. Payor's right of medical examination. The payor may arrange for the medical examination of an injured worker at any reasonable time and place. A copy of the medical examination report shall be made available to the Commission upon request.

R612-300-3. Required Reports.

A. Form 123, Physician's Initial Report. Within one week after providing initial medical care to an injured worker, a health care provider shall complete "Form 123 - Physicians' Initial Report." The provider shall fully complete Form 123 according to its instructions. The provider shall then file Form 123 with the Division and payor.

1. Form 123 must be completed and filed for every initial visit for which a bill is generated, including first aid, when the worker reports that his or her medical condition is work related.

2. If initial medical care is provided by any health care provider other than a physician, Form 123 must be countersigned by the supervising physician.

B. Form 221, Restorative Services Authorization. Form 221,

"Restorative Services Authorization Form" required by Subsection R612-300-5. C. 7. shall be filed with both the payor and the Division.

C. Forms 043, Employee's Intent to Leave State, and Form 044, Attending Physician's Statement. These forms are to be submitted to the Division before an injured worker leaves Utah.

D. Form 110, Release to Return to Work. Form 110 shall be mailed by either the health care provider or payor to the injured worker and Division within five calendar days after the health care provider releases the injured worker to return to work.

R612-300-4. General Method For Computing Medical Fees.

A. Adoption of "CPT" and "RBRVS." The Labor Commission hereby adopts and by this reference incorporates:

"Optum 2017 The Essential RBRVS, 2017 1st Quarter Update," designated as RBRC17/U1787 and U1787R ("RBRVS" hereafter).

B. Medical fees calculated according to the RBRVS relative value unit assigned to each CPT code. Unless some other provision of these rules specifies a different method, the RBRVS is to be used in conjunction with the "conversion factors" established in subsection C. of this rule to calculate payments for medical care provided to injured workers.

C. Conversion Factors. Fees for medical care of injured workers shall be computed by determining the relative value unit ("RVU") assigned by the RBRVS to a CPT code and then multiplying that RVU by the following conversion factors for specific medical specialties:

1. Anesthesiology (1 unit per 15 minutes of anesthesia): $62.00;

2. Medicine (Evaluation and Medicine Codes 99201 - 99204 and 99211-99214): $50.00;

3. Pathology and Laboratory: $56.00;

4. Radiology: $58.00;

5. Restorative Services: $50.00;

6. Surgery (all 20000 codes, codes 49505 thru 49525, and all 60000 codes): $65.00;

7. Other Surgery: $43.00.

D. Fees for Medical care not addressed by CPT/RBRVS, or requiring unusual treatment.

1. The payor and medical provider may establish and agree to a reasonable fee for medical care of an injured worker if:

a. neither the CPT/RBRVS or any other provision of these rules address the medical care in question; or

b. application of CPT/RBRVS or other provisions of these rules would result in an inadequate fee due to extraordinary difficulty of treatment.

2. If the medical provider and payor cannot agree to a reasonable fee in such cases, the provider can request a hearing before the Commission's Adjudication Division to establish a reasonable fee.

R612-300-5. Fees for Specific Procedures.

A. Needle procedures: Trigger point injections are reported per muscle. Payment under CPT code 20553 for injections of up to three muscles is the maximum allowed for any one treatment session, regardless of the number of muscles treated.

B. Radiology.

1. The cost of radioisotopes, gadolinium and comparable materials may be charged at the provider's cost plus 15%.

2. When x-rays are reviewed as part of an independent evaluation of the patient, a consultation, or other office visit, the review is included as a part of the basic service to the patient and may not be billed separately.

C. Restorative Services.

1. The following criteria must be met before payment is allowed for restorative services:

a. The patient's condition must have the potential for restoration of function;

b. The treatment must be prescribed by the treating physician;

c. The treatment must be specifically targeted to the patient's condition; and

d. The provider must be in constant attendance during the providing of treatment.

2. No payment is allowed for CPT codes 97024, diathermy; 97026, infrared therapy; 97028, ultraviolet therapy/cold laser therapy; 97005, athletic training evaluations; 97006, athletic training reevaluation.

3. All restorative services provided must be itemized even if not billed.

4. Medical providers billing under CPT codes 97001 through 97610 are limited to payment for a maximum of three procedures/units per visit, or six procedures if different sites are treated. Services billed under CPT codes 97545, 97546 and 97150 require preauthorization and are limited to 4 units per injury. The payor shall pay the three highest valued procedures for each treatment site for the visit.

5. Patient education is to be billed using CPT code 97535 rather than codes 98960 through 98962, and is limited to 4 units per injury claim.

6. The entire spine is considered to be a single body part or unit. For that reason, CPT codes 98941 through 98943 and 98926 through 98929 may not be used for billing purposes.

7. When a change in treatment or a new RSA is required, physicians and physical therapists may bill for one evaluation and up to 2 modalities/procedures. Without an evaluation, they may bill for up to 3 modalities/procedures. With prior authorization from the payor, physicians and physical therapists may make additional billing when justified by special circumstances.

8. Any medical provider billing for restorative services shall file the appropriate version of Form 221, "Restorative Services Authorization (RSA) form" with the payor and the Division within ten days of the initial evaluation. Subjective/objective/assessment/plan ("SOAP") notes are to be sent to the payor in addition to the RSA form. SOAP notes are not to be sent to the Division unless requested.

a. Upon receipt of the provider's RSA form and SOAP notes, the payor shall respond within ten days by authorizing a specified number of treatments or denying the request. No more than eight treatments may be provided during this ten-day authorization period.

b. A payor may deny the requested treatments for the following reasons:

i. The injury or disease being treated is not work related; or

ii. The payor has received written medical opinion or other medical information indicating the treatment is not necessary. A copy of such written opinion or information must be provided to the injured worker, the medical provider, and the Division.

c. In cases where approval is received for initial treatment, the provider shall submit updated RSA forms and SOAP notes to the payor for approval or denial at least every six treatments.

d. An injured worker or provider may request a hearing before the Division of Adjudication to resolve issues of compensability, necessity of treatment, and compliance with this subsection's time limits.

D. Functional Capacity Evaluations. The following functional capacity evaluations require payor preauthorization and are billed in 15 minute increments under CPT code 97750:

1. A limited functional capacity evaluation to determine an injured worker's dynamic maximal repetitive lifting, walking, standing and sitting tolerance. Billing for this type of evaluation is limited to a maximum of 45 minutes.

2. A full functional capacity evaluation to determine an injured worker's maximum and repetitive lifting, walking, standing, sitting, range of motion, predicted maximal oxygen uptake, as well as ability to stoop, bend, crawl or perform work in an overhead or bent position. In addition, this evaluation includes reliability and validity measures concerning the individual's performance. Billing

for this type of evaluation is limited to a maximum of 2.5 hours.

3. A work capacity evaluation to determine an injured worker's capabilities based on the physical aspects of a specific job description. Billing for this type of evaluation is limited to a maximum of 2 hours.

4. A job analysis to determine the physical aspects of a particular job. Billing is not subject to a maximum time limit due to the variability of factors involved in the analysis.

E. Impairment Ratings and Insurance Medical Examinations.

1. Impairment Rating by Treating Physician. Treating physicians shall bill for preparation of impairment ratings under CPT code 99455, with 2.0 RVU assigned/30 minutes.

2. Impairment Rating by Non-Treating Physician. Non-treating physicians may bill for preparation of impairment ratings under CPT code 99456, with 2.65 RVU assigned/30 minutes.

3. Medical Evaluations Commissioned by Payors. The Labor Commission does not regulate fees for medical evaluations requested by payors.

F. Transcutaneous Electrical Nerve Simulators (TENS). No fee is allowed for TENS unless it is prescribed by a physician and supported by prior diagnostic testing showing the efficacy of TENS in control of the patient's chronic pain. TENS testing and training is limited to four (4) sessions and a 30-day trial period but may be extended with written documentation of medical necessity.

G. Electophysiologic Testing. A physician who is legally authorized by his or her medical practice act to diagnose injury or disease is entitled to the full fee for electrophysiologic testing. Physical therapists and physicians who are qualified to perform such testing but who are not legally authorized to diagnose injury or disease are entitled to payment of 75% of the full fee.

H. Dental Injuries.

1. Initial Treatment.

a. If an employer maintains a medical staff or designates a company doctor, an employee requiring treatment for a workplace dental injury shall report to such medical staff or doctor and follow their directions for obtaining the necessary dental treatment.

b. If an employer does not maintain a medical staff or designate a company doctor, or if such medical staff or doctor is unavailable, the injured worker may obtain the necessary dental care from a dentist of his or her choice. The payor shall pay the dentist at 70% of UCR for services rendered.

2. Subsequent treatment.

a. If additional dental care is necessary, the dentist who provided initial treatment may submit to the payor a request for authorization to continue treatment. The transmission date of the request must be verifiable. The request itself must include a description of the injury, the additional treatment required, and the fee to be charged for the additional treatment.

i. The payor shall respond to the request for authorization within 10 working days of the request's transmission. This 10-day period can be extended with written approval of the Director of the Industrial Accidents Division.

ii. If the payor does not respond to the dentist's request for authorization within 10 working days, the dentist may proceed with treatment and the payor shall pay the cost of treatment as contained in the request for authorization.

iii. If the payor approves the proposed treatment, the payor shall send written authorization to the dentist and injured worker. This authorization shall include the amount the payor agrees to pay for the treatment. If the dentist accepts the payor's payment offer, the dentist may proceed to provide the approved services and shall be paid the agreed upon amount.

iv. If the dentist proceeds with treatment without authorization, the dentist's fee is limited to 70% of UCR.

b. If the dentist who provided initial treatment is unwilling to provide subsequent treatment under the terms outlined in subsection 2.a., above, the payor shall within 20 calendar days direct the injured worker to a dentist located within a reasonable travel distance who will accept the payor's payment offer.

i. If, after receiving notice that the payor has arranged for the services of a dentist, the injured worker chooses to obtain treatment from a different dentist, the payor shall only be liable for payment at 70% of UCR. The treating dentist may bill the injured worker for the difference between the dentist's charges and the amount paid by the insurer.

c. If the payor is unable to locate another dentist to provide the necessary services, the payor shall attempt to negotiate a satisfactory reimbursement with the dentist who provided initial treatment.

I. Drug testing. Drug screenings for addictive classes of pain medications shall be performed as recommended in the Utah clinical Guidelines on Prescribing Opiates for Treatment of Pain, Utah Department of Health 2009. The collection and billing shall be limited to one 80300 code per date of service, except for unusual circumstances.

J. Procedures for which no fee is allowed. Due to a lack of evidence of medical efficacy, no payment is authorized for the following:

1. Muscle Testing, CPT codes 95832 through 95857;

2. Computer based Motion Analysis, CPT codes 96000 through 96004;

3. Athletic Training Evaluation, CPT codes 97005 and 97006;

4. Acupuncture, CPT codes 97810 through 97814;

5. Analysis of Data, now BR, CPT code 99090;

6. Patient Education, CPT codes 98960 through 98962;

7. Educational supplies, CPT code 99071; or

8. Thermograms, artificial discs, percutaneous diskectomies, endoscopic diskectomies, IDEPT, platelet rich plasma injections, thermo-rhizotomies and other heat or chemical treatments for discs.

R612-300-6. Limitations on Fees for Specific Medical Providers and Non-Physicians.

A. Physician Assistants, Nurse Practitioners, Medical Social Workers, Nurse Anesthetists, and Physical Therapy Assistants. Fees for services performed by physician assistants, nurse practitioners, medical social workers, nurse anesthetists, and physical therapy assistants are set at 75% of the amount that would otherwise be allowed by these rules and shall be billed using an 83 modifier.

B. Assistant Surgeons. Fees for assistant surgeons are limited as follows:

1. Medical doctors, osteopaths and podiatrists, designated with an -80 modifier, are to be paid 20% of the primary surgeon's fee;

2. Minimum paramedicals, designated with an -81 modifier, are to be paid 15% of the primary surgeon's value or 75% of the amount allowed under subsection B. 1., above.

3. When a qualified resident surgeon is not available, 20% of the primary surgeon's fee;

4. Other paramedical assistants, such as surgical assistants, are not billed separately.

C. Home health care. The following fees, which include mileage and travel time, are payable for Home Health Codes 99500 through 99602:

1. RN: $100/ 2 hours
2. LPN: $75 / 2 hours
3. Home Health Aide: $25 / hour + $6 additional 30 min.
4. Speech Therapists: $80 / visit
5. Physical Therapy: $125/ hour
6. Occupational Therapy: $125/ hour

7. Home Infusion Providers are to be paid according to contract between the payor and home infusion provider. If no contract is established, the payor shall pay the amount specified in Days Guidelines and pay UCR or Cost + 15% for the drugs and supplies.

D. Acupuncturists, naturopathic providers and massage therapy. Payor preauthorization is required for any services provided by acupuncturists and naturopaths. Payment for massage therapy is only allowed when administered by a medical provider

and billed according to the requirements of Rule R612-300. 5. C, "Restorative Services."

E. Ambulance. Ambulance charges are limited to the rates set by the State Emergency Medical Service Commission.

R612-300-7. Billing and Payment.

A. Billing Limitations.

1. Except as otherwise provided by a specific provision of the Workers' Compensation Act or these rules, an injured worker may not be billed for the cost of medical care necessary to treat his or her workplace injuries.

2. A health care provider may not submit a bill for medical care of an injured worker to both the employer and the insurance carrier.

B. Discounting and down-coding.

1. Discounting or reducing the fees established by these rules is permitted only pursuant to a specific contract between the medical provider and payor.

2. A payor may change the CPT code submitted by a health care provider under the following circumstances:

a. The submitted code is incorrect;

b. Another code more closely identifies the medical care;

c. The medical provider has not submitted the documentation necessary to support the code; or

d. The medical care is part of a larger procedure and included in the fee for that procedure.

3. If a payor changes a code number, the payor shall explain the reason for the change and provide the name and phone number of the payor's claims processor to the medical provider in order to allow further discussion.

C. Place of Treatment. A medical provider's billing for a medical procedure must identify the setting where a procedure was performed.

1. In an office or clinic: Fees for procedures performed in an office or clinic are to be computed using the Non-Facility Total RVU.

2. In a facility setting: Fees for physician services for procedures performed in a facility are to be computed using the "Facility Total RVU," as the facility will be billing for the direct and indirect costs related to the service.

D. Separate Bills. Separate bills must be presented by each medical provider within 30 days of treatment on a HCFA 1500 billing form. All bills must contain the federal ID number of the provider submitting the bill.

E. Hospital Fees.

1. The Labor Commission does not have authority to set fees for hospital care of injured workers. However, hospitals are subject to the Commission's reporting requirements, and fees charged by health care providers for services performed in a hospital are subject to the Commission's fee rules.

2. Fees covering hospital care shall be separate from those for professional services and shall not extend beyond the actual necessary hospital care.

3. All billings must be submitted on a UB92 form, properly itemized and coded, and shall include all documentation, including discharge summary, necessary to support the billing. No separate fee may be charged for billing or documentation of hospital services.

F. Charges for Supplies, Materials, or Drugs.

1. Ordinary supplies, materials or drugs used in treatment shall not be charged separately but shall be included in the amount allowed for the underlying medical care.

2. Special or unusual supplies, materials, or drugs not included as a normal and usual part of the service or procedure may be billed at cost plus 15% restocking fees and any taxes paid.

G. Miscellaneous.

1. A physician may bill the new patient E and M code when seeing an established patient for a new work injury.

2. Payment for hospital care is limited to the bed rate for semi-private room unless a private room is medically necessary.

3. Non-facility RVS total unit values apply, except that procedures provided in a facility setting shall be reimbursed at the facility total unit value and the facility may bill a separate facility charge.

4. Items that are a portion of an overall procedure are NOT to be itemized or billed separately.

5. Payors may round charges to the nearest dollar. If this is done on some charges, it must be done with all charges.

H. Prompt Payment and Interest.

1. All bills for medical care of injured workers must be paid within 45 days of submission to the payor unless the bill or some portion of the bill is in dispute. Any portion of the bill not in dispute remains payable within 45 days of billing.

2. As required by Section 34A-2-420 of the Utah Workers' Compensation Act, any award for medical care made by the Commission shall include interest at 8% per annum from the date of billing for such medical care.

I. Billing Disputes. Payors and health care providers shall use the following procedures to resolve billing disputes.

1. The provider shall submit a bill for services with supporting documentation to the payor within one year of the date of service.

2. The payor shall evaluate the bill and pay the appropriate fee as established by these rules.

3. If the provider believes the payor has improperly computed the fee, the provider may submit a written request for reevaluation to the payor. The request shall describe the specific areas of disagreement and include all appropriate documentation. Any such request for re-evaluation must be submitted to the payor within one year of the date of the original payment.

4. Within 30 days of receipt of the request for re-evaluation, the payor shall either pay the additional fee due the provider or respond with a specific written explanation of the basis for its denial of additional fees. The payor shall maintain proof of transmittal of its response.

5. A payor seeking reimbursement from a provider for overpayment of a bill shall, within one year of the overpayment, submit to the provider a written request for repayment that explains the basis for request. Within 90 days of receipt of the request, the provider shall either make appropriate repayment or respond with a specific written denial of the request.

6. If the provider and payor continue to disagree regarding the proper fee, either party may request informal review of the matter by the Division. Any party may also file a request for hearing on the dispute with the Adjudication Division.

R612-300-8. Travel Allowance for Injured Workers.

A. Payment for Travel to Obtain Medical Care. An injured worker who must travel outside his or her community to obtain necessary medical care is entitled to payment of meals and lodging. An injured worker is entitled to other travel expenses regardless of distance. Payors shall reimburse injured workers for these expenses according to the standards set forth in State of Utah Accounting Policies and Procedures, Section FIACCT 10-02.00, "Travel Reimbursement".

1. All travel must be by the most direct route and to the nearest location where adequate treatment is reasonably available.

2. Travel may not be required between the hours of 10:00 p.m. and 6:00 a.m., unless approved by the Commission.

B. Time Limits for Requesting and Paying Travel Expenses.

1. Requests for travel reimbursement must be submitted to the payor for payment within one year after the subject travel expenses were incurred;

2. The payor must pay an injured employee's travel expenses at the earlier of:

a. Every three months;

b. Upon accrual of $100 in such expense; or

c. At closure of the injured worker's claim.

C. Prescriptions. Travel allowance shall not include picking

up prescriptions with the following exceptions:

1. Travel allowance will be allowed if documentation is provided substantiating a claim that prescriptions cannot be obtained locally within the injured worker's community;

2. Travel allowance will be allowed in instances where dispensing laws do not allow a medication to be called in to a pharmacy thus requiring an injured worker to physically obtain an original prescription from the provider's office.

R612-300-9. Permanent Impairment Ratings.

A. Utah's 2006 Impairment Guides. The "Utah 2006 Impairment Guides" are incorporated by reference and are to be used to rate a permanent impairment not expressly listed in Section 34A-2-412 of the Utah Workers' Compensation Act.

B. American Medical Association's "Guides to the Evaluation of Permanent Impairment, Fifth Edition." For those permanent impairments not addressed in either Section 34A-2-412 or the "Utah 2006 Impairment Guides," impairment ratings are to be established according to the American Medical Association's "Guides to the Evaluation of Permanent Impairment, Fifth Edition."

R612-300-10. Medical Records.

A. Relationship between HIPAA and Workers' Compensation Disclosure Requirements. Workers' compensation insurers, employers and the Utah Labor Commission need access to health information of individuals who are injured on the job or who have a work-related illness in order to process or adjudicate claims, or to coordinate care under Utah's workers' compensation system. Generally, this health information is obtained from health care providers who treat these individuals and who may be covered by federal "HIPAA" privacy rules.

The HIPAA Privacy Rule specifically recognizes the legitimate need of the workers' compensation system to have access to individuals' health information to the extent authorized by State law. See 45 CFR 164.512(1). The Privacy Rule also recognizes the importance of permitting disclosures required by other laws. See 45 CFR 164.512(a). Therefore, disclosures permitted by this rule for workers' compensation purposes or otherwise required by this rule do not conflict with and are not prohibited by the HIPAA Privacy Rule.

B. Disclosures Permitted Without Authorization. A medical provider, without authorization from the injured worker, shall:

1. For purposes of substantiating a bill submitted for payment or filing required Labor Commission forms, such as the "Physician's Initial Report of Injury/Illness" or the "Restorative Services Authorization," disclose medical records necessary to substantiate the billing, including drug and alcohol testing, to:

a. An employer's workers' compensation insurance carrier or third party administrator;

b. A self-insured employer who administers its own workers' claims.

c. The Uninsured Employers' Fund;

d. The Employers' Reinsurance Fund; or

e. The Labor Commission as required by Labor Commission rules.

2. Disclose medical records pertaining to treatment of an injured worker who makes a claim for workers' compensation benefits, to another physician for specialized treatment, to a new treating physician chosen by the claimant, or for a consultation regarding the claimed work related injury or illness.

C. Disclosures Requiring Authorization.

1. Except as limited in C(3), a medical provider, whose medical records are relevant to a worker's compensation claim, shall, upon receipt of a Labor Commission medical records release form, or an authorization form that conforms to HIPAA requirements, disclose his/her medical records to:

a. An employer's insurance carrier or third party administrator;

b. A self-insured employer who administers its own workers' compensation claims;

c. An agent of an entity listed in B(1)(a through e), which includes, but is not limited to a case manager or reviewing physician;

d. The Uninsured Employers Fund;

e. The Employers' Reinsurance Fund;

f. The Labor Commission;

g. The injured worker;

h. An injured workers' personal representative;

i. An attorney representing any of the entities listed above in an industrial injury or occupational disease claim.

2. Medical records are relevant to a workers' compensation claim if:

a. The records were created after the reported date of the accident or onset of the illness for which workers' compensation benefits have been claimed; or

b. the records were created in the past ten years (15 years if permanent total disability is claimed) and:

i. There is a specific reason to suspect that the medical condition existed prior to the reported date of the claimed work related injury or illness or;

ii. The claim is being adjudicated by the Labor Commission.

3. Medical records related to care provided by a psychiatrist, psychologist, obstetrician, or care related to the reproductive organs may not be disclosed by a medical provider unless a claim has been made for a mental condition, a condition related to the reproductive organs, or the claimant has signed a separate, specific release for these records.

D. Disclosure Regarding Return to Work. A medical provider, who has treated an injured worker for a work related injury or illness, shall disclose information to an injured workers' employer as to when and what restrictions an injured worker may return to work.

E. Additional Disclosures Requiring Specific Approval. Requests for medical records beyond what subsections B, C, and D permit require a signed approval by the director, the medical director, a designated person(s) within the Industrial Accidents Division or an administrative law judge if the claim is being adjudicated.

F. Appeals. A party affected by the decision made by a person in subsection E may appeal that decision to the Adjudication Division of the Labor Commission.

G. Injured Worker's Duty to Disclose Medical Treatment and Providers. Upon receipt and within the scope of this rule, an injured worker shall provide those entities or persons listed in C(1) the names, address, and dates of medical treatment (if known) of the medical providers who have provided medical care within the past 10 years (15 years for permanent total disability claim) except for those medical providers names in C(3). Labor Commission form number 307 "Medical Treatment Provider List" must be used for this purpose. Parties listed in C(1) of this rule must provide each medical provider identified on form 307 with a signed authorization for access to medical records. A copy of the signed authorization may be sent to the medical providers listed on form 307.

H. Injured Worker's Right to Contest Requests for Pre-Injury Medical Records. An injured worker may contest, for good reason, a request for medical records created prior to the reported date of the accident or illness for which the injured worker has made a claim for benefits by filing a complaint with the Labor Commission. Good reason is defined as the request has gone beyond the scope of this rule or sensitive medical information is contained in a particular medical record.

I. Limitations on Use and Re-disclosure of Medical Information.

1. Any party obtaining medical records under authority of this rule may not disclose those medical records, without a valid authorization, except as required by law.

2. An employer may only use medical records obtained under the authority of this rule to:

a. Pay or adjudicate workers' compensation claims if the employer is self-insured;

b. To assess and facilitate an injured workers' return to work;

c. As otherwise authorized by the injured worker.

3. An employer obtaining medical records under authority of this rule must maintain the medical records separately from the employee's personnel file.

4. Any medical records obtained under the authority of this rule to make a determination regarding the acceptance of liability or for treatment of a condition related to a workers' compensation claim shall only be used for workers' compensation purposes and shall not be released, without a signed release by the injured worker or his/her personal representative, to any other party. An employer shall make decisions related only to the workers' compensation claim based on any medical information received under this rule.

K. Permissible Fees for Providing Medical Records. When any medical provider provides copies of medical records, other than the records required when submitting a bill for payment or as required by the Labor Commission rules, the following charges are presumed reasonable:

1. A search fee of $15 payable in advance of the search;

2. Copies at $.50 per page, including copies of microfilm, payable after the records have been prepared and

3. Actual costs of postage payable after the records have been prepared and sent. Actual cost of postage is deemed to be the cost of regular mail unless the requesting party has requested the delivery of the records by special mail or method.

4. The Labor Commission will release its records per the above charges to parties/entities with a signed and notarized release from the injured worker unless the information is classified and controlled under the Government Records Access and Management Act (GRAMA).

5. No fee shall be charged when the RBRVS or the Commission's Medical Fee Guidelines require specific documentation for a procedure or when medical providers are required to report by statute or rule.

6. An injured worker or his/her personal representative may obtain one copy of each of the following records related to the industrial injury or occupational disease claim, at no cost, when the injured worker or his/her personal representative have signed a form by the Industrial Accidents Division to substantiate his/her industrial injury/illness claim;

a. History and physical;

b. Operative reports of surgery;

c. Hospital discharge summary;

d. Emergency room records;

e. Radiological reports;

f. Specialized test results; and

g. Physician SOAP notes, progress notes, or specialized reports.

h. Alternatively, a summary of the patients records may be made available to the injured worker or his/her personal representative at the discretion of the physician.

R612-300-11. Utilization Review Standards.

A. Purpose of Utilization Review and Definitions.

1. "Utilization Review" is used to manage medical costs, improve patient care and enhance decision-making. Utilization review includes, but is not limited to, the review of requests for authorization and the review of medical bills to determine whether the medical services were or are necessary to treat a workplace injury. Utilization review does not include:

a. bill review for the purpose of determining whether the medical services rendered were accurately billed, or

b. any system, program, or activity used to determine whether an individual has sustained a workplace injury.

2. Any utilization review system shall incorporate a two-level review process that meets the criteria set forth in subsections B and C of this rule.

3. Definitions. As used in this rule:

a. "Request for Authorization" means any request by a physician for assurance that appropriate payment will be made for a course of proposed medical treatment.

b. "Reasonable Attempt" requires at least two phone calls and a fax, two phone calls and an e-mail, or three phone calls, within five business days from date of the payor's receipt of the physician's request for review.

B. Level I - Initial Request and Review.

1. A health care provider may use Form 223 to request authorization and payment for proposed medical treatment. The provider shall attach all documentation necessary for the payor to make a decision regarding the proposed treatment.

a. Requests for approval of restorative services are governed by the provisions of Section R612-300.5. C. 7. which requires submission of the appropriate RSA form and documentation.

2. Upon receipt of the provider's request for authorization, the payor may use medical or non-medical personnel to apply medically-based criteria to determine whether to approve the request. The payor must:

a. Within 5 business days after receiving the request and documentation, transmit Form 223 back to the physician, in a verifiable manner, advising of the payor's approval or denial of the proposed treatment.

i. If approval is denied, the payor must include with its denial a statement of the criteria it used to make its determination. A copy of the denial must also be mailed to the injured worker.

C. Level II - Review.

1. A health care provider who has been denied authorization or has received no timely response may request a physician's review by completing and sending the applicable portion of Commission Form 223 to the payor.

a. The provider must include the times and days that he/she is available to discuss the case with the reviewing physician, and must be reasonably available during normal business hours.

b. This request for review may be used by a health care provider who has been denied authorization for restorative services pursuant to Subsection R612-300-5.C.7.

2. The payor's physician representative must complete the review within five business days of the treating physician's request for review. Additional time may be requested from the Commission to accommodate highly unusual circumstances or particularly difficult cases.

a. The insurer's physician representative must make a reasonable effort to contact the requesting provider to discuss the request for treatment. The payor shall notify the Commission if an additional five days is needed in order to contact the treating physician or to review the case.

b. If the payor again denies approval of the recommended treatment, the payor must complete the appropriate portion of Commission Form 223, and shall include:

i. the criteria used by the payor in making the decision to deny authorization; and

ii. the name and specialty of the payor's reviewing physician;

iii. appeals information.

c. The denial to authorize payment for treatment must then be sent to the physician, the injured worker and the Commission.

3. The payor's failure to respond to the review request within five business days, by a method which provides certification of transmission, shall constitute authorization for payment of the treatment.

D. Mediation and Adjudication. Upon receipt of denial of authorization for payment for medical treatment at Level II, the Commission will facilitate, upon the request of the injured worker, the final disposition of the case.

1. If the parties agree, the medical dispute will be referred to Commission staff for mediation.

2. If the parties do not agree to mediation, the matter will be referred to the Division of Adjudication for hearing and decision.

E. Reduction of Fee for Failure to Follow Utilization Review Standards.

1. In cases in which a health care provider has received notice of this rule but proceeds with non-emergency medical treatment without obtaining payor authorization, the following shall apply:

a. If the medical treatment is ultimately determined to be necessary to treat a workplace injury, the fee otherwise due the health care provider shall be reduced by 25%.

b. If the medical treatment is ultimately determined to be unnecessary to treat a workplace injury, the payor is not liable for payment for such treatment. The injured worker may be liable for the cost of treatment.

2. The penalty provision in D. 1. shall not apply if the medical treatment in question has been preauthorized by some other non-worker's compensation insurance company or other payor.

R612-300-12. Commission Approval of Health Care Treatment Protocols.

A. Authority. Pursuant to authority granted by Subsection 34A-2-111(2)(c)(i)(B)(VII) of the Utah Workers' Compensation Act, the Utah Labor Commission establishes the following standards and procedures for Commission approval of medical treatment and quality care guidelines.

B. Standards

1. Scientifically based: Subsection 34A-2-111(2)(c)(i)(B)(VII)(Aa) of the Act requires that guidelines be scientifically based. The Commission will consider a guideline to be "scientifically based" when it is supported by medical studies and/or research.

2. Peer reviewed: Subsection 34A-2-111(2)(c)(i)(B)(VII)(Bb) of the Act requires that guidelines be peer reviewed. The Commission will consider a guideline to be "peer reviewed" when the medical study's content, methodology, and results have been reviewed and approved prior to publication by an editorial board of qualified experts.

3. Other standards: Pursuant to its rulemaking authority under Subsection 34A-2-111(2)(c)(i)(B)(VII), the Utah Labor Commission establishes the following additional standards for medical treatment and quality care guidelines.

a. The guidelines must be periodically updated and, subject to Commission discretion, may not be approved for use unless updated in whole or in part at least biannually;

b. Guideline sources must be identified;

c. The guidelines must be reasonably priced;

d. The guidelines must be easily accessible in print and electronic versions.

C. Procedure: Pursuant to Subsection 34A-2-111(2)(c)(i)(B)(VII) of the Utah Workers' Compensation Act, a party seeking Commission action to approve or disapprove a guideline shall file a petition for such action with the Labor Commission.

R612-300-13. HIV, Hepatitis B and C Testing and Reporting for Emergency Medical Service Providers.

A. Purpose and Authority. This rule, established pursuant to U.C.A. Section 78B-8-404, establishes procedures for testing and reporting following a significant exposure of an emergency medical services provider to infectious diseases.

B. Definitions. In addition to the terms defined in Section 78B-8-401, the following definitions apply for purposes of this rule.

1. Contact means designated person(s) within the emergency medical services agency or the employer of the emergency medical services provider.

2. Emergency medical services (EMS) agency means an agency, entity, or organization that employs or utilizes emergency medical services providers as defined in (4) as employees or volunteers.

3. Source Patient means any individual cared for by a pre-hospital emergency medical services provider, including but not limited to victims of accidents or injury, deceased persons, prisoners or persons in the custody of the Department of Corrections, a county correctional facility, or a public law enforcement entity.

4. Receiving facility means a hospital, health care or other facility where the patient is delivered by the emergency medical services provider for care.

C. Emergency Medical Services Provider Responsibility.

1. The EMS provider shall document and report all significant exposures to the receiving facility and contact as defined in C.2.

2. The reporting process is as follows:

a. The exposed EMS provider shall complete the Exposure Report Form (ERF) at the time the patient is delivered to the receiving facility and provide a copy to the person at the receiving facility authorized by the facility to receive the form. In the event the exposed EMS provider does not accompany the source patient to the receiving facility, he/she may report the exposure incident, with information requested on the ERF, by telephone to a person authorized by the facility to receive the form. In this event, the exposed EMS provider shall nevertheless submit a written copy of the ERF within three days to an authorized person of the receiving facility.

b. The exposed EMS provider shall, within three days of the incident, submit a copy of the ERF to the contact as defined in C.2.

D. Receiving Facility Responsibility.

1. The receiving facility shall establish a system to receive ERFs as well as telephoned reports from exposed EMS providers on a 24-hour per day basis. The facility shall also have available or on call, trained pre-test counselors for the purpose of obtaining consent and counseling of source patients when HIV testing has been requested by EMS providers. The receiving facility shall contact the source patient prior to release from the facility to provide the individual with counseling or, if unable to provide counseling, provide the source patient with phone numbers for a trained counselor to provide the counseling within 24 hours.

2. Upon notification of exposure, the receiving facility shall request permission from the source patient to draw a blood sample for disease testing. In conjunction with this request, the source patient must be advised of his/her right to refuse testing and be advised that if he/she refuses to be tested that fact will be forwarded to the EMS agency or employer of EMS provider. The source patient shall also be advised that if he/she refuses to be tested, the EMS agency or provider may seek a court order to compel the source patient to submit to a blood draw for the disease testing.

Testing is authorized only when the source patient, his/her next of kin or legal guardian consents to testing, with the exception that consent is not required from an individual who has been convicted of a crime and is in the custody or under the jurisdiction of the Department of Corrections, a county correctional facility, a public law enforcement entity, or if the source patient is dead. If consent is denied, the receiving facility shall complete the ERF and send it to the EMS agency or employer of the EMS provider. If consent is received, the receiving facility shall draw a sample of the source patient's blood and send it, along with the ERF, to a qualified laboratory for testing.

3. The laboratory that the receiving facility has sent source patient's blood draw to shall send the disease test results, by Case ID number, to the EMS agency or employer of the EMS provider.

F. EMS Agency/Employer Responsibility:

1. The EMS agency/employer, upon receipt of the disease tests, from the receiving facility laboratory, shall immediately report the result, by case number, not name, to the exposed EMS provider.

2. The EMS agency/employer, upon the receipt of refusal of testing by the source, shall report that refusal to the EMS provider.

3. The agency/employer or its insurance carrier shall pay for the EMS provider and the source patient testing for the covered diseases per the Labor Commission fee schedule.

4. The EMS agency/employer shall maintain the records of any disease exposures contained in this rule per the OSHA Blood

Borne Pathogen standards.

R612-300-14. Advance Practice Registered Nurse.

A. Authority. This rule is enacted under the authority of 34A-1-104 and 58-31b-803.

B. Requirement. An advanced practice registered nurse who treats an injured worker and prescribes Schedule II controlled substances for chronic pain is subject to the provisions of the "Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain," July 2013, adopted by the Federation of State Medical Boards, which is incorporated by reference.

KEY: workers' compensation, fees, medical practitioners, nurse practitioners

April 9, 2018	**34A-1-104**
Notice of Continuation February 8, 2018	**34A-2-201**

R616. Labor Commission, Boiler, Elevator and Coal Mine Safety.
R616-2. Boiler and Pressure Vessel Rules.
R616-2-1. Authority.

This rule is established pursuant to Title 34A, Chapter 7 for the purpose of establishing reasonable safety standards for boilers and pressure vessels to prevent exposure to risks by the public and employees.

R616-2-2. Definitions.

A. "ASME" means the American Society of Mechanical Engineers.

B. "Boiler inspector" means a person who is an employee of:

1. The Division who is authorized to inspect boilers and pressure vessels by having met nationally recognized standards of competency and having received the Commission's certificate of competency; or

2. An insurance company writing boiler and pressure vessel insurance in Utah who is deputized to inspect boilers and pressure vessels by having met nationally recognized standards of competency, receiving the Commission's certificate of competency, and having paid a certification fee.

C. "Commission" means the Labor Commission created in Section 34A-1-103.

D. "Division" means the Division of Boiler, Elevator and Coal Mine Safety of the Labor Commission.

E. "National Board" means the National Board of Boiler and Pressure Vessel Inspectors.

F. "Nonstandard" means a boiler or pressure vessel that does not bear ASME and National Board stamping and registration.

G. "Owner/user agency" means any business organization operating pressure vessels in this state that has a valid owner/user certificate from the Commission authorizing self-inspection of unfired pressure vessels by its owner/user agents, as regulated by the Commission, and for which a fee has been paid.

H. "Owner/user agent" means an employee of an owner/user agency who is authorized to inspect unfired pressure vessels by having met nationally recognized standards of competency, receiving the Commission's certificate of competency, and having paid a certification fee.

R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels.

The following safety codes and rules shall apply to all boilers and pressure vessels in Utah, except those exempted pursuant to Section 34A-7-101, and are incorporated herein by this reference in this rule.

A. ASME Boiler and Pressure Vessel Code -- 2017.

1. Section I Rules for Construction of Power Boilers.

2. Section IV Rules for Construction of Heating Boilers.

3. Section VIII Rules for Construction of Pressure Vessels.

B. Power Piping ASME B31.1 -- 2016.

C. Controls and Safety Devices for Automatically Fired Boilers ASME CSD-1-2015. Except:

1. Part CG-130(c).

D. National Board Inspection Code ANSI/NB-23 - 2017 Part 3.

E. NFPA 85 Boiler and Combustion Systems Hazard Code 2015.

F. Recommended Administrative Boiler and Pressure Vessel Safety Rules and Regulations NB-132 Rev. 4.

G. Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair and Alteration API 510 Tenth Edition, 2014. Except:

1. Section-8, and

2. Appendix-A.

R616-2-4. Quality Assurance for Boilers, Pressure Vessels and Power Piping.

A. Consistent with the requirements of the Commission and its predecessor agency since May 1, 1978, all boilers and pressure vessels installed on or after May 1, 1978 shall be registered with the National Board and the data plate must include the National Board number.

B. Pursuant to Section 34A-7-102(2), any boiler or pressure vessel of special design must be approved by the Division to ensure it provides a level of safety equivalent to that contemplated by the Boiler and Pressure Vessel Code of the ASME. Any such boiler or pressure vessel must thereafter be identified by a Utah identification number provided by the Division.

C. All steam piping, installed after May 1, 1978, which is external (from the boiler to the first stop valve for a single boiler and the second stop valve in a battery of two or more boilers having manhole openings) shall comply with Section 1 of the ASME Boiler and Pressure Vessel Code or ASME B31.1 Power Piping as applicable.

D. Nonstandard boilers or pressure vessels installed in Utah before July 1, 1999 may be allowed to continue in operation provided the owner can prove the equivalence of its design to the requirements of the ASME Boiler and Pressure Vessel Code. Nonstandard boilers or pressure vessels may not be relocated or moved.

E. Effective July 1, 1999, all boiler and pressure vessel repairs or alterations must be performed by an organization holding a valid Certificate of Authorization to use the "R" stamp from the National Board. Repairs to pressure relief valves shall be performed by an organization holding a valid Certificate of Authorization to use the "VR" stamp from the National Board.

R616-2-5. Code Applicability.

A. The safety codes which are applicable to a given boiler or pressure vessel installation are the latest versions of the codes in effect at the time the installation commenced.

B. If a boiler or pressure vessel is replaced, this is considered a new installation.

C. If a boiler or pressure vessel is relocated to another location or moved in its existing location, this is considered a new installation.

R616-2-6. Variances to Code Requirements.

A. In a case where the Division finds that the enforcement of any code would not materially increase the safety of employees or general public, and would work undue hardships on the owner or user, the Division may allow the owner or user a variance pursuant to Section 34A-7-102. Variances must be in writing to be effective, and can be revoked after reasonable notice is given in writing.

B. Persons who apply for a variance to a safety code requirement must present the Division with the rationale as to how their boiler or pressure vessel installation provides safety equivalent to the safety code.

C. No errors or omissions in these codes shall be construed as permitting any unsafe or unsanitary condition to exist.

R616-2-7. Boiler and Pressure Vessel Compliance Manual.

A. The Division shall develop and issue a safety code compliance manual for organizations and personnel involved in the design, installation, operation and maintenance of boilers and pressure vessels in Utah.

B. This compliance manual shall be reviewed annually for accuracy and shall be re-issued on a frequency not to exceed two years.

C. If a conflict exists between the Boiler and Pressure Vessel compliance manual and a safety code adopted in R616-2-3, the code requirements will take precedence.

R616-2-8. Inspection of Boilers and Pressure Vessels.

A. It shall be the responsibility of the Division to make inspections of all boilers or pressure vessels operated within its

jurisdiction, when deemed necessary or appropriate.

B. Boiler inspectors shall examine conditions in regards to the safety of the employees, public, machinery, ventilation, drainage, and into all other matters connected with the safety of persons using each boiler or pressure vessel, and when necessary give directions providing for the safety of persons in or about the same. For boilers or pressure vessels inspected by an inspector employed by the Division, the owner or user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary. For boilers or pressure vessels inspected by a deputy inspector employed by an insurance company, the deputy inspector's right of entry on the premises where the boiler or pressure vessel is located is subject to the agreement between the insurance company and the owner or operator of the boiler or pressure vessel. In the event an internal inspection of a boiler or pressure vessel is required the owner or user shall, at a minimum, prepare the boiler or pressure vessel by meeting the requirements of 29 CFR Part 1910.146 "Permit Required Confined Spaces" and 29 CFR Part 1910.147 "Control of Hazardous Energy (Lockout/Tagout)".

C. If the Division finds a boiler or pressure vessel complies with the safety codes and rules, the owner or user shall be issued a Certificate of Inspection and Permit to Operate.

D. If the Division finds a boiler or pressure vessel is not being operated in accordance with safety codes and rules, the owner or user shall be notified in writing of all deficiencies and shall be directed to make specific improvements or changes as are necessary to bring the boiler or pressure vessel into compliance.

E. Pursuant to Sections 34A-1-104, 34A-2-301 and 34A-7-102, if the improvements or changes to the boiler or pressure vessel are not made within a reasonable time, the boiler or pressure vessel is being operated unlawfully.

F. If the owner or user refuses to allow an inspection to be made, the boiler or pressure vessels is being operated unlawfully.

G. If the owner or user refuses to pay the required fee, the boiler or pressure vessel is being operated unlawfully.

H. If the owner or user operates a boiler or pressure vessel unlawfully, the Commission may order the boiler or pressure vessel operation to cease pursuant to Sections 34A-1-104 and 34A-7-103.

I. If, in the judgment of a boiler inspector, the lives or safety of employees or public are or may be endangered should they remain in the danger area, the boiler inspector shall direct that they be immediately withdrawn from the danger area, and the boiler or pressure vessel be removed from service until repairs have been made and the boiler or pressure vessel has been brought into compliance.

J. An owner/user agency may conduct self inspection of its own unfired pressure vessels with its own employees who are owner/user agents under procedures and frequencies established by the Division.

R616-2-9. Fees.

Fees to be charged as required by Section 34A-7-104 shall be adopted by the Labor Commission and approved by the Legislature pursuant to Section 63J-1-301(2).

R616-2-10. Notification of Installation, Revision, or Repair.

A. Before any boiler covered by this rule is installed or before major revision or repair, particularly welding, begins on a boiler or pressure vessel, the Division must be advised at least one week in advance of such installation, revision, or repair unless emergency dictates otherwise.

B. It is recommended that a business organization review its plans for purchase and installation, or of revision or repair, of a boiler or pressure vessel well in advance with the Division to ensure meeting code requirements upon finalization.

R616-2-11. Initial Agency Action.

Issuance or denial of a Certificate of Inspection and Permit to Operate by the Division, and orders or directives to make changes or improvements by the boiler inspector are informal adjudicative actions commenced by the agency per Section 63G-4-201.

R616-2-12. Presiding Officer.

The boiler inspector is the presiding officer referred to in Section 63G-4-201. If an informal hearing is requested pursuant to R616-2-13, the Commission shall appoint the presiding officer for that hearing.

R616-2-13. Request for Informal Hearing.

Within 30 days of issuance, any aggrieved person may request an informal hearing regarding the reasonableness of a permit issuance or denial or an order to make changes or improvements. The request for hearing shall contain all information required by Sections 63G-4-201(2)(a) and 63G-4-201(3).

R616-2-14. Classification of Proceeding for Purpose of Utah Administrative Procedures Act.

Any hearing held pursuant to R616-2-13 shall be informal and pursuant to the procedural requirements of Section 63G-4-203 and any agency review of the order issued after the hearing shall be per Section 63G-4-302. An informal hearing may be converted to a formal hearing pursuant to Section 63G-4-202(3).

R616-2-15. Deputy Boiler/Pressure Vessel Inspectors.

A. Purpose -- Section 34A-7-10 of the Safety Act ("the Act"; Title 34A, Chapter 7, Part One, Utah Code Annotated) permits the Division of Boiler, Elevator and Coal Mine Safety ("the Division") to authorize qualified individuals to inspect boilers and pressure vessels as "deputy inspectors." This rule sets forth the Division's procedures and standards for authorizing deputy inspectors, monitoring their performance, and suspending or revoking such authority when appropriate.

B. Initial appointment of deputy inspectors.

1. An applicant for initial Division authorization to inspect boilers and pressure vessels as a deputy inspector must satisfy the following requirements in the order listed below:

a. A company insuring boilers and pressure vessels in Utah ("sponsoring employer" hereafter) must submit a letter to the Division certifying that:

i. the applicant is employed by the sponsoring employer; and

ii. the sponsoring employer requests the Division authorize the applicant to inspect boilers and pressure vessels insured by that employer;

b. The applicant or sponsoring employer must submit to the Division a current, valid certification from the National Board of Boiler and Pressure Vessel Certification ("National Board") that the applicant is qualified to inspect boilers and pressure vessels;

c. The applicant or sponsoring employer must submit an application fee of $25 to the Division;

d. The applicant must complete training for deputy inspectors provided by the Division;

e. The applicant must pass an oral examination administered by the Division pertaining to boiler and pressure vessel inspection standards and processes; and

f. The applicant must pass a written, closed-book examination administered by the Division on the Division's boiler/Pressure Vessel Compliance Manual, Rules, and codes adopted;

2. Upon successful completion of the foregoing requirements, the Division will appoint the applicant as a deputy inspector and will issue credentials to that effect. The Division will also notify the sponsoring employer of the appointment.

3. Initial appointment as a deputy inspector terminates at the end of the calendar year in which such appointment is made unless a deputy inspector qualifies for reappointment under paragraph C of this rule.

C. Annual reappointment of deputy inspectors.

1. Effective January 1 of each year, the Division will renew

the appointment of each deputy inspector for an additional year if the inspector satisfies the following requirements:

a. The individual was authorized to serve as a deputy inspector as of December 31 of the previous year;

b. A sponsoring employer has submitted a letter to the Division certifying that:

i. the individual is employed by the sponsoring employer; and

ii. The sponsoring employer requests the Division to reappoint that individual as a deputy inspector to inspect boilers and pressure vessels for that employer;

c. The individual or sponsoring employer has submitted to the Division a current, valid certification from the National Board establishing that the individual is qualified as a boiler and pressure vessel inspector;

d. The individual or sponsoring employer has submitted to the Division the required renewal fee of $20;

e. The individual has completed the Division's required training for deputy inspectors.

2. An individual who does not meet each of the foregoing requirements is not eligible for reappointment as a deputy inspector and must instead meet each of the requirements for initial appointment under paragraph B of this rule.

D. Lapse, change of employment and loss of National Board certification.

1. Lapse. An individual's appointment as a deputy inspector will lapse if the individual:

a. Does not renew the appointment by satisfying the requirements of paragraph C of this rule;

b. Does not perform and submit to the Division at least one boiler or pressure vessel inspection during the previous calendar year; or

c. Fails to inform the Division of any change in status of employment with his or her sponsoring employer as required in the following paragraph D.2. of this rule.

2. Change in employment.

a. A deputy inspector must immediately notify the Division in writing of any change in the status of the inspector's employment with his or her sponsoring employer.

b. If the Division determines that an individual previously appointed as a deputy inspector is no longer employed by a company authorized to insure boilers and pressure vessels in Utah, the Division will immediately revoke that individual's appointment.

c. If the Division determines that a deputy inspector has changed employment to another company that insures boilers and pressure vessels in Utah, the Division will require the new employer or deputy inspector to submit the following:

i. A letter from the new employer:

AA. certifying that the individual is employed by that sponsoring employer; and

BB. requesting that the individual's appointment as a deputy inspector be continued;

ii. A current, valid certification as a boiler/pressure vessel inspector from the National Board; and

iii. Payment to the Division of the required fee of $20.

3. National Board Certification.

a. Every deputy inspector shall at all times hold a current valid certification as a boiler/pressure vessel inspector from the National Board.

b. Each deputy inspector shall immediately notify the Division if his or her National Board certification has been revoked or suspended.

c. If the Division has reason to believe that a deputy inspector's National Board certification has been revoked or suspended, the Division will obtain written verification from the National Board. IF the National Board has in fact revoked or suspended the deputy inspector's certification, the Division will revoke the inspector's appointment as a deputy inspector.

E. Scope of authority. Appointment as a deputy inspector has the limited effect of authorizing the deputy inspector to inspect boilers and pressure vessels insured by his or her sponsoring employer for compliance with engineering codes and other standards adopted by the Division in Utah Administrative Code Rule R616-2. The Division expressly does not confer any other authority to deputy inspectors. Deputy inspectors remain employees of their respective sponsoring employers and are not employees of the Division or agents of the Division for any other purpose. A deputy inspector's right to inspect any particular boiler or pressure vessel, including the deputy inspector's right of entry on the premises where the boiler or pressure vessel is located, is subject to the agreement between the sponsoring employers and the owner or operator of the boiler or pressure vessel. Appointment as a deputy inspector by the Division does not confer any right of entry independent from the terms of such agreement.

F. Inspection Standards

1. In inspecting any boiler or pressure vessel, a deputy inspector shall apply the standards and engineering codes adopted in Utah Administrative Code R616-2 - Boiler and Pressure Vessel Rules.

2. Each deputy inspector must use the Division's web-based applications to accurately record and submit all information regarding boilers and pressure vessels, including;

a. inspection reports;

b. scrapped and inactive items;

c. information changes other than those requiring submission of a Change of Insurance Status Form (NB4); and

d. a Web Issue Form (Form WIF-01) to identify any error or other issue resulting from the deputy inspector's use of the Division's web-based applications.

G. Quality Control. The Division will evaluate the performance of each deputy inspector to assure compliance with the Division's standards for boiler and pressure vessel inspections.

1. The Division's Business Analyst will review each inspection report submitted by a deputy inspector and will report any serious errors to the Chief Boiler and Pressure Vessel Inspector ("Chief Inspector") for appropriate action.

2. Each year, the Chief Inspector will evaluate a sample of each deputy inspector's inspections performed during that year for compliance with Division standards.

3. In addition to the reviews undertaken pursuant to paragraph G.2. of this rule, the Chief Inspector will also investigate any observation or report of an inspection deficiency to determine whether the deputy inspector complied with Division standards and rules in performing and reporting the inspection.

H. Corrective Action, Revocation and Right to Hearing.

1. If the Chief Inspector concludes that a deputy inspector does not satisfy requirements of this rule for continued appointment as a deputy inspector or has performed an inspection in a manner that is inconsistent with Division standards, the Chief Inspector will submit a written report and may recommend corrective action to the Division Director.

2. Depending on the circumstances and the seriousness of the situation, corrective action may include;

a. warning letter;

b. requirements for additional training;

c. requirements for retesting;

d. request review by the National Board;

e. additional supervision; and

f. revocation of appointment as a deputy inspector.

3. The Division Director shall forward a copy of the Chief Inspector's written report and any recommendation for corrective action to the deputy inspector and the sponsoring employer. If the deputy inspector or sponsoring employer dispute the report or recommended corrective action, the Division Director shall schedule time and place to conduct a hearing on the matter, such hearing to be conducted as an informal adjudicative proceeding under the Utah Administrative Procedures Act. After conducting such hearing, the Division Director will issue a written decision setting forth the material facts and ordering appropriate corrective

action, if any. The Division Director shall forward a copy of the decision to the deputy inspector, sponsoring employer, and the National Board.

4. If the deputy inspector or sponsoring employer is dissatisfied with the Division Director's decision, the inspector or sponsoring employer may seek judicial review as provided by the Utah Administrative Procedures Act.

KEY: boilers, certification, safety
April 9, 2018 **34A-7-101 et seq.**
Notice of Continuation August 23, 2016

R616. Labor Commission, Boiler, Elevator and Coal Mine Safety.
R616-3. Elevator Rules.
R616-3-1. Authority.

This rule is established pursuant to Section 34A-7-201 for the purpose of the Labor Commission ascertaining, fixing, and enforcing reasonable standards regarding elevators for the protection of life, health, and safety of the general public and employees.

R616-3-2. Definitions.

A. "ANSI" means the American National Standards Institute, Inc.

B. "ASME" means the American Society of Mechanical Engineers.

C. "Commission" means the Labor Commission created in Section 34A-1-103.

D. "Division" means the Division of Boiler, Elevator and Coal Mine Safety of the Labor Commission.

E. "Elevator" means a hoisting and lowering mechanism equipped with a car or platform and that moves in guides in a substantially vertical direction.

F. "Escalator" means a stairway, moving walkway, or runway that is power driven, continuous and used to transport one or more individuals.

R616-3-3. Safety Codes for Elevators.

The following safety codes are adopted and incorporated by reference within this rule:

A. ASME A17.1-2016/CSA B44-16, Safety Code for Elevators and Escalators, and amended as follows:

1. Delete 2.2.2.5;

2. Amend 8.6.5.8 as follows: Existing hydraulic cylinders installed below ground when found to be leaking shall be replaced with cylinders conforming to 3.18.3.4 or the car shall be provided with safeties conforming to 3.17.1 and guide rails, guide rail supports and fastenings conforming to 3.23.1. This code is issued every two years. New issues become mandatory only when a formal change is made to these rules. Elevators are required to comply with the A17.1 code in effect at the time of installation.

B. ASME A17.3 - 2015 Safety Code for Existing Elevators and Escalators. This code is adopted for regulatory guidance only for elevators classified as remodeled elevators by the Division of Boiler, Elevator and Coal Mine Safety.

C. ASME A90.1-2015, Safety Standard for Belt Manlifts.

D. ANSI A10.4-2016, Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations.

E. ICC/ANSI A117.1 (2009) Accessible and Usable Buildings and Facilities, sections 407 and 408, and 410 approved October 20, 2010.

F. ASME A18.1-2014 Safety Standard For Platform Lifts And Stairway Chairlifts.

G. ASME A17.6-2010 Standard for Elevator Suspension, Compensation, and Governor Systems.

R616-3-4. Inspector Qualification.

A. Any person who performs elevator safety inspections must have a current certification as a Qualified Elevator Inspector from a nationally accredited organization.

R616-3-5. Modifications and Variances to Codes.

A. In a case where the Division finds that the enforcement of any code would not materially increase the safety of employees or general public, and would work undue hardships on the owner/user, the Division may allow the owner/user a variance. Variances must be in writing to be effective and can be revoked after reasonable notice is given in writing.

B. Persons who apply for a variance to a safety code requirement must present the Division with the rationale as to how their elevator installation provides safety equivalent to the applicable safety code.

C. No errors or omissions in these codes shall be construed as permitting any unsafe or unsanitary condition to exist.

D. The Commission may, by rule, add or delete from the applicable safety codes for any good and sufficient safety reason.

E. In the event that adopted safety codes are in conflict with one another, the ASME A17.1, Safety Code for Elevators and Escalators will take precedence. The exception to this is for compliance with the accessibility guidelines of Pub. L. No. 101-336 "The Americans with Disability Act of 1990". In this instance, the International Building Code standards adopted in R616-3-3 for accessibility as applied to elevators take precedence over ASME A17.1.

R616-3-6. Exemptions.

A. These rules apply to all elevators in Utah with the following exemptions:

1. Private residence elevators installed inside a single family dwelling. Common elevators which serve multiple private residences are not exempt from these rules.

2. Elevators in buildings owned by the Federal government.

B. Owners of elevators exempted in R616-3-6.A. may request a safety inspection by Division of Boiler, Elevator and Coal Mine Safety inspectors. Code non-compliance items will be treated as recommendations by the inspector with the owner having the option as to which, if any, are corrected. Owners requesting these inspections will be invoiced at the special inspection rate. If the owner requests a State of Utah Certificate to Operate for the elevator, all of the recommendations must be completed to the satisfaction of the inspector and the owner will be invoiced the appropriate certificate fee.

R616-3-7. Inspection of Elevators, Permit to Operate, Unlawful Operations.

A. It shall be the responsibility of the Division to make inspections of all elevators when deemed necessary or appropriate.

B. Elevator inspectors shall examine conditions in regards to the safety of the employees, public, machinery, drainage, methods of lighting, and into all other matters connected with the safety of persons using or in close proximity to each elevator, and when necessary give directions providing for the better health and safety of persons in or about the same. The owner/user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary.

C. If the Division finds that an elevator complies with the applicable safety codes and rules, the owner/user shall be issued a Certificate of Inspection and Permit to Operate.

1. The Certificate of Inspection and Permit to Operate is valid for 24 months.

2. The Certificate of Inspection and Permit to Operate shall be displayed in a conspicuous location for the entire validation period. If the certificate is displayed where accessible to the general public, as opposed to being in the elevator machine room, it must be protected under a transparent cover.

D. If the Division finds an elevator is not being operated in accordance with the safety codes and rules, the owner/user shall be notified in writing of all deficiencies and shall be directed to make specific improvements or changes as are necessary to bring the elevator into compliance.

E. Pursuant to Section 34A-7-204, if the improvements or changes are not made within a reasonable time, by agreement of the division and the owner, the elevator is being operated unlawfully.

F. If the owner/user refuses to allow an inspection to be made, the elevator is being operated unlawfully.

G. If the owner/user refuses to pay the required fee, the elevator is being operated unlawfully.

H. If the owner/user operates an elevator unlawfully, the

Commission may order the elevator operation to cease pursuant to Section 34A-1-104.

I. If, in the judgment of an elevator inspector, the lives or safety of employees or public are, or may be, endangered should they remain in the danger area, the elevator inspector shall direct that they be immediately withdrawn from the danger area, and the elevator removed from service until repairs have been made and the elevator has been brought into compliance.

R616-3-8. Inclined Wheelchair Lift Headroom Clearance.

A. Headroom clearance for inclined wheelchair lifts throughout the range of travel shall be not less than 80 inches (2032 mm) as measured vertically from the leading edge of the platform floor.

B. For existing facilities only, in the event that it is not technically or economically feasible to provide other means of access for disabled persons, inclined wheelchair lifts may be installed if all of the following conditions are met:

1. The appropriate building inspection jurisdiction approves the use of an inclined wheelchair lift for the specific application.

2. Headroom clearance throughout the range of travel shall be not less than 60 inches as measured vertically from the leading edge of the platform floor.

3. The passenger restriction sign as required by ASME A18.1 3.1.2.3 shall be amended as follows: "PHYSICALLY DISABLED PERSONS ONLY. NO FREIGHT. HEADROOM CLEARANCE IS LIMITED. USE ONLY IN THE SITTING POSITION".

R616-3-9. Valves in Hydraulic Elevator Operating Fluid Systems.

A. Due to the potential loss of pressure retaining capability when over torqued, bronze-bodied valves shall not be installed in the hydraulic systems of a hydraulic elevator.

B. This requirement is in effect for all new installations and remodel installations involving the hydraulic system.

C. If a bronze-bodied valve installed on an existing elevator begins to leak, that valve shall be replaced by a steel-bodied valve.

R616-3-10. Hydraulic Elevator Piping.

A. This rule establishes minimum standards for hydraulic fluid piping in hydraulic elevators. The piping specifications referred to in this rule are governed by ASME or ASTM piping specifications (e.g. ASME Specification SA-53 Table X2.4).

B. Hydraulic elevators not incorporating a safety valve may use schedule 40 piping.

C. For newly installed hydraulic elevators that do incorporate a safety valve:

1. Where piping is protected by the safety valve, schedule 40 piping may be used;

2. Where grooved or threaded connections are used in piping that is unprotected by the safety valve, i.e. between the safety valve and the hydraulic jack(s), nominal pipe size (NPS)3 or schedule 80 piping may be used;

3. Where piping is unprotected by the safety valve, but welded or bolted flange connections are used, schedule 40 piping may be used.

R616-3-11. Shunt Trips in Elevator Systems.

A. The means (shunt trip) to automatically disconnect the main line power supply to the elevator discussed in 2.8.3.3.2 of A17.1 is not required for hydraulic elevators with a rise of 50 feet or less.

R616-3-12. Hoistway Vents.

Hoistway ventilation as outlined in the International Building Code is under the jurisdiction of the local building official.

R616-3-13. Hand Line Control Elevators.

A. Operation of a hand line control elevator is not permitted.

B. Owners of hand line control elevators are required to render the elevator electrically and mechanically incapable of operation.

R616-3-14. Remodeled Elevators.

A. When an elevator is classified as a remodeled (modernized) elevator by the Division, the components of the elevator involved in the modernization must comply with the standards of the latest version of ASME A17.1 and ASME A17.3 in effect at the time the remodeling of the elevator commences.

R616-3-15. Fees.

A. Fees to be charged as provided by Section 34A-1-106 and 63J-1-303 shall be adopted by the Labor Commission and approved by the Legislature pursuant to Section 63J-1-301(2).

B. The fee for the initial certification permit shall be invoiced to and paid by the company or firm installing the elevator.

C. The renewal certification permit shall be invoiced to and paid by the owner/user.

D. Any request for a special inspection shall be invoiced to and paid by the person/company requesting the inspection, at the hourly rate plus mileage and expenses.

R616-3-16. Notification of Installation, Revision or Remodeling.

A. Before any elevator covered by this rule is installed or a major revision or remodeling begins on the elevator, the Division must be advised at least one week in advance of such installation, revision, or remodeling unless emergency dictates otherwise.

R616-3-17. Initial Agency Action.

Issuance or denial of a Certificate of Inspection and Permit to Operate by the Division, and orders or directives to make changes or improvements by the elevator inspector are informal adjudicative actions commenced by the agency per Section 63G-4-201.

R616-3-18. Presiding Officer.

The elevator inspector is the presiding officer referred to in Section 63G-4-201. If an informal hearing is requested pursuant to R616-3-18, the Commission shall appoint the presiding officer for that hearing.

R616-3-19. Request for Informal Hearing.

Within 30 days of issuance, any aggrieved person may request an informal hearing regarding the reasonableness of a permit issuance or denial or an order to make changes or improvements. The request for hearing shall contain all information required by Sections 63G-4-201(3)(a) and 63G-4-201(3)(b).

R616-3-20. Classification of Proceeding for Purpose of Utah Administrative Procedures Act.

Any hearing held pursuant to R616-3-18 shall be informal and pursuant to the procedural requirements of Section 63G-4-203 and any agency review of the order issued after the hearing shall be per Section 63G-4-302. An informal hearing may be converted to a formal hearing pursuant to Subsection 63G-4-202(3).

KEY: elevators, certification, safety
April 9, 2018 **34A-1-101 et seq.**
Notice of Continuation August 23, 2016

R655. Natural Resources, Water Rights.
R655-1. Wells Used for the Discovery and Production of Geothermal Energy in the State of Utah.
R655-1-1. General Provisions.

1.1 Authority: In Section 73-22-5, the Division of Water Rights is given jurisdiction and authority to require that all wells for the discovery and production of water and steam at temperatures greater than 120 degrees centigrade to be used for geothermal energy production in the State of Utah, be drilled, operated, maintained, and abandoned in a manner as to safeguard life, health, property, the public welfare, and to encourage maximum economic recovery.

1.2 Definitions:

(a) "Applicant" means any person submitting an application to the Division of Water Rights to appropriate water, brine or steam for geothermal purposes and for the construction and operation of any well or injection well.

(b) "BOPE" is an abbreviation for Blow-Out Prevention Equipment which is designed to be attached to the casing in a geothermal well in order to prevent a blow-out.

(c) "Completion." A well is considered to be completed thirty days after drilling operations have ceased unless a suspension of operation is approved by the Division, or thirty days after it has commenced producing a geothermal resource, whichever occurs first, unless drilling operations are resumed before the end of the thirty-day period or at the end of the suspension.

(d) "Correlative Rights" means the owners' or operators' just and equitable share in the geothermal resource.

(e) "Division" means the Division of Water Rights, Department of Natural Resources, State of Utah.

(f) "Drilling Logs" means the recorded description of the lithologic sequence encountered in drilling a well.

(g) "Drilling Operations" means the actual drilling, redrilling, or recompletion of the well for production or injection including the running and cementing of casing and the installation of well head equipment. Drilling operations do not include perforating, logging, and related operations.

(h) "Exploratory Well" means a well drilled for the discovery or evaluation of geothermal resources either in an established geothermal field or in unexplored areas.

(i) "Geothermal Area" means the same general land area which in its subsurface is underlaid or reasonably appears to be underlaid by geothermal resources from or in a reservoir, pool, or other source or interrelated sources.

(j) "Geothermal Field" means an area designated by the Division which contains a well or wells capable of commercial production of geothermal resources.

(k) "Geothermal Resource" means the natural heat energy of the earth, the energy in whatever form which may be found in any position and at any depth below the surface of the earth, present in, resulting from, or created by, or which may be extracted from natural heat and all minerals in solution or other products obtained from the material medium of any geothermal resource.

(l) "Injection Well" means any special well, converted producing well, or reactivated or converted abandoned well employed for injecting material into a geothermal area or adjacent area to maintain pressures in a geothermal reservoir, pool, or other source, or to provide new material to serve as a material medium therein, or for reinjecting any material medium or the residue thereof, or any by-product of geothermal resource exploration or development into the earth.

(m) "Material Medium" means any substance including, but not limited to, naturally heated fluids, brines, associated gases and steam in whatever form, found at any depth and in any position below the surface of the earth, which contains or transmits the natural heat energy of the earth, but excluding petroleum, oil, hydrocarbon gas, or other hydrocarbon substances.

(n) "Notice" means a statement to the Division that the applicant intends to do work.

(o) "Operator" means any person drilling, maintaining, operating, pumping, or in control of any well. The term operator also includes owner when any well is or has been or is about to be operated by or under the direction of the owner.

(p) "Owner" means the owner of the geothermal lease or well and includes operator when any well is operated or has been operated or is about to be operated by any person other than the owner.

(q) "Person" means any individual natural person, general or limited partnership, joint venture, association, cooperative organization, corporation, whether domestic or foreign, agency or subdivision of this or any other state or municipal or quasi-municipal entity whether or not it is incorporated.

(r) "Production Well" means any well which is commercially producing or is intended for commercial production of a geothermal resource.

(s) "State Engineer" is the Director of the Division of Water Rights, which is the agency having general administrative supervision over the waters of the State. The duties of this Division are primarily set forth in Title 73, Chapters 1 through 6.

(t) "Suspension of Operations" means the cessation of drilling, redrilling, or alteration of casing before the well is officially abandoned or completed. All suspensions must be authorized by the Division.

(u) "Waste" means any physical waste including, but not limited to:

(1) Underground waste resulting from inefficient, excessive, or improper use, or dissipation of geothermal energy, or of any geothermal resource pool, reservoir, or other source; or the locating, spacing, constructing, equipping, operating, or producing of any well in a manner which results, or tends to result in reducing the quantity of geothermal energy to be recovered from any geothermal area in the State.

(2) The inefficient above-ground transporting and storage of geothermal energy; and the locating, spacing, equipping, operating, or producing of any well or injection well in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of geothermal energy; the escape into the open air from a well of steam or hot water in excess of what is reasonably necessary in the efficient development or production of a well.

(v) "Well" means any well drilled for the discovery or production of geothermal resources or any well on lands producing geothermal resources or reasonably presumed to contain geothermal resources, or any special well, converted producing well or reactivated or converted abandoned well employed for reinjecting geothermal resources or the residue thereof.

1.3 All administrative procedures involving applications, approvals, hearings, notices, revocations, orders and their judicial review, and all other administrative procedures required or allowed by these rules are governed by rules for administrative procedures adopted by the Division, including R655-6, Administrative Procedures for Informal Proceedings Before the Division of Water Rights of the State of Utah.

1.4 The approval of the Division is required prior to commencing drilling, rehabilitating, renovating, deepening, redrilling, or plugging and abandonment operations.

R655-1-2. Drilling.

2.1 Applications:

2.1.1 Application to drill for Geothermal Resources.

Any person, owner or operator, who proposes to drill a well for the production of geothermal resources or to drill an injection well shall first apply to the Division in accordance with Title 73, Chapter 3. Applications to appropriate water for geothermal purposes will be processed and investigated by the Division, and if they meet the requirements of Section 73-3-8, they will be approved by the State Engineer on a well-to-well basis or as a group of wells which comprise an operating unit and have like characteristics.

Appropriation of water for geothermal purposes shall not be considered mutually interchangeable with water for any other

purpose. Water, brine, steam or condensate produced during a geothermal operation may be subject to further appropriation if physical conditions permit.

2.1.1.1 The driller must have a current well driller's license and bond from the State Engineer in accordance with R655-4 UAC. The driller must also adhere to the rules of R655-4 UAC when drilling through groundwater aquifers. 2.1.2 Plan of Operations:

Before drilling an exploratory, production well, or injection well, the applicant shall submit a plan of operations to the State Engineer for his approval. The plan shall include:

(a) Location, elevation and layout including a map showing the parcel boundaries and well location.

(b) Lease identification and Well Number.

(c) Tools and equipment description including maximum capacity and depth rating.

(d) Expected depth and geology.

(e) Drilling, mud, cementing and casing program.

(f) BOPE installation and test.

(g) Logging, coring and testing program.

(h) Methods for disposal of waste materials.

(i) Environmental considerations such as the placement of pits or sumps, the disposal of solid and liquid wastes, and the handling of test fluids.

(j) Emergency procedures.

(k) Other information as the State Engineer may require.

2.1.3 Application to deepen or modify an existing well.

If the owner or operator plans to deepen, redrill, plug, or perform any operation that will in any manner modify the well, an application shall be filed with the Division and written approval must be received prior to beginning work; however, in an emergency, the owner or operator may take action to prevent damage without receiving prior written approval from the Division, but in those cases the owner or operator shall report his action to the Division as soon as possible.

2.1.4 Application for permit to convert to injection.

If the owner or operator plans to convert an existing geothermal well into an injection well with no change of mechanical condition, written request shall be filed with the Division and written approval must be received prior to beginning injection.

2.1.5 Amendment of permit.

No changes in the point of diversion, place or nature of use shall be allowed until an amendment to the application is approved by the State Engineer in accordance with Section 73-3-3.

2.1.6 Notice to other agencies.

Notice of applications, permits, orders, or other actions received or issued by the Division may be given to any other agency or entity which may have information, comments, or interest in the activity involved.

2.2 Fees: Any application or plan of operation filed with the State Engineer shall be accompanied by a filing fee in accordance with Section 73-2-14.

2.3 Bonds:

2.3.1 Any operator having approval to drill, re-enter, test, alter or operate a well, prior to any construction or operation, shall file with the Division of Water Rights and obtain its approval of a surety bond, payable to the Division of Water Rights for not less than $10,000 for each individual well or $50,000 for all wells. The surety bond shall be on a form prescribed by the Division and shall be conditioned on faithful compliance with all statutes and these rules. A cash bond can be submitted in lieu of a surety bond upon approval of the Division of Water Rights.

2.3.2 Bonds shall remain in force for the life of the well or wells and may not be released until the well or wells are properly abandoned or another valid bond is substituted.

2.3.3 Transfer of property does not release the bond. If any property is transferred and the principal desires to be released from his bond, the operator shall:

a. Assign or transfer ownership in the manner prescribed in Sections 73-1-10 and 73-3-18, identifying the right by application number, well number or location and,

b. Provide the Division with a declaration in writing from the assignee or transferee that he accepts the assignment and tenders his own bond therewith or therein accepts responsibility under his blanket bond on file with the Division.

2.4 Well Spacing:

2.4.1 Any well drilled for the discovery or production of geothermal resources or as an injection well shall be located 100 feet or more from and within the outer boundary of the parcel of land on which the well is situated, or 100 feet or more from a public road, street, or highway dedicated prior to the commencement of drilling. This requirement may be modified or waived by the State Engineer upon written request if it can be demonstrated that public safety is preserved and that the integrity of the geothermal source is not jeopardized.

2.4.2 For several contiguous parcels of land in one or different ownerships that are operated as a single geothermal field, the term outer boundary line means the outer boundary line of the land included in the field. In determining the contiguity of parcels of land, no street, road, or alley lying within the lease or field shall be determined to interrupt such contiguity.

2.4.3 The State Engineer shall approve the proposed well spacing programs or prescribe modifications to the programs as he deems necessary for proper development giving consideration to factors as, but not limited to, topographic characteristics of the area, the number of wells that can be economically drilled to provide the necessary volume of geothermal resources for the intended use, protecting correlative rights, minimizing well interference, unreasonable interference with multiple use of lands, and protection of the environment.

2.4.4 Directional drilling.

Where the surface of the parcel of land is unavailable for drilling, the surface well location may be located upon property which may or may not be contiguous. Surface well locations shall not be less than 25 feet from the outer boundary of the parcel on which it is located, nor less than 25 feet from an existing street or road. The production or injection interval of the well shall not be less than 100 feet from the outer boundary of the parcel into which it is drilled. Directional surveys must be filed with the Division for all wells directionally drilled.

2.5 Identification: Each well being drilled or drilled and not abandoned shall be identified by a durable sign posted in a conspicuous place near the well. The lettering shall be large enough to be legible at 50 feet under normal conditions and shall show the name of the applicant, well number, location by 10-acre tract, and name of lease.

The well number shall be according to the modified Kettleman Well Numbering System adopted by the U.S. Geological Survey.

2.6 Unit Agreements: At the request of any interested party or on his own initiative, the State Engineer may establish a unit plan or agreement for a geothermal area to prevent waste, protect correlative rights and avoid drilling unnecessary wells. Proper notice to interested parties must be given and a hearing held before the State Engineer before the unit may be created.

2.7 Casing Requirements:

2.7.1 General.

All wells shall be cased in a manner to protect or minimize damage to the environment, usable ground waters and surface waters, geothermal resources, life, health, and property. The permanent well head completion equipment shall be attached to the production casing or to the intermediate casing if production casing does not reach the surface.

Specifications for casing strings shall be determined or approved on a well-to-well basis. All casing strings reaching the surface shall provide adequate anchorage for blowout-prevention equipment, hole pressure control and protection for all natural resources. The casing requirements given are general but should be used as guidelines in submitting proposals to drill (Plan of

Operations).

2.7.2 Conductor Casing.

A minimum of 40 feet of conductor casing shall be installed. The annular space is to be cemented solid to the surface. A 24-hour cure period for the grout must be allowed prior to drilling out the shoe unless additives approved by the State Engineer are used to obtain early strength. An annular blowout preventer shall be installed on all exploratory wells and on development wells when deemed necessary by the Division. For low-temperature geothermal wells less than 90 degrees C. this requirement may be reduced or waived by the State Engineer.

2.7.3 Surface Casing.

Except in the case of low-temperature geothermal wells, the surface casing hole shall be logged with an induction electrical log, or equivalent, before running casing or by gamma-neutron log. This requirement may vary from area to area, depending upon the amount of pre-existing subsurface geological data available. If sufficient subsurface geologic data is available, the State Engineer may not require additional logging of the surface casing hole. However, permission to omit this requirement must be granted by the Division prior to running surface casing.

Surface casing shall provide for control of formation fluids, for protection of shallow usable ground water and for adequate anchorage for blowout-prevention equipment. All surface casing shall be cemented solid to the surface. A 24-hour cure period shall be allowed prior to drilling out the shoe of the surface casing unless additives approved by the State Engineer are used to obtain early strength.

2.7.3.1 Length of Surface Casing.

(a) In areas where subsurface geological conditions are variable or unknown, surface casing in general shall be set at a depth of wells drilled in those areas. A minimum of surface casing shall be set through a sufficient series of low permeability, competent lithologic units to ensure a solid anchor for blowout-prevention equipment and to protect usable ground water and surface water from contamination. A second string or intermediate casing may be required if the first string has not been cemented through a sufficient series of low permeability, competent lithologic units and either a rapidly increasing geothermal gradient or rapidly increasing formation pressures are encountered.

(b) In areas of known high formation pressure, surface casing shall be set at a depth approved by the Division after a careful study of geological conditions.

(c) Within the confines of designated geothermal fields, the depth to which surface casing shall be set shall be approved by the Division on the basis of known field conditions.

(d) These requirements may be reduced or waived by the State Engineer for low-temperature geothermal wells.

2.7.3.2 Mud Return Temperatures.

The temperature of the return mud shall be monitored regularly during the drilling of the surface casing hole. Either a continuous temperature monitoring device shall be installed and maintained in working condition, or the temperature shall be read manually. In either case, return mud temperature shall be logged after each joint of pipe has been drilled down 30 feet.

2.7.3.3 Blowout-Prevention Equipment.

BOPE capable of shutting-in the well during any operation shall be installed on the surface casing and maintained ready for use at all times. BOPE pressure tests shall be witnessed by Division personnel on all exploratory wells prior to drilling out the shoe of the surface casing. The decision to require and witness BOPE pressure tests on all other wells shall be made on a well-to-well basis. The Division must be contacted 24 hours in advance of a scheduled pressure test. The State Engineer may give verbal permission to proceed with the test upon request by the operator.

2.7.4 Intermediate Casing.

Intermediate casing shall be required for protection against unusual pressure zones, cave-ins, wash-outs, abnormal temperature zones, uncontrollable lost circulation zones or other drilling hazards. Intermediate casing strings shall be cemented solid to the surface or to the top of the liner hanger whenever the intermediate casing string is run as a liner. The liner lap shall be pressure tested prior to resumption of drilling.

2.7.5 Production Casing.

Production casing may be set above or through the producing or injection zone and cemented above the injection zones. Sufficient cement shall be used to exclude overlying formation fluids from the geothermal zone, to segregate zones and to prevent movement of fluids behind the casing into zones that contain usable ground water. Production casing shall either be cemented solid to the surface or lapped into intermediate casing, if run. If the production casing is lapped into an intermediate casing, the casing overlap shall be at least 100 feet, the lap shall be cemented solid, and it shall be pressure tested to ensure its integrity.

2.8 Electric Logging:

All wells, except observation wells for monitoring purposes only, shall be logged with an induction electrical log or equivalent or gamma-neutron log from the bottom of the hole to the bottom of the conductor pipe. This requirement may be modified or waived by the Division upon written request if such request demonstrates sufficient existing data of surrounding wells.

2.9 Cementing Casing.

Cements used in cementing casing and sealing formations must be of a grade and type best suited for expected reservoir temperature, formation water chemistry and bonding properties. Cements acceptable for use in high-temperature holes include Modified Type A or G, Alumina Silica Flour, Phosphate Bonded Glass, or other equivalent high-temperature design cement as approved by the Division.

R655-1-3. Blowout Prevention.

3.1 General.

3.1.1 Blowout-Prevention Equipment (BOPE) installations shall meet the minimum specifications for assemblies prescribed by the most recent version of the American Petroleum Institute's Standard 53 (Blowout Prevention Equipment Systems for Drilling Wells) which are incorporated herein by reference or as may be otherwise prescribed by the Division. The American Petroleum Institute Standard 53 is available from the American Petroleum Institute, 1220 L Street, NW, Washington, DC 20005-4070, phone 202-682-8000, www.api.org. Equipment for the prevention of a blowout, capable of shutting in the well during any operation, must be installed on the surface casing and maintained in good operating condition at all times. This equipment must have a rating for pressure greater than the maximum anticipated pressure at the wellhead. Equipment for the prevention of a blowout is required on any well where temperatures may exceed 120°C. A BOPE plan including testing must be included in the plan of operations. BOPE shall have a minimum working-pressure rating equal to or greater than the lesser of:

(a) A pressure equal to the product of the depth of the BOPE anchor string in feet times one psi per foot.

(b) A pressure equal to the rated burst pressure of the BOPE anchor string.

(c) A pressure equal to 2,000 psi.

Specific inspections and tests of the BOPE may be made by the Division. The Division shall be notified at least 48 hours prior to the commencement of a BOPE test. The requirements for tests will be included in the Division's answer to the notice of the intention to drill. The operator shall test the equipment for the prevention of a blowout under pressure. The operator shall submit to the Division the pressure data and supporting information for the equipment for the prevention of a blowout as soon as practicable after the conclusion of the testing. All blowout preventers and related equipment that may be exposed to well pressure must be tested first to a low pressure and then to a high pressure:

(a) A pressure decline of 10 percent or less in 30 minutes is for the low pressure test considered satisfactory prior to initiating the

high-pressure test;

(b) When performing the low-pressure test, it is not acceptable to apply a higher pressure and bleed down to the low test pressure;

(c) The high-pressure test must be to the rated working pressure of the ram type blowout prevention equipment and related equipment, or to the rated working pressure of the wellhead on which the stack is installed, whichever is lower. A pressure decline of 10 percent or less in 30 minutes is considered satisfactory;

(d) Annular blowout prevention equipment must be high-pressure tested to 50 percent of the rated working pressure;

(e) The blowout prevention equipment must be pressure tested: when installed, prior to drilling out casing shoes, and following repairs or reassembly of the preventers that require disconnecting a pressure seal in the assembly.

3.1.2 A Division employee may be present at the well at any time during the drilling.

3.1.3 A logging unit equipped to regularly record the following data shall be installed and operated continuously after drilling out the shoe of the conductor pipe and until the well has been drilled to the total depth.

(a) Drilling mud temperature.

(b) Drilling mud pit level.

(c) Drilling mud pump volume.

(d) Drilling mud weight.

(e) Drilling rate.

(f) Hydrogen sulfide gas volume.

The Division may waive the requirement for installation of a logging unit on evidence that the owner or operator has engaged a qualified mud engineer to monitor, log and record the data specified in the above subparagraphs a. through d. The drilling rate required in subparagraph e shall be logged with standard industry recording devices, and hydrogen sulfide monitoring and safety equipment shall be provided whenever needed to satisfy the requirement of subparagraph f.

3.2 Requirements Using Mud as the Drilling Fluid.

The following requirements are for exploratory areas, unstable areas containing fumaroles, geysers, hot springs, mud pots, and for fields with a history of lost circulation, a blowout, or zone pressures less than 1000 psi. These requirements may be reduced by the State Engineer where the geothermal formations are known to be shallow and of low pressure and temperature.

(a) An annular BOPE and a spool, fitted with a low-pressure safety pop-off and blow-down line, installed on the conductor pipe may be required to ensure against possible gas blowouts during the drilling of the surface casing hole.

(b) Annular BOPE and pipe-ram/blind-ram BOPE with a minimum working pressure rating of 2,000 psi shall be installed on the surface casing so that the well can be shut-in at any time. The double-ram preventer shall have a mechanical locking device.

(c) A hydraulic actuating system utilizing an accumulator of sufficient capacity and a high pressure auxiliary back-up system. This total system shall be equipped with dual controls: one at the driller's station and one at least 50 feet away from the well head.

(d) Kelly cock and standpipe valve.

(e) A fill-up line installed above the BOPE.

(f) A kill line installed below the BOPE, leading directly to the mud pumps and fitted with a valve through which cement could be pumped if necessary.

(g) A blow-down line fitted with two valves installed below the BOPE. The blow-down line shall be directed in a manner to permit containment of produced fluids and to minimize any safety hazard to personnel.

(h) All lines and fittings shall be steel and have a minimum working-pressure rating of at least that required of the BOPE.

(i) The temperature of the return mud during the drilling of the surface casing hole shall be monitored regularly. Either a continuous temperature monitoring device shall be installed and maintained in working condition, or the temperature shall be read manually. In either case, return mud temperatures shall be logged after each joint of pipe is drilled down every 30 feet.

3.3 Requirements Using Air as the Drilling Fluid.

The following requirements are for areas where it is known that dry steam exists at depth or formation pressures are less than hydrostatic:

(a) A rotating-head installed at the top of the BOPE stack.

(b) A pipe-ram/blind-ram BOPE, with a minimum working-pressure rating of 1,000 psi, installed below the rotating-head so that the well can be shut-in at any time.

(c) A banjo-box or mud-cross steam diversion unit installed below the double-ram BOPE fitted with a muffler capable of lowering sound emissions to within State standards.

(d) A blind-ram BOPE, with a minimum working-pressure rating of 1,000 psi, installed below the banjo-box or mud-cross so that the well can be shut-in while removing the rotating-head during bit changes.

(e) A master gate valve, with a minimum working-pressure rating of 600 psi, installed below the blind-ram so that the well can be shut-in after the well has been completed, prior to removal of the BOPE stack.

(f) All ram-type BOPE shall have a hydraulic actuating system utilizing an accumulator of sufficient capacity and a high-pressure backup system.

(g) Dual control stations for hydraulic backup system: one at the driller's station and the other at least 50 feet away from the well head.

(h) Float and standpipe valves.

(i) A kill line installed below the BOPE, leading directly to the mud pumps and fitted with a valve through which cement could be pumped if necessary.

(j) All lines and fittings must be steel and have a minimum working-pressure rating of 1,000 psi.

R655-1-4. Records.

4.1 General: The owner or operator of any well shall keep or cause to be kept a careful and accurate log, core record, and history of the drilling of the well. These records shall be kept in the nearest office of the owner or operator or at the well site and together with all other reports of the owner and operator regarding the well shall be subject to the inspection by the Division during business hours. All records, unless otherwise specified, must be filed with the Division within 90 days after completion of the well.

4.2 Records to be Filed with the Division:

4.2.1 Drilling Logs and Core Record -- the drilling log shall include the lithologic characteristics and depths of formations encountered, the depth and temperatures, chemical compositions and other chemical and physical characteristics of fluids encountered from time to time so far as ascertained. The core record shall show the depth, lithologic character, and fluid content of cores obtained so far as determined. The collection of cuttings at least every 30 feet, or more often if a significant change in lithology occurs, and filing thereof, is a condition for approval of the Plan of Operations. The cuttings must be cleaned, dried, marked for location and depth and placed in envelopes, sample bags, or chip trays. The cuttings and a split of any core must be submitted to the Division within 30 days after the well is completed.

4.2.2 Well History -- the history shall describe in detail in chronological order on a daily basis all significant operations carried out and equipment used during all phases of drilling, testing, completion, and abandonment of any well.

4.2.3 Well Summary Report -- the well summary report shall accompany the core record and well history reports. It is designed to show data pertinent to the construction and condition of a well at the time of completion of work done.

4.2.4 Production Records -- the owner or operator of any well producing geothermal resources shall file with the Division on or before the tenth day of each month for the preceding month, a statement of production utilized in a form as the Division may

designate.

4.2.5 Injection Records -- the owner or operator of any well injecting geothermal fluids or waste water for any purpose shall file with the Division on or before the tenth day of each month for the preceding month a report of the injection as the Division may designate.

4.2.6 Electric Logs and Directional Surveys if Conducted -- electric logs and directional surveys shall be filed upon recompletion of any well. Like copies shall be filed upon recompletion of any well. Upon a showing of hardship, the Division may extend the time within which to comply for a period not to exceed one year.

4.3 Confidential Status: Any reports, logs, records, or histories filed with the Division shall not be available for public inspection and shall be kept confidential by the Division unless agreed to by the owner, provided, however, that the Division may use any reports, logs, records, or histories in any action in any court to enforce the provisions of Title 73, Chapter 22, or any order adopted hereunder. The following information may be made public by the Division:

(a) Owner or operator's name.

(b) Well designation or number.

(c) Elevation of derrick floor or ground elevation.

(d) Location of well.

(e) The application and all information pertaining to it, including its current status.

4.4 Inspection of Records: The records filed by an operator with the Division shall be open to inspection only to those authorized in writing by the operator and to designated Division personnel. The records of any operator filed for a completed or producing well that has been transferred by sale, lease, or otherwise shall be available to the new owner or lessee for his inspection or copying and shall be available for inspection or copying by others upon written authorization of new owner or lessee.

R655-1-5. Injection Wells.

Unless the Division approves an alternative method of disposal, all fluids derived from the geothermal resources must be reinjected into the same reservoir from which the fluids were produced.

5.1 Construction: The owner or operator of a proposed injection well or series of injection wells shall provide the Division with information it deems necessary for evaluation of the impact of injection on the geothermal reservoir and other natural resources. Information shall include the items listed for a plan of operations as per Section 2.1.2 of this section (R655-1), existing reservoir conditions, method of injection, source of injection fluid, estimates of daily amount of material medium to be injected, zones or formations affected, description of the effects of injection on such factors as potable water, seismicity, and local tectonic conditions, proposed downhole and surface injection equipment and metering facilities with capacity, design capabilities, and design safety factors in sufficient detail to enable adequate environmental analysis including construction and engineering design plans, proposed injectivity surveys, seismic surveys, seismic monitoring, and other means to monitor injection, and analysis of fluid to be injected and of the fluid from the intended zone of the injection, if available. The bonding for an injection well is the same as those required for an exploratory well or production well.

5.2 Convert to Injection Well: An owner or operator planning to convert an existing well to an injection well, even if there will be no change to the mechanical condition, must submit an injection well conversion plan with the Division and the Division must approve the plan before injection is commenced.

5.3 Surveillance:

5.3.1 When an operator or owner proposes to drill or modify an injection well or convert a well to an injection well, he shall be required to demonstrate to the Division by means of internal and external tests that the casing and annular cement seals have complete mechanical integrity. These tests shall be conducted in a method approved by the Division as proposed in the injection well plan of operations. In the case of the annular cement seal survey for a new or converted injection well, the owner or operator shall make sufficient surveys within thirty days after injection is started into a well to prove that all the injected fluid is confined to the intended zone of injection.

5.3.2 On a continuing basis and in order to establish that all injected water is confined to the intended zone of injection, mechanical integrity surveys on the well casing and annular cement seals shall be made at least every five years or more often if necessary on a well-to-well basis. The Division must be notified in writing with a testing plan for each injection well at least three weeks before mechanical integrity testing commences. Specific internal and external mechanical integrity tests shall be proposed in the testing plan and must conform to the most current industry and regulatory standards for geothermal injection well mechanical integrity testing. The Division shall approve each testing plan and issue a written notice to proceed with testing approval to the operator prior to commencing. A mechanical integrity testing plan shall be submitted by the owner or operator to the Division for approval prior to each testing cycle. The Division shall be notified 48 hours in advance of surveys in order that a representative may be present if deemed necessary. If the operator can substantiate by existing data that these tests are not necessary, then, after review of the data, the State Engineer may grant a waiver exempting the operator from the tests.

5.3.3 Injection wells shall be monitored to ensure that there is no escape of geothermal fluids from the casings or through the annular space between casings and open hole except in the zone for which injection is permitted. Monitoring required by the Division may include gauging pressure between casings, periodic testing for casing leaks, surveys to detect movement of fluid in adjacent rock formations, cement bond logs, temperature measurements, analysis of water chemistry, special wellhead equipment or other methods employed by industry to monitor re-injection operations.

5.3.4 After a well has been placed into injection, the injection well site will be visited periodically by Division personnel. The operator or owner will be notified of any necessary remedial work. Unless modified by the State Engineer, this work must be performed within ninety days of approval for the injection well, or approval for the injection well issued by the Division will be rescinded.

5.3.5 Injection pressures shall be recorded and compared with the pressures reported on the monthly injection reports. Any discrepancies shall be rectified immediately by the operator. A graph of pressures and rates versus time shall be maintained by the operator. Reasons for anomalies shall be promptly ascertained. If these reasons are such that it appears damage is being done, approval by the Division may be rescinded, and injection shall cease.

5.3.6 The pressure for injection at the wellhead of an injection well must not exceed that which is calculated to initiate new fractures or propagate existing fractures in the zone for injection or the confining formation between the zone of injection and underground sources of drinking water. The operator shall calculate the maximum injection pressure based upon industry standards and submit those to the Division for approval.

5.3.7 The chemical, physical, and biological nature of the injected fluid must be analyzed with sufficient frequency to yield representative data on its characteristics. When requested by the Division, or at any time the injected fluid is modified, a new analysis shall be made and the results sent to the Division.

R655-1-6. Abandonment and Sealing.

6.1 Objectives: The objectives of abandonment are to block interzonal migration of fluids so as to:

(a) Prevent contamination of fresh waters or other natural resources.

(b) Prevent damage to geothermal reservoirs.
(c) Prevent loss of reservoir energy.
(d) Protect life, health, environment and property.

6.2 General Requirements: The following are general requirements which are subject to review and modification for individual wells or field conditions:

(a) A notice of intent to abandon geothermal resource wells is required to be filed with the Division five days prior to beginning abandonment procedures. A permit to abandon may be given orally by the State Engineer provided the operator submits a written request for abandonment within 24 hours of the oral request.

(b) A history of geothermal resource wells shall be filed within sixty days after completion of abandonment procedures.

(c) All wells abandoned shall be monumented and the description of the monument shall be included in the history of well report. Monument shall consist of a four-inch diameter pipe 10 feet in length of which four feet shall be above ground. The remainder shall be imbedded in concrete. The applicant's name, application number, and location of the well shall be shown on the monument. An abandoned well on tilled land shall be marked in a manner approved by the State Engineer.

(d) Good quality, heavy drilling fluid shall be used to replace any water in the hole and to fill all portions of the hole not plugged with grout.

(e) All grout plugs with a possible exception of the surface plug shall be pumped into the hole through drill pipe or tubing.

(f) All open annuli shall be filled solid with grout to the surface.

(g) A minimum of 100 feet of grout shall be emplaced straddling the interface or transition zone at the base of ground water aquifers.

(h) One hundred feet of grout shall straddle the placement of the shoe plug on all casings including conductor pipe.

(i) A surface plug of either neat cement or concrete mix shall be in place from the top of the casing to at least 50 feet below the top of the casing.

(j) All casing shall be cut off at least five feet below land surface.

(k) Grout plugs shall extend at least 50 feet over the top of any liner installed in the well.

(l) Injection wells are required to be abandoned in the same manner as other wells.

(m) Other abandonment procedures may be approved by the Division if the owner or operator can demonstrate that the geothermal resource, ground waters, and other natural resources will be protected. Approval must be given in writing prior to the beginning of any abandonment procedures.

(n) Within five days after the completion of the abandonment of any well or injection well, the owner or operator of the abandoned well or injection well shall report in writing to the Division on all work done with respect to the abandonment.

R655-1-7. Maintenance.

7.1 General: All well heads, separators, pumps, mufflers, manifolds, valves, pipelines, and other equipment used for the production of geothermal resources shall be maintained in good condition in order to prevent loss of or damage to life, health, property, and natural resources.

7.2 Corrosion: All surface well head equipment and pipelines and subsurface casing and tubing will be subject to periodic corrosion surveillance in order to safeguard health, life, property, and natural resources.

7.3 Tests: The Division may require tests or remedial work as in its judgment are necessary to prevent damage to life, health, property, and natural resources, to protect geothermal reservoirs from damage or to prevent the infiltration of detrimental substances into underground or surface water suitable for irrigation or other beneficial uses to the best interest of the neighboring property owners and the public. Tests may include, but are not limited to, casing tests, cementing tests, and equipment tests.

7.4 Miscellaneous Activities. The owner or operator of the geothermal resource shall notify the Division of intention to: 1) Make minor change in the manner in which a well is operated; 2) Conduct temperature or pressure survey; 3) Conduct a flow test; or 4) Perform routine maintenance of a well. The notice must be submitted to the Division prior to the commencement of work. Minor changes can include installing or changing capillary tubing; pulling or replacing a pump; or any other change for which the Division takes little or no action other than acknowledging the notice and filing it. The Division reserves the right to inspect any of the noticed activities listed in this subsection.

7.5 Other Permitted Activities. The owner or operator of a geothermal resource shall submit application for permission to engage in the following activities:

(a) Increasing the depth of a well;
(b) Testing of water shut-off;
(c) Entering or opening a plugged well;
(d) Shooting, acidizing or fracture treating;
(e) Drilling in a direction which is not intended to be vertical, including directional drilling;
(f) Changing the construction of a hole or well including placing a plug in the hole or well and recovering or altering the casing.
(g) Conducting a major work over or cleaning of a well;
(h) Changing a well's ownership, status, name, or location'
(i) Abandoning and plugging a well

7.5.1 The owner or operator of the geothermal resource shall report to the Division any progress regarding or the completion of an activity for which permission was required pursuant to this section and any supplemental history of the well.

R655-1-8. Temperature Gradient Wells.

8.1 General: Wells may be drilled upon approval of the State Engineer for measurement of subsurface temperatures and conductive heat flow.

8.2 Information: Request for a temperature gradient well program shall include the following information:

(a) Well number.
(b) Well location, elevation and expected depth.
(c) Geologic interpretation of area under investigation, including any known or inferred temperature data.
(d) Proposed drilling program, including method and casing schedule.
(e) Proposed method of abandonment.
(f) The State Engineer may require other data and impose restrictions or supervision by the Division as his studies may indicate.

8.3 Conditions: The following general conditions shall apply to temperature gradient wells:

(a) The depth of the hole shall not exceed 1,000 feet unless otherwise authorized by the State Engineer.
(b) The wells are to be cased and sealed against the water in the formations to be drilled.
(c) Return mud or air temperatures shall be monitored at, at least 30 foot intervals and should the temperature reach 125 degrees F. the drilling shall cease and the casing installed or the hole abandoned. Plastic casing may be used at temperatures under 125 degrees F.; otherwise, steel casing shall be used.
(d) Upon completion of the testing program, the casings are to be capped, or the casings are to be pulled and the holes cemented from bottom to top.
(e) The driller must have a current well driller's license from the State Engineer in accordance with R655-4 UAC. The driller shall also comply with the rules and regulations of R644-4 UAC when drilling temperature gradient wells. At least 48 hours before starting, the driller must give this Division notice of the day that drilling will commence.
(f) A well completion report, including temperature data, shall

be submitted to the State Engineer within 90-days of completion. The well completion report shall be public record unless the owner or operator requests, in writing, that the records be held confidential in accordance with Section 73-22-6(1)(c).

(g) The driller shall exercise due caution in all drilling operations to prevent blowouts, explosions or fires.

R655-1-9. Environment.

9.1 General: The owner shall conduct exploration and development operations in a manner that provides maximum protection of the environment; rehabilitate disturbed lands; take all necessary precautions to protect the public health and safety; and conduct operations in accordance with the spirit and objectives of all applicable environmental legislation, and executive orders.

Adverse environmental impacts from geothermal-related activity shall be prevented or mitigated through enforcement of applicable Federal, State, and local standards, and the application of existing technology. Inability to meet these environmental standards or continued violation of environmental standards due to operations of the lessee, after notification, may be construed as grounds for the State Engineer to order a suspension of operations.

R655-1-10. Penalties.

As stated in Section 73-22-10, any willful violation of or failure to comply with any provision of these rules shall be a misdemeanor and each day that the violation continues shall constitute a separate offense.

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R655. Natural Resources, Water Rights.
R655-4. Water Wells.
R655-4-1. Purpose, Scope, and Exclusions.

1.1 Purpose.

Under Subsection 73-2-1(4)(b), the State Engineer, as the Director of the Utah Division of Water Rights, is required to make rules regarding well construction and related regulated activities and the licensing of water well drillers and pump installers.

These rules are promulgated pursuant to Section 73-3-25. The purpose of these rules is to assist in the orderly development of underground water; insure that minimum construction standards are followed in the drilling, construction, deepening, repairing, renovating, cleaning, development, testing, disinfection, pump installation/repair, and abandonment of water wells and other regulated wells; prevent pollution of aquifers within the state; prevent wasting of water from flowing wells; obtain accurate records of well construction operations; and insure compliance with the state engineer's authority for appropriating water.

These rules also establish administrative procedures for applications, approvals, hearings, notices, revocations, orders and their judicial review, and all other administrative procedures required or allowed by these rules. These rules shall be liberally construed to permit the Division to effectuate the purposes of Utah law.

1.2 Scope.

The drilling, construction, deepening, repair, renovation, replacement, or abandonment of the following types of wells are regulated by these administrative rules and the work must be permitted by the Utah Division of Water Rights and completed by a licensed well driller. The cleaning, development, testing, and disinfection, in the following types of wells is regulated by these administrative rules and the work must be completed by a licensed well driller or a licensed pump installer; however a permit is not required. Moreover, the installation and repair of pumps in the following types of wells are regulated by these administrative rules and the work must be completed by a licensed pump installer; however a permit is not required. Pursuant to Section 73-3-25(2)(a), a person conducting pump installation and repair work on their own well on their own property for their own use is exempt from these rules and is not required to have a pump installer's license. These rules apply to both vertical, angle and horizontal wells if they fall within the criteria listed below. The rules contained herein pertain only to work on or within the well itself. These rules do not regulate the incidental work beyond the well such as plumbing, electrical, and excavation work up to the well; and the building of well enclosures unless these activities directly impact or change the construction of the well itself. The process for an applicant to obtain approval to drill, construct, deepen, repair, renovate, clean, develop, abandon, or replace the wells listed below in 1.2.1, 1.2.2, 1.2.3, and 1.2.4 is outlined in Section R655-4-9 of these rules.

1.2.1 Cathodic protection wells which are completed to a depth greater than 30 feet.

1.2.2 Closed-loop and open-loop Heating and/or cooling exchange wells which are greater than 30 feet in depth and which encounter formations containing groundwater. If a separate well or borehole is required for re-injection purposes, it must also comply with these administrative rules.

1.2.3 Monitor, piezometer, and test wells designed for the purpose of testing and monitoring water level, pressure, quality and/or quantity which are completed to a depth greater than 30 feet.

1.2.4 Other wells (cased or open) which are completed to a depth greater than 30 feet that can potentially interfere with established aquifers such as wells to monitor mass movement (inclinometers), facilitate horizontal utility placement, monitor man-made structures, house instrumentation to monitor structural performance, or dissipate hydraulic pressures (dewatering wells).

1.2.5 Private water production wells which are completed to a depth greater than 30 feet.

1.2.6 Public water system supply wells.

1.2.7 Recharge and recovery wells which are drilled under the provisions of Title 73, Chapter 3b "Groundwater Recharge and Recovery Act" Utah Code Annotated.

1.3 Exclusions.

The drilling, construction, deepening, repair, renovation, replacement, cleaning, development, pump installation/repair, or abandonment of the following types of wells or boreholes are excluded from regulation under these administrative rules:

1.3.1 Any wells described in Section 1.2 that are constructed to a final depth of 30 feet or less. However, diversion and beneficial use of groundwater from wells at a depth of 30 feet or less shall require approval through the appropriation procedures and policies of the state engineer and Title 73, Chapter 3 of the Utah Code Annotated.

1.3.2 Geothermal wells. Although not regulated under the Administrative Rules for Water Wells, geothermal wells are subject to Section 73-22-1 "Utah Geothermal Resource Conservation Act" Utah Code Annotated and the rules promulgated by the state engineer including Section R655-1, Wells Used for the Discovery and Production of Geothermal Energy in the State of Utah. Moreover, those drilling and constructing geothermal wells must hold a current well driller's license in accordance with Sections R655-4-3 and R655-4-8 of these rules.

1.3.3 Temporary exploratory wells drilled to obtain information on the subsurface strata on which an embankment or foundation is to be placed or an area proposed to be used as a potential source of material for construction.

1.3.4 Wells or boreholes drilled or constructed into non-water bearing zones or which are 30 feet or less in depth for the purpose of utilizing heat from the surrounding earth.

1.3.5 Geotechnical borings drilled to obtain lithologic data which are not installed for the purpose of utilizing or monitoring groundwater, and which are properly sealed immediately after drilling and testing.

1.3.6 Oil, gas, and mineral/mining exploration/production wells. These wells are subject to rules promulgated under the Division of Oil, Gas, and Mining of the Utah Department of Natural Resources.

1.3.7 Well setback/separation and water quality testing requirements are generally regulated at the local health department level or by another state agency.

R655-4-2. Definitions.

ABANDONED WELL - any well which is not in use and has been sealed or plugged with approved sealing materials so that it is rendered unproductive and shall prevent contamination of groundwater. A properly abandoned well will not produce water nor serve as a channel for movement of water from the well or between water bearing zones.

ADDRESS - the current residential or business address of a well driller as recorded in the Division's files.

ADJUDICATIVE PROCEEDING - means, for the purposes of this rule, an administrative action or proceeding commenced by the Division in conjunction with an Infraction Notice; or an administrative action or proceeding commenced in response to a well driller's appeal or a Cease and Desist Order or an appeal of a restriction or denial of a license renewal application.

AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI) - a nationally recognized testing laboratory that certifies building products and adopts standards including those for steel and plastic (PVC) casing utilized in the well drilling industry. ANSI standards are often adopted for use by ASTM and AWWA. Current information on standards can be obtained from: ANSI, 1430 Broadway, New York, NY 10018 (ANSI.org).

AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM) - an independent organization concerned with the development of standards on characteristics and performance of materials, products and systems including those utilized in the well drilling industry. Information may be obtained from: ASTM, 1916

Race Street, Philadelphia, PA 19013 (ASTM.org).

AMERICAN WATER WORKS ASSOCIATION (AWWA) - an international association which publishes standards intended to represent a consensus of the water supply industry that the product or procedure described in the standard shall provide satisfactory service or results. Information may be obtained from: AWWA, 6666 West Quincy Avenue, Denver CO 80235 (AWWA.org).

ANNULAR SPACE - the space between the outer well casing and the borehole or the space between two sets of casing.

AQUIFER - a porous underground formation yielding withdrawable water suitable for beneficial use.

ARTESIAN AQUIFER - a water-bearing formation which contains underground water under sufficient pressure to rise above the zone of saturation.

ARTESIAN WELL - a well where the water level rises appreciably above the zone of saturation.

BACKFLOW PREVENTER - means a safety device, assembly, or construction practice used to prevent water pollution or contamination by preventing flow of a mixture of water and/or chemicals from the distribution piping into a water well or in the opposite direction of that intended. This includes but is not limited to check valves, foot valves, curb stops, or air gaps

BENTONITE - a highly plastic, highly absorbent, colloidal swelling clay composed largely of mineral sodium montmorillonite. Bentonite is commercially available in powdered, granular, tablet, pellet, or chip form which is hydrated with potable water and used for a variety of purposes including the stabilization of borehole walls during drilling, the control of potential or existing high fluid pressures encountered during drilling below a water table, well abandonment, and to provide a seal in the annular space between the well casing and borehole wall.

BENTONITE GROUT - a mixture of bentonite and potable water specifically designed to seal and plug wells and boreholes mixed at manufacturer's specifications to a grout consistency which can be pumped through a pipe directly into the annular space of a well or used for abandonment. Its primary purpose is to seal the borehole or well in order to prevent the subsurface migration or communication of fluids.

CASH BOND - A type of well driller bond in the form of a certificate of deposit (CD) submitted and assigned to the State Engineer by a licensed driller to satisfy the required bonding requirements.

CASING - a tubular retaining and sealing structure that is installed in the borehole to maintain the well opening.

CATHODIC PROTECTION WELL - a well constructed for the purpose of installing deep anodes to minimize or prevent electrolytic corrosive action of metallic structures installed below ground surface, such as pipelines, transmission lines, well casings, storage tanks, or pilings.

CEASE AND DESIST ORDER - means an order issued by the State Engineer comprised of a red tag placed on a well rig at the well drilling location and a letter to the driller requiring that all well drilling activity at the well drilling location cease until such time as the order is lifted.

CLOSED-LOOP HEATING/COOLING EXCHANGE WELL - means the subsystem of a geothermal heat pump system that consists of the drilled vertical borehole into the Earth that is equipped with a heat exchange media conveyance tube (loop tube), and is grouted from the bottom of the vertical borehole to the Earth's surface at the drilling site. Construction of a geothermal heat pump loop well includes, in continuous order, drilling of the vertical borehole, placement of the loop tube to the bottom of the vertical borehole with the grout tremie, and grouting of the vertical borehole from the bottom of the vertical borehole to the Earth's surface at the drill site. Closed loop systems circulate a heat transfer fluid (such as water or a mixture of water and food grade/non-toxic anti-freeze) to exchange heat with the subsurface geological environment.

CONDUCTOR CASING - means the temporary or permanent casing used in the upper portion of the well bore to prevent collapse of the formation during the construction of the well or to conduct the gravel pack to the perforated or screened areas in the casing.

CONFINING UNIT - a geological layer either of unconsolidated material, usually clay or hardpan, or bedrock, usually shale, through which virtually no water moves.

CONSOLIDATED FORMATION - bedrock consisting of sedimentary, igneous, or metamorphic rock (e.g., shale, sandstone, limestone, quartzite, conglomerate, basalt, granite, tuff, etc.).

DEFAULT ORDER - means an order issued by the Presiding Officer after a well driller fails to attend a hearing in a well driller adjudicative proceeding. A Default Order constitutes a Final Judgment and Order.

DEWATERING WELL - a water extraction well constructed for the purpose of lowering the water table elevation, either temporarily or permanently, around a man-made structure or construction activity.

DISINFECTION - or disinfecting is the use of chlorine or other disinfecting agent or process approved by the state engineer, in sufficient concentration and contact time adequate to inactivate or eradicate bacteria such as coliform or other organisms.

DIVISION - means the Division of Water Rights. The terms Division and State Engineer may be used interchangeably in this rule.

DRAWDOWN - the difference in elevation between the static water level and the pumping water level in a well.

DRILL RIG - any power-driven percussion, rotary, boring, coring, digging, jetting, or augering machine used in the construction of a well or borehole.

EMERGENCY SITUATION - any situation where immediate action is required to protect life or property. Emergency status would also extend to any situation where life is not immediately threatened but action is needed immediately and it is not possible to contact the state engineer for approval. For example, it would be considered an emergency if a domestic well needed immediate repair over a weekend when the state engineer's offices are closed.

FILES - means information maintained in the Division's public records, which may include both paper and electronic information.

FINAL JUDGMENT AND ORDER - means a final decision issued by the Presiding Officer on the whole or a part of a well driller adjudicative proceeding. This definition includes "Default Orders."

GRAVEL PACKED WELL - a well in which filter material such as sand and/or gravel is placed in the annular space between the well intakes (screen or perforated casing) and the borehole wall to increase the effective diameter of the well and to prevent fine-grained sediments from entering the well.

GROUNDWATER - subsurface water in a zone of saturation.

GROUT - a fluid mixture of Portland cement or bentonite with water of a consistency that can be forced through a pipe and placed as required. Upon approval, various additives such as sand, bentonite, and hydrated lime may be included in the mixture to meet different requirements.

HEATING/COOLING EXCHANGE SYSTEM - also known as GeoExchange, ground-source heat pump, geothermal heat pump, and ground-coupled heat pump; a heat pump that uses the Earth itself as a heat source (heating) and heat sink (cooling). It is coupled to the ground by means of a closed loop heat exchanger installed vertically underground or by physically pumping water from a well with an open loop systems and utilizing the thermal properties of the water to heat or cool.

HYDRAULIC FRACTURING - the process whereby water or other fluid is pumped with sand under high pressure into a well to fracture and clean-out the rock surrounding the well bore thus increasing the flow to the well.

INFRACTION NOTICE - means a notice issued by the Division to the well driller informing him of his alleged act or acts violating the Administrative Rules for Water Drillers and the infraction points that have been assessed against him.

ISSUED - means a document executed by an authorized

delegate of the State Engineer (in the case of an Infraction Notice) or by the Presiding Officer (in the case of a Hearing Notice, Final Judgment and Order or other order related to a well driller adjudicative proceeding) and deposited in the mail.

LICENSE - means the express grant of permission or authority by the State Engineer to carry on the activity of well drilling.

LICENSED PUMP INSTALLER - means a qualified individual who has obtained a license from the Division and who is engaged in the installation, removal, alteration, or repair of pumps and pumping equipment for compensation.

LOG - means an official document or report that describes where, when, and how a regulated well was drilled, constructed, deepened, repaired, renovated, cleaned, developed, tested, equipped with pumping equipment, and/or abandoned. A Log shall be submitted to the Division by a licensee on forms provided by the Division including a Well Driller's Report, Well Abandonment Report, or Pump Installer's Report.

MONITOR WELL - a well, as defined under "well" in this section, that is constructed for the purpose of determining water levels, monitoring chemical, bacteriological, radiological, or other physical properties of ground water or vadose zone water.

NATIONAL SANITATION FOUNDATION (NSF) - a voluntary third party consensus standards and testing entity established under agreement with the U. S. Environmental Protection Agency (EPA) to develop testing and adopt standards and certification programs for all direct and indirect drinking water additives and products. Information may be obtained from: NSF, 3475 Plymouth Road, P O Box 1468, Ann Arbor, Michigan 48106 (NSF.org).

NEAT CEMENT GROUT -- cement (types I, II, III, V, high-alumina, or a combination thereof) conforming to the ASTM Standard C150 (standard specification of Portland cement), with no more than six gallons of water per 94 pound sack (one cubic foot) of cement of sufficient weight density of not less than 15 lbs/gallon. One cubic yard of neat cement grout contains approximately 1993 pounds of Portland cement and not more than 127 gallons of clean water. Bentonite, controlled density fill (CDF), or fly ash shall not be added to neat cement grout unless state engineer approval is received.

NOMINAL SIZE - means the manufactured commercial designation of the diameter of a casing. An example would be casing with an outside diameter of 12 3/4 inches which may be nominally 12-inch casing by manufactured commercial designation.

OPEN-LOOP HEATING/COOLING EXCHANGE WELL - means a well system in which groundwater is extracted from a typical water production well and pumped through an above ground heat exchanger inside the heat pump system. Heat is either extracted or added by the primary refrigerant loop (primary loop refrigerant does not come into contact with the pumped water), and then the water is returned to the same aquifer by injection through the original extraction well or through a separate injection well.

OPERATOR - a drill rig operator or pump rig operator is an individual who works under the direct supervision of a licensed Utah Water Well Driller or Pump Installer and who can be left in responsible charge of regulated well drilling or pump installation/repair activity using equipment that is under the direct control of the licensee.

PARTY means the State Engineer, an authorized delegate of the State Engineer, the well driller, the pump installer, or the affected well owner.

PIEZOMETER - a tube or pipe, open at the bottom in groundwater, and sealed along its length, used to measure hydraulic head or water level in a geologic unit.

PITLESS ADAPTER - a commercially manufactured devise designed for attachment to a well casing which allows buried pump discharge from the well and allows access to the interior of the well casing for installation or removal of the pump or pump appurtenances, while preventing contaminants from entering the well. Such devices protect the water and distribution lines from temperature extremes, permit extension of the casing above ground as required in Subsection R655-4-11.3.2 and allow access to the well, pump or system components within the well without exterior excavation or disruption of surrounding earth or surface seal.

PITLESS UNIT - a factory-assembled device with cap which extends the upper end of a well casing to above grade and is o constructed as to allow for buried pump discharge from the well and allows access to the interior of the well casing for installation or removal of the pump or pump appurtenances, while preventing contaminants from entering the well. Such devices protect the water and distribution lines from temperature extremes, permit extension of the casing above ground as required in Subsection R655-4-11.3.2 and allow access to the well, pump or system components within the well without exterior excavation or disruption of surrounding earth or surface seal.

POLLUTION - the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water that renders the water harmful, detrimental, or injurious to humans, animals, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any or reasonable purpose.

POTABLE WATER - water supplied for human consumption, sanitary use, or for the preparation of food or pharmaceutical products which is free from biological, chemical, physical, and radiological impurities.

PRESIDING OFFICER - means an authorized delegate of the State Engineer who conducts a well driller adjudicative proceeding.

PRESSURE GROUTING - a process by which grout is confined within the drillhole or casing by the use of retaining plugs or packers and by which sufficient pressure is applied to drive the grout slurry into the annular space or zone to be grouted.

PRIVATE WATER PRODUCTION WELL - a privately owned well constructed to supply water for any purpose which has been approved by the state engineer (such as irrigation, stockwater, domestic, commercial, industrial, etc.).

PROBATION - A disciplinary action that may be taken by the state engineer that entails greater review and regulation of well drilling activities but which does not prohibit a well driller from engaging in the well drilling business or operating well drilling equipment.

PROVISIONAL WELL - authorization granted by the state engineer to drill under a pending, unapproved water right, change or exchange application; or for the purpose of determining characteristics of an aquifer, or the existence of a useable groundwater source. Water from a provisional well cannot be put to beneficial use until the application has been approved.

PUBLIC WATER SYSTEM SUPPLY WELL - a well, either publicly or privately owned, providing water for human consumption and other domestic uses which has at least 15 service connections or regularly serves an average of at least 25 individuals daily for at least 60 days out of the year. Public Water System Supply Wells are also regulated by the Division of Drinking Water in the Utah Department of Environmental Quality (Section R309 of the Utah Administrative Code).

PUMP/PUMPING EQUIPMENT - means any equipment or materials utilized or intended for use in withdrawing or obtaining groundwater for any use.

PUMP INSTALLATION/REPAIR - means the procedure employed in the placement and preparation for operation of pumps and pumping equipment at the water well location, including all construction or repair involved in making entrance to the water well, which involves the breaking of the well seal.

PUMPING WATER LEVEL - the water level in a well after a period of pumping at a given rate.

RECORD - means the official collection of all written and electronic materials produced in a well driller adjudicative proceeding, including but not limited to Infraction Notices, pleadings, motions, exhibits, orders and testimony produced during the adjudicative proceedings, as well as the files of the Division as

defined herein.

RED TAG - is a component of a "CEASE AND DESIST ORDER" in the form of a red colored tag placed on a well at a well drilling location

REGISTRATION - means the express grant of permission or authority by the State Engineer to carry on the activity of well drilling or pump installation under the supervision of a licensed well driller or pump installer.

REPAIRING, RENOVATING, AND DEEPENING - means the deepening, hydrofracturing, re-casing, perforating, re-perforating, installation of packers or seals, and any other material change in the design or construction of a well. Material changes include but are not limited to casing installation or modification including casing extensions, installation or modification of liner pipe, reaming or under reaming of the borehole, pitless unit installation or re-sealing.

REVOCATION - A disciplinary action that may be taken by the state engineer that rescinds the well driller's Utah Water Well Driller's License

SAND - a material having a prevalent grain size ranging from 2 millimeters to 0.06 millimeters.

SAND CEMENT GROUT - a grout consisting of equal parts by volume of cement conforming to ASTM standard C150 and clean sand/aggregate with no more than six (6) gallons of water per 94 pound sack (one cubic foot) of cement.

STANDARD DIMENSION RATIO (SDR) - the ratio of average outside pipe diameter to minimum pipe wall thickness.

STATE ENGINEER - the director of the Utah Division of Water Rights or any employee of the Division of Water Rights designated by the state engineer to act in administering these rules. The terms Division and State Engineer may be used interchangeably in this rule.

STATIC LEVEL - stabilized water level in a non-pumped well beyond the area of influence of any pumping well.

SURETY BOND - an indemnity agreement in a sum certain and payable to the state engineer, executed by the licensee as principal and which is supported by the guarantee of a corporation authorized to transact business as a surety in the State of Utah.

SUSPENSION - A disciplinary action that may be taken by the state engineer that prohibits the well driller from engaging in the well drilling business or operating well drilling equipment as a registered operator for a definite period of time and /or until certain conditions are met.

TEST WELL - authorization granted by the state engineer to drill under a Non-production well approval for the purpose of determining characteristics of an aquifer, or the existence of a useable groundwater source. Water from a Test Well cannot be put to beneficial use.

TREMIE PIPE - a device that carries materials such as seal material, gravel pack, or formation stabilizer to a designated depth in a drill hole or annular space.

UNCONSOLIDATED FORMATION - loose, soft, incoherent rock material composed of sedimentary, igneous, or metamorphic rock which includes sand, gravel, and mixtures of sand and gravel. These formations are widely distributed and can possess good water storage and transmissivity characteristics.

UNHYDRATED BENTONITE - dry bentonite consisting primarily of granules, tablets, pellets, or chips that may be placed in a well or borehole in the dry state and hydrated in place by either formation water or by the addition of potable water into the well or borehole containing the dry bentonite. Unhydrated bentonite can be used for sealing and abandonment of wells.

VADOSE ZONE - the zone containing water under less than atmospheric pressure, including soil water, intermediate vadose water and capillary water. The zone extends from land surface to the zone of saturation or water table.

WATERTIGHT - a condition that does not allow the entrance, passage, or flow of water under normal operating conditions.

WELL - a horizontal or vertical excavation or opening into the ground made by digging, boring, drilling, jetting, augering, or driving or any other artificial method and left cased or open for utilizing or monitoring underground waters.

WELL DRILLER - any person who is licensed by the state engineer to construct water wells for compensation or otherwise. The licensed driller has total responsibility for the construction work in progress at the well drilling site.

WELL DRILLER BOND - A financial guarantee to the state engineer, in the form of a surety bond or cash bond, by which a licensed driller binds himself to pay the penal sum of $5,000 to the state engineer in the event of significant noncompliance with the Administrative Rules for Water Wells.

WELL DRILLING - the act of drilling, constructing, deepening, replacing, repairing, renovating, cleaning, developing, or abandoning a well.

R655-4-3. Licenses and Registrations.

3.1 General.

3.1.1 Section 73-3-25 of the Utah Code requires every person that drills, constructs, deepens, repairs, renovates, cleans, develops, tests, disinfects, installs/repairs pumps, and abandons a regulated well in the state to obtain a license from the state engineer. Licenses and registrations are not transferable. Applicants for well driller or pump installer licensure must meet all requirements in this subsection, and applicants cannot obtain a Utah license through reciprocity or comity with a similar license from other States or organizations.

3.1.2 Any person found to be performing regulated well activity without a valid license (well driller's license or pump installer's license, as applicable) or operator's registration will be ordered to cease and desist by the state engineer. The order may be made verbally but must also be followed by a written order. The order may be posted at an unattended well drilling site. A person found performing regulated well activities without a license will be subject to the state engineer's enforcement powers under Section 73-2-25 of the Utah Code (Related rules: Section R655-14 UAC) and subject to criminal prosecution under Section 73-3-26 of the Utah Code annotated, 1953.

3.2 Well Driller's License.

A Utah Well Driller's License allows an individual to perform regulated well activity including drilling, construction, deepening, repairing, renovating, cleaning, development, testing, disinfection, pump installation/repair, and abandonment of water wells and other regulated wells. An applicant must meet the following requirements to become licensed as a Utah Water Well Driller:

3.2.1 Applicants must be 21 years of age or older and be a citizen of the United States, or be lawfully entitled to remain and work in the United States in accordance with Section 63G-11-104 UCA (Applicants must file a Division Lawful Presence Affidavit with the license application);

3.2.2 Complete and submit the application form provided by the state engineer.

3.2.3 Pay the application fee approved by the state legislature.

3.2.4 Provide documentation of experience according to the following standards:

3.2.4.1 Water well drillers shall provide documentation of at least two (2) years of full time prior water well drilling experience utilizing the applied for drilling methods with a licensed driller in good standing OR documentation of sixteen (16) applicable wells constructed by the applicant under the supervision of a licensed well driller in good standing.

3.2.4.2 Monitor well drillers shall provide documentation of at least two (2) years of full time prior monitor well drilling experience utilizing the applied for drilling methods with a licensed driller in good standing OR documentation of thirty two (32) wells constructed by the applicant under the supervision of a licensed well driller in good standing.

3.2.4.3 Heating/cooling exchange and other non-production well drillers must provide documentation of at least six (6) months of full time prior well drilling experience utilizing the applied for

drilling methods with a licensed driller in good standing AND documentation of sixteen (16) well drilling projects constructed by the applicant under the supervision of a licensed well driller in good standing.

3.2.4.4 A copy of the well log for each well constructed must be provided. The documentation must also show the applicant's experience with each type of drilling rig to be listed on the license. Acceptable documentation will include registration with the Division of Water Rights, letters from licensed well drillers (Utah or other states), or a water well drilling license granted by another state, etc.

3.2.4.5 Successful completion of training/education in well drilling, geology, map reading, and other related subjects may be substituted for up to, but not exceeding, twenty five percent of the required drilling experience, and for up to, but not exceeding, twenty five percent of the required drilled wells or well drilling projects. The state engineer will determine the number of months of drilling experience and the number of drilled wells that will be credited for the classroom study.

3.2.4.6 A limited or restricted license can be obtained in subcategories of activity including well cleaning, well renovation, well abandonment, and well development/testing. Testing requirements for these license subcategories will be reduced or limited in accordance with the level of activity.

3.2.5 File a well driller bond in the sum of $5,000 with the Division of Water Rights payable to the state engineer. The well driller bond must be filed under the conditions and criteria described in Section 4-3.9.

3.2.6 Obtain a score of at least 70% on each of the written licensing examinations required and administered by the state engineer. The required examinations test the applicant's knowledge of:

a. The Administrative Rules for Water Wells and Utah water law as it pertains to underground water;

b. The minimum construction standards established by the state engineer for water well construction;

c. Geologic formations and proper names used in describing underground material types;

d. Reading maps and locating points from descriptions based on section, township, and range;

e. Groundwater geology and the occurrence and movement of groundwater;

f. The proper operating procedures and construction methods associated with the various types of water well drilling rigs. (A separate test is required for each type of water well drilling rig to be listed on the license).

3.2.7 Demonstrate proficiency in resolving problem situations that might be encountered during the construction of a water well by passing an oral examination administered by the state engineer.

3.3 Drill Rig Operator's Registration.

An applicant must meet the following requirements to become registered as a drill rig operator:

3.3.1 Applicants must be 18 years of age or older and be a citizen of the United States, or be lawfully entitled to remain and work in the United States in accordance with Section 63G-11-104 UCA (Applicants must file a Division Lawful Presence Affidavit with the operator application).

3.3.2 Complete and submit the application form provided by the state engineer.

3.3.3 Pay the application fee approved by the state legislature.

3.3.4 Provide documentation of at least six (6) months of prior water well drilling experience with a licensed driller in good standing. The documentation must show the applicant's experience with each type of drilling rig to be listed on the registration. Acceptable documentation will include letters from licensed well drillers or registration as an operator in another state.

3.3.5 Obtain a score of at least 80% on a written examination of the minimum construction standards established by the state engineer for water well construction. The test will be provided to the licensed well driller by the state engineer. The licensed well driller will administer the test to the prospective operator and return it to the state engineer for scoring.

3.4 Pump Installer's License.

A Utah Pump Installer's License allows an individual to perform regulated pump activity including pump removal, installation, and repair in water wells and other regulated wells. A licensed pump installer can also clean, develop, pump test, and disinfect a regulated well. An individual (does not include entities such as businesses, corporations, governments, water systems, and municipalities) can perform pump installation and repair work on their own well on their own property without obtaining a Pump Installer's License. An applicant must meet the following requirements to become licensed as a Utah Pump Installer:

3.4.1 Applicants must be 21 years of age or older and be a citizen of the United States, or be lawfully entitled to remain and work in the United States in accordance with Section 63G-11-104 UCA (Applicants must file a Division Lawful Presence Affidavit with the license application).

3.4.2 Complete and submit the application form provided by the state engineer.

3.4.3 Pay the application fee approved by the state legislature.

3.4.4 Provide documentation of experience of at least two (2) years of full time prior water well pump installation and repair experience with a driller or pump installer in good standing

3.4.4.4 The documentation must show the applicant's experience with each type of pump rig to be listed on the license. Acceptable documentation will include registration with the Division of Water Rights, reference letters from licensed well drillers/pump installers (Utah or other states), or a license granted by another state, etc.

3.4.4.5 Successful completion of training/education in pump installation/repair and other related subjects may be substituted for up to, but not exceeding, twenty five percent of the required pump experience. The state engineer will determine the number of months of drilling experience that will be credited for the classroom study.

3.4.5 File a pump installer bond in the sum of $5,000 with the Division of Water Rights payable to the state engineer. The bond must be filed under the conditions and criteria described in Section 4-3.9.

3.4.6 Obtain a score of at least 70% on each of the written licensing examinations required and administered by the state engineer. The required examinations test the applicant's knowledge of:

a. The Administrative Rules for Water Wells and Utah water law as it pertains to underground water;

b. The minimum construction standards established by the state engineer pertaining to pump installation and repair;

c. Groundwater protection procedures and standards applicable to pump installation and repair work on wells;

d. The proper operating procedures and methods associated with pump installation and repair.

3.4.7 Demonstrate proficiency in resolving problem situations that might be encountered during pump installation and repair of a water well by passing an oral examination administered by the state engineer.

3.5 Pump Rig Operator's Registration.

An applicant must meet the following requirements to become registered as a pump rig operator:

3.5.1 Applicants must be 18 years of age or older and be a citizen of the United States, or be lawfully entitled to remain and work in the United States in accordance with Section 63G-11-104 UCA (Applicants must file a Division Lawful Presence Affidavit with the license application).

3.5.2 Complete and submit the application form provided by the state engineer.

3.5.3 Pay the application fee approved by the state legislature.

3.5.4 Provide documentation of at least six (6) months of prior

pump installation and repair experience with a licensed driller or pump installer in good standing. Acceptable documentation will include letters from licensed well drillers or registration as an operator in another state.

3.5.5 Obtain a score of at least 80% on a written examination of the minimum construction standards established by the state engineer for pump installation and repair. The test will be provided to the licensed pump installer/well driller by the state engineer. The licensed pump installer/well driller will administer the test to the prospective operator and return it to the state engineer for scoring.

3.6 Conditional, Restricted, or Limited Licenses.

The state engineer may issue a restricted, conditional, or limited license to an applicant based on prior drilling experience.

3.7 Refusal to Issue a License or Registration.

The state engineer may, upon investigation and after a hearing, refuse to issue a license or a registration to an applicant if it appears the applicant has not had sufficient training or experience to qualify as a competent well driller, pump installer, or operator.

3.8 Falsified Applications.

The state engineer may, upon investigation and after a hearing, revoke a license or a registration in accordance with Section 5.6 if it is determined that the original application contained false or misleading information.

3.9 Well Driller/Pump Installer Bond.

3.9.1 General

3.9.1.1. In order to become licensed and to continue licensure, well drillers and pump installers must file a bond in the form of a surety bond or cash bond, approved by the state engineer, in the sum of five thousand dollars ($5,000) with the Division of Water Rights, on a form provided by the Division, which is conditioned upon proper compliance with the law and these rules and which is effective for the licensing period in which the license is to be issued. The bond shall stipulate the obligee as the "Office of the State Engineer". The bond is penal in nature and is designed to ensure compliance by the licensed well driller or pump installer to protect the groundwater resource, the environment, and public health and safety. The bond may only be exacted by the state engineer for the purposes of investigating, repairing, or abandoning wells in accordance with applicable rules and standards. No other person or entity may initiate a claim against the bond. Lack of a current and valid bond shall be deemed sufficient grounds for denial or discontinuation of a driller's/pump installer's license. The well driller/pump installer bond may consist of a surety bond or a cash bond as described below.

3.9.2 Surety Bonds.

3.9.2.1. The licensee and a surety company or corporation authorized to do business in the State of Utah as surety shall bind themselves and their successors and assigns jointly and severally to the state engineer for the use and benefit of the public in full penal sum of five thousand dollars ($5,000). The surety bond shall specifically cover the licensee's compliance with the Administrative Rules for Water Wells found in R655-4 of the Utah Administrative Code. Forfeiture of the surety bond shall be predicated upon a failure to drill, construct, repair, renovate, deepen, clean, develop, test, disinfect, perform pump work, or abandon a regulated well in accordance with these rules (R655-4 UAC). The bond shall be made payable to the 'Utah State Engineer' upon forfeiture. The surety bond must be effective and exactable in the State of Utah.

3.9.2.2. The bond and any subsequent renewal certificate shall specifically identify the licensed individual covered by the bond (company names may be included on the bond, but the licensed driller name must be included). The licensee shall notify the state engineer of any change in the amount or status of the bond. The licensee shall notify the state engineer of any cancellation or change at least thirty (30) days prior to the effective date of such cancellation or change. Prior to the expiration of the 30-day notice of cancellation, the licensee shall deliver to the state engineer a replacement surety bond or transfer to a cash bond. If such a bond is not delivered, all activities covered by the license and bond shall cease at the expiration of the 30 day period. Termination shall not relieve the licensee or surety of any liability for incidences that occurred during the time the bond was in force.

3.9.2.3. Before the bond is forfeited by the licensee and exacted by the state engineer, the licensee shall have the option of resolving the noncompliance to standard either by personally doing the work or by paying to have another licensed driller do the work. If the licensee chooses not to resolve the problem that resulted in noncompliance, the entire bond amount of five thousand dollars ($5,000) shall be forfeited by the surety and expended by the state engineer to investigate, repair or abandon the well(s) in accordance with the standards in R655-4 UAC. Any excess there from shall be retained by the state engineer and expended for the purpose of investigating, repairing, or abandoning wells in accordance with applicable rules and standards. All claims initiated by the state engineer against the surety bond will be made in writing.

3.9.2.4. The bond of a surety company that has failed, refused or unduly delayed to pay, in full, on a forfeited bond is not approvable.

3.9.3 Cash Bonds.

3.9.3.1. The requirements for the well driller/pump installer bond may alternatively be satisfied by a cash bond in the form of a certificate of deposit (CD) for the amount of five thousand dollars ($5,000) issued by a federally insured bank or credit union with an office(s) in the State of Utah. The cash bond must be in the form of a CD. Cash, savings accounts, checking accounts, letters of credit, etc., are not acceptable cash bonds. The CD shall specifically identify the licensed individual covered by that fund. The CD shall be automatically renewable and fully assignable to the state engineer. CD shall state on its face that it is automatically renewable.

3.9.3.2. The cash bond shall specifically cover the licensee's compliance with well drilling rules found in R655-4 of the Utah Administrative Code. The CD shall be made payable or assigned to the state engineer and placed in the possession of the state engineer. If assigned, the state engineer shall require the bank or credit union issuing the CD to waive all rights of setoff or liens against those CD. The CD, if a negotiable instrument, shall be placed in the state engineer's possession. If the CD is not a negotiable instrument, the CD and a withdrawal receipt, endorsed by the licensee, shall be placed in the state engineer's possession.

3.9.3.3. The licensee shall submit CDs in such a manner which will allow the state engineer to liquidate the CD prior to maturity, upon forfeiture, for the full amount without penalty to the state engineer. Any interest accruing on a CD shall be for the benefit of the licensee.

3.9.3.4. The period of liability for a cash bond is five (years) after the expiration, suspension, or revocation of the license. The cash bond will be held by the state engineer until the five year period is over, then it will be relinquished to the licensed driller. In the event that a cash bond is replaced by a surety bond, the period of liability, during which time the cash bond will be held by the state engineer, shall be five (5) years from the date the new surety bond becomes effective.

3.9.4 Exacting a Well Driller/Pump Installer Bond.

3.9.4.1. If the state engineer determines, following an investigation and a hearing in accordance with the process defined in Sections 4-5, 4-6, and 4-7, that the licensee has failed to comply with the Administrative Rules for Water Wells and refused to remedy the noncompliance, the state engineer may suspend or revoke a license and fully exact the well driller bond and deposit the money as a non-lapsing dedicated credit.

3.9.4.2. The state engineer may expend the funds derived from the bond to investigate or correct any deficiencies which could adversely affect the public interest resulting from non-compliance with the Administrative Rules by any well driller/pump installer.

3.9.4.3. The state engineer shall send written notification by certified mail, return receipt requested, to the licensee and the surety on the bond, if applicable, informing them of the determination to

exact the well driller bond. The state engineer's decision regarding the noncompliance will be attached to the notification which will provide facts and justification for bond exaction. In the case of a surety bond exaction, the surety company will then forfeit the total bond amount to the state engineer. In the case of a cash bond, the state engineer will cash out the CD. The exacted well driller bond funds may then be used by the state engineer to cover the costs of well investigation, repair, and/or abandonment.

R655-4-4. Administrative Requirements and General Procedures.

4.1 Authorization to Drill or Conduct Regulated Activity.

The well driller shall make certain that a valid authorization or approval to drill exists before engaging in regulated well drilling activity. Authorization to drill shall consist of a valid 'start card' based on any of the approvals listed below. Items 4.1.1 through 4.1.12 allow the applicant to contract with a well driller to drill, construct, deepen, replace, repair, renovate, or abandon exactly one well at each location listed on the start card or approval form. The drilling of multiple borings/wells at an approved location/point of diversion is not allowed without authorization from the state engineer's office. Most start cards list the date when the authorization to drill expires. If the expiration date has passed, the start card and authorization to engage in regulated drilling activity is no longer valid. If there is no expiration date on the start card, the driller must contact the state engineer's office to determine if the authorization to drill is still valid. When the work is completed, the permission to drill is terminated. Preauthorization or pre-approval of pump installation/repair work, well cleaning, development, testing, and disinfection is not required. A well renovation permit is required if an existing well is to be modified by activities such as deepening, casing/seal/gravel pack repair/renovation, liner installation, pitless adapter/unit installation, and perforating/screen installation. A well renovation permit is not required if the well is not modified by activities such as cleaning, development, testing, disinfection, and pump work.

4.1.1 An approved application to appropriate.

4.1.2 A provisional well approval letter (also known as a Rush Letter Approval).

An approved provisional well letter grants authority to drill but allows only enough water to be diverted to determine the characteristics of an aquifer or the existence of a useable groundwater source.

4.1.3 An approved permanent change application.

4.1.4 An approved exchange application.

4.1.5 An approved temporary change application.

4.1.6 An approved application to renovate or deepen an existing well.

4.1.7 An approved application to replace an existing well.

4.1.8 An approved monitor well letter.

An approved monitor well letter grants authority to drill but allows only enough water to be diverted to monitor groundwater.

4.1.9 An approved heat exchange well letter.

4.1.10 An approved cathodic protection well letter.

4.1.11 An approved non-production well construction application.

4.1.12 Any letter or document from the state engineer directing or authorizing a well to be drilled or work to be done on a well.

4.2 Start Cards.

4.2.1 Prior to commencing work to drill, construct, deepen, replace, repair, renovate, clean, or develop any well governed by these administrative rules, the driller must notify the state engineer of that intention by transmitting the information on the "Start Card" to the state engineer by telephone (leaving a voice mail is acceptable notification), by facsimile (FAX), by hand delivery, or by e-mail (with completed Start Card scanned and attached to e-mail). Thereafter, a completed original Start Card must be sent to the state engineer by the driller after it has been telephoned in (including voice mail). A completed original Start Card does not need to be sent to the state engineer by the driller after it has been faxed or E-mailed. A copy of the Start Card should be kept at the drill site at all times regulated activity is being conducted.

4.2.2 A specific Start Card is printed for each well drilling approval and is furnished by the state engineer to the applicant or the well owner. The start card is preprinted with the water right or non-production well number, owner name/address, and the approved location of the well. The state engineer marks the approved well drilling activity on the card. If a Start Card is stamped with 'Special Conditions', the licensee shall contact the state engineer's office to determine what the special drilling conditions or limitations are; then implement them in the drilling and construction of the well. The driller must put the following information on the card:

a. The date on which work on the well will commence;

b. The projected completion date of the work;

c. The well driller's license number;

d. The licensed well driller's signature.

4.2.3 When a single authorization is given to drill wells at more than one point of diversion, a start card shall be submitted for each location to be drilled.

4.2.4 Following the submittal of a start card, if the actual start date of the drilling activity is postponed beyond the date identified on the start card, the licensed driller must notify the state engineer of the new start date.

4.2.5 A start card is not required to abandon a well. However, prior to commencing well abandonment work, the driller is required to notify the state engineer by telephone, by facsimile, or by e-mail of the proposed abandonment work. The notice must include the location of the well. The notice should also include the water right or non-production well number associated with the well and the well owner if that information is available.

4.2.6 A start card or pre-notification is not required to perform pump installation and repair work on a well.

4.3 General Requirements During Construction.

4.3.1 The well driller or pump installer shall have the required penal bond continually in effect during the term of the license; otherwise the license will become inactive.

4.3.2 The well driller's/pump installer's license number or company name exactly as shown on the license must be prominently displayed on each well drilling/pump rig operated under the license. If the company name is changed the licensee must immediately inform the state engineer of the change in writing.

4.3.3 A licensed well driller or a registered drill rig operator must be at the well site whenever the following aspects of well construction are in process: advancing the borehole, setting casing and screen, placing a filter pack, constructing a surface seal, or similar activities involved in well deepening, renovation, repair, cleaning, developing, testing, disinfecting, capping, pitless installation, or abandoning. All registered drill rig operators working under a well driller's license must be employees of the well driller and must use equipment either owned by or leased by the licensed well driller.

4.3.3.1 A licensed pump installer or a registered pump rig operator must be at the well site whenever the following aspects of pump work are in process: pump removal, pump installation, modification to the well head including capping, sealing, and pitless adapter/unit installation, or similar activities on and within the well involving pump installation/repair. Inasmuch as a licensed pump installer is allowed to clean, develop, test, and disinfect a regulated well, these activities must be performed in the presence of a licensed pump installer or registered pump rig operator. All registered pump rig operators working under a pump installer's license must be employees of the pump installer and must use equipment either owned by or leased by the licensed pump installer.

4.3.3.2 A registered drill rig operator who is left in responsible charge of advancing the borehole, setting casing and

screen, placing a filter pack, constructing a surface seal, or similar activities involved in well deepening, renovation, repair, cleaning, developing, testing, disinfecting, capping, pitless installation, or abandoning must have a working knowledge of the minimum construction standards and the proper operation of the drilling rig. The licensed well driller is responsible to ensure that a registered operator is adequately trained to meet these requirements.

4.3.3.3 A registered pump rig operator who is left in responsible charge of pump installation or repair must have a working knowledge of the minimum construction standards and the proper operation of the pump rig. The licensed well driller or pump installer is responsible to ensure that a registered operator is adequately trained to meet these requirements.

4.3.4 State engineer provisions for issuing cease and desist orders (Red Tags)

4.3.4.1 Construction Standards: The state engineer or staff of the Division of Water Rights may order that regulated work on a well cease if a field inspection reveals that the construction does not meet the minimum construction standards to the extent that the public interest might be adversely affected.

4.3.4.2 Licensed Drilling Method: A cease work order may also be issued if the well driller is not licensed for the drilling method being used for the well construction.

4.3.4.3 Incompetent Registered Operator: If, during a field inspection by the staff of the Division of Water Rights, it is determined that a registered operator in responsible charge does not meet these requirements, a state engineer's red tag (see Section 4.3.4) shall be placed on the drilling rig or pump rig and the drilling/pump operation shall be ordered to shut down. The order to cease work shall remain effective until a qualified person is available to perform the work.

4.3.4.4 No licensee or registered operator on site: If, during a field inspection by the staff of the Division of Water Rights, it is determined that neither a licensee or registered operator are one site when regulated well activity is occurring, the state engineer may order regulated well work to cease.

4.3.4.5 General: The state engineer's order shall be in the form of a red tag which shall be attached to the drilling/pump rig. A letter from the state engineer shall be sent to the licensee to explain the sections of the administrative rules which were violated. The letter shall also explain the requirements that must be met before the order can be lifted.

4.3.4.6 A licensee may appeal a Cease and Desist order by:

4.3.4.6.1 submitting to the Division a written statement clearly and concisely stating the specific disputed facts, the supporting facts, and the relief sought; or

4.3.4.6.2 requesting a hearing on the issue according to the provisions of R655-4-7.

4.3.4.7 A Cease and Desist Order shall remain in force during the pendency of the appeal.

4.3.5 When required by the state engineer, the well driller or registered operator shall take lithologic samples at the specified intervals and submit them in the bags provided by the state engineer.

4.3.6 A copy of the current Administrative Rules for Water Wells should be available at each well construction site for review by the construction personnel. Licensed well drillers/pump installers and registered operators must have proof of licensure or registration with them on site during regulated well activity.

4.3.7 Prior to starting construction of a new well, the licensed driller shall investigate and become familiar with the drilling conditions, geology of potential aquifers and overlying materials, anticipated water quality problems, and know contaminated water bearing zones that may be encountered in the area of the proposed drilling activity.

4.4 Removing Drill Rig From Well Site.

4.4.1 A well driller shall not remove his drill rig from a well site unless the well drilling activity is properly completed or abandoned in accordance with the construction standards in Sections 9 thru 12.

4.4.2 For the purposes of these rules, the regulated work on a well will be considered completed when the well driller removes his drilling rig from the well site. The regulated pump work on a well will be considered completed when the pump installer removes his pump rig from the well site.

4.4.3 The well driller may request a variance from the state engineer to remove a drill rig from a well prior to completion or abandonment. This request must be in written form to the state engineer. The written request must provide justification for leaving the well incomplete or un-abandoned and indicate how the well will be temporarily abandoned as provided in Section R655-4-14 and must give the date when the well driller plans to continue work to either complete the well or permanently abandon it.

4.5 Official Well Driller's Report (Well Log).

4.5.1 Within 30 days of the completion of regulated work on any well, the driller shall file an official well driller's report (well log) with the state engineer. The blank well log form will be mailed to the licensed well driller upon receipt of the information on the Start Card as described in Subsection 4.2.

4.5.2 The water right number or non-production well number, owner name/address, and the approved location of the well will be preprinted on the blank well log provided to the well driller. The driller is required to verify this information and make any necessary changes on the well log prior to submittal. The state engineer will mark the approved activity (e.g., new, replace, repair, deepen) on the well log. The driller must provide the following information on the well log:

a. The start and completion date of work on the well;

b. The nature of use for the well (e.g., domestic, irrigation, stock watering, commercial, municipal, provisional, monitor, cathodic protection, heat pump, etc.;

c. The borehole diameter, depth interval, drilling method and drilling fluids utilized to drill the well;

d. The lithologic log of the well based on strata samples taken from the borehole as drilling progresses;

e. Static water level information to include date of measurement, static level, measurement method, reference point, artesian flow and pressure, and water temperature;

f. The size, type, description, joint type, and depth intervals of casing, screen, and perforations;

g. A description of the filter pack, surface and interval seal material, and packers used in the well along with necessary related information such as the depth interval, quantity, and mix ratio;

h. A description of the finished wellhead configuration;

i. The date and method of well development;

j. The date, method, yield, drawdown, and elapsed time of a well yield test;

k. A description of pumping equipment (if available);

l. Other comments pertinent to the well activity completed;

m. The well driller's statement to include the driller name, license number, signature, and date.

4.5.3 Accuracy and completeness of the submitted well log are required. Of particular importance is the lithologic section which should accurately reflect the geologic strata penetrated during the drilling process. Sample identification must be logged in the field as the borehole advances and the information transferred to the well log form for submission to the state engineer.

4.5.4 An amended well log shall be submitted by the licensed driller if it becomes known that the original report contained inaccurate or incorrect information, or if the original report requires supplemental data or information. Any amended well log must be accompanied by a written statement, signed and dated by the licensed well driller, attesting to the circumstances and the reasons for submitting the amended well log.

4.6 Official Well Abandonment Reports (Abandonment Logs).

4.6.1 Whenever a well driller is contracted to replace an existing well under state engineer's approval, it shall be the

responsibility of the well driller to inform the well owner that it is required by law to permanently abandon the old well in accordance with the provisions of Section R655-4-14.

4.6.2 Within 30 days of the completion of abandonment work on any well, the driller shall file an abandonment log with the state engineer. The blank abandonment log will be mailed to the licensed well driller upon notice to the state engineer of commencement of abandonment work as described in Subsection R655-4-4(4.2.5).

4.6.3 The water right number or non-production well number, owner name/address, and the well location (if available) will be preprinted on the blank abandonment log provided to the well driller. The driller is required to verify this information and make any necessary changes on the abandonment log prior to submitting the log. The driller must provide the following information on the abandonment log:

a. Existing well construction information;

b. Date of abandonment;

c. Reason for abandonment;

d. A description of the abandonment method;

e. A description of the abandonment materials including depth intervals, material type, quantity, and mix ratio;

f. Replacement well information (if applicable);

g. The well driller's statement to include the driller name, license number, signature, and date.

4.6.4 When a well is replaced and the well owner will not allow the driller to abandon the existing well, the driller must briefly explain the situation on the abandonment form and submit the form to the state engineer within 30 days of completion of the replacement well.

4.7 Official Pump Installation Report (Pump Log).

4.7.1 Soon after the completion of regulated pump work on any well, the licensee shall file an official pump installation report (pump log) with the state engineer. If well disinfection is the only activity on a well, a pump log need not be filed with the state engineer. Blank pump log forms will be available to the licensee at any Division office, requested by mail, or downloaded from the Division's website (www.waterrights.utah.gov).

4.7.2 Pertinent information to be included on the pump log by the licensee shall consist of:

a. The water right number or non-production well number;

b. the well owner name and address;

c. The approved point of diversion or location of the well;

d. The start and completion date of work on the well;

e. The nature of use for the well (e.g., domestic, irrigation, stock watering, commercial, municipal, provisional, monitor, cathodic protection, heat pump, etc.;

f. Pertinent well details including casing diameters/depths, total well depth, well intake depth intervals, wellhead configuration including pitless adapter/unit configuration if applicable;

g. A detailed description of pump-related work performed on or in the well including pump setting depth, pump type, pumping rate, valving, drop piping, jointing, capping, testing, sealing, disinfection, and pitless adapter/unit installation;

h. Static water level information to include date of measurement, static level, measurement method, reference point, artesian flow and pressure, and water temperature;

i. A description of the finished wellhead configuration;

j. The date, method, yield, drawdown, and elapsed time of a well yield test;

k. Other comments pertinent to the well activity completed;

m. The pump installer's statement to include the licensee name, license number, signature, and date.

4.8 Incomplete or Incorrectly Completed Reports.

An incomplete log or a log that has not been completed correctly will be returned to the licensee to be completed or corrected. The log will not be considered filed with the state engineer until it is complete and correct.

4.8 Extensions of Time.

The well driller may request an extension of time for filing the well log if there are circumstances which prevent the driller from obtaining the necessary information before the expiration of the 30 days. The extension request must be submitted in writing before the end of the 30-day period.

4.9 Late Well Logs - Lapsed License

All outstanding well logs or abandonment logs shall be properly submitted to the state engineer prior to the lapsing of a license. A person with a lapsed license who has failed to submit all well/abandonment logs within 90 days of lapsing will be subject to the state engineer's enforcement powers under Section 73-2-25 of the Utah Code (Related rules: Section R655-14 UAC)

R655-4-5. Administrative Rule Infractions.

5.1 List of Infractions and Points.

Licensed well drillers who commit the infractions listed below in Table 1 shall have assessed against their well drilling record the number of points assigned to the infraction.

TABLE 1

Level I Infractions of Administrative Requirements

	Points
Well log submitted late	10
Failure to submit a Pump Log	10
Well abandonment report submitted late	10
License number or company name not clearly posted on well drilling/pump rig	10
Failing to notify the state engineer of a change in the well licensee's company name	10
Failure to properly notify the state engineer before the proposed start date shown on the start card	20
Failure to properly notify the state engineer before the abandonment of a regulated well	20
Failure to notify the state engineer of a change of start date	50
Constructing a replacement well further than 150 ft from the original well without the authorization of an approved change application	50
Failure to drill at the state engineer approved location as identified on the start card	50
Removing the well drilling rig from the well site before completing the well or temporarily or permanently abandoning the well	50

TABLE 2

Level II Infractions of Administrative Requirements

	Points
Employing an operator who is not registered with the state	75
Contracting out work to an unlicensed driller (using the unlicensed driller's rig) without prior written approval from the state	75
Performing any well drilling activity without valid authorization (except in emergency situations)	100
Intentionally making a material misstatement of fact in an official well driller's report/pump log or amended official well driller's report (well log)	100

TABLE 3

Level III Infractions of Construction Standards / Conditions

	Points
Approvals	
Using a method of drilling not listed	

on the well driller's license	30
Failing to comply with any conditions included on the well approval such as minimum or maximum depths, specified locations of perforations, etc.	50
Performing any well construction activity in violation of a red tag cease work order	100
Casing	
Failure to extend well casing at least 18" above ground	30
Failure to install casing in accordance with these rules	50
Failure to install a protective casing around a PVC well at the surface	50
Using improper casing joints	100
Using or attempting to use sub-standard well casing	100
Surface Seals	
Using improper products or procedures to install a surface seal	100
Failure to seal off artesian flow on the outside of casing	100
Failure to install surface seal to adequate depth based on formation type	100
Failure to install interval seals to eliminate aquifer commingling or cross contamination	100
Well Abandonment	
Using improper procedures to abandon a well	100
Using improper products to abandon a well	100
Construction Fluids	
Using water of unacceptable quality in the well drilling operation	40
Using an unacceptable mud pit	40
Failure to use treated or disinfected water for drilling processes	40
Using improper circulation materials or drilling chemicals	100
Filter/Gravel Packs and Formation Stabilizers	
Failure to disinfect filter pack	40
Failure to install filter pack properly	75
Failure to install formation stabilizer according to standard	75
Well Completion	
Failure to make well accessible to water level or pressure head measurements	30
Failure to install casing annular seals, cap, and valving, and to control artesian flow	30
Failure to disinfect a well upon completion of well drilling activity	40
Failure to install sanitary well capping according to standard	75
Failure to install a pitless adapter/unit according to standard	75
Failure to develop and test a well according to standard	75
Failure to hydrofracture a well according to standard	75
Failure to install packers/plugs according to standard	75
Failure to install well intakes(screens, perforations, open bottom) according to standard	75
Failure to install non-production wells according to standard	100
Pump Installation and Repair	
Failure to extend well casing at least 18" above ground	30
Failure to make well accessible to water level or pressure head measurements	30
Failure to install casing annular seals, cap, and valving, and to control artesian flow	30
Failure to disinfect a well upon completion of pump activity	40
Failure to install a protective casing around a PVC well at the surface	50
Failure to maintain surface completion and security standards	75
Failure to install or maintain Backflow protection	75
Failure to develop and test a well according to standard	75
Failure to install sanitary well capping according to standard	75
Failure to install a pitless adapter/unit according to standard	75
Failure to prevent contamination from entering a well through placement, products, tools, and materials	100
Failure to repair a well's surface seal	100
General	
Failure to securely cover an unattended well during construction	30
Failure to engage in well drilling activity in accordance with accepted industry practices	100

TABLE 4

Level IV Infractions of Application Requirements

	POINTS
Submitting an initial license or registration application that contains false or misleading information	100

5.2 When Points Are Assessed.

Points will be assessed against a driller's record upon verification by the state engineer that an infraction has occurred. Points will be assessed at the time the state engineer becomes aware of the infraction regardless of when the infraction occurred.

5.3 Infraction Notice

When infraction points are assessed against a well driller's record, the State Engineer shall issue an infraction notice to the well driller. The notice shall include an explanation of the administrative rule(s) violated, the date the alleged violations were discovered and the approximate date of occurrence, the number of points assessed for each infraction, the total number of points on the well drillers record, an explanation of the adjudicative process to appeal a cease and desist order and or infraction notice, and an explanation of how to delete points from the driller record, an any other information deemed pertinent by the state engineer.

5.4 Appeal of Infractions.

5.4.1 If the infraction points do not require a hearing, a well driller may appeal an infraction within 30 days of the date the Infraction Notice was issued. The appeal shall be made in writing to the state engineer and shall state clearly and concisely the disputed facts, the supporting facts, and the relief sought.

5.4.2 A well driller may request reconsideration of a denied appeal by requesting a hearing before the Presiding Officer within 20 days of the denial. If the Presiding Officer does not respond within 20 days after the request is submitted, then it is deemed denied.

5.5 Deleting Points from the Driller Record.

Points assessed against a well driller's record shall remain on the record unless deleted through any of the following options:

5.5.1 Points shall be deleted three years after the date when the infraction is noted by the state engineer and the points are assessed against the driller's record.

5.5.2 One half the points on the record shall be deleted if the well driller is free of infractions for an entire year.

5.5.3 Thirty (30) points shall be deleted for obtaining six (6) hours of approved continuing education credits in addition to the credits required to renew the water well driller's license. A driller may exercise this option only once each year.

5.5.4 Twenty (20) points shall be deleted for taking and passing (with a minimum score of 70%) the test covering the administrative requirements and the minimum construction standards. A driller may exercise this option only every other year.

5.6 Well Driller Hearings.

When the number of infraction points assessed against the well driller's record equals or exceeds 100, the state engineer shall submit

a request to the Presiding Officer for a hearing. The requested purpose of the hearing shall be to determine if administrative penalties should be levied against the water well driller including fines and probation, suspension, or revocation of the water well driller's. In lieu of a hearing, the well driller may request a preliminary conference to resolve and agree upon the dispute, fines, and penalties. If resolution cannot be reached at the preliminary conference, a hearing shall be held.

5.7 Lack of Knowledge Not an Excuse.

Lack of knowledge of the law or the administrative requirements and minimum construction standards related to well drilling shall not constitute an excuse for violation thereof.

R655-4-6. Administrative Penalties.

Administrative penalties ordered against a licensed driller by the Presiding Officer following a hearing can include probation, administrative fines, license suspension, and license revocation. Administrative penalties are ordered based on the severity of the infraction (Level I, II, III from Tables 1-3 of Section 5.1) as well as the recurrence of an infraction. The maximum administrative fine per infraction shall be capped at $1000.

6.1 Level I Administrative Penalties: Level I administrative penalties shall be levied against Level I administrative infractions (see Table 1 of Section 5.1). The Level I administrative penalty structure is as follows:

6.1.1 At the first conviction of Level I infractions, the disciplinary action for the infractions shall be probation.

6.1.2 Second conviction shall result in probation and a fine at a rate of $2.50 per infraction point.

6.1.3 Third conviction shall result in probation and an elevated fine at a rate of $5.00 per infraction point.

6.1.4 Fourth conviction shall result in an elevated fine at a rate of $10.00 per infraction point and possible suspension.

6.1.5 Continued and repeated convictions beyond the fourth conviction may result in an elevated fine at a rate of $10.00 per infraction point and possible suspension or revocation.

6.1.6 Fines for late well logs and abandonment logs shall be calculated separately and added to fines calculated for other infractions. For late well log infractions, the points associated with each infraction shall be multiplied by a factor based on the lateness of the well log. The infraction point multipliers are as follows in Table 5:

TABLE 5

Tardiness of the log	Infraction Point Multiplier
1-2 weeks	0.50
2-4 weeks	1.00
1-3 months	1.50
3-6 months	2.00
6-9 months	2.50
9-12 months	3.00
Over 12 months	4.00

6.2 Level II Administrative Penalties: Level II administrative penalties shall be levied against Level II administrative infractions (see Table 2 of Section 5.1). The Level II administrative penalty structure is as follows:

6.2.1 At the first conviction of Level II infractions, the disciplinary action shall result in probation and a fine at a rate of $2.50 per infraction point.

6.2.2 Second conviction shall result in probation and an elevated fine at a rate of $5.00 per infraction point.

6.2.3 Third conviction shall result in possible suspension and an elevated fine at a rate of $10.00 per infraction point.

6.2.4 Continued and repeated convictions beyond the fourth conviction may result in an elevated fine at a rate of $10.00 per infraction point and possible suspension or revocation.

6.3 Level III Administrative Penalties: Level III administrative penalties shall be levied against Level III construction infractions (see Table 3 of Section 5.1). The Level III administrative penalty structure is as follows:

6.3.1 At the first conviction of Level III infractions, the disciplinary action shall result in probation and a fine at a rate of $5.00 per infraction point.

6.3.2 Second conviction shall result in possible suspension and an elevated fine at a rate of $10.00 per infraction point.

6.3.3 Third conviction may result in an elevated fine at a rate of $10.00 per infraction point and possible suspension or revocation.

6.3.4 Level IV Administrative Penalties: The Level IV administrative penalty shall be levied against a Level IV application requirement infraction (see Table 4 of Section 5.1). The Level IV administrative penalty is revocation of the license at first conviction.

6.4 Administrative Penalties - General

6.4.1 Penalties shall only be imposed as a result of a well driller hearing.

6.4.2 Failure to pay a fine within 30 days from the date it is assessed shall result in the suspension of the well driller license until the fine is paid.

6.4.3 Fines shall be deposited as a dedicated credit. The state engineer shall expend the money retained from fines for expenses related to well drilling activity inspection, well drilling enforcement, and well driller education.

6.5 Probation: As described above in Sections 6.1, 6.2, and 6.3, probation shall generally be the disciplinary action imposed in situations where the facts established through testimony and evidence describe first time infractions of the administrative rules that are limited in number and less serious in their impact on the well owner and on the health of the aquifer. The probation period shall generally last until the number of infraction points on the well driller's record is reduced below 70 through any of the options described in Subsection 4-5.5.

6.6 Suspension: Suspension shall generally be the disciplinary action imposed in situations where the facts established through testimony and evidence describe repeated convictions of the administrative rules, or infractions that a pose serious threat to the health of the aquifer, or a well driller's apparent disregard for the administrative rules or the state's efforts to regulate water well drilling. Depending upon the number and severity of the rule infractions as described above in Sections 6.1, 6.2, and 6.3, the state engineer may elect to suspend a well driller license for a certain period of time and/or until certain conditions have been met by the well driller. In establishing the length of the suspension, the state engineer shall generally follow the guideline that three infraction points is the equivalent of one day of suspension. A well driller whose license has been suspended shall be prohibited from engaging in regulated well drilling activity. License suspension may also result in the exaction of the Well Driller Bond as set forth in Subsection 4-3.9.4. A well driller whose license has been suspended is allowed to work as a registered operator under the direct, continuous supervision of a licensed well driller. If the suspension period extends beyond the expiration date of the water well driller license, the water well driller may not apply to renew the license until the suspension period has run and any conditions have been met. Once the suspension period has run and once all conditions have been met by the well driller, the suspension shall be lifted and the driller shall be notified that he/she may again engage in the well drilling business. The well driller shall then be placed on probation until the number of infraction points on the well driller's record is reduced below 70 through any of the options described in Subsection 4-5.5.

6.7 Revocation: Revocation shall generally be the disciplinary action imposed in situations where the facts established through testimony and evidence describe repeated convictions of the administrative rules for which the well driller's Utah Water Well License has previously been suspended. Revocation shall also be the disciplinary action taken if after a hearing the facts establish that a driller knowingly provided false or misleading information on a driller license application. A well driller whose license has been revoked shall be prohibited from engaging in regulated well drilling

activity. License revocation may also result in the exaction of the Well Driller Bond as set forth in Subsection 4-3.9.4. A well driller whose license has been revoked is allowed to work as a registered operator under the direct, continuous supervision of a licensed well driller. A well driller whose water well license has been revoked may not make application for a new water well license for a period of two years from the date of revocation. After the revocation period has run, a well driller may make application for a new license as provided in Section R655-4-3. However, the well drilling experience required must be based on new experience obtained since the license was revoked.

R655-4-7. Adjudicative Proceedings.

7.1 Designation of Presiding Officers.

The following persons may be designated Presiding Officers in well driller adjudicative proceedings: Assistant State Engineers; Deputy State Engineers; or other qualified persons designated by the State Engineer.

7.2 Disqualification of Presiding Officers.

7.2.1 A Presiding Officer shall disqualify himself from performing the functions of the Presiding Officer regarding any matter in which he, his spouse, or a person within the third degree of relationship to either of them or the spouse of such person:

7.2.1.1 Is a party to the proceeding, or an officer, director, or trustee of a party;

7.2.1.2 Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented, a party concerning the matter in controversy;

7.2.1.3 Knows that he has a financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a party to the proceeding;

7.2.1.4 Knows that he has any other interest that could be substantially affected by the outcome of the proceeding; or

7.2.1.5 Is likely to be a material witness in the proceeding.

7.2.2 A Presiding Officer is also subject to disqualification under principles of due process and administrative law.

7.2.3 These requirements are in addition to any requirements under the Utah Public Officers' and Employees' Ethics Act, Section 67-16-1 et seq.

7.2.4 A motion for disqualification shall be made first to the Presiding Officer. If the Presiding Officer is appointed, any determination of the Presiding Officer upon a motion for disqualification may be appealed to the State Engineer.

7.3 Informal Proceedings

7.3.1 All adjudicative proceedings initiated under this rule are classified as informal adjudicative proceedings.

7.3.1 The procedures for informal adjudicative proceedings initiated under this rule are set forth in this rule.

7.4 Service of Notice and Orders.

7.4.1 Hearing Notices and Final Judgment and Orders shall be served upon the well driller at the well driller's address using certified mail or methods described in Rule 5 of the Utah Rules of Civil Procedure.

7.4.2 Infraction notices, notices of approval or denial of licensing or registration or license or registration renewal, and other routine correspondence related to the Division's Well Drilling Program shall be sent to the well driller at the well driller's address by regular U.S. Mail.

7.5 Computation of Time.

7.5.1 Computation of any time period referred to in these rules shall begin with the first day following the act that initiates the running of the time period. The last day of the time period computed is included unless it is a Saturday, Sunday, or legal holiday or any other day on which the Division is closed, in which event the period shall run until the end of the business hours of the following business day.

7.5.2 The Presiding Officer, for good cause shown, may extend any time limit contained in these rules, unless precluded by statute. All requests for extensions of time shall be made by motion.

7.6 Request for Hearing

7.6.1 A hearing before a Presiding Officer is permitted in a well drilling adjudicative proceeding if:

7.6.1.1 The proceeding was commenced by an Infraction Notice; or

7.6.1.2 The proceeding was commenced by a well driller request raising a genuine issue regarding

7.6.1.2.1 The denial of a license or registration renewal application; or

7.6.1.2.2 The issuance of a cease and desist order (red tag)

7.6.2 Regardless of any other provision of the general laws to the contrary, all requests for a hearing shall be in writing and shall be filed with the Division to the attention of the Presiding Officer.

7.6.3 The request for a hearing shall state clearly and concisely the disputed facts, the supporting facts, the relief sought, and any additional information required by applicable statutes and rules.

7.6.4 The Presiding Officer shall, give all parties at least ten (10) days notice of the date, time and place for the hearing. The Presiding Officer may grant requests for continuances for good cause shown.

7.6.5 Any party may, by motion, request that a hearing be held at some place other than that designated by the Presiding Officer, due to disability or infirmity of any party or witness, or where justice and equity would be best served.

7.6.6 A well driller at any time may withdraw the well driller's request for a hearing. The withdrawal shall be filed with the Division to the attention of the Presiding Officer, in writing, signed by the well driller or an authorized representative, and is deemed final upon the date filed.

7.7 Filings Generally.

7.7.1 Papers filed with the Division shall state the title of the proceeding and the name of the well driller on whose behalf the filing is made.

7.7.2 Papers filed with the Division shall be signed and dated by the well driller on whose behalf the filing is made or by the well driller's authorized representative. The signature constitutes certification that the well driller:

7.7.2.1 Read the document;

7.7.2.2 Knows the content thereof;

7.7.2.3 To the best of the well driller's knowledge, represents that the statements therein are true;

7.7.2.4 Does not interpose the papers for delay; and

7.7.2.5 If the well driller's signature does not appear on the paper, authorized a representative with full power and authority to sign the paper.

7.7.3 All papers, except those submittals and documents that are kept in a larger format during the ordinary course of business, shall be submitted on an 8.5 x 11-inch paper. All papers shall be legibly hand printed or typewritten.

7.7.4 The Division may provide forms to be used by the parties.

7.7.5 The original of all papers shall be filed with the Division with such number of additional copies as the Division may reasonably require.

7.7.6 Simultaneously with the filing of any and all papers with the Division, the party filing such papers shall send a copy to all other parties, or their authorized representative to the proceedings, by hand delivery, or U.S. Mail, postage prepaid, properly addressed.

7.8 Motions.

7.8.1 A party may submit a request to the Presiding Officer for any order or action not inconsistent with Utah law or these rules. Such a request shall be called a motion. The types of motions made shall be those that are allowed under these Rules and the Utah Rules of Civil Procedure.

7.8.2 Motions may be made in writing at any time before or after the commencement of a hearing, or they may be made orally during a hearing. Each motion shall set forth the grounds for the desired order or action and, if submitted in writing, state whether

oral argument is requested. A written supporting memorandum, specifying the legal basis and support of the party's position shall accompany all motions.

7.8.3 The Presiding Officer may, upon the Presiding Officer's own initiative or upon the motion of any party, order any party to file a response or other pleading, and further permit either party to amend its pleadings in a manner just to all parties.

7.8.4 Preliminary Conference. Parties may request to appear for a preliminary conference prior to a hearing or prior to the scheduled commencement of a hearing or at any time before issuing a Final Judgment and Order. All parties shall prepare and exchange the following information at the initial preliminary conference:

(a) Names and addresses of prospective witnesses including proposed areas of expertise for expert witnesses;

(b) A brief summary of proposed testimony;

(c) A time estimate of each witness' direct testimony;

(d) Curricula vitae (resumes) of all prospective expert witnesses.

(e) The scheduling of a preliminary conference shall be solely within the discretion of the Presiding Officer.

(f) The Presiding Officer shall give all parties at least three (3) days notice of the preliminary conference.

(g) The notice shall include the date, time and place of the preliminary conference. The purpose of a preliminary conference is to consider any or all of the following:

(a) The simplification or clarification of the issues;

(b) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which shall avoid unnecessary proof;

(c) The limitation of the number of witnesses or avoidance of similar cumulative evidence, if the case is to be heard;

(d) The possibility of agreement disposing of all or any of the issues in dispute; or

(e) Such other matters as may aid in the efficient and equitable disposition of the adjudicative enforcement proceeding.

7.8.5 Consent Order: If the respondent substantially agrees with or does not contest the statements of fact in the initial order, or if the parties agree to specific amendments to the statements of fact in the initial order, the parties may enter into a Consent Order after a preliminary conference by stipulating to the facts, fines, and penalties, if any. A Consent Order based on that stipulation, shall be prepared by the state engineer for execution by the parties. The executed Consent Order shall be reviewed by the Presiding Officer and, if found to be acceptable, will be signed and issued by the Presiding Officer. A Consent Order issued by the Presiding Officer is not subject to reconsideration or judicial review.

7.9 Conduct of Hearings.

7.9.1 All parties, authorized representatives, witnesses and other persons present at the hearing shall conduct themselves in a manner consistent with the standards and decorum commonly observed in Utah courts. Where such decorum is not observed, the Presiding Officer may take appropriate action including adjournment, if necessary.

7.9.2 The Presiding Officer shall conduct the hearing, make all decisions regarding admission or exclusion of evidence or any other procedural matters, and have an oath or affirmation administered to all witnesses.

7.10 Rules of Evidence in Hearings.

7.10.1 Discovery is prohibited, but the Division may issue subpoenas or other orders to compel production of necessary evidence.

7.10.2 A party may call witnesses and present oral, documentary, and other evidence.

7.10.3 A party may comment on the issues and conduct cross-examination of any witness as may be required for a full and true disclosure of all facts relevant to any issue designated for hearing, and as may affect the disposition of any interest which permits the person participating to be a party.

7.10.4 A witness' testimony shall be under oath or affirmation.

7.10.5 Any evidence may be presented by affidavit rather than by oral testimony, subject to the right of any party to call and examine or cross-examine the affiant.

7.10.6 Relevant evidence shall be admitted.

7.10.7 The Presiding Officer's decision may not be based solely on hearsay.

7.10.8 Official notice may be taken of all facts of which judicial notice may be taken in Utah courts.

7.10.9 All parties shall have access to public information contained in the Division's files and to all materials and information gathered in the investigation, to the extent permitted by law.

7.10.10 No evidence shall be admitted after completion of a hearing or after a case is submitted on the record, unless otherwise ordered by the Presiding Officer.

7.10.11 Intervention is prohibited.

7.10.12 A well driller appearing before the Presiding Officer for the purpose of a hearing may be represented by a licensed attorney. The Water Well Drilling Specialist shall present evidence before a Presiding Officer supporting the State Engineer's claim. At the State Engineer's discretion, other Division staff or a representative from the office of the Attorney General may also present supporting evidence.

7.11 Transcript of Hearing.

7.11.1 Testimony and argument at the hearing shall be recorded electronically. The Division shall make copies of electronic recordings available to any party, upon written request. The fee charged for this service shall be equal to the actual costs of providing the copy. The Division is not responsible to supply any party with a transcript of a hearing.

7.11.2 If any party shall cause to be produced a transcript of a hearing, a copy of said transcript shall be filed with the Division and provided to all other parties. By order of the Presiding Officer and with the consent of all parties, such written transcript may be deemed an official transcript.

7.11.3 Corrections to an official transcript may be made only to conform it to the evidence presented at the hearing. Transcript corrections, agreed to by opposing parties, may be incorporated into the record, if and when approved by the Presiding Officer, at any time during the hearing, or after the close of the adjudicative proceeding. The Presiding Officer may call for the submission of proposed corrections and may determine the disposition thereof at appropriate times during the course of the proceeding.

7.12 Procedures and Standards for Orders

7.12.1 If the well driller attends the hearing, the Presiding Officer shall issue a Final Judgment and Order.

7.12.2 The Presiding Officer may issue a Default Order if, after proper notice, the well driller fails to attend a hearing scheduled by the Presiding Officer.

7.12.3 Within a reasonable time after the close of a well driller adjudicative proceeding, the Presiding Officer shall issue a written and signed Final Judgment and Order, including but not limited to:

7.12.3.1 A statement of law and jurisdiction;

7.12.3.2 A statement of facts;

7.12.3.3 An identification of the confirmed infraction(s);

7.12.3.4 An order setting forth actions required of the well driller;

7.12.3.5 A notice of the option to request reconsideration and the right to petition for judicial review;

7.12.3.6 The time limits for requesting reconsideration or filing a petition for judicial review; and

7.12.3.7 Other information the Presiding Officer deems necessary or appropriate.

7.12.4 The Presiding Officer's Final Judgment and Order shall be based on the record, as defined in this rule.

7.12.5 A copy of the Presiding Officer's Final Judgment and Order shall be promptly mailed to each of the parties.

7.12.6 A well driller who fails to attend a hearing waives any

right to request reconsideration of the Final Judgment and Order per Section R655-4-7.13, but may petition for judicial review per Section R655-4-7.16.

7.13 Reconsideration.

7.13.1 Within 14 days after the Presiding Officer issues a Final Judgment and Order, any party may file a written request for reconsideration stating the specific grounds upon which relief is requested.

7.13.2 Unless otherwise provided by statute, the filing of a request for reconsideration is not a prerequisite for seeking judicial review of the order.

7.13.3 The request for reconsideration shall be filed with the Division to the attention of the Presiding Officer and one copy shall be mailed to each party by the party filing the request.

7.13.4 The Presiding Officer may issue a written order granting or denying the request for reconsideration. It is not required that the written order explain the grounds for the Presiding Officer's decision.

7.13.5 If the Presiding Officer does not issue an order granting a request for reconsideration within 14 days after the date it is filed with the Division, the request shall be considered denied.

7.14 Amending Administrative Orders.

7.14.1 On the motion of any party or of the Presiding Officer, the Presiding Officer may amend a Final Judgment and Order for reasonable cause shown, including but not limited to a clerical mistake made in the preparation of the order.

7.14.2 A motion by any party to amend an order shall be made in a reasonable time and, if to amend a Final Judgment and Order, not more than three (3) months after the Final Judgment and Order was issued.

7.14.3 The Presiding Officer shall notify the parties of the receipt and consideration of a motion to amend an order by issuing a notice. The notice shall include a copy of the motion.

7.14.4 Any party opposing a motion to amend an order may submit information within the time period to be established by the Presiding Officer's notice of the motion.

7.14.5 After considering a motion to amend an order and any relevant information received from the parties, the Presiding Officer shall advise the parties of his determination. If the Presiding Officer determines that the order shall be amended, the Presiding Officer shall issue the amended order to all parties.

7.15 Setting Aside a Final Judgment and Order.

7.15.1 On the motion of any party or on a motion by the Presiding Officer, the Presiding Officer may set aside a Final Judgment and Order on any reasonable grounds, including but not limited to the following:

7.15.1.1 The well driller was not properly served with an Infraction Notice;

7.15.1.2 A rule or policy was not followed when the Final Judgment and Order was issued;

7.15.1.3 Mistake, inadvertence, excusable neglect;

7.15.1.4 Newly discovered evidence which by due diligence could not have been discovered before the Presiding officer issued the Final Judgment and Order; or

7.15.1.5 Fraud, misrepresentation or other misconduct of an adverse party;

7.15.2 A motion to set aside a final order shall be made in a reasonable time and not more than three (3) months after the Final Judgment and Order was issued.

7.15.3 The Presiding Officer shall notify the parties of the receipt and consideration of a motion to set aside a final order by issuing a notice to all parties, including therewith a copy of the motion.

7.15.4 Any party opposing a motion to set aside a final order may submit information within the time period to be established by the Presiding Officer's notice of the motion.

7.15.4 After consideration of the motion to set aside an order and any information received from the parties, the Presiding Officer shall issue an order granting or denying the motion, and provide a copy of the order to all parties.

7.16 Judicial Review.

7.16.1 Pursuant to Section 73-3-14, a Final Judgment and Order may be reviewed by trial de novo by the district court:

7.16.1.1 In Salt Lake County; or

7.16.1.2 In the county where the violation occurred.

7.16.2 A well driller shall file a petition for judicial review of a Final Judgment and Order within 20 days from the day on which the order was issued, or if a request for reconsideration has been filed and denied, within 20 days of the date of denial of the request for reconsideration.

7.16.3 The Presiding Officer may grant a stay of an order or other temporary remedy during the pendency of the judicial review on the Presiding Officer's own motion, or upon the motion of a party. The procedures for notice, for consideration of motions, and for issuing a determination shall be as set forth herein for a motion to set aside a Final Judgment and Order.

R655-4-8. License and Operator Registration Renewal.

8.1 Well Driller and Pump Installer Licenses. The Division will mail to each licensed well driller and pump installer a notice (packet) to renew his/her license approximately 30 days before the expiration of the license. Failure to receive the notice does not relieve a licensee of his obligation to file application and pay the fee for renewal in a timely manner. A well driller shall notify the Division of any change in his mailing address within 30 days after the change.

8.1.1 Well driller licenses and Pump Installer licenses shall expire and be renewed according to the following provisions:

a. The licenses of well drillers and pump installers whose last name begins with A thru L shall expire at 12 midnight on June 30 of odd numbered years.

b. The licenses of well drillers and pump installers whose last name begins with M thru Z shall expire at 12 midnight on June 30 of even numbered years.

c. Drillers and pump installers who meet the renewal requirements set forth in Subsection R655-4-8(8.1.2) on or before the expiration deadlines set forth in Subsection R655-4-8(8.1.1) shall be authorized to operate as a licensed well driller or pump installer until the new license is issued. If a licensee does not complete the renewal requirements by the license expiration date, the license will become inactive, and the licensee must cease and desist all regulated work until the license has been renewed.

d. Licensees must renew their licenses within 24 months of the license expiration date. Licensees failing to renew within 24 months of the license expiration date must re-apply for a license, meet all the application requirements of Subsections R655-4-3(3.2) or R655-4-3(3.4), and provide documentation of 12 hours of continuing education according to the requirements of R655-4-8(8.2) obtained within the previous 24 months.

8.1.2 Applications to renew a license must include the following items:

a. Payment of the license renewal fee determined and approved by the legislature;

b. Written application to the state engineer;

c. Documentation of continuing well driller bond coverage in the amount of five thousand dollars ($5,000) penal bond for the next licensing period. The form and conditions of the well driller bond shall be as set forth in Section R655-4.3.9. Allowable documentation can include bond continuation certificates and CD statements;

d. As applicable to the type of license, proper submission of all start cards, official well driller reports (well logs), pump installer reports (pump logs), and well abandonment reports for the current licensing period;

e. Documentation of compliance with the continuing education requirements described in Section 8.2. Acceptable documentation of attendance at approved courses must include the following information: the name of the course, the date it was

conducted, the number of approved credits, the name and signature of the instructor and the licensees name; for example, certificates of completion, transcripts, attendance rosters, diplomas, etc. (Note: licensees are advised that the state engineer will not keep track of the continuing education courses each licensee attends during the year. Licensees are responsible to acquire and then submit documentation with the renewal application.)

8.1.3 License renewal applications that do not meet the requirements of Subsection R655-4-8(8.1.2) by June 30 of the expiration year or which are received after June 30 of the expiration year, will be assessed an additional administrative late fee determined and approved by the legislature.

8.1.4 Restricted, conditioned, limited, or denied renewal applications

8.1.4.1 The state engineer may renew a license on a restricted, conditional, or limited basis if the licensee's performance and compliance with established rules and construction standards indicates the scope of the licensee's permitted activities should be reduced or that the licensee requires strict supervision during a probationary period.

8.1.4.2 The restricted, conditional, or limited license shall state the restrictions, conditions, or limitations placed on the licensee's regulated activity; whether the restrictions, conditions, or limitations are permanent or time-limited; and the requirements, if any, which must be met for the license to be re-issued without restrictions, conditions, or limitations.

8.1.4.3 The state engineer may deny an application to renew a license if there has been a violation of these rules or UTAH CODE ANNOTATED Section 73-3-25 that casts doubt on the competency of the licensee or his willingness to comply with the well drilling administrative requirements or construction standards.

8.1.4.4 Within 30 days of a license renewal application being denied or a license being renewed on a restricted, conditioned, or limited basis, a licensee may appeal the action by requesting a hearing according to the provisions of R655-4-7.

8.1.4.5 The restrictions, conditions, or limitations on a license or the denial of a license shall remain effective during the pendency of the well driller/pump installer adjudicative proceeding.

8.2 Continuing Education.

8.2.1 During each license period, licensed well drillers and pump installers are required to earn at least twelve (12) continuing education credits by attending training sessions approved, sponsored or sanctioned by the state engineer. Drillers and pump installers who do not renew their licenses, but who intend to renew within the following 24 month period allowed in Section 8.1.1, are also required to earn twelve (12) continuing education credits.

8.2.2 The state engineer will develop criteria for the training courses, approve the courses which can offer continuing education credits, and assign the number of credits to each course.

8.2.3 The state engineer shall assign the number of continuing education credits to each proposed training session based on the instructor's qualifications, a written outline of the subjects to be covered, and written objectives for the session. Licensees wishing continuing education credit for other training sessions shall provide the state engineer with all information it needs to assign continuing education requirements.

8.2.4 Licensed drillers must complete a State Engineer-sponsored "Administrative Rules for Well Drillers and Pump Installers" review course or other approved rules review once every four (4) years.

8.2.5 CE credits cannot be carried over from one licensing period to another.

8.3 Operator's Registration.

8.3.1 Drill Rig and Pump Rig operator registrations shall expire at the same time as the license of the well driller or pump installer by whom they are employed. Operators who meet the renewal requirements set forth in Subsection R655-4-8(8.3.2) on or before 12 midnight June 30 of the expiration year shall be authorized to act as a registered operator until the new registration is issued. Operators must renew their registrations within 24 months of the registration expiration date. Operators failing to renew within 24 months of the registration expiration date must re-apply for an operator's registration and meet all the application requirements of Subsections R655-4-3(3.3) and R655-4-3(3.5).

8.3.2 Applications to renew an operator's registration must include the following items:

a. Payment of the registration renewal fee determined and approved by the legislature;

b. Written application to the state engineer.

8.3.3 Registration renewal applications that do not meet the requirements of Subsection R655-4-8(8.3.2) by the June 30 expiration date or that are received after the June 30 expiration date will be assessed an additional administrative late fee determined and approved by the legislature.

R655-4-9. The Approval Process for Non-Production Wells.

9.1 General.

Regulated non-production wells such as cathodic protection wells, closed-loop heating/cooling exchange wells, monitor/piezometer/test wells, and other wells meeting the criteria in R655-4-1(1.2.4) drilled and constructed to a depth greater than 30 feet below natural ground surface require approval from the state engineer. The approval and permitting of regulated production wells is accomplished through the water right processes in accordance with Section 73 of the Utah Code.

9.2 Approval to Drill, Construct, Renovate, or Replace.

Approval to drill, construct, renovate, or replace non-production wells is issued by the state engineer's main office and regional offices following review of written requests from the owner/applicant or their appointed representative. The appointed representative shall not include the licensed driller designated on the application. The requests for approval shall be made on forms provided by the state engineer entitled "Request for Non-Production Well Construction". The following information must be included on the form:

a. General location or common description of the project.

b. Specific course and distance locations from established government surveyed outside section corners or quarter corners.

c. Total anticipated number of wells to be installed.

d. Diameters, approximate depths and materials used in the wells.

e. Projected start and completion dates.

f. Name and license number of the driller contracted to install the wells.

g. A detailed explanation of the purpose and technical aspects of the drilling project. This can also include reviews and approvals (e.g., building permits) done by local jurisdictions of the project. This additional documentation may expedite the Division's processing of the non-production well application.

h. Signature of the well owner or authorized representative attesting to the accuracy and truthfulness of the information on the application. The licensed driller cannot be the signatory on the non-production well application.

9.2.1 There is no fee required to request approval to drill, construct, renovate, or replace a non-production well. Using available information and sources, the Division will evaluate the potential for the non-production well to become a contamination source or otherwise negatively impact the groundwater resource prior to approval. This evaluation can take up to 14 days to conduct. The Division shall list application information on its website to allow the public and local jurisdictions to review the project prior to approval. The well permit application shall be returned without review to the applicant if the Division determines that the application is incomplete, contains inaccurate information, lacks sufficient information or is illegible. The Division shall deny the issuance of a well permit if the site where the well is to be drilled is designated by the Division as an area where wells may not be constructed, including but not limited to contaminated or

protected aquifers, areas where drilling and construction of wells can impact other water rights, and other areas where environmental remediation may be adversely affected by the construction and/or operation of wells. Upon written approval by the state engineer, the project will be assigned an approved non-production well number which will be referenced on all start cards and official well driller's reports.

R655-4-10. General Requirements.

10.1 Standards.

10.1.1 In some locations, the compliance with the following minimum standards will not result in a well being free from pollution or from being a source of subsurface leakage, waste, or contamination of the groundwater resource. Since it is impractical to attempt to prepare standards for every conceivable situation, the well driller or pump installer shall judge when to construct or otherwise perform work on wells under more stringent standards when such precautions are necessary to protect the groundwater supply and those using the well in question. Other state and local regulations pertaining to well drilling and construction, groundwater protection, isolation distances (setbacks) from potential contamination sources and/or other structures/boundaries, and water quality/testing regulations may exist that are either more stringent than these rules or that specifically apply to a given situation. It is the licensee's responsibility to understand and apply other federal, state, and local regulations as applicable.

10.2 Well Site Locations.

10.2.1 Well site locations are described by course and distance from outside section corners or quarter corners (based on a Section/Township/Range Cadastral System) and by the Universal Transverse Mercator (UTM) coordinate system (NAD83 Map Datum) on all state engineer authorizations to drill (Start Cards). However, the licensee should also be familiar with local zoning ordinances, or county boards of health requirements which may limit or restrict the actual well location and construction in relationship to property/structure boundaries and existing or proposed concentrated sources of pollution or contamination such as septic tanks, drain fields, sewer lines, stock corrals, feed lots, etc. The licensee should also be familiar with the Utah Underground Facilities Act (Title 54, Chapter 8a of the Utah Code Annotated 1953 as amended) which requires subsurface excavators (including well drilling) to notify operators of underground utilities prior to any subsurface excavation. Information on this requirement can be found by calling Blue Stakes Utility Notification Center at (800)662-4111.

10.2.2 Regulated wells shall be drilled at the approved location as defined on the valid start card. The driller shall check the drilling location to see if it matches the state-approved location listed on the Driller's Start Card.

10.3 Unusual Conditions.

10.3.1 If unusual conditions occur at a well site and compliance with these rules and standards will not result in a satisfactory well or protection to the groundwater supply, a licensed water well driller or pump installer shall request that special standards be prescribed for a particular well (variance request). The request for special standards shall be in writing and shall set forth the location of the well, the name of the owner, the unusual conditions existing at the well site, the reasons and justification that compliance with the rules and minimum standards will not result in a satisfactory well, and the proposed standards that the licensee believes will be more adequate for this particular well. If the state engineer finds that the proposed changes are in the best interest of the public, the state engineer will approve the proposed changes by assigning special standards for the particular well under consideration. At the Division's discretion, the licensee applying for the variance may be required to provide additional technical information justifying the variance. The variance request will be evaluated, and a response will be given within fourteen days. In a public health emergency or other exceptional circumstance, verbal notification for a variance may be given. An emergency usually consists of a well failure resulting in a dry well or an unusable well. Driller convenience does not constitute an emergency.

R655-4-11. Well Drilling and Construction Requirements.

11.0 General.

11.0.1 Figures 1 through 5 are used to illustrate typical well construction standards, and can be viewed in the State of Utah Water Well Handbook available at the Division of Water Rights, 1594 West North Temple, Salt Lake City, Utah. Figure 1 illustrates the typical construction of a drilled well with driven casing such as a well drilled using the cable tool method or air rotary with a drill-through casing driver. Figure 2 illustrates the typical construction of a well drilled with an oversized borehole and/or gravel packed without the use of surface casing. Figure 3 illustrates the typical construction of a well drilled with an oversized borehole and/or gravel packed with the use of surface casing. Figure 4 illustrates the typical construction of a well drilled with an oversized borehole and/or gravel packed completed in stratified formations in which poor formation material or poor quality water is encountered. Figure 5 illustrates the typical construction of a well completed with PVC or nonmetallic casing.

11.1 Approved Products, Materials, and Procedures.

11.1.1 Any product, material or procedure designed for use in the drilling, construction, cleaning, renovation, development pump installation/repair, or abandonment of water production or non-production wells, which has received certification and approval for its intended use by the National Sanitation Foundation (NSF) under ANSI/NSF Standard 60 or 61, the American Society for Testing Materials (ASTM), the American Water Works Association (AWWA) or the American National Standards Institute (ANSI) may be utilized. Other products, materials or procedures may also be utilized for their intended purpose upon manufacturers certification that they meet or exceed the standards or certifications referred to in this section and upon state engineer approval.

11.2 Well Casing - General

11.2.1 Drillers Responsibility. It shall be the sole responsibility of the well driller to determine the suitability of any type of well casing for the particular well being constructed, in accordance with these minimum requirements.

11.2.2 Casing Stick-up. The well casing shall extend a minimum of 18 inches above finished ground (land) level and the natural ground surface should slope away from the casing. A secure sanitary, weatherproof mechanically secured cap/seal or a completely welded cap shall be placed on the top of the well casing to prevent contamination of the well. If a vent is placed in the cap, it shall be properly screened to prevent access to the well by debris, insects, or other animals.

11.2.3 Steel Casing. All steel casing installed in Utah shall be in new or like-new condition, being free from pits or breaks, clean with all potentially dangerous chemicals or coatings removed, and shall meet the minimum specifications listed in Table 6 of these rules. In order to utilize steel well casing that does not fall within the categories specified in Table 6, the driller shall receive written approval from the state engineer. All steel casing installed in Utah shall meet or exceed the minimum ASTM, ANSI, or AWWA standards for steel pipe as described in Subsection 11.1 unless otherwise approved by the state engineer. Applicable standards (most recent revisions) may include:

ANSI/AWWA A100-AWWA Standard for Water Wells.

ANSI/ASTM A53-Standard Specifications for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless.

ANSI/ASTM A139-Standard Specification for Electric-Fusion (Arc)-Welded Steel Pipe (NPS 4 and over).

ANSI/AWWA C200-Standard for Steel Water Pipe-6 in. and Larger.

ASTM A589-89-Standard Specification for Seamless and Welded Carbon Steel Water-Well Pipe.

API Spec.5L and 5LS-Specification for Liner Pipe.

ASTM A106-Standard Specification for Seamless Carbon Steel Pipe for High Temperature Service

ASTM A778-Standard Specifications for Welded, Unannealed Austenitic Stainless Steel Tubular Products.

ASTM A252-Standard Specification for Welded and Seamless Steel Pipe Piles.

ASTM A312-Standard Specification for Seamless, Welded, and Heavily Cold Worked Austenitic Stainless Steel Pipes

ASTM A409- Standard Specification for Welded Large Diameter Austenitic Steel Pipe for Corrosive or High-Temperature Service

TABLE 6

MINIMUM WALL THICKNESS FOR STEEL WELL CASING

Depth Nominal Casing Diameter	0 to 200 (ft)	200 to 300 (ft)	300 to 400 (ft)	400 to 600 (ft)	600 to 800 (ft)	800 to 1000 (ft)	1000 to 1500 (ft)	1500 to 2000 (ft)
5	.250	.250	.250	.250	.250	.250	.250	.250
6	.250	.250	.250	.250	.250	.250	.250	.250
8	.250	.250	.250	.250	.250	.250	.250	.250
10	.250	.250	.250	.250	.250	.250	.312	.312
12	.250	.250	.250	.250	.250	.250	.312	.312
14	.250	.250	.250	.250	.312	.312	.312	.312
16	.250	.250	.312	.312	.312	.312	.375	.375
18	.250	.312	.312	.312	.375	.375	.375	.438
20	.250	.312	.312	.312	.375	.375	.375	.438
22	.312	.312	.312	.375	.375	.375	.375	.438
24	.312	.312	.375	.375	.375	.438		
30	.312	.375	.375	.438	.438	.500		

Note: Minimum wall thickness is in inches.
For nominal casing diameters less than five (5) inches, the minimum wall thickness must be equivalent to ASTM Schedule 40.
For any other casing diameter not addressed herein, prior approval by the state engineer is require.
0.250 = 1/4, 0.312 = 5/16, 0.375 = 3/8, 0.438 = 7/16.

11.2.4 Plastic and Other Non-metallic Casing.

11.2.4.1 Materials. PVC well casing and screen may be installed in Utah upon obtaining permission of the well owner. Other types of non-metallic casing or screen must be approved by the state engineer prior to installation. Plastic well casing and screen shall be manufactured and installed to conform with The American National Standards Institute (ANSI) or the American Society for Testing and Materials (ASTM) Standard F 480 (most recent version), which are incorporated by reference to these rules. Casing and screen meeting this standard is normally marked "WELL CASING" and with the ANSI/ASTM designation "F 480-, SDR-17 (or 13.5, 21, etc.)". All plastic casing and screen for use in potable water supplies shall be manufactured to be acceptable to the American National Standards Institute/National Sanitation Foundation (NSF) standard 61. Other types of plastic casings and screens may be installed upon manufacturers certification that such casing meets or exceeds the above described ASTM/SDR specification or ANSI/NSF approval and upon state engineer approval.

11.2.4.2 Minimum Wall Thickness and Depth Requirements. PVC well casing and screen with a nominal diameter equal to or less than four (4) inches and for non-production well purposes shall meet the minimum wall thickness required under ASTM Standard F480-95 SDR 21 or a Schedule 40 designation. PVC well casing and screen use for water production well purposes with a nominal diameter equal to or less than four (4) inches shall meet the minimum wall thickness required under ASTM Standard F480-95 SDR 17 or a Schedule 80 designation. PVC well casing and screen with a nominal diameter greater than four (4) inches shall meet the minimum wall thickness required under ASTM Standard F480 (most recent version) SDR 17 or a Schedule 80 designation. Additionally, caution should be used whenever other than factory slots or perforations are added to PVC well casing. The installation of hand cut slots or perforations significantly reduces the collapse strength tolerances of unaltered casings. The depth at which plastic casing and screen is placed in a well shall conform to the minimum requirements and restrictions as outlined in ASTM Standard F-480 (most recent version) and to PVC casing manufacturer recommendations. Liner pipe does not need to meet these wall thickness requirements if it is placed inside of a casing that does meet these wall thickness requirements.

11.2.4.3 Fiberglass Casing. Fiberglass reinforced plastic well casings and screens may be installed in wells upon obtaining permission of the well owner. All fiberglass casing or screens installed in wells for use in potable water supplies shall be manufactured to be acceptable by ANSI/NSF Standard 61 and upon state engineer approval.

11.2.4.4 Driving Non-metallic Casing. Non-metallic casing shall not be driven, jacked, or dropped and may only be installed in an oversized borehole.

11.2.4.5 Protective Casing. If plastic or other non-metallic casing is utilized, the driller shall install a protective steel casing which complies with the provisions of Subsection 11.2.3 or an equivalent protective covering approved by the state engineer over and around the well casing at ground surface to a depth of at least two and one half (2.5) feet. If a pitless adapter is installed on the well, the bottom of the protective cover shall be placed above the pitless adapter/well connection. If the pitless adapter is placed in the protective casing, the protective casing shall extend below the pitless entrance in the well casing and be sealed both on the outside of the protective casing and between the protective casing and well casing. The protective cover shall be sealed in the borehole in accordance with the requirements of Subsection 11.4. The annular space between the protective cover and non-metallic casing shall also be sealed with acceptable materials in accordance with Subsection 11.4. A sanitary, weather-tight seal or a completely welded cap shall be placed on top of the protective cover, thus enclosing the well itself. If the sanitary seal is vented, screens shall be placed in the vent to prevent debris insects, and other animals from entering the well. This protective casing requirement does not apply to monitor wells. Figure 5 depicts this requirement.

11.3 Casing Joints.

11.3.1 General. All well casing joints shall be made water tight. In instances in which a reduction in casing diameter is made, there shall be enough overlap of the casings to prevent misalignment and to insure the making of an adequate seal in the annular space between casings to prevent the movement of unstable sediment or formation material into the well, in addition to preventing the degradation of the water supply by the migration of inferior quality water through the annular space between the two casings.

11.3.2 Steel Casing. All steel casing shall be screw-coupled or welded. If the joints are welded, the weld shall meet American Welding Society standards and be at least as thick as the wall thickness of the casing and shall consist of at least two beads for the full circumference of the joint and be fully penetrating. Spot welding of joints is prohibited.

11.3.3 Plastic Casing. All plastic well casing shall be mechanically screw coupled, chemically welded, cam-locked or lug coupled to provide water tight joints as per ANSI/ASTM F480-95. Metal screws driven into casing joints shall not be long enough to penetrate the inside surface of the casing. Metal screws should be used only when surrounding air temperatures are below 50 degrees Fahrenheit (F) which retards the normal setting of the cement. Solvent-welded joints shall not impart taste, odors, toxic substances, or bacterial contamination to the water in the well.

11.4 Surface Seals and Interval Seals.

11.4.1 General. Before the drill rig is removed from the drill site of a well, a surface seal shall be installed. Well casings shall be sealed to prevent the possible downward movement of contaminated surface waters in the annular space around the well casing. The seal shall also prevent the upward movement of artesian waters within the annular space around the well casing. Depending upon hydrogeologic conditions around the well, interval

seals may need to be installed to prevent the movement of groundwater either upward or downward around the well from zones that have been cased out of the well due to poor water quality or other reasons. The following surface and interval seal requirements apply equally to rotary drilled, cable tool drilled, bored, jetted, augered, and driven wells unless otherwise specified.

11.4.2 Seal Material.

11.4.2.1 General. The seal material shall consist of neat cement grout, sand cement grout, unhydrated bentonite, or bentonite grout as defined in Section R655-4-2. Use of sealing materials other than those listed above must be approved by the state engineer. Bentonite drilling fluid (drilling mud), dry drilling bentonite, or drill cuttings are not an acceptable sealing material. In no case shall drilling fluid (mud), drill cuttings, drill chips, or puddling clay be used, or allowed to fill, partially fill, or fall into the required sealing interval of a well during construction of the well. The annular space to be grouted must be protected from collapse and the introduction of materials other than grout. All hydrated sealing materials (neat cement grout, sand cement grout, bentonite grout) shall be placed by tremie pipe, pumping, or pressure from the bottom of the seal interval upwards in one continuous operation when placed below a depth of 30 feet or when placed below static groundwater level. Neat cement and sand cement grouts must be allowed to cure a minimum of 24 hours before well drilling, construction, or testing may be resumed. Allowable setting times may be reduced or lengthened by use of accelerators or retardants specifically designed to modify setting time, at the approval of the state engineer. The volume of annular space in the seal interval shall be calculated by the driller to determine the estimated volume of seal material required to seal the annular space. The driller shall place at least the volume of material equal to the volume of annular space, thus ensuring that a continuous seal is placed. The driller shall maintain the well casing centered in the borehole during seal placement using centralizers or other means to ensure that the seal is placed radially and vertically continuous. Neat cement and sand cement grout shall not be used for surface or interval seals with PVC and other approved non-metallic casing unless specific state engineer approval is obtained.

11.4.2.2 Bentonite Grout. Bentonite used to prepare grout for sealing shall have the ability to gel; not separate into water and solid materials after it gels; have a hydraulic conductivity or permeability value of 10E-7 centimeters per second or less; contain at least 20 percent solids by weight of bentonite, and have a fluid weight of 9.5 pounds per gallon or greater and be specifically designed for the purpose of sealing. In addition, if a bentonite grout is to be placed in the vadose zone (unsaturated interval), then clean rounded fine sand shall be added to the bentonite grout in order to increase the overall solids content and stabilize the grout from dehydrating and cracking in that interval. For 20% solids bentonite grout, at least 100 pounds of clean rounded fine sand shall be added. For 30% solids bentonite grout, at least 50 pounds of clean fine sand shall be added. Bentonite grout shall not be used for sealing intervals of fractured rock or sealing intervals of highly unstable material that could collapse or displace the sealing material, unless otherwise approved by the state engineer. Bentonite grout shall not be used as a sealing material where rapidly flowing groundwater might erode it. Bentonite or polymer drilling fluid (mud) does not meet the definition of a grout with respect to density, gel strength, and solids content and shall not be used for sealing purposes. At no time shall bentonite grout contain materials that are toxic, polluting, develop odor or color changes, or serve as a micro-bacterial nutrient. All bentonite grout shall be prepared and installed according to the manufacturer's instructions and these rules. All additives must be certified by a recognized certification authority such as NSF and approved by the state engineer. All bentonite used in any well shall be certified by NSF/ANSI approved standards for use in potable water supply wells, or equivalent standards as approved by the state engineer.

11.4.2.3 Unhydrated Bentonite. Unhydrated bentonite (e.g., granular, tabular, pelletized, or chip bentonite) may be used in the construction of well seals above a depth of 50 feet. Unhydrated bentonite can be placed below a depth of 50 feet when placed inside the annulus of two casings, when placed using a tremie pipe, or by using a placement method approved by the state engineer. The bentonite material shall be specifically designed for well sealing and be within industry tolerances. All unhydrated bentonite used for sealing must be free of organic polymers and other contamination. Placement of bentonite shall conform to the manufacturer's specifications and instructions and result in a seal free of voids or bridges. Granular or powdered bentonite shall not be placed under water by gravity feeding from the surface. When placing unhydrated bentonite, a sounding or tamping tool shall be run in the sealing interval during pouring to measure fill-up rate, verify a continuous seal placement, and to break up possible bridges or cake formation.

11.4.3 Seal and Unperforated Casing Placement.

11.4.3.1 General Seal Requirements. Figure 1 illustrates the construction of a surface seal for a typical well. The surface seal must be placed in an annular space that has a minimum diameter of four (4) inches larger than the nominal size of the permanent well casing (This amounts to a 2-inch annulus). The surface seal must extend from land surface to a minimum depth of 30 feet. The completed surface seal must fully surround the permanent well casing, must be evenly distributed, free of voids, and extend to undisturbed or recompacted soil. In unconsolidated formations such as gravels, sands, or other unstable conditions when the use of drilling fluid or other means of keeping the borehole open are not employed, either a temporary surface casing with a minimum depth of 30 feet and a minimum nominal diameter of four (4) inches greater than the outermost permanent casing shall be utilized to ensure proper seal placement or the well driller shall notify the state engineer's office that the seal will be placed in a potentially unstable open borehole without a temporary surface casing by telephone or FAX in conjunction with the start card submittal in order to provide an opportunity for the state engineer's office to inspect the placement of the seal. If a temporary surface casing is utilized, the surface casing shall be removed in conjunction with the placement of the seal. Alternatively, conductor casing may be sealed permanently in place to a depth of 30 feet with a minimum 2-inch annular seal between the surface casing and borehole wall. If the temporary surface casing is to be removed, the surface casing shall be withdrawn as sealing material is placed between the outer-most permanent well casing and borehole wall. The sealing material shall be kept at a sufficient height above the bottom of the temporary surface casing as it is withdrawn to prevent caving of the borehole wall. If the temporary conductor casing is driven in place without a 2-inch annular seal between the surface casing and borehole wall, the surface casing shall be removed. Specific state engineer approval must be obtained on a case-by-case basis for any variation of these requirements. Surface seals and unperforated casing shall be installed in wells located in unconsolidated formation such as sand and gravel with minor clay or confining units; unconsolidated formation consisting of stratified layers of materials such as sand, gravel, and clay or other confining units; and consolidated formations according to the following procedures.

11.4.3.2 Unconsolidated Formation without Significant Confining Units. This includes wells that penetrate an aquifer overlain by unconsolidated formations such as sand and gravel without significant clay beds (at least six feet thick) or other confining formations. The surface seal must be placed in a 2-inch annular space to a minimum depth of 30 feet. Permanent unperforated casing shall extend at least to a depth of 30 feet and also extend below the lowest anticipated pumping level. Additional casing placed in the open borehole below the required depths noted above shall meet the casing requirements of Subsection 9.2 unless the casing is installed as a liner inside a larger diameter approved casing.

11.4.3.3 Unconsolidated Formation with Significant

Confining Units. This includes wells that penetrate an aquifer overlain by clay or other confining formations that are at least six (6) feet thick. The surface seal must be placed in a 2-inch annular space to a minimum depth of 30 feet and at least five (5) feet into the confining unit above the water bearing formation. Unperforated casing shall extend from ground surface to at least 30 feet and to the bottom of the confining unit overlying the water bearing formation. If necessary to complete the well, a smaller diameter casing, liner, or well screen may be installed below the unperforated casing. The annular space between the two casings shall be sealed with grout, bentonite, or a mechanical packer. Additional casing placed in the open borehole below the required depths noted above shall meet the casing requirements of Subsection 11.2 unless the casing is installed as a liner inside a larger diameter approved casing.

11.4.3.4 Consolidated Formation. This includes drilled wells that penetrate an aquifer, either within or overlain by a consolidated formation. The surface seal must be placed in a 2-inch annular space to a minimum depth of 30 feet and at least five (5) feet into competent consolidated formation. Unperforated permanent casing shall be installed to extend to a depth of at least 30 feet and the lower part of the casing shall be driven and sealed at least five (5) feet into the consolidated formation. If necessary to complete the well, a smaller diameter casing, liner, or well screen may be installed below the unperforated casing. The annular space between the two casings shall be sealed with grout, bentonite, or a mechanical packer. Additional casing placed in the open borehole below the required depths noted above shall meet the casing requirements of Subsection 11.2 unless the casing is installed as a liner inside a larger diameter approved casing.

11.4.3.5 Sealing Artesian Wells. Unperforated well casing shall extend into the confining stratum overlying the artesian zone, and shall be adequately sealed into the confining stratum to prevent both surface and subsurface leakage from the artesian zone. If leaks occur around the well casing or adjacent to the well, the well shall be completed with the seals, packers, or casing necessary to eliminate the leakage. The driller shall not move the drilling rig from the well site until leakage is completely stopped, unless authority for temporary removal of the drilling rig is granted by the state engineer, or when loss of life or property is imminent. If the well flows naturally at land surface due to artesian pressure, the well shall be equipped with a control valve so that the flow can be completely stopped. The control valve must be available for inspection by the state engineer at all times. All flowing artesian water supply wells shall be tested for artesian shut-in pressure in pounds per square inch and rate of flow in cubic feet per second, or gallons per minute, under free discharge conditions. This data shall be reported on the well log.

11.4.3.6 Exceptions: With state engineer approval, exceptions to minimum seal depths can be made for shallow wells where the water to be produced is at a depth less than 30 feet. In no case shall a surface seal extend to a total depth less than 10 feet below land surface.

11.4.4 Interval Seals. Formations containing undesirable materials (e.g., fine sand and silt that can damage pumping equipment and result in turbid water), contaminated groundwater, or poor quality groundwater must be sealed off so that the unfavorable formation cannot contribute to the performance and quality of the well. These zones, as well as zones with significantly differing pressures, must also be sealed to eliminate the potential of cross contamination or commingling between two aquifers of differing quality and pressure. Figure 4 illustrates this situation. Unless approved by the state engineer, construction of wells that cause the commingling or cross connection of otherwise separate aquifers is not allowed.

11.4.5 Other Sealing Methods. In wells where the above-described methods of well sealing do not apply, special sealing procedures can be approved by the state engineer upon written request by the licensed well driller.

11.5 Special Requirements for Oversized and Gravel Packed Wells. This section applies to wells in which casing is installed in an open borehole without driving or drilling in the casing and an annular space is left between the borehole wall and well casing (e.g., mud rotary wells, flooded reverse circulation wells, air rotary wells in open bedrock).

11.5.1 Oversized Borehole. The diameter of the borehole shall be at least four (4) inches larger than the outside diameter of the well casing to be installed to allow for proper placement of the gravel pack and/or formation stabilizer and adequate clearance for grouting and surface seal installations. In order to accept a smaller diameter casing in any oversized borehole penetrating unconsolidated or stratified formations, the annular space must be sealed in accordance with Subsection 11.4. In order to minimize the risk of: 1) borehole caving or collapse; 2) casing failure or collapse; or 3) axial distortion of the casing, it is required that the entire annular space in an oversized borehole between the casing and borehole wall be filled with formation stabilizer such as approved seal material, gravel pack, filter material or other state engineer-approved materials. Well casing placed in an oversized borehole should be suspended at the ground surface until all formation stabilizer material is placed in order to reduce axial distortion of the casing if it is allowed to rest on the bottom of an open oversized borehole. In order to accept a smaller diameter casing, the annular space in an oversized borehole penetrating unconsolidated formations (with no confining layer) must be sealed in accordance with Subsection 11.4 to a depth of at least 30 feet or from static water level to ground surface, whichever is deeper. The annular space in an oversized borehole penetrating stratified or consolidated formations must be sealed in accordance with Subsection 11.4 to a depth of at least 30 feet or five (5) feet into an impervious strata (e.g., clay) or competent consolidated formation overlying the water producing zones back to ground surface, whichever is deeper. Especially in the case of an oversized borehole, the requirements of Subsection 11.4.4 regarding interval sealing must be followed.

11.5.2 Gravel Pack or Filter Material. The gravel pack or filter material shall consist of clean, well-rounded, chemically stable grains that are smooth and uniform. The filter material should not contain more than 2% by weight of thin, flat, or elongated pieces and should not contain organic impurities or contaminants of any kind. In order to assure that no contamination is introduced into the well via the gravel pack, the gravel pack must be washed with a minimum 100 ppm solution of chlorinated water or dry hypochlorite mixed with the gravel pack at the surface before it is introduced into the well (see Table 7 of these rules for required amount of chlorine material).

11.5.3 Placement of Filter Material. All filter material shall be placed using a method that through common usage has been shown to minimize a) bridging of the material between the borehole and the casing, and b) excessive segregation of the material after it has been introduced into the annulus and before it settles into place. It is not acceptable to place filter material by pouring from the ground surface unless proper sounding devices are utilized to measure dynamic filter depth, evaluate pour rate, and minimize bridging and formation of voids.

11.5.4 No Surface Casing Used. If no permanent conductor casing is installed, neat cement grout, sand cement grout, bentonite grout, or unhydrated bentonite seal shall be installed in accordance with Subsection 11.4. Figure 2 of these rules illustrates the construction of a typical well of this type.

11.5.5 Permanent Conductor Casing Used. If permanent conductor casing is installed, it shall be unperforated and installed and sealed in accordance with Subsection 11.4 as depicted in Figure 3 of these rules. After the gravel pack has been installed between the conductor casing and the well casing, the annular space between the two casings shall be sealed by either welding a water-tight steel cap between the two casings at land surface or filling the annular space between the two casings with neat cement grout, sand cement grout, bentonite grout, or unhydrated bentonite from at least 50 feet to the surface and in accordance with Subsection 11.4. If a hole will

be created in the permanent conductor casing in order to install a pitless adapter into the well casing, the annual space between the conductor casing and well casing shall be sealed to at least a depth of thirty (30) feet with neat cement grout, sand cement grout, bentonite grout, or unhydrated bentonite. A waterproof cap or weld ring sealing the two casings at the surface by itself without the annular seal between the two casings is unacceptable when a pitless adapter is installed in this fashion. Moreover in this case, the annular space between the surface casing and well casing must be at least 2 inches in order to facilitate seal placement.

11.5.6 Gravel Feed Pipe. If a gravel feed pipe, used to add gravel to the gravel pack after well completion, is installed, the diameter of the borehole in the sealing interval must be at least four (4) inches in diameter greater than the permanent casing plus the diameter of the gravel feed pipe. The gravel feed pipe must have at least 2-inches of seal between it and the borehole wall. The gravel feed pipe must extend at least 18 inches above ground and must be sealed at the top with a watertight cap or plug (see Figure 2).

11.5.7 Other Gravel Feed Options. If a permanent surface casing or conductor casing is installed in the construction of a filter pack well, a watertight, completely welded, steel plate (weld ring) at least 3/16 of an inch in thickness shall be installed between the inner production casing and the outer surface/conductor casing at the wellhead. A watertight fill port with threaded cap may be installed for the purpose of placing additional filter pack material in the well.

11.6 Protection of the Aquifer.

11.6.1 Drilling Fluids and LCMs. The well driller shall take due care to protect the producing aquifer from clogging or contamination. Organic substances or phosphate-based substances shall not be introduced into the well or borehole during drilling or construction. Every effort shall be made to remove all substances and materials introduced into the aquifer or aquifers during well construction. "Substances and materials" shall mean all bentonite- and polymer-based drilling fluids, filter cake, and any other inorganic substances added to the drilling fluid that may seal or clog the aquifer. All polymers and additives used in any well shall be certified by NSF/ANSI approval standards for use in potable water supply wells, or equivalent standards as approved by the state engineer. The introduction of lost circulation materials (LCM's) during the drilling process shall be limited to those products which will not present a potential medium for bacterial growth or contamination. Only LCM's which are non-organic, which can be safely broken down and removed from the borehole, may be utilized. This includes, but is not limited to, paper/wood products, brans, hulls, grains, starches, hays/straws, and proteins. This is especially important in the construction of wells designed to be used as a public water system supply. All polymers and additives used in any well shall be certified by NSF/ANSI approval standards for use in potable water supply wells, or equivalent standards as approved by the Division. The product shall be clearly labeled as meeting these standards. Polymers and additives must be designed and manufactured to meet industry standards to be nondegrading and must not act as a medium which will promote growth of microorganisms.

11.6.2 Containment of Drilling Fluid. Drilling or circulating fluid introduced into the drilling process shall be contained in a manner to prevent surface or subsurface contamination and to prevent degradation of natural or man-made water courses or impoundments. Rules regarding the discharges to waters of the state are promulgated under R317-8-2 of the Utah Administrative Code and regulated by the Utah Division of Water Quality (Tel. 801-536-6146). Pollution of waters of the state is a violation of the Utah Water Quality Act, Utah Code Annotated Title 19, Chapter 5.

11.6.3 Mineralized, Contaminated or Polluted Water. Whenever a water bearing stratum that contains nonpotable mineralized, contaminated or polluted water is encountered, the stratum shall be adequately sealed off so that contamination or co-mingling of the overlying or underlying groundwater zones will not occur (see Figure 4) Water bearing zones with differing pressures must also be isolated and sealed off in the well to avoid aquifer depletion, wasting of water, and reduction of aquifer pressures.

11.6.4 Down-hole Equipment. All tools, drilling equipment, and materials used to drill, repair, renovate, clean, or install a pump in a well shall be free of contaminants prior to beginning well construction or other in-well activity. Contaminants include lubricants, fuel, bacteria, etc. that will reduce the well efficiency, and any other item(s) that will be harmful to public health and/or the resource or reduce the life of the water well. It is recommended that excess lubricants placed on drilling equipment be wiped clean prior to insertion into the borehole.

11.6.5 Well Disinfection and Chlorination of Water. No contaminated or untreated water shall be placed in a well during construction. Water should be obtained from a chlorinated municipal system. Where this is not possible, the water must be treated to give at least 100 parts per million free chlorine residual. Upon completion of a well or work on a well, the driller or pump installer shall disinfect the well using accepted disinfection procedures to give at least 100 parts per million free chlorine residual equally distributed in the well water from static level to the bottom of the well. A chlorine solution designated for potable water use prepared with either calcium hypochlorite (powdered, granular, or tablet form) or sodium hypochlorite in liquid form shall be used for water well disinfection. Off-the-shelf chlorine compounds intended for home laundry use, pool or fountain use should not be used if they contain additives such as antifungal agents, silica ("Ultra" brands), scents, etc. Table 7 provides the amount of chlorine compound required per 100 gallons of water or 100 feet linear casing volume of water to mix a 100 parts per million solution. Disinfection situations not depicted in Table 7 must be approved by the state engineer. Additional recommendations and guidelines for water well system disinfection are available from the state engineer upon request.

TABLE 7

AMOUNT OF CHLORINE COMPOUND FOR EACH 100 FEET OF WATER STANDING IN WELL (100 ppm solution)

Well Diameter (inches)	Ca-HyCLT* (25% HOCL) (ounces)	Ca-HyCLT (65% HOCL) (ounces)	Na-HyCLT** (12-trade %) (fluid ounces)	Liquid CL*** (100% Cl2) (lbs)
2	1.00	0.50	3.5	0.03
4	3.50	1.50	7.0	0.06
6	8.00	3.00	16.0	0.12
8	14.50	5.50	28.0	0.22
10	22.50	8.50	45.0	0.34
12	32.50	12.00	64.0	0.50
14	44.50	16.50	88.0	0.70
16	58.00	26.00	112	0.88
20	90.50	33.00	179	1.36
For every 100 gal. of water add:	5.50	2.00	11.5	0.09

NOTES: *Calcium Hypochlorite (solid)
**Sodium Hypochlorite (liquid)
***Liquid Chlorine

11.7 Special Requirements.

11.7.1 Explosives. Explosives used in well construction shall not be detonated within the section of casing designed or expected to serve as the surface seal of the completed well, whether or not the surface seal has been placed. If explosives are used in the construction of a well, their use shall be reported on the official well log. In no case shall explosives, other than explosive shot perforators specifically designed to perforate steel casing, be detonated inside the well casing or liner pipe.

11.7.2 Access Port. Every well shall be equipped with a usable access port so that the position of the water level, or pressure head, in the well can be measured at all times.

11.7.3 Completion or Abandonment. A licensed driller shall not remove his drill rig from a well site unless the well is completed

or abandoned. Completion of a well shall include all surface seals, gravel packs or curbs required. Dry boreholes, or otherwise unsuccessful attempts at completing a well, shall be properly abandoned in accordance with Section R655-4-14. Upon completion, all wells shall be equipped with a watertight, tamper-resistant casing cap or sanitary seal.

11.7.4 Surface Security. If it becomes necessary for the driller to temporarily discontinue the drilling operation before completion of the well or otherwise leave the well or borehole unattended, the well and/or borehole must be covered securely to prevent contaminants from entering the casing or borehole and rendered secure against entry by children, vandals, domestic animals, and wildlife.

11.7.5 Pitless Adapters/Units. Pitless adapters or units are acceptable to use with steel well casing as long as they are installed in accordance with manufacturers recommendations and specifications as well as meet the Water Systems Council Pitless Adapter Standard (PAS-97) which are incorporated herein by reference and are available from Water Systems Council, 13 Bentley Dr., Sterling, VA 20165, phone 703-430-6045, fax 703-430-6185 (watersystemscouncil.org). The pitless adaptor, including the cap or cover, casing extension, and other attachments, must be so designed and constructed to be secure, water tight, and to prevent contamination of the potable water supply from external sources. Pitless wellhead configurations shall have suitable access to the interior of the well in order to measure water level and for well disinfection purposes. Pitless configurations shall be of watertight construction throughout and be constructed of materials at least equivalent to and having wall thickness and strength compatible to the casing. Pitless adapters or units are not recommended to be mounted on PVC well casing. If a pitless adapter is to be used with PVC casing, it should be designed for use with PVC casing, and the driller should ensure that the weight of the pump and column do not exceed the strength of the PVC well casing. If it is known that a pitless adapter/unit will be installed on a well, a cement grout seal shall not be allowed within the pitless unit or pitless adaptor sealing interval as the well is being constructed. The pitless adapter or unit sealing interval shall be sealed with unhydrated bentonite as the well is constructed and before pitless installation. Upon pitless adapter/unit installation, the surface seal below the pitless connection shall be protected and maintained. After the pitless adapter/unit has been installed, the associated excavation around the well from the pitless connection to ground surface shall be backfilled and compacted with low permeability fill that includes clay. The pitless adapter or unit, including the cap or cover, pitless case and other attachments, shall be designed and constructed to be watertight to prevent the entrance of contaminants into the well from surface or near-surface sources.

11.7.6 Hydraulic Fracturing. The hydraulic fracturing pressure shall be transmitted through a drill string and shall not be transmitted to the well casing. Hydraulic fracturing intervals shall be at least 20 feet below the bottom of the permanent casing of a well. All hydraulic fracturing equipment shall be thoroughly disinfected with a 100 part per million chlorine solution prior to insertion into the well. The driller shall include the appropriate hydraulic fracturing information on the well log including methods, materials, maximum pressures, location of packers, and initial/final yields. In no case shall hydrofacturing allow commingling of waters within the well bore. Clean sand or other material (propping agents) approved by the Division may be injected into the well to hold the fractures open when pressure is removed.

11.7.7 Static Water Level, Well Development, and Well Yield. To fulfill the requirements of Subsection R655-4-4.5.2, new wells designed to produce water shall be developed to remove drill cuttings, drilling mud, or other materials introduced into the well during construction and to restore the natural groundwater flow to the well to the extent possible. After a water production well is developed, a test should be performed to determine the rate at which groundwater can be reliably produced from the well. Following development and testing, the static water level in the well should also be measured. Static water level, well development information, and well yield information shall be noted on the official submittal of the Well Log by the well driller.

11.7.8 Packers. Packers shall be of a material that will not impart taste, odor, toxic substances or bacterial contamination to the water in the well.

11.7.9 Screens. Screens must be constructed of corrosion-resistant material and sufficiently strong to withstand stresses encountered during and after installation. Screen slot openings, screen length, and screen diameter should be sized and designed to provide sufficient open area consistent with strength requirements to transmit sand-free water from the well. Screens should be installed so that exposure above pumping level will not occur.

11.7.10 Openings in the Casing. There shall be no opening in the casing wall between the top of the casing and the bottom of the required casing seal except for pitless adapters, measurement access ports, and other approved openings installed in conformance with these standards. In no case shall holes be cut in the casing wall for the purpose of lifting or lowering casing into the well bore unless such holes are properly welded closed and watertight prior to placement into the well bore.

11.7.11 Casing vents. If a well requires venting, it must terminate in a down-turned position at least 18-inches above ground (land) level, at or above the top of the casing or pitless unit and be covered with a 24 mesh corrosion-resistant screen.

R655-4-12. Special Wells.

12.1 Construction Standards for Special Wells.

12.1.1 General. The construction standards outlined in Section R655-4-11 are meant to serve as minimum acceptable construction standards. Certain types of wells such as cathodic protection wells, closed-loop heating or cooling exchange wells, recharge and recovery wells, and public supply wells require special construction standards that are addressed in this section or in rules promulgated by other regulating agencies. At a minimum, when constructing special wells as listed above, the well shall be constructed by a licensed well driller, and the minimum construction standards of Section R655-4-11 shall be followed in addition to the following special standards.

12.1.2 Public Water Supply Wells. Public water supply wells are subject to the minimum construction standards outlined in Section R655-4-11 in addition to the requirements established by the Department of Environmental Quality, Division of Drinking Water under Rules R309-515 and R309-600. Rules and requirements in R309-515 and R309-600 are regulated by the Division of Drinking Water and not by the Division of Water Rights and may include a preliminary evaluation report related to drinking water source protection, well plan and specification review and approval, and mandatory grout seal inspection (The Division of Drinking Water should be contacted to determine specific and current rules and requirements).

12.1.3 Cathodic Protection Well Construction. Cathodic protection wells shall be constructed in accordance with the casing, joint, surface seal, and other applicable requirements outlined in Section R655-4-11. Any annular space existing between the base of the annular surface seal and the top of the anode and conductive fill interval shall be filled with appropriate fill or sealing material. Fill material shall consist of washed granular material such as sand, pea gravel, or sealing material. Fill material shall not be subject to decomposition or consolidation and shall be free of pollutants and contaminants. Fill material shall not be toxic or contain drill cuttings or drilling mud. Additional sealing material shall be placed below the minimum depth of the annular surface seal, as needed, to prevent the cross-connection and commingling of separate aquifers and water bearing zones. Vent pipes, anode access tubing, and any other tubular materials (i.e., the outermost casing) that pass through the interval to be filled and sealed are considered casing for the purposes of these standards and shall meet the requirements of

Subsections R655-4-11.2 and 11.3. Cathodic protection well casing shall be at least 2 inches in internal diameter to facilitate eventual well abandonment. Figure 6 illustrates the construction of a typical cathodic protection well.

12.1.4 Closed-loop Heating/Cooling Exchange Wells. Wells or boreholes utilized for heat exchange or thermal heating in a closed-loop fashion, which are greater than 30 feet in depth and encounter formations containing groundwater, must be drilled by a licensed driller and the owner or applicant must have an approved application for that specific purpose as outlined in Section R655-4-9. Wells or boreholes installed for heat or thermal exchange process must comply with the minimum construction standards of Section R655-4-11. Direct exchange (DX) systems are not allowed unless case by case permission is provided by the state engineer.

12.1.4.1 For open-loop systems where groundwater is removed, processed, and re-injected, a non-consumptive use water right approval must be obtained from the state engineer. Approval to re-inject water underground is also required from the Utah Division of Water Quality. Open-loop system wells shall be constructed in accordance with the requirements found in Section 11. If a separate well or borehole is required for re-injection purposes, it must also comply with these standards and the groundwater must be injected into the same water bearing zones as from which it is initially withdrawn. The quality and quantity of groundwater shall not be diminished or degraded upon re-injection.

12.1.4.2 Closed-loop heat exchange wells must also comply with the guidelines set forth in the National Ground Water Association Guidelines for Construction of Vertical Boreholes for Closed Loop Heat Pump Systems (guidelines are copyrighted and available from the National Ground Water Association at 601 Dempsey Rd, Westerville, OH 43081-8978, Phone 614-898-7791, Fax 614.898-7786, website www.ngwa.org, email customerservice@ngwa.org) or standards set forth in the Design and Installation Standards for Closed-Loop/Geothermal Heat Pump Systems (standards are copyrighted and available from the International Ground Source Heat Pump Association (374 Cordell South, Oklahoma State University, Stillwater, OK 74078-8018, www.igshpa.okstate.edu). These guidelines and standards may be viewed during normal business hours at the Division's main office at 1594 West North Temple, SLC, UT 84116). For closed-loop systems where groundwater is not removed in the process, non-production well approval must be obtained from the state engineer. Specific requirements for closed-loop wells include:

a. The location of closed loop heat pump wells must comply with applicable ordinances, regulations, or other enforceable instruments of local governments to ensure adequate protection of public water systems from encroachments or any impairment of the groundwater resource. During drilling and construction, provisions shall be made to reduce entry of foreign matter or surface runoff into the well or borehole.

b. Closed-loop system wells must be sealed from the bottom of the well/boring to ground surface using acceptable materials and placement methods described in Section 11.4. Sand may be added to the seal mix to enhance thermal conductivity as long as the seal mix meets permeability and gel strength standards outlined in Section 11.4.

c. Borehole Diameter: The borehole diameter of a closed loop heat pump well must be of sufficient size to allow placement of the pipe and placement of a tremie to emplace the grout. In general, for loop piping with a nominal diameter of 3/4 to 1 inch, the borehole diameter shall be at least 4.75 inches. For loop piping with a nominal diameter of 1.25 inches, the borehole diameter shall be at least 5.25 inches. For loop piping with a nominal diameter of 1.5 to 2.0 inches, the borehole diameter shall be at least 6.0 inches.

d. Grouting of Vertical Ground Water Heat Pump Wells: Grouting the annulus of a heat pump well shall be completed within 24 hours from the time the borehole is drilled and loaded with the U-bend assembly and within at least 6 hours from the time the drill rig moves off the borehole. Full-length grout placement is required on all vertical closed loop heat pump boreholes.

e. Placement of Grout Material: Full-length grout material must be placed by tremie from the bottom of the borehole to the top. The tremie pipe shall be continuously submerged in grout during placement. The tremie pipe must not be left in the borehole. The grout must fill the entire borehole. Grout must not be allowed to free-fall. Once the grout has settled for at least 48 hours, borehole shall be topped off with additional grout as necessary to maintain seal material to ground surface.

f. Pipe: Pipe material, joining methods, and installation must meet the guidelines and standards referenced in the National Ground Water Association Guidelines for Construction of Vertical Boreholes for Closed Loop Heat Pump Systems, (guidelines are copyrighted and available from the National Ground Water Association at 601 Dempsey Rd, Westerville, OH 43081-8978, Phone 614-898-7791, Fax 614.898-7786, email customerservice@ngwa.org) and in the Design and Installation Standards for Closed-Loop/Geothermal Heat Pump Systems (standards are copyrighted and available from the International Ground Source Heat Pump Association (374 Cordell South, Oklahoma State University, Stillwater, OK 74078-8018, www.igshpa.okstate.edu). Guidelines and standards may be viewed during normal business hours at the Division's main office at 1594 West North Temple, SLC, UT 84116). U-bend connections shall be factory jointed and piping shall not have any fusion joints below a depth of 30 feet.

g. Pressure Testing: Loop piping shall be filled with water and pressure tested prior to installation into the borehole. Loop piping failing this initial pressure testing shall not be installed. The installed system must be pressure tested at a minimum of 2 times the system operating pressure to ensure the integrity of the system. If a pressure loss is detected, the cause must be properly repaired or material replaced or properly plugged. The system shall be pressure tested again following any repairs. Pressure testing procedures shall follow the guidelines and standards in the National Ground Water Association Guidelines for Construction of Vertical Boreholes for Closed Loop Heat Pump Systems, (guidelines are copyrighted and available from the National Ground Water Association at 601 Dempsey Rd, Westerville, OH 43081-8978, Phone 614-898-7791, Fax 614.898-7786, email customerservice@ngwa.org) and in the Design and Installation Standards for Closed-Loop/Geothermal Heat Pump Systems (standards are copyrighted and available from the International Ground Source Heat Pump Association (374 Cordell South, Oklahoma State University, Stillwater, OK 74078-8018, www.igshpa.okstate.edu). Guidelines and standards may be viewed during normal business hours at the Division's main office at 1594 West North Temple, SLC, UT 84116).

h. Heat transfer fluid, additives, and inhibitors. The heat transfer fluids, additives, and inhibitors used inside the closed-loop assembly must be nontoxic, safe to install, provide corrosion protection, not promote bacterial growth, and not produce an unacceptable risk to the environment in the event of a system leak. Potassium acetate or ethylene glycol shall not be used as a heat transfer fluid. Water used in the heat transfer fluid mix must be from a treated potable source or be disinfected in accordance with these rules. Use and placement of fluids, additives, and inhibitors shall be in accordance with the guidelines and standards in the National Ground Water Association Guidelines for Construction of Vertical Boreholes for Closed Loop Heat Pump Systems, (guidelines are copyrighted and available from the National Ground Water Association at 601 Dempsey Rd, Westerville, OH 43081-8978, Phone 614-898-7791, Fax 614.898-7786, email customerservice@ngwa.org) and in the Design and Installation Standards for Closed-Loop/Geothermal Heat Pump Systems (standards are copyrighted and available from the International Ground Source Heat Pump Association (374 Cordell South, Oklahoma State University, Stillwater, OK 74078-8018, www.igshpa.okstate.edu). Guidelines and standards may be viewed during normal business hours at the Division's main office at 1594

West North Temple, SLC, UT 84116).

i. Abandonment: When closed-loop heat exchange wells are required to be permanently abandoned (decommissioned and sealed), the most recent version of the standards referenced in the previous section shall be followed. The state engineer shall be notified prior to loop field abonnement. All heat transfer fluids shall be flushed and removed from loop piping prior to abandonment. Below ground loop piping to be abandoned shall be filled completely with acceptable grout and the loop piping ends properly capped or sealed.

12.1.4.3 The rules herein pertain only to the heating and cooling exchange well constructed to a depth greater than 30 feet and are not intended to regulate the incidental work that may occur up to the well such as plumbing, electrical, piping, trenching, and backfilling activities.

12.1.5 Recharge and Recovery Wells. Any well drilled under the provisions of Title 73, Chapter 3b (Groundwater Recharge and Recovery Act) shall be constructed in a manner consistent with these rules and shall be drilled by a currently licensed driller. Special rules regarding the injection of water into the ground are also promulgated under the jurisdiction of the Utah Department of Environmental Quality, Division of Water Quality (Rule R317-7 "Underground Injection Control Program" of the Utah Administrative Code) and must be followed in conjunction with the Water Well Drilling rules.

R655-4-13. Deepening, Rehabilitation, and Renovation of Wells.

13.1 Sealing of Casing.

13.1.1 If in the repair of a drilled well, the old casing is withdrawn, the well shall be recased and resealed in accordance with the rules provided in Subsection R655-4-11(11.4).

13.2 Inner Casing.

13.2.1 If an inner casing is installed to prevent leakage of undesirable water into a well, the space between the two well casings shall be completely sealed using packers, casing swedging, pressure grouting, etc., to prevent the movement of water between the casings.

13.3 Outer Casing.

13.3.1 If the "over-drive" method is used to eliminate leakage around an existing well, the casing driven over the well shall meet the minimum specifications listed in Subsection R655-4-11(11.4).

13.4 Artesian Wells.

13.4.1 If upon deepening an existing well, an artesian zone is encountered, the well shall be cased and completed as provided in Subsection R655-4-11(11.4).

13.5 Drilling in a Dug Well.

13.5.1 A drilled well may be constructed through an existing dug well provided that:

13.5.1.1 Unperforated Casing Requirements. An unperforated section of well casing extends from a depth of at least ten (10) feet below the bottom of the dug well and at least 20 feet below land surface to above the maximum static water level in the dug well.

13.5.1.2 Seal Required. A two foot thick seal of neat cement grout, sand cement grout, or bentonite grout is placed in the bottom of the dug well so as to prevent the direct movement of water from the dug well into the drilled well.

13.5.1.3 Test of Seal. The drilled well shall be pumped or bailed to determine whether the seal described in Subsection R655-4-13(13.5.1.2) is adequate to prevent movement of water from the dug well into the drilled well. If the seal leaks, additional sealing and testing shall be performed until a water tight seal is obtained.

13.6 Well Rehabilitation and Cleaning.

13.6.1 Tools used to rehabilitate or clean a well shall be cleaned, disinfected, and free of contamination prior to placement in a well.

13.6.2 The driller shall use rehabilitation and cleaning tools properly so as not to permanently damage the well or aquifer. If the surface seal is damaged or destroyed in the process of rehabilitation or cleaning, the driller shall repair the surface seal to the standards set forth in Subsection R655-4-11(11.4).

13.6.3 Debris, sediment, and other materials displaced inside the well and surrounding aquifer as a result of rehabilitation or cleaning shall be completely removed by pumping, bailing, well development, or other approved methods.

13.6.4 Detergents, chlorine, acids, or other chemicals placed in wells for the purpose of increasing or restoring yield, shall be specifically designed for that purpose and used according to the manufacturer's recommendations.

13.6.5 Any renovation, rehabilitation, cleaning, or other work on a well that requires alteration of the well itself shall be conducted by a licensed well driller.

13.6.6 Following completion of deepening, renovation, rehabilitation, cleaning, or other work on a well, the well shall be properly disinfected in accordance with Subsection R655-4-11(11.6.5).

R655-4-14. Abandonment of Wells.

14.1 Temporary Abandonment.

14.1.1 When any well is temporarily removed from service, the top of the well shall be sealed with a tamper resistant, water-tight cap or seal. If a well is in the process of being drilled and is temporarily abandoned, the well shall be sealed with a tamper resistant, water-tight cap or seal and a surface seal installed in accordance with Subsection R655-4-11(11.4). The well may be temporarily abandoned during construction for a maximum of 90 days. After the 90 day period, the temporarily abandoned well shall be completed as a well that meets the standards of Section 11 or permanently abandoned in accordance with the following requirements, and an official well abandonment report (abandonment log) must be submitted in compliance with Section R655-4-4.

14.2 Permanent Abandonment.

14.2.1 The rules of this section apply to the abandonment of the type of wells listed in Subsection R655-4-1(1.2) including private water wells, public supply wells, monitor wells, cathodic protection wells, and heating or cooling exchange wells. A licensed driller shall notify the state engineer prior to commencing abandonment work of an existing well and submit a complete and accurate abandonment log following abandonment work in accordance with Section R655-4-4 of these rules. Prior to commencing abandonment work, the driller shall obtain a copy of the well log of the well proposed to be abandoned from the well owner or the state engineer, if available, in order to determine the proper abandonment procedure. Any well that is to be permanently abandoned shall be completely filled from bottom to top in a manner to prevent vertical movement of water within the borehole as well as preventing the annular space surrounding the well casing from becoming a conduit for possible contamination of the groundwater supply. A well driller who wishes to abandon a well in a manner that does not comply with the provisions set forth in this section must request approval from the state engineer.

14.3 License Required.

14.3.1 Well abandonment shall be accomplished under the direct supervision of a currently licensed water well driller who shall be responsible for verification of the procedures and materials used.

14.4 Acceptable Materials.

14.4.1 Neat cement grout, sand cement grout, unhydrated bentonite, or bentonite grout in accordance with Section R655-4-11.4 shall be used to abandon wells and boreholes. Other sealing materials or additives, such as fly ash, may be used in the preparation of grout upon approval of the state engineer. Drilling mud or drill cuttings shall not be used as any part of a sealing materials for well abandonment. The liquid phase of the abandonment fluid shall be water from a potable municipal system or disinfected in accordance with Subsection R655-4-11(11.6.5).

14.5 Placement of Materials.

14.5.1 Neat cement and sand cement grout shall be

introduced at the bottom of the well or required sealing interval and placed progressively upward to the top of the well. The sealing material shall be placed by the use of a grout pipe, tremie line, dump bailer or equivalent in order to avoid freefall, bridging, or dilution of the sealing materials or separation of aggregates from sealants. Sealing material shall not be installed by freefall (gravity) unless the interval to be sealed is dry and no deeper than 30 feet below ground surface. If the well to be abandoned is a flowing artesian well, the well may be pressure grouted from the surface. The well should be capped immediately after placement of seal materials to allow the seal material to set up and not flow out of the well.

14.5.2 Bentonite-based abandonment products shall be mixed and placed according to manufacturer's recommended procedures and result in a seal free of voids or bridges. Granular or powered bentonite shall not be placed under water. When placing unhydrated bentonite, a sounding or tamping tool shall be run in the sealing interval during pouring to measure fill-up rate, verify a continuous seal placement, and to break up possible bridges or cake formation.

14.5.3 If seal material settlement occurs during placement and set up, the top of the abandoned well casing or borehole shall be topped off with approved sealing material until the seal top remains at the natural ground surface.

14.5.4 Abandonment materials placed opposite any non-water bearing intervals or zones shall be at least as impervious as the formation or strata prior to penetration during the drilling process.

14.5.5 Prior to well or borehole abandonment, all pump equipment, piping, and other debris shall be removed to the extent possible. The well shall also be sounded immediately before it is plugged to make sure that no obstructions exist that will interfere with the filling and sealing. If the well contains lubricating oil that has leaked from a turbine shaft pump, it shall be removed from the well prior to abandonment and disposed of in accordance with applicable state and federal regulations.

14.5.6 Verification shall be made that the volume of sealing and fill material placed in a well during abandonment operations equals or exceeds the volume of the well or borehole to be filled and sealed.

14.6 Termination of Casing.

14.6.1 The casings of wells to be abandoned shall be severed to the natural ground surface or deeper if necessitated by development of the area. If the casing is severed below ground surface, compacted native material shall be placed above the abandoned well upon completion.

14.7 Abandonment of Artesian Wells.

14.7.1 A neat cement grout, sand-cement grout, or concrete plug shall be placed in the confining stratum overlying the artesian zone so as to prevent subsurface leakage from the artesian zone. The remainder of the well shall be filled with sand-cement grout, neat cement grout, bentonite abandonment products, or bentonite grout. The uppermost ten (10) feet of the well shall be abandoned as required in Subsection R655-4-14(14.5.3).

14.8 Abandonment of Drilled and Jetted Wells.

14.8.1 A neat cement grout or sand cement grout plug shall be placed opposite all perforations, screens or openings in the well casing. The remainder of the well shall be filled with cement grout, neat cement, bentonite abandonment products, concrete, or bentonite slurry. The uppermost ten feet of the well shall be abandoned as required in Subsection R655-4-14(14.5.3).

14.9 Abandonment of Gravel Packed Wells.

14.9.1 All gravel packed wells shall be pressure grouted throughout the perforated or screened section of the well. The remainder of the well shall be filled with sand cement grout, neat cement grout, bentonite abandonment products, or bentonite grout. If gravel pack extends above or below the perforated/screened interval in the annular space between the casing and borehole wall, additional perforations in that blank interval of casing shall be required. The uppermost ten feet of the well shall be abandoned as required in Subsection R655-4-14(14.5.3).

14.10 Removal of Casing.

14.10.1 Where possible, it is recommended that the well casing be removed during well abandonment, and when doing so, the abandonment materials shall be placed from the bottom of the well or borehole progressively upward as the casing is removed. The well shall be sealed with sand cement grout, neat cement grout, bentonite abandonment products, or bentonite grout. In the case of gravel packed wells, the entire gravel section shall be pressure grouted. The uppermost ten feet of the well shall be abandoned as required in Subsection R655-4-14(14.5.3).

14.11 Replacement Wells.

14.11.1 Wells which are to be removed from operation and replaced by the drilling of a new well under an approved replacement application, shall be abandoned in a manner consistent with the provisions of Section R655-4-14 before the rig is removed from the site of the newly constructed replacement well, unless written authorization to remove the rig without abandonment is provided by the state engineer. Also refer to the requirements provided in Subsection R655-4-4(4.4).

14.12 Abandonment of Cathodic Protection Wells.

14.12.1 The general requirements for permanent well abandonment in accordance with Section R655-4-14 shall be followed for the abandonment of cathodic protection wells.

14.12.2 A cathodic protection well shall be investigated before it is destroyed to determine its condition, details of its construction and whether conditions exist that will interfere with filling and sealing.

14.12.3 Casing, cables, anodes, granular backfill, conductive backfill, and sealing material shall be removed as needed, by re-drilling, if necessary, to the point needed to allow proper placement of abandonment material. Casing that cannot be removed shall be adequately perforated or punctured at specific intervals to allow pressure injection of sealing materials into granular backfill and all other voids that require sealing.

R655-4-15. Monitor Well Construction Standards.

15.1 Scope.

15.1.1 Certain construction standards that apply to water wells also apply to monitor wells. Therefore, these monitoring well standards refer frequently to the water well standard sections of the rules. Standards that apply only to monitor wells, or that require emphasis, are discussed in this section. Figure 7 illustrates a schematic of an acceptable monitor well with an above-ground surface completion. Figure 8 illustrates a schematic of an acceptable monitor well with a flush-mount surface completion. Figures 7 and 8 can be viewed in the publication, State of Utah Administrative Rules for Water Wells, most recent edition, available at the Division of Water Rights, 1594 West North Temple, Salt Lake City, Utah.

15.1.2 These standards are not intended as a complete manual for monitoring well construction, alteration, maintenance, and abandonment. These standards serve only as minimum statewide guidelines towards ensuring that monitor wells do not constitute a significant pathway for the movement of poor quality water, pollutants, or contaminants. These standards provide no assurance that a monitor well will perform a desired function. Ultimate responsibility for the design and performance of a monitoring well rests with the well owner and/or the owner's contractor, and/or technical representative(s). Most monitor well projects are the result of compliance with the Environmental Protection Agency (EPA), Federal Regulations such as the Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "Superfund"), or specific State Solid and Hazardous Waste requirements. The contracts governing their installation are tightly written containing specific requirements as to site location, materials used, sampling procedures and overall objectives. Therefore specific construction requirements for monitor well installation shall be governed by applicable contracts and regulations providing they meet or exceed

state requirements and specifications. Guidelines and recommended practices dealing with the installation of monitor wells may be obtained from the state engineer upon request. Additional recommended information may be obtained from the Environmental Protection Agency (EPA), Resource Conservation and Recovery Act (RCRA), Groundwater Monitoring Enforcement and Compliance Document available from EPA's regional office in Denver, Colorado and from the Handbook of Suggested Practices for the Design and Installation of Groundwater Monitoring Wells, available from the National Groundwater Association in Dublin, Ohio.

15.2 Installation and Construction.

15.2.1 Materials and Equipment Contaminant-Free. All material used in the installation of monitor wells shall be contaminant-free when placed in the ground. Drilling equipment shall be clean and contaminant free in accordance with Subsection R655-4-11(11.6.4). During construction contaminated water should not be allowed to enter contaminant-free geologic formations or water bearing zones.

15.2.2 Borehole Integrity. Some minor cross-contamination may occur during the drilling process, but the integrity of the borehole and individual formations must then be safeguarded from permanent cross connection.

15.2.3 Casing and Screen. The well casing should be perforated or screened and filter packed with sand or gravel where necessary to provide adequate sample collection at depths where appropriate aquifer flow zones exist. The casing and screen selected shall not affect or interfere with the chemical, physical, radiological, or biological constituents of interest. Screens in the same well shall not be placed across separate water bearing zones in order to minimize interconnection, aquifer commingling, and cross contamination. Screens in a nested well can be placed in separate water bearing zones as long as the intervals between the water bearing zones are appropriately sealed and aquifer cross connection and commingling does not occur. Monitor well casing and screen shall conform to ASTM standards, or consist of at least 304 or 316 stainless steel, PTFE (Teflon), or Schedule 40 PVC casing.

15.2.4 Gravel/Filter Pack. If installed, the gravel or filter pack should generally extend two (2) feet to ten (10) feet above screened or perforated areas to prevent the migration of the sealing material from entering the zones being sampled. Gravel or filter pack material shall meet the requirements of Subsection R655-4-11(11.5.2). Gravel/filter pack for monitoring wells does not require disinfection. Drill cutting should not be placed into the open borehole annulus. The well driller shall ensure that a bridge or voids do not occur in the annular space during the placement of the gravel pack by means of a sounding device or other mechanism.

15.2.5 Annular Seal. All monitor wells constructed shall have a continuous surface seal, which seals the annular space between the borehole and the permanent casing, in accordance with the provisions in Section R655-4-11. The surface seal depth requirements of Section R655-4-11 do not apply to monitor wells. The surface seal may be more or less than 50 feet depending on the screen/perforation and/or gravel pack interval. Seals shall also be constructed to prevent interconnection and commingling of separate aquifers penetrated by the well, prevent migration of surface water and contaminations into the well and aquifers, and shall provide casing stability. The seal shall have a minimum diameter of four inches larger than the nominal size of the permanent casing, and shall extend from land surface to the top of the filter pack. After the permanent casing and filter pack (optional) has been set in final position, a layer of bentonite or fine sand (e.g., mortar sand) shall be placed on top of the filter pack to maintain separation between the seal material and the screened interval in order to insure that the seal placement will not interfere with the filter pack. The remaining annular space shall be filled to land surface in a continuous operation with unhydrated bentonite, neat cement grout, sand-cement grout, or bentonite grout. Only potable water should be used to hydrate any grout or slurry mixture. The completed annular space shall fully surround the permanent casing, be evenly distributed, free of voids, and extend from the permanent casing to undisturbed or recompacted soil. All sealing materials and placement methods shall conform to the standards in Section R655-4-2 and Subsection R655-4-11(11.4). The well driller shall ensure that a bridge or voids do not occur in the annular space during the placement of the seal.

15.2.6 Cuttings, Decon Water, Development Water, and Other IDW. Drill cuttings, decontamination (Decon) water, monitor well development water, and other investigation derived waste (IDW) shall be managed and disposed of in accordance with applicable state and federal environmental regulations. It is the responsibility of the driller to know and understand such requirements.

15.3 Minimum Surface Protection Requirements.

15.3.1 If a well is cased with metal and completed above ground surface, a locking water resistant cap shall be installed on the top of the well.

15.3.2 If the well is not cased with metal and completed above ground surface, a protective metal casing shall be installed over and around the well. The protective casing shall be cemented at least two feet into the ground around the nonmetallic casing. A water tight cap shall be installed in the top of the well casing. A locking cap shall be installed on the top of the protective casing.

15.3.3 Monitor wells completed above ground and potentially accessible to vehicular damage shall be protected in the following manner. At least three metal posts, at least three inches in diameter, shall be cemented in place around the casing. Each post shall extend at least three feet above and two feet below ground surface. A concrete pad may be installed to add protection to the surface completion. If installed, the concrete pad shall be at least four (4) inches thick and shall slope to drain away from the well casing. The base shall extend at least two (2) feet laterally in all directions from the outside of the well boring. When a concrete pad is used, the well seal may be part of the concrete pad.

15.3.4 If the well is completed below land surface, a water tight cap with a lock shall be attached to the top of the well casing. A metal monument or equivalent shall be installed over and around the well. The monument shall serve as a protective cover and be installed level with the land surface and be equipped with a waterproof seal to prevent inflow of any water or contaminants. Drains will be provided, when feasible, to keep water out of the well and below the well cap. The monument and cover must be designed to withstand the maximum expected load.

15.4 Abandonment.

15.4.1 Abandonment of monitor wells shall be completed in compliance with the provisions of Section R655-4-14. The provisions of Section R655-4-14 are not required for the permanent abandonment of monitor wells completed at a depth of 30 feet below natural ground surface.

R655-4-16. Pump Installation and Repair.

16.1 Pump installation practices. All pump installations shall be completed in such a manner as to prevent waste and contamination of groundwater by pollution material entering the well from pumping equipment, casing connectors, fittings, piping, sanitary seals or caps.

16.2 Surface Seal. If in the process of pump installation or repair, the well's surface seal is disturbed or damaged, it shall be repaired and resealed in accordance with the standards provided in Subsection R655-4-11(11.4).

16.3 Tools, Equipment, and Materials. Down-hole tools and equipment used in performance of pump installation and repair shall be cleaned, disinfected, and free of contamination prior to placement in a well. All tools, drilling equipment, and materials used to drill a well shall be free of contaminants prior to beginning pump-related work. Contaminants include lubricants, fuel, bacteria, etc. that will reduce the well efficiency, and any other item(s) that will be harmful to public health and/or the resource or reduce the life of the water well. It is recommended that excess lubricants

placed on equipment be wiped clean prior to insertion into the well. Thread Compounds, Sealants, and Lubricants must not exceed the maximum contaminant levels for chemicals, taste, and odor. The licensee shall use pump-related tools and equipment properly so as not to permanently damage the well or aquifer.

16.4 Disinfection. Following completion of pump installation and repair work on a well, the well, pump, and in-well discharge piping shall be properly disinfected in accordance with Subsection R655-4-11(11.6.5).

16.5. Product, material, and Process Standards. Any product, material or procedure designed for use related to pump installation and repair of water production or non-production wells, which has received certification and approval for its intended use by the National Sanitation Foundation (NSF) under ANSI/NSF Standard 60 or 61, the American Society for Testing Materials (ASTM), the American Water Works Association (AWWA) or the American National Standards Institute (ANSI) may be utilized. Other products, materials or procedures may also be utilized for their intended purpose upon manufacturers certification that they meet or exceed the standards or certifications referred to in this section and upon state engineer approval. Organic substances shall not be introduced into the well or borehole during pump installation and repair work.

16.6 Surface Completions. Pump installers shall leave the well surface completion upon completion of pump installation/repair work in accordance with the standards in Subsection R655-4-11 as it pertains to casing stick up, steel/PVC casing extensions, sanitary capping and venting, and protective casings. Upon completion, all wells shall be equipped with a watertight, tamper-resistant casing cap or sanitary seal.

16.7 Flowing Artesian Wells. In accordance with Subsection R655-4-11(11.4.3.5, artesian wells that flow naturally at the surface, the well shall be equipped with a control valve so that the flow can be completely stopped. The control valve must be available for inspection by the state engineer at all times.

16.8 Seals Between Casings. If the well is constructed of multiple casing strings at or near the ground surface and if a pitless adapter/unit is installed, the standards of Subsection R655-4-11(11.5.5) shall be employed to ensure proper sealing between casings is maintained.

16.9 Water Level and Flow Measurement. Following pump installation and repair work, the well shall be left in such a manner to allow for access to water level measurements in accordance with R655-4-11(11.7.2). After pump installation and repair work is completed on a well, the static water level should be measured after which a test should be performed to determine the rate at which groundwater can be reliably produced from the well. Pumping water level should be measured and recorded during this test. Static water level and well testing information shall be noted on the official submittal of the Pump Log by the pump installer or well driller.

16.10 Surface Security. If it becomes necessary for the pump installer to temporarily discontinue operation on a well before completion or otherwise leave the well unattended, the well must be covered securely to prevent contaminants from entering the casing and rendered secure against entry by children, vandals, domestic animals, and wildlife.

16.11 Above-grade connections. An above-grade connection into the top or side of a well casing shall be at least eighteen inches (18") above the land surface and shall be constructed so as to exclude dirt or other foreign matter by at least one of the following methods, as may be applicable:

(A) Threaded connection;
(B) Welded connection;
(C) Expansion sealer;
(D) Bolted flanges with rubber gaskets;
(E) Overlapping well cap; or
(F) If a water well pump is mounted or sealed on a concrete pedestal, the casing shall extend at least to the top of the pedestal and at least eighteen inches (18") above the land surface.

16.12 Pitless Connections. Pitless adapters and units shall be installed in accordance with the standards set forth in Subsection R655-4-11(11.7.5). Pitless adapters shall be installed below the frost line. A below-ground connection shall not be submerged in water at the time of installation. Holes cut in the casing through which the pitless adapters are installed must be sized and constructed so as to guarantee a watertight seal with the pitless adapter in place.

16.13 Backflow Protection. When a check valve or foot valve is not a part of the pump, a check valve or back-siphon prevention device shall be installed on the pump discharge line within the well or beyond the well to eliminate the opportunity for contaminated water to backflush into the well. Such device must be designed to direct or isolate the water flow to prevent water in the distribution line from running back down the well during removal or repair to the pump and pumping equipment. When a flow meter is installed on a well the meter must be located downstream from the backflow preventer and be placed in accordance with manufacturer spacing specifications.

16.14 Hand Pumps. Hand pumps shall be of the force type equipped with a packing gland around the pump rod, a delivery spout which is closed and downward directed, and a one-piece bell-type base which is part of the pump stand or is attached to the pump column in a watertight manner. The bell base of the pump shall be bolted with a gasket to a flange which is securely attached to the casing or pipe sleeve.

16.15 Pumping Water Level. In a screened or perforated well, the well pump setting and suction inlet shall be located so that the pumping level of the water cannot be drawn below the top of the screen.

16.16 Pump and Column/Drop Pipe Removal. During any repair or installation of a water well pump, the licensed installer shall make a reasonable effort to maintain the integrity of ground water and to prevent contamination by elevating the pump column and fittings, or by other means suitable under the circumstances.

KEY: water wells, pump installers, well drillers license
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R657. Natural Resources, Wildlife Resources.
R657-34. Procedures for Confirmation of Ordinances on Hunting Closures.
R657-34-1. Purpose and Authority.

(1) Under the authority of Sections 23-14-1, 23-14-18, and 23-14-19, this rule provides the standards and procedures for a political subdivision within a community to obtain confirmation from the Wildlife Board to close an area to hunting for reasons of safety.

(2) If a political subdivision of the state adopts an ordinance or policy concerning hunting, fishing, or trapping that conflicts with Title 23, Wildlife Resources Code of Utah, or rules promulgated pursuant thereto, state law shall prevail.

R657-34-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition, "Political subdivision" means any municipality, city, county, or other governmental entity which is legally separate and distinct from the state.

R657-34-3. Information Gathering.

(1) Prior to making a request to the Wildlife Board to close an area to hunting, the political subdivision shall hold a public hearing within its boundaries for the purpose of disclosing the proposed ordinance or policy and gathering public comment.

(2) The political subdivision shall compile a written summary of the hearing, including the date of the hearing, number of persons in attendance, and public comment.

(3) At least 45 days prior to the Wildlife Board meeting in which the request for a hunting closure shall be made, the political subdivision shall submit the following information to the director of the division:

(a) a draft copy of the proposed ordinance or policy;

(b) a plat map showing the boundaries of the area in which the political subdivision is requesting the closure and the boundaries of the political subdivision;

(c) the safety reasons for the proposed closure; and

(d) the written summary of the public hearing as required in Subsection (2).

(4) The purpose of this section is to provide sufficient information to allow the division to conduct a technical evaluation of the impacts the closure may have on division objectives, administrative rules, game depredation, wildlife management, and public interests.

(5) As the division conducts a technical evaluation of the impacts the closure may have regarding public interests, the division shall gather information and broad input from the appropriate regional advisory councils and the officials of the pertinent political subdivision.

R657-34-4. Wildlife Board Confirmation.

(1) At least 20 days prior to the Wildlife Board meeting in which the request for closure is to be made, the director of the division shall submit the following information to the chairman of the Wildlife Board:

(a) a copy of any information received from the political subdivision, including the information provided in Subsection R657-34-3(3);

(b) the technical evaluation prepared by the division; and

(c) the division's recommendations regarding the closure.

(2) The Wildlife Board shall consider the request for closure in an open public meeting.

(3)(a) At or within a reasonable time after the hearing, the chairman of the Wildlife Board shall notify the political subdivision in writing that the requested closure is confirmed or denied.

(b) If the Wildlife Board denies the requested closure, the notification shall include the reasons for the decision.

(4) If the requested closure is denied, the political subdivision may submit a request for reconsideration of the decision by following the procedures provided in Sections R657-2-16 or R657-2-22. The request for reconsideration is not a prerequisite for judicial review.

(5) The closure shall become effective concurrently with the proposed ordinance or policy.

KEY: wildlife, hunting closures, game laws
July 2, 2003 23-14-1
Notice of Continuation April 12, 2018 23-14-18

R657. Natural Resources, Wildlife Resources.
R657-37. Cooperative Wildlife Management Units for Big Game or Turkey.
R657-37-1. Purpose and Authority.

(1) Under authority of Section 23-23-3, this rule provides the standards and procedures applicable to Cooperative Wildlife Management Units organized for the hunting of big game or turkey.

(2) Cooperative Wildlife Management Units are established to:

(a) increase wildlife resources;

(b) provide income to landowners;

(c) provide the general public access to private and public lands for hunting big game or turkey within a Cooperative Wildlife Management Unit;

(d) create satisfying hunting opportunities;

(e) provide adequate protection to landowners who open their lands for hunting; and

(f) provide landowners an incentive to manage lands to protect and sustain wildlife habitat and benefit wildlife.

R657-37-2. Definitions.

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-23-2.

(2) In addition:

(a) "CWMU" means Cooperative Wildlife Management Unit.

(b) "CWMU agent" means a person appointed by a landowner association member to protect private property within the CWMU.

(c) "General public" means all persons except landowner association members and their spouse or dependent children.

(d) "Landowner association " means a landowner or group of landowners of private land organized as a single entity for the purpose of applying for, becoming and operating a CWMU.

(e) "Landowner association member" means:

(i) an individual landowner or the managing members of a legal entity holding a fee interest in private property enrolled in a CWMU;

(ii) a landowner association president; and

(iii) a landowner association operator.

(f) "Landowner association operator" means a person designated by the landowner association to operate the CWMU and handle day-to-day interactions of the landowner association with the public.

(g) "Landowner association president" means a representative of the landowner association who is responsible for all internal operations of the landowner association and is ultimately responsible for the CWMU.

(h) "Voucher" means a document issued by the division to a landowner association member, allowing a landowner association member to designate who may purchase a CWMU big game or turkey hunting permit from a division office.

R657-37-3. Requirements for the Establishment of a Cooperative Wildlife Management Unit.

(1)(a) The minimum allowable acreage for a CWMU is 10,000 contiguous acres, except as provided in Subsection (3).

(b) Land parcels that adjoin corner-to-corner shall not be considered contiguous for the purpose of meeting minimum acreage requirements for CWMUs except as specifically authorized by the Wildlife Board pursuant to Subsection (3)(b) and R657-37-6.

(c) The land comprising Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, shall not be included as part of any big game or turkey CWMU.

(d) No land parcel shall be included in more than one CWMU.

(e) Separate hunt boundaries by species on a CWMU are not permitted.

(f) For the purpose of issuing a certificate of registration under R657-37-5, public lands cannot be used to attain minimum acreages.

(g) All lands included within a CWMU shall provide quality hunting opportunity in order to qualify towards minimum acreage requirements.

(2) The Wildlife Board may approve a new CWMU having at least 10,000 contiguous acres, provided:

(a) the property is capable of independently maintaining the presence of the respective species and harboring them during the period of hunting;

(b) the property is capable of accommodating the anticipated number of hunters and providing a reasonable hunting opportunity;

(c) the property exhibits enforceable boundaries clearly identifiable to both the public and private hunters; and

(d) the CWMU contributes to meeting division wildlife management objectives.

(3)(a) The Wildlife Board may approve a new CWMU for deer, pronghorn or turkey that is at least 5,000 contiguous acres provided that it otherwise satisfies the requirements of Subsections (1) and (2).

(b) The Wildlife Board may approve a new CWMU for deer, pronghorn, elk or moose that fails to meet the acreage or parcel configuration requirements in Subsection (1), provided:

(i) the applicant submits a written request for special considerations to the CWMU Advisory Committee by February 1st prior to the annual August 1st application deadline;

(ii) upon receipt of a request for special considerations, the CWMU Advisory Committee will immediately forward the request to the division for review and recommendations;

(iii) the division will review the request for special considerations and make recommendations to the CWMU Advisory Committee within 60 days of receipt; and

(iv) the CWMU Advisory Committee will consider the request for special considerations and the division's recommendations, and make recommendations to the Wildlife Board on the advisability of granting the CWMU application.

(4)(a) Cooperative Wildlife Management Units organized for hunting big game or turkey shall consist of private land to the extent practicable.

(b) The Wildlife Board may approve a CWMU containing public land only if:

(i) the public land is completely surrounded by private land or is otherwise inaccessible to the general public;

(ii) the public land is necessary to establish an enforceable boundary clearly identifiable to both the general public and public and private permit holders; or

(iii) the public land is necessary to achieve statewide and unit management objectives.

(c) If any public land is included within a CWMU, the landowner association must meet applicable federal and state land use requirements on the public land.

(d) The Wildlife Board shall increase the number of permits or hunting opportunities made available to the general public to reflect the proportion of public lands to private lands within the CWMU pursuant to Subsection R657-37-4(3)(a)(iv).

(5) The intent is to establish CWMUs consisting of blocks of land that function well as hunting units. The Wildlife Board may deny a CWMU that meets technical requirements but does not constitute a good hunting unit.

R657-37-4. Cooperative Wildlife Management Unit Management Plan.

(1)(a) The landowner association must manage the CWMU in compliance with a CWMU Management Plan consistent with statewide and unit management objectives for the respective big game or turkey management unit and approved by the Wildlife Board.

(2)(a) The CWMU Management Plan may be approved by the Wildlife Board for a period of three years and is incorporated into

the CWMU's certificate of registration.

(b) Amendments to the CWMU Management Plan may be requested by the Wildlife Board, the division or the CWMU landowner association member or operator and may result in an amendment to the certificate of registration, consistent with R657-37-5.5.

(3)(a) The CWMU Management Plan must include:

(i) species management objectives for the CWMU that are consistent with statewide and unit management objectives for the respective big game or turkey management unit;

(ii) antlerless harvest objectives;

(iii)(A) dates that the general public with buck or bull CWMU permits will be allowed to hunt in accordance with R657-37-7(3)(a); and

(B) a detailed explanation of how comparable hunting opportunities will be provided to both the private and public permit holders on the CWMU as required in Section 23-23-7.5;

(iv) a clear explanation of the purpose for including public land within the CWMU boundaries, if public land is included;

(v) an explanation of how the public is compensated by the CWMU when public land is included;

(vi) rules and guidelines used to regulate a permit holder's conduct as a guest on the CWMU;

(vii) County Recorder Plat Maps or equivalent maps, dated by receipt of purchase within 30 days of the initial or renewal application deadline for a certificate of registration, depicting boundaries and ownership for all property within the CWMU;

(viii) two original 1:100,000 USGS maps, which must be filed in the appropriate regional division office and the Salt Lake office, depicting all interior and exterior boundaries of the proposed CWMU;

(ix) strategies and methods that avoid adverse impacts to adjacent landowners resulting from the operation of the CWMU, including the provisions provided in Section R657-37-7(6); and

(x) any request for reciprocal agreements.

(b) The division shall, review all CWMU Management Plans and make recommendations to the Wildlife Board.

(4)(a) CWMU operators are required to complete a CWMU training session provided by the division on an annual basis.

(b) Failure to complete the CWMU training session may result in the CWMU operator being referred to the CWMU Advisory Committee described in R657-37-15 or may result in administrative action taken against a certificate of registration as described in R657-37-14.

R657-37-5. Application for Certificate of Registration.

(1)(a) An application for a CWMU certificate of registration that doesn't include special considerations identified in R657-37-3(3)(b) must be completed and returned to the regional division office where the proposed CWMU is located no later than August 1.

(b) An application including special considerations described in R657-37-3(3)(b) must be submitted to the CWMU Advisory Committee by February 1.

(2) The application must be accompanied by:

(a) the CWMU Management Plan as described in R657-37-4(3), including all maps;

(b)(i) a petition containing the signature and acreage of each participating landowner agreeing to establish and operate the CWMU as provided in this rule and Title 23, Chapter 23 of the Wildlife Resources Code; or

(ii) a copy of a legal contract or agreement identifying:

(A) the private land;

(B) the duration of the contract or agreement; and

(C) the names and signatures of landowners conveying the hunting rights to the CWMU landowner association;

(c) the name of the landowner association operator;

(d) the name of the landowner association president; and

(e) the nonrefundable handling fee.

(3)(a) The division may reject any application that is incomplete or completed incorrectly.

(b) Applicants must update the division regarding any changes to the substance of their application while it is under consideration or it may be considered incomplete or incorrect.

(4) The division shall forward the complete and correct application, required documentation, and any recommendation provided by the CWMU Advisory Committee to the Regional Advisory Councils and Wildlife Board for consideration.

(5) Upon receiving the application and recommendation from the division, the Wildlife Board may:

(a) authorize the issuance of a certificate of registration, for three years, allowing the landowner association member to operate a CWMU; or

(b) deny the application and provide the landowner association with reasons for the decision.

(6) The Wildlife Board shall consider any violation of the provisions of Title 23, Wildlife Resources Code and any information provided by the division, landowners, and the public in determining whether to authorize the issuance of a certificate of registration for a CWMU.

(7) A certificate of registration is issued on a three year basis and shall expire on January 31.

(8) The CWMU application and the management plan agreement are binding upon the landowner association members and all successors in interest to the CWMU property or the hunting rights thereon as it pertains to allowing public permit holders reasonable access to all CWMU property during the applicable hunting seasons for purposes of filling the permit.

R657-37-5a. Amendment to a Certificate of Registration; Termination of Certificate of Registration.

(1)(a) A CWMU must notify the division in writing regarding any requested change in:

(i) permit numbers or allocation;

(ii) season dates;

(iii) landowner association membership;

(iv) acreage of the CWMU;

(v) operator;

(vi) the CWMU Management Plan; or

(vii) any other matter related to the management and operation of the CWMU not originally included in the certificate of registration.

(b) Written notification of a requested change must be submitted to the appropriate regional division office where the CWMU is located.

(c) The division must be notified of all changes in landowner association membership, acreage, and operator within 30 days of such changes occurring.

(d) Changes in the CWMU described in R657-37-5.5(1)(a) require an amendment to the certificate of registration.

(2) Requests to amend buck and bull permit numbers, permit allocation, or season dates:

(a) may be initiated by the CWMU or the division;

(b) are due on August 1 of the year prior to when hunting is to occur; and

(c) shall be forwarded to the Regional Advisory Councils and Wildlife Board for consideration; and

(d) upon approval by the Wildlife Board, an amendment to the original certificate of registration shall be issued in writing.

(3) Requests to amend antlerless permit numbers:

(a) may be initiated by the CWMU or the division;

(b) must be submitted to the division by the last day of February;

(c) shall be forwarded to the Regional Advisory Councils and Wildlife Board for consideration; and

(d) upon approval by the Wildlife Board, an amendment to the original certificate of registration may be issued in writing.

(4)(a) If acreage totals in the CWMU decrease by more than

33% or landowner membership within a landowner association changes by more than 33% over the term of the certificate of registration, the certificate of registration shall:

(i) remain effective for the hunting season beginning in that calendar year; and

(ii) following completion of that hunting season, the certificate of registration shall terminate.

(b) A CWMU whose certificate of registration is terminated under this section may reapply consistent with R657-37-5.

(c)(i) If a reduction in acreage occurs on a CWMU that does not trigger the 33% threshold identified in subsection 4(a) and the resulting acreage total is below the standard totals generally required by R657-37-3, the CWMU will be reported to the CWMU Advisory Committee for review and recommendation to the Wildlife Board for action.

(ii) Review by the CWMU Advisory Committee and subsequent action by the Wildlife Board shall be taken consistent with R657-37-15.

(5)(a) All other requests for amendments shall be reviewed by the division.

(b) If the division recommends approval of the amendment, the division will submit that recommendation to the director.

(c) Upon approval by the director, an amendment to the original certificate of registration shall be issued in writing.

R657-37-6. Renewal of a Certificate of Registration.

(1)(a) At the end of a certificate of registration term, the certificate of registration may be renewed, consistent with this section.

(b) A certificate of registration terminated pursuant to R657-37-5.5 or R657-37-14 is not eligible for renewal.

(2)(a) An application for renewal of a certificate of registration that does not require special considerations identified in R657-37-3(b) must be completed and returned to the regional division office where the CWMU is established no later than August 1 of the year preceeding the expiration of the certificate of registration term.

(b) An application for renewal of a certificate of registration requiring an exception to the minimum acreage requirements or parcel configurations identified in R657-37-3(b) must be submitted to the CWMU Advisory Committee by February 1 of the year preceeding the expiration of the certificate of registration term.

(3) The renewal application must identify all changes from the previous certificate of registration and CWMU Management Plan.

(4) The renewal application must be accompanied by:

(a) the CWMU Management Plan as described in Section R657-37-4(3); and

(b) all maps as described in Section R657-37-4(3) if the CWMU boundaries have changed; and

(c)(i) a petition containing the signature and acreage of each participating landowner agreeing to establish and operate the CWMU as provided in this rule and Title 23, Chapter 23 of the Wildlife Resources Code; or

(ii) a copy of a legal contract or agreement identifying:

(A) the private land;

(B) the duration of the contract or agreement; and

(C) the names and signatures of landowners conveying the hunting rights to the CWMU agent or landowner association operator;

(d) the name of the designated landowner association operator; and

(e) the nonrefundable handling fee.

(6) The division may reject any application that is incomplete or completed incorrectly.

(7) The division shall consider:

(a) the contents of the renewal application;

(b) the previous performance of the CWMU, including the actions of all landowner association members; and

(c) any violation by a landowner association member of Title 23, Wildlife Resources Code, this rule, stipulations contained in the certificate of registration and all other relevant information provided from any source related to the applicant's fitness to operate a CWMU.

(8) After evaluating a complete renewal application, the division shall:

(a) recommend approving renewal of the certificate of registration and forward the permit recommendations to the Regional Advisory Councils and Wildlife Board; or

(b) recommend denying the renewal certificate of registration and state the reasons for denial in writing to the applicant; and

(i) forward the application, reason for denial and recommendation to the Regional Advisory Councils and Wildlife Board; and

(ii) provide the applicant with information for seeking Wildlife Board review of the denial.

(9)(a) Upon receiving the division's recommendation as provided in Subsection (6), the Wildlife Board may consider:

(i) the contents of the renewal application;

(ii) the previous performance of the CWMU, including the actions of the landowner association member or landowner association operator when reviewing renewal of the certificate of registration;

(iii) any violation of Title 23, Wildlife Resources Code, this rule, stipulations contained in the certificate of registration and all other relevant information provided from any source related to the applicant's fitness to operate a CWMU;

(iv) any recommendation provided by the CWMU Advisory Committee if the landowner association has been referred to the CWMU Advisory Committee during the renewal process; and

(v) the recommendation by the division.

(b) The Wildlife Board may renew a certificate of registration for a CWMU that does not meet minimum acreage requirements and includes land parcels that adjoin corner-to-corner or containing noncontiguous parcels, provided:

(i) the CWMU legally possessed a CWMU certificate of registration during the previous year that allowed for corner-to-corner land parcels or noncontiguous land parcels; and

(ii) the CWMU's renewal application does not add additional corner-to-corner or noncontiguous parcels from the previously approved CWMU certificate of registration.

(10) A certificate of registration for renewal is authorized for three years and shall expire on January 31, providing the certificate of registration is not revoked, suspended, or terminated prior to the expiration date.

R657-37-7. Operation by Landowner Association.

(1)(a) A CWMU must be operated by a landowner association who is represented by a president or a landowner association operator.

(b) A landowner association president or landowner association operator may appoint CWMU agents to protect private property within the CWMU; however, the landowner association president, or landowner association operator must assume ultimate responsibility for the operation of the CWMU.

(2)(a) A landowner association member or landowner association operator may enter into reciprocal agreements with other landowner association members or landowner association operators to allow hunters who have obtained a CWMU permit to hunt within each other's CWMUs as provided in Subsections R657-37-4(3)(a)(x).

(b) Reciprocal hunting agreements may be approved only to:

(i) raise funds to address joint habitat improvement projects;

(ii) address emergency situations limiting hunting opportunity on a CWMU;

(iii) raise funds to aid in essential management practices for the benefit of CWMU species, including obtaining age or species population data as recommended by regional division personnel and approved by the division's wildlife section chief; or

(iv) or be used with unused vouchers as provided in R657-37-9(12)(a).

(c) If a person is authorized to hunt in one or more CWMUs as provided in Subsection (a), written permission from the landowner association member or landowner association operator and written authorization from the division must be in the person's possession while hunting.

(3)(a) A landowner association member or landowner association operator must provide general public CWMU permittees a minimum of:

(i) five days to hunt with buck, bull or turkey permits; and

(ii) three days to hunt with antlerless permits.

(b) Sunday hunt days may not be included in minimum hunt days except by mutual agreement of the permittee and the operator.

(b) General public CWMU permitees shall be allowed to hunt the entire CWMU except areas that are excluded from hunting to all permittees.

(i) a landowner association may identify in the management plan areas within the CWMU boundary that are open to specific species only. These areas must be open to all permit holders for that species.

(c) A person who has obtained a CWMU permit may hunt only in the CWMU for which the permit is issued, except as provided under Subsection (2).

(4)(a) Each landowner association member or landowner association operator must:

(i) clearly post all boundaries of the CWMU at all corners, fishing streams crossing property lines, road, gates, and rights-of-way entering the land with signs that are a minimum of 8 1/2 by 11 inches on a bright yellow background with black lettering, and that contain the language provided in Subsection (b); and

(ii) if a CWMU uses public land for the purpose of making a definable boundary for the CWMU then that boundary shall be posted every three hundred yards.

(b) A CWMU is created under an agreement between private landowners and the division, and approved by the Wildlife Board. Only persons with a valid CWMU permit for the CWMU may hunt moose, deer, elk, pronghorn or turkey within the boundaries of the CWMU. The general public may use accessible public land portions of the CWMU for all legal purposes, other than hunting big game or turkey for which the CWMU is authorized.

(5) A landowner association member or landowner association operator must provide a written copy of its guidelines used to regulate a permit holder's conduct as a guest on the CWMU to each permit holder.

(6)(a) A CWMU and the division shall cooperatively address the needs of landowners who are negatively impacted by big game animals or turkeys associated with the CWMU.

(b) The CWMU and the division shall cooperatively seek methods to prevent or mitigate agricultural depredation caused by big game animals or turkeys associated with the CWMU.

R657-37-8. Cooperative Wildlife Management Unit Agents.

(1) A landowner association member may appoint a CWMU agent to monitor access and protect the private property of the CWMU.

(2) Each CWMU agent must wear or have in possession a form of identification prescribed by the Wildlife Board which indicates the agent is a CWMU agent.

(3) A CWMU agent may refuse entry to or remove from a CWMU any person who:

(a) does not possess a valid CWMU permit;

(b) endangers or has endangered human safety;

(c) damages or has damaged property within a CWMU;

(d) fails or has failed to comply with reasonable rules of a landowner association; or

(e) does not have the legal right to be on lands within a CWMU.

(4) A CWMU agent may not refuse entry to the general public onto any public land within the boundaries of a CWMU that is otherwise accessible to the public for purposes other than hunting big game or turkey for which the CWMU is authorized.

(5) In performing the functions described in this section, a CWMU agent must comply with the relevant laws of this state.

R657-37-9. Permit Allocation.

(1) The division shall issue CWMU permits for hunting big game or turkey to permittees:

(a) qualifying through a drawing conducted for the general public as defined in Subsection R657-37-2(2)(c); or

(b) named by the landowner association member or landowner association operator.

(2) CWMU landowner association members and their spouses and dependent children cannot apply for CWMU permits specific to their CWMU that are offered in the public drawing.

(3) A landowner association member or landowner association operator shall be issued vouchers that may be used to purchase hunting permits from division offices.

(4) The division and the landowner association member must, in accordance with Subsection (4), determine:

(a) the total number of permits to be issued for the CWMU; and

(b) the number of permits that may be offered by the landowner association member to the general public as defined in Subsection R657-37-2(2)(c).

(5)(a) Big game permits may be allocated using an option from:

(i) table one for moose and pronghorn; or

(ii) table two for elk and deer.

(b)(i) Over the term of the certificate of registration, and at all times during the its term, at least 40% of the total permits for bull moose and at least 60% of the antlerless moose permits will be allocated to the public and distributed via the public drawing.

(ii) Notwithstanding subsection (b)(i) above and Tables 1 and 2, if the proportion of permits allocated to the public over consecutive certificate of registration terms substantially deviates from that identified in subsection (b)(i), the Wildlife Board may approve a modified permit distribution scheme that fairly allocates public and private permits.

(c) At least one buck or bull permit or at least 10% of the bucks or bulls permits, whichever is greater, must be made available to the general public through the big game drawing process.

(d) Permits shall not be issued for spike bull elk.

(e) Turkey permits shall be allocated in a ratio of fifty percent to the CWMU and fifty percent to the general public, with the public receiving the extra permit when there is an odd number of total permits.

TABLE 1

MOOSE AND PRONGHORN
Cooperative Wildlife Management Unit's Share

Option	Bucks/Bulls	Does/Antlerless
1	60%	40%

Public's Share

Option	Bucks/Bulls	Does/Antlerless
1	40%	60%

TABLE 2

ELK AND DEER
Cooperative Wildlife Management Unit's Share

Option	Bucks/Bulls	Antlerless
1	90%	0%
2	85%	25%
3	80%	40%
4	75%	50%

Public's Share

Option	Bucks/Bulls	Antlerless
1	10%	100%

2	15%	75%
3	20%	60%
4	25%	50%

(6)(a) The landowner association member or landowner association operator must meet antlerless harvest objectives established in the CWMU management plan under subsection R657-37-4(3)(a)(ii).

(b) Failure to meet antlerless harvest objectives based on a three year average may result in discipline under section R657-37-14.

(7) A landowner association member or landowner association operator must provide access free of charge to any person who has received a CWMU permit through the general public big game or turkey drawings, except as provided in Section 23-23-11.

(8) If the division and the landowner association member disagree on the number of permits to be issued, the number of permits allocated, or the method of take, the Wildlife Board shall make the determination based on the biological needs of the big game or turkey populations, including available forage, depredation, and other mitigating factors.

(9) A CWMU permit entitles the holder to hunt the species and sex of big game or turkey specified on the permit and only in accordance with the certificate of registration and the rules and proclamations of the Wildlife Board.

(10) Vouchers for antlerless permits may be designated by a landowner association member to any eligible person as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game, and Rule R657-42.

(11)(a) If a landowner association has a CWMU voucher that is not redeemed during the previous year, a landowner association may donate that voucher to a 501(c)(3) tax exempt organization, provided the following conditions are satisfied:

(i) The voucher donation is approved by the director prior to transfer;

(ii) No more than one voucher is donated per year by a landowner association;

(iii) The voucher is donated for a charitable cause, and the landowner association does not receive compensation or consideration of any kind other than tax benefit; and

(iv) The recipient of the voucher is identified prior to obtaining the director's approval for the donation.

(b) A CWMU voucher approved for donation under this section may be extended no more than one year.

(c) The division must be notified in writing and the donation completed before May 1st the year the CWMU voucher is to be redeemed.

(d) vouchers may be used in reciprocal hunting agreements described in accordance with R657-7-(2)(b).

(12)(a) A complete list of the current CWMUs, and number of big game or turkey permits available for public drawing shall be published in the respective proclamations of the Wildlife Board for taking big game or turkey.

(b) The division reserves the exclusive right to list approved CWMUs in the proclamations of the Wildlife Board for taking big game or turkey. The division may unilaterally decline to list a CWMU in the proclamation where the unit is under investigation for wildlife violations, a portion of the property comprising the CWMU is transferred to a new owner, or any other condition or circumstance that calls into question the CWMUs ability or willingness to allow a meaningful hunting opportunity to all the public permit holders that would otherwise draw out on the public permits.

R657-37-10. Permit Cost.

The fee for permits allocated to any CWMU is the same as the applicable:

(a) limited entry permit fee for elk and pronghorn;

(b) general season, limited entry or premium limited entry permit fee for deer or turkey; and

(c) once-in-a-lifetime permit fee for moose.

R657-37-11. Possession of Permits and License by Hunters - Restrictions.

(1) A person may not hunt in a CWMU without having in his possession:

(a) a valid CWMU permit; and

(b) the necessary hunting licenses, permits and tags.

(2) A CWMU permit:

(a) entitles the holder to hunt only on the CWMU specified on the permit pursuant to the rules of the Wildlife Board and does not entitle the holder to hunt on any other public or private land, except as provided under Subsection R657-37-7(2)(a); and

(b) constitutes written permission for trespass as required under Section 23-20-14.

(3) Prior to hunting on a CWMU each permittee must:

(a) contact the relevant landowner association member or landowner association operator and request the CWMU rules and requirements; and

(b) make arrangements with the landowner association member or landowner association operator for the hunt.

R657-37-12. Season Lengths.

(1) A landowner association member or landowner association operator may arrange for permittees to hunt on the CWMU during the following dates:

(a) an archery buck deer season may be established beginning with the opening of the general archery deer season through August 31 and during the sixty-one consecutive day buck deer season;

(b) an archery bull elk season may be established beginning with the opening of the general archery elk season through October 31 and during a bull elk season variance;

(c) an archery buck pronghorn season may be established beginning with the opening of the statewide limited entry archery buck pronghorn season through October 31;

(d) general season bull elk, buck pronghorn, and moose seasons may be established September 1 through October 31, or the closing date of the general season for the respective species, whichever is later;

(e)(i) general buck deer seasons may be established for no longer than sixty-one consecutive days from September 1 through November 10;

(ii) a landowner association member or landowner association operator electing to establish buck deer hunting in November must:

(A) meet the CWMU management plan objectives;

(B) not exceed average hunter density exhibited on the surrounding deer wildlife management units;

(C) provide positive hunter satisfaction; and

(D) maintain a harvest success rate at least equal to the surrounding deer wildlife management units;

(E) designate the CWMU's sixty-one consecutive day season in the application, or if the sixty-one day consecutive season is not designated the season shall begin September 1;

(F) allow all public hunters the option to hunt in November;

(f) muzzleloader bull elk seasons may be established September 1 through the end of the general muzzleloader elk season and during a bull elk season variance;

(g) antlerless elk seasons may be established August 1 through January 31;

(h) antlerless deer seasons may be established August 1 through December 31;

(i) doe pronghorn seasons may be established August 1 through October 31, unless August 1 falls on a Sunday, in which case the season shall start on the following Monday; and

(j) turkey seasons may be established the second Saturday in April through May 31.

(2) The Wildlife Board may authorize bull elk hunting season variances only if the CWMU landowner association member or

landowner association operator clearly demonstrates that November hunting is necessary on the CWMU.

(3) Notwithstanding the season length provisions in this section, any season described in Subsection (1) that begins on a Sunday will default to and commence the Saturday before.

R657-37-13. Rights-of-Way.

A landowner association member may not restrict established public access to public land enclosed by the CWMU.

R657-37-14. Violations.

(1) The Wildlife Board may refuse to issue, renew, or amend a certificate of registration to an applicant, or may revoke, restrict, place on probation, change permits or allocations or otherwise act upon a certificate of registration where the landowner association member has:

(a) violated any provision of this rule, the Wildlife Resources Code, the certificate of registration, or the CWMU Management Plan; or

(b) engaged in conduct that results in the conviction of, a plea of no contest to, or a plea held in abeyance to a crime of moral turpitude, or any other crime that when considered with the functions and responsibilities of a CWMU operator bears a reasonable relationship to the operator's or applicant's ability to safely and responsibly operate a CWMU.

(2) The procedures and rules governing any adverse action taken by the division or the Wildlife Board against a certificate of registration or an application for certificate of registration are set forth in Rule R657-2.

R657-37-15. Cooperative Wildlife Management Unit Advisory Committee.

(1) A CWMU Advisory Committee shall be created consisting of eight members nominated by the director and approved by the Wildlife Board.

(2) The committee shall include:

(a) two sportsmen representatives;

(b) two CWMU representatives;

(c) one agricultural representative;

(d) one at-large public representative;

(e) one elected official; and

(f) one Regional Advisory Council chairperson or Regional Advisory Council member.

(3) The committee shall be chaired by the Wildlife Section Chief, who shall be a non-voting member.

(4) The committee shall:

(a) hear complaints dealing with fair and equitable treatment of hunters on CWMUs;

(b) review the operation of the CWMU program;

(c) review failure to meet antlerless objectives;

(d) hear complaints from adjacent landowners;

(e) review changes in acreage totals for CWMUs that are under standard minimum acreage or parcel configuration requirements and evaluate the appropriateness of their continued participation in the program; and

(f) make advisory recommendations to the director and Wildlife Board on the matters in Subsections (a), (b), (c), (d), and (e).

(5) The Wildlife Section Chief shall determine the agenda, and time and location of the meetings.

(6) The director shall set staggered terms of appointment of members in order to assure that all committee members' terms shall expire after four years, and at least three members shall expire after the initial two years.

KEY: wildlife, cooperative wildlife management unit
February 8, 2016 23-23-3
Notice of Continuation April 12, 2018

R657. Natural Resources, Wildlife Resources.

R657-42. Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents.

R657-42-1. Purpose and Authority.

(1) Under the authority of Sections 23-19-1 and 23-19-38 the division may issue wildlife documents in accordance with the rules of the Wildlife Board.

(2) This rule provides the standards and procedures for the:

(a) exchange of permits;

(b) surrender of wildlife documents;

(c) refund of wildlife documents;

(d) reallocation of permits; and

(e) assessment of late fees.

R657-42-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and the applicable rules and guidebooks of the Wildlife Board.

(2) In addition:

(a) "Alternate drawing lists" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

(b) "CWMU" means cooperative wildlife management unit.

(c) "Deployed or mobilized" means that a person provides military or emergency services in the interest of national defense or national emergency pursuant to the demand, request or order of their employer.

(d) "General season permit" means any:

(i) bull elk, buck deer, or turkey permit identified in the guidebooks of the Wildlife Board as a general season permit;

(ii) antlerless permit for elk, deer, or pronghorn antelope; or

(iii) harvest objective cougar permit.

(e) "Landowner association operator" for purposes of this rule, means:

(i) a landowner association or any of its members eligible to receive limited entry landowner permits as provided in Rule R657-43; or

(ii) CWMU - landowner association or its designated operator as provided in Rule R657-37.

(f) "Limited entry permit" means any permit, including a CWMU, conservation, expo, sportsman, or limited entry landowner permit, identified in the guidebooks of the Wildlife Board as limited entry or premium limited entry for the following;

(i) bull elk, buck deer, buck pronghorn, bear, cougar, or turkey; and

(ii) antlerless moose.

(g) "Once-in-a-lifetime permit" means any permit, including a CWMU, conservation, expo, sportsman, or limited entry landowner permit, identified in the guidebooks of the Wildlife Board as once-in-a-lifetime for the following:

(i) bison, bull moose, Rocky Mountain goat, desert bighorn sheep, and Rocky Mountain bighorn sheep.

(h) "Wildlife document" means any license, permit, tag, or certificate of registration issued by the division.

R657-42-3. Exchanges.

(1)(a) Any person who has obtained a general buck deer or a general bull elk permit may exchange that permit for any other available general permit if both permits are for the same species and sex.

(b) A person must make general buck deer and general bull elk permit exchanges at any division office prior to the season opening date of the permit to be exchanged.

(2) Any person who has obtained a cougar harvest objective unit permit may exchange that permit for any other available cougar harvest objective unit permit as provided in Rule R657-10.

(3) Any person who has obtained a limited entry bear any weapon or limited entry bear archery permit may exchange that permit for a limited entry bear archery or limited entry bear any weapon permit, respectively.

(4) The division may charge a handling fee for the exchange of a permit.

R657-42-4. Surrenders.

(1) Any person who has obtained a wildlife document and decides not to use it, may surrender the wildlife document to any division office.

(2) Any person who has obtained a wildlife document may surrender the wildlife document prior to the season opening date of the wildlife document for the purpose of:

(a) waiving the waiting period normally assessed and reinstating the number of bonus points, including a bonus point for the current year as if a permit had not been drawn, if applicable;

(b) reinstating the number of preference points, including a preference point for the current year as if a permit had not been drawn, if applicable;

(c) purchasing a reallocated permit or any other permit available for which the person is eligible; or

(d) receiving a refund as provided in R657-42-5.

(3) A CWMU permit must be surrendered prior to the applicable season opening date provided by the CWMU operator, except as provided in Section R657-42-11.

(4) Dedicated hunter participants must surrender their permits prior to the general archery deer season, except as provided in Section R657-38-6.

(5) A person may surrender a limited-entry, or once-in-a-lifetime permit received through a group application in the Big Game drawing and have their bonus points for that permit species reinstated, provided;

(a) all group members surrender their permits; and

(b) all permits are surrendered to the division more than 30 days before the start of the season for which the permit is valid.

(6) A person may surrender a general season permit received through a group application in the Big Game drawing and have their preference points reinstated, provided;

(a) all members of the group surrender their permits to the division prior to the start of the season for which the permit is valid.

(7) Notwithstanding Subsections (5)(b) and (6)(a), a person who obtains a permit through a group application in the Big Game drawing may surrender that permit after the opening date of the applicable hunting season and have the bonus points for the permit species restored, provided the person;

(a) is a member of United States Armed Forces or public health or public safety organization and is deployed or mobilized in the interest of national defense or national emergency;

(b) surrenders the permit to the division, with the tag attached and intact, or signs an affidavit verifying the permit is no longer in their possession within one year of the end of hunting season authorized by the permit; and

(c) satisfies the requirements for receiving a refund in R657-42-5(3)(c) and (d).

(8) The division may not issue a refund, except as provided in Sections 23-19-38, 23-19-38.2, and R657-42-5.

R657-42-5. Refunds.

(1) The refund of a license, certificate of registration or permit shall be made in accordance with:

(a) Section 23-19-38 and Rule R657-50;

(b) Section 23-19-38.2 and Subsection (3); or

(c) Section 23-19-38 and this section.

(2)(a) An application for a refund may be obtained from any division office.

(b) All refunds must be processed through the Salt Lake Division office.

(3) A person may receive a refund for a wildlife document if that person was deployed or mobilized on or after September 11, 2001, in the interest of national defense or national emergency and is thereby completely precluded from participating in the hunting or fishing activity authorized by the wildlife document, provided:

(a) the refund request is made to the division within one year of the end of the hunting or fishing season authorized by the wildlife document;

(b) the person surrenders the wildlife document to the division, or signs an affidavit stating the wildlife document is no longer in the person's possession; and

(c) the person verifies that the deployment or mobilization completely precluded them from participating in the activity authorized by the wildlife document ; and

(d) the person provides military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:

(i) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which they were deployed or mobilized; and

(ii) the nature and length of their duty while deployed or mobilized.

(4) The division may issue a refund for a wildlife document if the person to whom it was issued dies prior to participating in the hunting or fishing activity authorized by the wildlife document, provided:

(a) The person legally entitled to administer the decedent's estate provides the division with:

(i) picture identification;

(ii) letters testamentary, letters of administration, or such other evidence establishing the person is legally entitled to administer the affairs of the decedent's estate;

(iii) a photocopy of the decedent's certified death certificate; and

(iv) the wildlife document for which a refund is requested.

(5)(a)(i) A person may receive a refund for a once-in-a-lifetime or limited-entry permit provided the permit is surrendered to the division no less than 30 days prior to the season opening date identified on the permit

(ii) A person may receive a refund for a general season permit that must be surrendered in order to accept a reallocated limited entry permit for the same species.

(b)(i) The established wildlife document refund fee shall be deducted from all refunds under subsection (5)(a).

(ii) A refund will not be issued where the wildlife document purchase price is equal to or less than the wildlife document refund fee.

(6) The director may determine that a person did not have the opportunity to participate in an activity authorized by the wildlife document.

(7) The division may reinstate a bonus point or preference point, whichever is applicable, and waive waiting periods, if applicable, when issuing a refund in accordance with this Section.

R657-42-6. Reallocation of Permits.

(1)(a) The division may reallocate surrendered limited entry and once-in-a-lifetime permits.

(b) The division shall not reallocate general season permits for big game and turkey, but the number of permits surrendered may be added to the appropriate permit quota the following year.

(2) Permits shall be reallocated through the Salt Lake Division office.

(3)(a) Any limited entry, once-in-a-lifetime or public CWMU permit surrendered to the division shall be reallocated through the drawing process by contacting the next person listed on the alternate drawing list or as provided in Subsection (b).

(b) A person who is denied a permit due to an error in issuing permits may be placed on the alternate drawing list to address the error, if applicable, in accordance with the Rule R657-50.

(c) The alternate drawing lists are classified as private and therefore, protected under the Government Records Access Management Act.

(d) The division shall make a reasonable effort to contact the next person on the alternate list by telephone or mail.

(e) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public CWMU permit, does not accept the permit or the division is unable to contact that person, the reallocation process will continue until the division has reallocated the permit or the season closes for that permit.

(4) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public CWMU permit has obtained a permit, that person may be required to surrender the previously obtained permit in accordance with Section R657-42-4(2) and any other applicable rules and guidebooks of the Wildlife Board.

(5) Any private CWMU permit surrendered to the division will be reallocated by the landowner through a voucher, issued to the landowner by the division in accordance with Rule R657-37.

R657-42-7. Reallocated Permit Cost.

(1) Any person who accepts the offered reallocated permit must pay the applicable permit fee.

(2) The division may not issue a refund, except as provided in Section R657-42-5.

R657-42-8. Accepted Payment of Fees.

(1) Personal checks, business checks, money orders, cashier's checks, and credit or debit cards are accepted for payment of wildlife documents.

(2) Personal or business checks drawn on an out-of-state account are not accepted.

(3) Third-party checks are not accepted.

(4) All payments must be made payable to the Utah Division of Wildlife Resources.

(5)(a) Credit or debit cards must be valid at least 30 days after any drawing results are posted.

(b) Checks, and credit or debit cards will not be accepted as combined payment on single or group applications.

(c) If applicants are applying as a group, all fees for all applicants in that group charged to a credit or debit card must be charged to a single card.

(d) Handling fees and donations are charged to the credit or debit card when the application is processed.

(e) Application amendment fees must be paid by credit or debit card.

(f) Permit fees may be charged to the credit or debit card prior to the posting date of the drawings, if successful.

(g) The division shall not be held responsible for bank charges incurred for the use of credit or debit cards.

(6)(a) An application is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

(b) The division charges a returned check collection fee for any check returned unpaid.

(7)(a) A license or permit is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

(b) The Division may make attempt to contact the successful applicant by phone or mail to collect payment prior to voiding the license or permit.

(8)(a) A license or permit received by a person shall be deemed invalid if payment for that license or permit is not received, or a check is returned unpaid from the bank, or the credit or debit card is invalid or refused.

(b) A person must notify the division of any change of credit or debit card numbers if the credit or debit card is invalid or refused.

(9) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(10) The division may require a money order or cashier's check to correct payment for a license, permit, or certificate of registration.

(11) Any person who fails to pay the required fee for any wildlife document, shall be ineligible to obtain any other wildlife document until the delinquent fees and associated collection costs are paid.

(12) The Division may take any of the following actions when a wildlife document is voided for nonpayment or remains unissued and unpaid;

(a) reissue the wildlife document using the alternate drawing list for that document;

(b) reissue the wildlife document over-the-counter; or

(c) elect to withhold the wildlife document from reissuance.

(13) The Division may reinstate the applicant's bonus points or preference points and waive waiting periods, where applicable, when:

(a) voiding a permit in accordance with this section and the permit is reallocated;

(b) withholding a wildlife document from a successful applicant for nonpayment and the permit is reallocated; or

(c) full payment is received by the successful applicant on a voided or withheld wildlife document that is not reallocated.

R657-42-9. Assessment of Late Fees.

(1) Any wildlife application submitted under the Utah Administrative Code Rules provided in Subsection (a) through (e), within 30 days of the applicable application deadline established in such rules, in the guidebooks of the Wildlife Board, or by the division may be processed only upon payment of a late fee as provided by the approved fee schedule.

(a) R657-52, Commercial Harvesting of Brine Shrimp and Brine Shrimp Eggs;

(b) R657-21, Cooperative Wildlife Management Units for Small Game;

(c) R657-22, Commercial Hunting Areas;

(d) R657-37, Cooperative Wildlife Management Units for Big Game; or

(e) R657-43, Landowner Permits.

(2) Any person who fails to report their Big Game hunt information pursuant to R657-5 Taking Big Game, within 30 calendar days of the ending season date for their once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit hunt may apply for a Big Game permit or bonus point in the following year provided:

(a) the survey is completed and submitted to the division at least 5 days prior to the close of the Big Game application period established in the guidebook of the Wildlife Board for taking big game.

(b) the late fee established in the approved fee schedule is paid to the Division through the 1-800 number listed in the guidebooks of the Wildlife Board for taking big game.

(c) The accepted method of payment of fee is only a credit or debit card.

(3) Any person who fails to report their Swan hunt information pursuant to R657-9-7, within 30 calendar days of the ending season date for their Swan hunt may apply for a Swan permit in the following year provided:

(a) the survey is completed and submitted to the division at least 5 days prior to the close of the Swan application period established in the guidebook of the Wildlife Board for taking waterfowl.

(b) the late fee established in the approved fee schedule is paid to the Division through the 1-800 number listed in the guidebook of the Wildlife Board for taking waterfowl or through the division website.

(c) The accepted method of payment of fee is only a credit or debit card.

R657-42-10. Duplicates.

(1) If an unexpired wildlife document is destroyed, lost or stolen, a person may obtain a duplicate from a division office or online license agent, for a duplicate fee as provided in the fee schedule.

(2) The division may waive the fee for a duplicate unexpired wildlife document provided the person did not receive the original wildlife document.

(3) To obtain the duplicate wildlife document, the applicant may be required to complete an affidavit testifying to such loss, destruction or theft.

R657-42-11. Surrender of Cooperative Wildlife Management Unit or Limited Entry Landowner Permits.

(1) A person who has obtained a CWMU or limited entry landowner permit may surrender the permit after the deadline provided in Subsection R657-42-4(3) for CWMU permits and after the season opening date for limited entry landowner permits for the purpose of:

(a) death in accordance with Section 23-19-38, Subsection (2) and Section R657-42-5(4);

(b) injury or illness in accordance with Section 23-19-38 and Subsection (2);

(c) deployment or mobilization in the interest of national defense or national emergency in accordance with Section 23-19-38.2 and Subsection (2); or

(d) an error occurring in issuing the permit in accordance with Subsection (2) and Rule R657-50.

(2)(a) The permittee and the landowner association operator must sign an affidavit stating that the permittee has not participated in any hunting activity.

(b) The permittee and landowner association operator signatures must be notarized.

(c) The affidavit and unused permit must be submitted to the division.

(3)(a) The division may reissue a voucher to a landowner association operator, or reallocate a surrendered permit in accordance with Section 23-19-38 and as provided in Subsections (b) and (c).

(b) The division may reallocate a surrendered permit:

(i) originally issued by the division through the big game drawing process in accordance with Section R657-42-6; or

(ii) originally issued by the division through a voucher redemption in the form of a new voucher issued to the landowner association operator.

(c) Reissuance of vouchers or reallocation of permits under this section may only occur in the year in which the surrendered permit was valid.

KEY: wildlife, permits

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	23-19-38.2

R657. Natural Resources, Wildlife Resources.

R657-45. Wildlife License, Permit, and Certificate of Registration Forms and Terms.

R657-45-1. Purpose and Authority.

Under authority of Sections 23-14-18, 23-14-19, 23-19-2 and 23-19-7 the Wildlife Board has established this rule for prescribing the forms and terms of a wildlife license, permit, and certificate of registration.

R657-45-2. Information Listed on the License, Permit, and Certificate of Registration Forms.

(1) A license, permit, and certificate of registration issued for hunting or fishing shall be made upon forms and in the manner prescribed by the Wildlife Board.

(2) The license, permit, and certificate of registration forms shall include the licensee's customer identification number, name, date of birth, address, height, weight, eye color, hair color, gender, and any other information the Division of Wildlife Resources may request.

R657-45-3. License Terms and Renewal.

(1)(a) Upon paying the prescribed fee and satisfying the criteria for issuance, a person may obtain a resident or nonresident fishing, hunting, or combination license valid for:

(i) 365 days (one year);

(ii) 730 days (two years);

(iii) 1095 days (three years);

(iv) 1460 days (four years); or

(v) 1825 days (five years).

(b) In addition to the license term prescribed in Subsection (1)(a), a person may obtain a:

(i) three or seven day resident or nonresident fishing license; or

(ii) three day nonresident hunting license.

(2)(a) Except as provided in Subsections (b) through (d), a multi-year fishing, hunting, and combination license under Subsection (1)(a) is available to residents and nonresidents at a discounted, adult license fee rate based on residency, license type and license term.

(i) A multi-year license is available to youth only at the adult license fee rate.

(b) A resident senior, age 65 and older, may obtain a multi-year fishing, hunting, or combination license at the 365 day, senior license fee rate multiplied by the number of years in the license term.

(c) A resident disabled veteran that is eligible for a discounted fishing license under Section 23-19-38.3 and R657-12-10, may obtain a multi-year fishing license at the reduced 365 day license fee rate multiplied by the number of years in the license term.

(3) A person with a current, one to five year hunting, fishing, or combination license may renew the license by purchasing:

(a) a new license on or after its expiration date; or

(b) the same license for a term prescribed in Subsection (1)(a) within six months of the expiration date on the unexpired license.

(i) A license renewed under Subsection (3)(b) is effective on the date of purchase and remains valid for a period equal to the sum of the remaining days on the unexpired license and the applicable term on the renewal license.

(4) Except as provided in Subsections (4)(a), a fishing, hunting, or combination license issued under this Section remains valid if the licensee subsequently changes residency during the term of license.

(a) A Utah resident license is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(5)(a) A resident that establishes a new domicile outside Utah during the unexpired term of a Utah resident fishing, hunting, or combination license, shall notify the Division of the change prior to purchasing a resident hunting, fishing, or trapping license in any

other state or country.

(b) Upon receiving notice of a domicile change under Subsection (5)(a), the Division will issue a free nonresident replacement license for the remaining term of the resident license.

(c) The Division may charge a handling fee for a residency based license exchange under this Subsection.

(d) The pro rata difference between the nonresident and resident license fee will not be refunded to a person that establishes Utah residency during the term of a nonresident license.

(6) A person that purchases a hunting permit and subsequently changes residency may lawfully use that permit for the applicable hunting season without notifying the Division of residency change.

R657-45-4. Persons Participating in Youth Organization or School Activity Authorized to Fish Without a License.

(1)(a) A school or youth organization, as defined in Subsection (5), that sponsors a recreational or instructional fishing activity for youth may obtain a certificate of registration from the Division authorizing participating youth to fish without a license.

(b) A school or youth organization may obtain a certificate of registration by submitting an online application with the Division specifying the:

(i) name and address of the school or youth organization applicant, including verification it qualifies as a school or youth organization, as defined in Subsection (5);

(ii) date and location of the fishing activity;

(iii) fishing activity is part of a recreational or instructional program of the school or youth organization;

(iv) fishing activity is officially sanctioned or authorized by the school or youth organization;

(v) approximate number of youth that will participate in the fishing activity, including verification that each youth is:

(A) under 16 years of age; and

(B) an enrolled student in the school or a registered member of the youth organization;

(vi) name, address, and age of the adult leader that will supervise the fishing activity;

(vii) adult leader will:

(A) possess a valid Utah fishing or combination license; and

(B) provide instruction and training to the youth participants on Utah fishing laws and regulations; and

(viii) adult leader has obtained from the school or youth organization a valid tour permit or written documentation that specifies:

(A) the date and place of the fishing activity;

(B) the name of the adult leader that will supervise the fishing activity; and

(C) that the activity is officially sanctioned or authorized by the school or youth organization.

(2)(a) Upon receipt of a complete application from a school or youth organization and upon determination that the requirements of this Section are satisfied, the Division may issue a certificate of registration authorizing the identified youth participating in the sponsored fishing activity to fish without a license.

(b) The certificate of registration will include the following information:

(i) name and address of the school or youth organization.

(ii) name, address, and age of the adult leader supervising the fishing activity;

(iii) date of the fishing activity;

(iv) location of the fishing activity; and

(v) approximate number youth participating in the fishing activity.

(3) A youth participating in a fishing activity on a school or youth organization certificate of registration issued under this Section may fish without a license, provided:

(a) the youth is:

(i) a member of the youth organization or a student enrolled in the school; and

(ii) younger than 16 years old; and

(b) the fishing is conducted:

(i) in compliance with all Utah fishing laws and regulations;

(ii) on the date and at the location identified on the certificate of registration; and

(iii) under the supervision of the adult leader identified on the certificate of registration.

(4) The adult leader supervising a youth fishing activity under this section shall:

(a) be 18 years of age or older;

(b) possess a valid Utah fishing or combination license;

(c) provide direct supervision to the activity participants; and

(d) instruct the activity participants on Utah fishing laws and regulations.

(5) As used in this section:

(a) "School" means an elementary school or a secondary school that:

(i) is a public or private school located in the state; and

(ii) provides student instruction for one or more years of kindergarten through grade 9.

(b) "Youth organization" means a local Utah chapter of:

(i) the Boy Scouts of America;

(ii) the Girls Scouts of the USA; or

(iii) an organization that:

(A) is exempt from taxation under Section 501(c)(3), Internal Revenue Code; and

(B) promotes character building through outdoor activities.

KEY: license, permit, certificate of registration
November 10, 2015 23-19-2
Notice of Continuation April 12, 2018

R657. Natural Resources, Wildlife Resources.
R657-53. Amphibian and Reptile Collection, Importation, Transportation and Possession.
R657-53-1. Purpose and Authority.

(1) Under Title 23, Wildlife Resources Code of Utah, this rule governs the collection, importation, transportation, possession, and propagation of amphibians and reptiles.

(2) Nothing in this rule shall be construed as superseding the provisions set forth in Title 23, Wildlife Resources Code of Utah. Any provision of this rule setting forth a criminal violation that overlaps a section of that title is provided in this rule only as a clarification or to provide greater specificity needed for the administration of the provisions of this rule.

(3) In addition to this rule, additional regulation is provided in R657-40. Where a more specific provision has been adopted, that provision shall control.

(4) Specific dates, species, areas, number of pre-authorized certificates of registration, limits and other administrative details which may change annually are published in the proclamation of the Wildlife Board for amphibians and reptiles.

(5) Amphibians and reptiles lawfully collected from wild populations in Utah and thereafter possessed remain the property of the state for the life of the animal pursuant to Section 23-13-3. The state does not assert ownership interest in lawfully possessed, captive-bred amphibians and reptiles, but does retain jurisdiction to regulate the importation, possession, propagation and use of such animals pursuant to Title 23 of the Utah Code and this rule.

(6) This rule does not apply to division employees acting within the scope of their assigned duties.

R657-53-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and Subsection (2) through Subsection (29).

(2) "Amphibian" means animals from the Class of Amphibia, including hybrid species or subspecies of amphibians and viable embryos or gametes of species or subspecies of amphibians.

(3) "Captive-bred" means any legally-obtained amphibian or reptile, for which fertilization and birth occurred in captivity, has spent its entire life in captivity, and is the offspring of legally obtained progenitors.

(4) "Certificate of registration" means a document issued under the Wildlife Resources Code, or any other rule or proclamation of the Wildlife Board granting authority to engage in activities not covered by a license, permit or tag.

(5) "Certificate of veterinary inspection" means an official health authorization issued by an accredited veterinarian required for the importation of an amphibian or reptile, as provided in Rule R58-1.

(6) "Collect" means to take, catch, capture, salvage, or kill any free-roaming amphibian or reptile within Utah.

(7) "Commercial use" means any activity through which a person in possession of an amphibian or reptile:

(a) receives any consideration for the amphibian or reptile or for a use of the amphibian or reptile, including nuisance control; or

(b) expects to recover all or any part of the cost of keeping the amphibian or reptile through selling, bartering, trading, exchanging, breeding, or other use, including displaying the amphibian or reptile for entertainment, advertisement, or business promotion.

(8) "Controlled species" means a species or subspecies of amphibian or reptile that if taken from the wild, introduced into the wild, or held in captivity, poses a possible significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration is required.

(9) "Den" means any place where reptiles congregate for winter hibernation or brumation.

(10) "Educational use" means the possession and use of an amphibian or reptile for conducting educational activities concerning wildlife and wildlife-related activities.

(11) "Entry permit number" means a number issued by the state veterinarian's office to a veterinarian signing a certificate of veterinary inspection authorizing the importation of an amphibian or reptile into Utah.

(12) "Export" means to move or cause to move any amphibian or reptile from Utah by any means.

(13) "Import" means to bring or cause an amphibian or reptile to be brought into Utah by any means.

(14) "Legally obtained" means to acquire through collection, trade, barter, propagation or purchase with supporting written documentation, such as applicable certificate of registration, collection permit, license, or sales receipt in accordance with applicable laws. Documentation must include the date of the transaction; the name, address and phone number of the person or organization relinquishing the animal; the name, address and phone number of the person or organization obtaining the animal; the scientific name of the animal acquired; and a description of the animal.

(15) "Native species" means any species or subspecies of amphibian or reptile that historically occurred in Utah and has not been introduced by humans or migrated into Utah as a result of human activity.

(16) "Naturalized species" means any species or subspecies of amphibian or reptile that is not native to Utah but has established a wild, self-sustaining population in Utah.

(17) "Noncontrolled species" means a species or subspecies of amphibian or reptile that if taken from the wild, introduced into the wild, or held in captivity, poses no significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration is not required, unless otherwise specified.

(18) "Nonnative species" means a species or subspecies of amphibian or reptile that is not native to Utah and has not established a wild, self-sustaining population in Utah.

(19) "Personal use" means the possession and use of an amphibian or reptile for a hobby or for its intrinsic pleasure and where no consideration for the possession or use of the animal is received by selling, bartering, trading, exchanging, breeding, or any other use.

(20) "Possession" means to physically retain or to exercise dominion or control over an amphibian or reptile.

(21) "Pre-authorized certificate of registration" means a certificate of registration that:

(a) meets the criteria established in Subsection R657-53-11(1)

(b) has been approved by the division; and

(c) is available for issuance.

(22) "Prohibited species" means a species or subspecies of amphibian or reptile that if taken from the wild, introduced into the wild, or held in captivity, poses a significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration shall only be issued in accordance with Sections R657-53-23(1)(a) or R657-53-19.

(23) "Propagation" means the mating of a male and female amphibian or reptile in captivity.

(24) "Reptile" means animals from the Class of Reptilia, including hybrid species or subspecies of reptiles and viable embryos or gametes of species or subspecies of reptiles.

(25) "Scientific use" means the possession and use of an amphibian or reptile for conducting bona fide scientific research that is directly or indirectly beneficial to wildlife or the general public.

(26) "Transport" means to be moved or cause to be moved, any amphibian or reptile within Utah by any means.

(27) "Turtle" means all animals commonly known as turtles, tortoises and terrapins, and all other animals of the Order Testidunata, Class Reptilia.

(28) "Wild population" means native or naturalized amphibians or reptiles living in nature including progeny from a gravid female where fertilization occurred in the wild and birth occurred within six months of collection.

(29) "Wildlife Registration Office" means the division office

in Salt Lake City responsible for processing applications and issuing certificates of registration.

R657-53-3. Liability.

(1)(a) Any person who accepts a certificate of registration assumes all liability and responsibility for the collection, importation, transportation, and possession of the authorized amphibian or reptile and for any other activity authorized by the certificate of registration.

(b) To the extent provided under the Utah Governmental Immunity Act, the division shall not be liable in any civil action for:

(i) any injury, disease, or damage caused by or to any animal, person, or property as a result of any activity authorized under this rule or a certificate of registration; or

(ii) the issuance, denial, suspension, or revocation of or by the failure or refusal to issue, deny, suspend, or revoke any certificate of registration or similar authorization.

(2) It is the responsibility of any person who obtains a certificate of registration to read, understand and comply with this rule and all other applicable federal, state, county, city, or other municipality laws, regulations, and ordinances governing amphibians or reptiles.

R657-53-4. Animal Welfare.

(1) Any amphibian or reptile held in possession under the authority of a certificate of registration shall be maintained under humane and healthy conditions, including humane handling, care, confinement, transportation, and feeding of the amphibian or reptile.

(2) Adequate measures must be taken for the protection of the public when handling, confining, or transporting any amphibian or reptile.

R657-53-5. Collection, Importation, and Possession of Threatened and Endangered Species.

(1) Any amphibian or reptile listed by the U.S. Fish and Wildlife Service as endangered or threatened pursuant to the federal Endangered Species Act is prohibited from collection, importation, possession, or propagation except:

(a) The division may authorize the collection, importation, possession, or propagation of a threatened or endangered species under the criteria set forth in this rule for controlled species where the U.S Fish and Wildlife Service has issued a permit or otherwise authorized the particular activity; or

(b) A person may import, possess, transfer, or propagate captive-bred eastern indigo snakes (Drymarchon couperi) without a certificate of registration where the U.S. Fish and Wildlife Service has issued a permit or otherwise authorized the particular activity.

R657-53-6. Release of an Amphibian or Reptile to the Wild -- Capture or Disposal of Escaped Wildlife.

(1) Pursuant to Section 23-13-14, a person may not release from captivity any amphibian or reptile without first obtaining authorization from the division.

(2)(a) Any peace officer, division representative, or authorized animal control officer may seize or dispose of any live amphibian or reptile that escapes from captivity.

(b) The division may retain custody of any recaptured amphibian or reptile until the costs of recapture or care have been paid by its owner or keeper.

R657-53-7. Inspection of Documentation.

A conservation officer or any other peace officer may require any person engaged in activities covered by this rule to exhibit any documentation related to activities covered by this rule, including certificates of registration, permits, certificates of veterinary inspection, certification, bills of sale, or proof of ownership or legal possession.

R657-53-8. Certificate of Registration Required.

(1)(a) A person shall obtain a certificate of registration before collecting, importing, transporting, possessing, or propagating any amphibian or reptile or their parts as provided in rule and the proclamations of the Wildlife Board for amphibians and reptiles, except as otherwise provided by the Wildlife Board or rules of the Wildlife Board.

(b) A certificate of registration is not required:

(i) to collect, import, transport, or possess any amphibian or reptile classified as noncontrolled, except as provided in Subsections R657-53-26(1)(c), R657-53-27(5) and R657-53-28(7); or

(ii) to export any species or subspecies of amphibian or reptile from Utah, provided that the amphibian or reptile is held in legal possession and importation into the destination state is lawful.

(c) An application for an amphibian or reptile classified as prohibited shall not be accepted by the division without providing written justification describing how the applicant's proposed collection, importation, or possession of the amphibian or reptile meets the criteria provided in Subsections R657-53-23(1)(a), R657-53-24(c)(i) or R657-53-19.

(d) Pre-authorized certificates of registration may be issued for collection and the resulting possession of amphibians and reptiles classified as controlled for collection pursuant to R657-53-13.

(2)(a) Certificates of registration expire as designated on the certificate of registration.

(b) Certificates of registration are not transferable.

(c) If the holder of a certificate of registration is a representative of an institution, organization, business, or agency, the certificate of registration shall end upon the representative's discontinuation of association with that entity.

(d) Certificates of registration do not provide the holder with any rights of succession and any certificate of registration issued to a business or organization shall be void upon the termination of the business or organization or upon bankruptcy or transfer.

(3) The issuance of a certificate of registration automatically incorporates within its terms the conditions and requirements of this rule specifically governing the activity for which the certificate of registration is issued.

(4) In addition to this rule, the division may impose specific requirements on the holder of the certificate of registration necessary for the safe and humane handling and care of the amphibian or reptile.

(5)(a) Upon or before the expiration date of a certificate of registration, the holder must renew an existing or apply for a new certificate of registration to continue the activity.

(b) The division shall use the criteria provided in Section R657-53-11 in determining whether to issue a certificate of registration.

(c) If an application is not made by the expiration date, a live or dead amphibian or reptile held in possession under the expired certificate of registration shall be considered unlawfully held.

(d) If an application for a new certificate of registration is submitted before the expiration date, the existing certificate of registration shall remain valid while the application is pending.

(6) Failure to submit timely, accurate, or valid reports as required under this rule or the certificate of registration may disqualify a person from obtaining a new certificate of registration.

(7) A certificate of registration may be suspended as provided in Section 23-19-9 and Rule R657-26.

R657-53-9. Application Procedures -- Fees.

(1)(a) Applications for certificates of registration are available from, and must be submitted to, the Wildlife Registration Office in Salt Lake City or any regional division office.

(b) The application may require up to 45 days for review and processing.

(c) Applications that are incomplete, completed incorrectly, or submitted without the appropriate fee or other required information may be returned to the applicant.

(2)(a) Legal tender in the correct amount must accompany the application.

(b) The certificate of registration fee includes a nonrefundable handling fee.

(c) Fees may be waived for wildlife rehabilitation, educational or scientific activities, or for state or federal agencies upon request if, in the opinion of the division, the activity is significantly beneficial to the division, wildlife, or wildlife management.

R657-53-10. Retroactive Effect on Possession.

(1) A person lawfully possessing an amphibian or reptile prior to the effective date of any species reclassification may receive a certificate of registration from the division for the continued possession of that amphibian or reptile where the amphibian or reptile's classification has changed hereunder from noncontrolled to controlled or prohibited, or from controlled to prohibited.

(2) The certificate of registration shall be obtained within six months of the reclassification, or possession of the amphibian or reptile thereafter shall be unlawful.

(3) The certificate of registration for a species where the classification has changed from noncontrolled to controlled shall be issued for the life of the animal.

(4) The certificate of registration for a species where the classification has changed from noncontrolled or controlled to prohibited shall be renewed annually for the life of the animal.

(5) The division may require annual reporting.

R657-53-11. Issuance Criteria.

(1) The following factors shall be considered before the division may issue a certificate of registration:

(a) the health, welfare, and safety of the public;

(b) the health, welfare, safety, and genetic integrity of wildlife and other animals; and

(c) ecological and environmental impacts.

(2) In addition to the criteria provided in Subsection (1), the division shall use the following criteria for the issuance of a certificate of registration for a scientific use of an amphibian or reptile:

(a) the validity of the objectives and design;

(b) the likelihood the project will fulfill the stated objectives;

(c) the applicant's qualifications to conduct the research, including the requisite education or experience;

(d) the adequacy of the applicant's resources to conduct the study; and

(e) whether the scientific use is in the best interest of the amphibian or reptile, wildlife management, education, or the advancement of science without unnecessarily duplicating previously documented scientific research.

(3) In addition to the criteria provided in Subsection (1), the division may use the following criteria for the issuance of a certificate of registration for an educational use of an amphibian or reptile:

(a) the objectives and structure of the educational program; and

(b) whether the applicant has written approval from the appropriate official if the activity is conducted in a school or other educational facility.

(4) The division may deny issuing or reissuing a certificate of registration to any applicant, if:

(a) the applicant has violated any provision of Title 23, Utah Wildlife Resources Code, Administrative Code R657, a certificate of registration, an order of the Wildlife Board or any other law that, when considered with the functions and responsibilities of collecting, importing, possessing or propagating an amphibian or reptile, bears a reasonable relationship to the applicant's ability to safely and responsibly carry out such activities;

(b) the applicant has previously been issued a certificate of registration and failed to submit any report or information required by this rule, the division, or the Wildlife Board; or

(c) the applicant misrepresented or failed to disclose material information required in connection with the application.

(d) The division may deny issuing or renewing a certificate of registration to an applicant where holding the amphibian or reptile at the proposed location violates federal, state or local laws.

(5) If an application is denied, the division shall provide the applicant with written notice of the reasons for denial.

(6) An appeal of the denial of an application may be made as provided in Section R657-53-20.

R657-53-12. Amendment to Certificate of Registration.

(1)(a) If material circumstances change, requiring a modification of the terms of the certificate of registration, the holder may request an amendment by submitting written justification and supporting information.

(b) The division may amend the certificate of registration or deny the request based on the criteria for initial applications provided in Section R657-53-11, and, if the request for an amendment is denied, shall provide the applicant with written notice of the reasons for denial.

(c) The division may charge a fee for amending the certificate of registration.

(d) An appeal of a request for an amendment may be made as provided in Section R657-53-20.

(2) The division reserves the right to amend any certificate of registration for good cause upon notification to the holder and written findings of necessity.

(3)(a) Each holder of a certificate of registration shall notify the division within 30 days of any change in mailing address.

(b) An amphibian or reptile or activities authorized by a certificate of registration may not be held at any location not specified on the certificate of registration without prior written permission from the division.

R657-53-13. Pre-authorized Certificates of Registration for Personal Use.

(1) Pre-authorized certificates of registration may only be issued for collection and the resulting possession for personal use of amphibians and reptiles classified as controlled for collection, as provided in this rule and the proclamation of the Wildlife Board.

(2) Pre-authorized certificates of registration shall be held to all conditions established in R657-53-8.

(3)(a) The criteria established in R657-53-11(1) shall be utilized to determine if pre-authorized certificates of registration shall be approved and issued.

(b) The criteria shall be applied to all amphibians and reptiles classified as controlled for collection.

(c) Pre-authorized certificates of registration shall be approved and issued only when the R657-53-11(1) criteria have been evaluated by the division and issuance found consistent with the criteria.

(4)(a) Applications for pre-authorized certificates of registration are available from, and must be submitted to, the Wildlife Registration Office in Salt Lake City.

(i) Applications for pre-authorized certificates of registration shall be accepted during the second full week of January and must be received by the Salt Lake Office by 5 p.m. Friday of that week.

(ii) Applications received before the second full week in January will not be accepted.

(iii) If necessary, a drawing will be held for those species that have more applications than available pre-authorized certificates of registration.

(iv) Remaining pre-authorized certificates of registration will be available after the second full week of January on a first-come, first-served basis.

(v) A person may not apply for or obtain more than one pre-authorized certificate of registration for each available species in a calendar year.

(vi) If available, pre-authorized certificates of registration shall

be issued within five business days beginning the Monday after the second full week in January.

(vii) Applications that are incomplete, completed incorrectly, or submitted without the appropriate fee or other required information may be rejected.

(b)(i) Legal tender in the correct amount must accompany the application.

(ii) The pre-authorized certificate of registration fee includes a nonrefundable handling fee.

(c) Applications for pre-authorized certificates of registration may be denied as provided in R657-53-11(4).

(5)(a) Pre-authorized certificates of registration are not transferable, nor may they be amended to change collection area, species, bag limits, or dates.

(b) A holder of a pre-authorized certificate of registration shall notify the division within 30 days of any change in mailing address.

(c) An amphibian or reptile, or activities authorized by a certificate of registration may not be held or conducted at any location not specified on the certificate of registration without prior written permission from the division.

(6) Specific dates, species, areas, number of pre-authorized certificates of registration approved, and bag limits shall be published in the proclamation of the Wildlife Board for amphibians and reptiles.

(7)(a) Holders of a pre-authorized certificate of registration must report collection success or lack thereof to the division before the expiration date of the pre-authorized certificate of registration.

(b) The division shall issue a possession certificate of registration for the amphibian or reptile collected under the pre-authorized certification of registration for the life of the animal.

(c) Annual reporting to the division on the status of the animal is required or the possession certificate of registration becomes invalid.

R657-53-14. Records and Reports.

(1)(a) From the date of issuance of the certificate of registration, the holder shall maintain complete and accurate records of any taking, possession, transportation, propagation, sale, purchase, barter, or importation pursuant to applicable sections of this rule or the certificate of registration.

(b) Records must be kept current and shall include the names, phone numbers, and addresses of persons with whom any amphibian or reptile has been sold, bartered, or otherwise transferred or received, and the dates of the transactions.

(c) The records required under this section must be maintained for five years from the expiration date of the certificate of registration.

(2) Reports of activity must be submitted to the Wildlife Registration Office as specified on the certificate of registration.

R657-53-15. Transfer of Possession.

(1) Any person who lawfully possesses an amphibian or reptile classified as prohibited or controlled may transfer possession of that amphibian or reptile only to a person who has first applied for and obtained a certificate of registration for that amphibian or reptile from the division, except as provided in Subsection (3).

(2) The division may issue a certificate of registration granting the transfer and possession of an amphibian or reptile only if the applicant/transferee meets the issuance criteria provided in Section R657-53-11.

(3) Upon the death of a certificate of registration holder, a legally-obtained and possessed amphibian or reptile may pass to a successor, and a certificate of registration will be issued to the successor provided the amphibian or reptile poses no detrimental impact to community safety and the successor is qualified to handle the amphibian or reptile.

R657-53-16. Violations.

(1) Any violation of this rule is a class C misdemeanor, as provided in Section 23-13-11.

(2) Nothing in this rule shall be construed to supersede any provision of Title 23, Wildlife Resources Code of Utah which establishes a penalty greater than a class C misdemeanor. Any provision of this rule which overlaps a provision of that title is intended only as a clarification or to provide greater specificity needed for the administration of the provisions of this rule.

R657-53-17. Certification Review Committee.

(1) The division shall establish a Certification Review Committee which shall be responsible for:

(a) reviewing:

(i) petitions to reclassify species and subspecies of amphibians or reptiles;

(ii) appeals of certificates of registration; and

(iii) requests for variances to this rule; and

(b) making recommendations to the Wildlife Board.

(2) The committee shall consist of the following individuals:

(a) the director or the director's designee who shall represent the director's office and shall act as chair of the committee;

(b) the chief of the Aquatic Section;

(c) the chief of the Wildlife Section;

(d) the chief of the Administrative Services Section;

(e) the chief of the Law Enforcement Section;

(f) the state veterinarian or his designee; and

(g) a person designated by the Department of Health.

(3) The division shall require a fee for the submission of a request provided in Section R657-53-18 and R657-53-19.

R657-53-18. Request for Species Reclassification.

(1) A person may make a request to change the classification of a species or subspecies of amphibian or reptile provided in this rule.

(2) A request for reclassification must be made to the Certification Review Committee by submitting an application for reclassification.

(3)(a) The application shall include:

(i) the petitioner's name, address, and phone number;

(ii) the species or subspecies for which the application is made;

(iii) the name of all interested parties known by the petitioner;

(iv) the current classification of the species or subspecies;

(v) a statement of the facts and reasons forming the basis for the reclassification; and

(vi) copies of scientific literature or other evidence supporting the change in classification.

(b) In addition to the information required under Subsection (a), the petitioner must provide any information requested by the committee necessary to formulate a recommendation to the Wildlife Board.

(4)(a) The committee shall, within a reasonable time, consider the request for reclassification and shall submit its recommendation to the Wildlife Board.

(b) The committee shall send a copy of its recommendation to the petitioner and other interested parties specified on the application.

(5)(a) At the next available Wildlife Board meeting the Wildlife Board shall:

(i) consider the committee recommendation; and

(ii) any information provided by the petitioner or other interested parties.

(b) The Wildlife Board shall approve or deny the request for reclassification based on the issuance criteria provided in Section R657-53-11(1).

(6) A change in species classification shall be made in accordance with Title 63G, Chapter 4, Administrative Rulemaking Act.

(7) A request for species reclassification shall be considered a request for agency action as provided in Subsection 63G-4-201(3)

and Rule R657-2.

R657-53-19. Request for Variance.

(1) A person may make a request for a variance to this rule for the collection, importation, propagation, or possession of an amphibian or reptile classified as prohibited under this rule by submitting a request for variance to the Certification Review Committee.

(2)(a) A request for variance shall include the following:

(i) the name, address, and phone number of the person making the request;

(ii) the species or subspecies of the amphibian or reptile and associated activities for which the request is made; and

(iii) a statement of the facts and reasons forming the basis for the variance.

(b) In addition to the information required under Subsection (a), the person making the request must provide any information requested by the committee necessary to formulate a recommendation to the Wildlife Board.

(3) The committee shall, within a reasonable time, consider the request and shall submit its recommendation to the Wildlife Board.

(4) At the next available Wildlife Board meeting the Wildlife Board shall:

(a) consider the committee recommendation; and

(b) any information provided by the person making the request.

(5)(a) The Wildlife Board shall approve or deny the request based on the issuance criteria provided in Section R657-53-11.

(b) If the request applies to a broad class of persons and not to unique circumstances of the applicant, the Wildlife Board shall consider changing the species classification before issuing a variance to this rule.

(6)(a) If the request is approved, the Wildlife Board may impose any restrictions on the person making the request considered necessary for that person to maintain the standards upon which the variance is made.

(b) Any restrictions imposed on the person making the request shall be included in writing on the certificate of registration which shall be signed by the person making the request.

(7) A request for variance shall be considered a request for agency action as provided in Subsection 63G-4-201(3) and Rule R657-2.

R657-53-20. Appeal of Certificate of Registration Denial.

(1) A person may appeal the division's denial of a certificate of registration by submitting an appeal request to the Certification Review Committee.

(2) The request must be made within 30 days after the date of the denial.

(3) The request shall include:

(a) the name, address, and phone number of the petitioner;

(b) the date the request was mailed;

(c) the species or subspecies of the amphibian or reptile and the activity for which the application was made; and

(d) supporting facts and other evidence applicable to resolving the issue.

(4) The committee shall review the request within a reasonable time after it is received.

(5) Upon reviewing the application and the reasons for its denial, the committee may:

(a) overturn the denial and approve the application; or

(b) uphold the denial.

(6) The committee may overturn a denial if the denial was:

(a) based on insufficient information;

(b) inconsistent with prior action of the division or the Wildlife Board;

(c) arbitrary or capricious; or

(d) contrary to law.

(7)(a) Within a reasonable time after making its decision, the committee shall mail a notice to the petitioner specifying the reasons for its decision.

(b) The notice shall include information that a person may seek Wildlife Board review of that decision.

(8)(a) If the committee upholds the denial, the petitioner may seek Wildlife Board review of the decision by submitting a request for Wildlife Board review within 30 days after its issuance.

(b) The request must include the information provided in Subsection (3).

(9)(a) Upon receiving a request for Wildlife Board review, the Wildlife Board shall, within a reasonable time, hold a hearing to consider the request.

(b) The Wildlife Board may:

(i) overturn the denial and approve the application; or

(ii) uphold the denial.

(c) The Wildlife Board shall provide the petitioner with a written decision within a reasonable time after making its decision.

(10) An appeal contesting initial division determination of eligibility for a certificate of registration shall be considered a request for agency action as provided in Subsection 63G-4-201(3) and Rule R657-2.

R657-53-21. Prohibited Collection Methods.

(1) Amphibians and reptiles may not be collected using any method prohibited in this rule and the proclamations of the Wildlife Board except as provided by a certificate of registration or the Wildlife Board.

(a) Lethal methods of collection are prohibited except as provided in Subsections R657-53-27(6) and R657-53-28(6), (8),and (9).

(b) The destruction of habitats such as breaking apart of rocks, logs or other shelters in or under which amphibians or reptiles may be found is prohibited.

(c) The use of winches, auto jacks, hydraulic jacks, crowbars and pry bars are prohibited.

(d) The use of gasoline or other potentially toxic substance is prohibited.

(e) The use of firearms, airguns or explosives is prohibited.

(f) The use of electrical or mechanical devices, or smokers is prohibited except as provided in Subsection (2)(b).

(g) The use of traps including pit fall traps, can traps, or funnel traps is prohibited.

(h) The use of fykes, seines, weirs, or nets of any description are prohibited except as provided in Subsection (2)(b).

(2)(a) Any logs, rocks, or other objects turned over or moved must be replaced in their original position.

(b) Dip nets less than 24 inches in diameter, snake sticks, and lizard nooses may be used.

R657-53-22. Personal Use: Collection and Possession or Importation and Possession of a Live or Dead Amphibian or Reptile.

(1) A person may collect and possess a live amphibian or reptile for personal use only as provided in Subsection (a), (b) or (c).

(a) Certificates of registration are not issued for the collection and possession of any live amphibian or reptile classified as prohibited for collection and possession, except as provided in R657-53-19.

(b) A certificate of registration is required for collection and possession of any live amphibian or reptile classified as controlled for collection and possession, except as otherwise provided by the Wildlife Board.

(c) A certificate of registration is not required for collection and possession of any live amphibian or reptile classified as noncontrolled for collection and possession, except as provided in Subsections R657-53-27(5) and (6) and R657-53-28(7) and (8).

(2) A person may collect and possess a dead amphibian or

reptile or its parts for personal use only as provided in Subsections (a), (b) or (c).

(a) A person may collect and possess a dead amphibian or reptile or its parts classified as controlled for collection and possession without a certificate of registration as provided in Subsections (i) and (ii).

(i) The specimen must be frozen and submitted to the division by appointment within 30 days of collection; and

(ii) The specimen must be labeled with the species name, salvage date, salvage location, Universal Transverse Mercator (UTM) location coordinates and name of person collecting the dead amphibian or reptile.

(b) A certificate of registration is required for collection and possession of a dead amphibian or reptile or its parts classified as controlled for collection and possession where the dead amphibian or reptile or its parts remains in personal possession, except as otherwise provided by the Wildlife Board.

(i) A certificate of registration is not required for collection and possession of any dead amphibian or reptile classified as noncontrolled for collection and possession, except as provided in Subsections R657-53-27(5) and (6) and R657-53-28(7) and (8).

(ii) Collection and possession of any dead amphibian or reptile or its parts classified as noncontrolled for collection and possession, which remain in personal possession will count against collection and possession limits.

(c) A dead amphibian or reptile or its parts classified as prohibited for collection and possession may not be collected and possessed without a certificate of registration issued by the division for collection and possession of the specimen.

(3) A person may temporarily handle for personal use live amphibians or reptiles classified as noncontrolled and controlled for collection and possession without a certificate of registration only as provided in Subsections (a) through (d).

(a) An amphibian or reptile may be held for up to 15 minutes in a non-harmful way for the purpose of photography, noninvasive data collection and moving out of harm's way;

(i) For the purposes of this Subsection, noninvasive data collection means the collection of external measurements, specimen weights, external meristics, and sex determination which does not involve the use of probes or other instruments which enter the body of the animal;

(b) The amphibian or reptile cannot be moved more than 60 feet from the location found;

(c) The amphibian or reptile can be placed in any container, bag or device which confines the animal so it may be transported; and

(d) The amphibian or reptile must be released immediately when directed to do so by a division employee.

(4) A certificate of registration is required for a person to handle live amphibians or reptiles classified as prohibited for collection and possession.

(5) A person may import and possess a live or dead amphibian or reptile or its parts for personal use only as provided in subsection (b), (c) and (d).

(a) Certificates of registration are not issued for the importation and possession of any live or dead amphibian or reptile or its parts classified as prohibited for importation and possession, except as provided in Subsection (d) and R657-53-19.

(b) A certificate of registration is required for importation and possession of any live or dead amphibian or reptile or its parts classified as controlled for importation and possession, except as otherwise provided by the Wildlife Board and subsection (i).

(i) Prior to importation, a certificate of registration shall be issued for the importation and the resulting possession of any live amphibian or reptile for personal use that is legally obtained from outside the state of Utah, is a species native to Utah, and is classified as controlled for importation and possession.

(ii) Legal documentation of the acquisition of the amphibian or reptile shall be maintained as determined in the certificate of registration.

(iii) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number to import any amphibian or reptile into Utah.

(iv) Imported native and naturalized species shall not count toward the possession limit.

(c) A certificate of registration is not required for importation and possession of any live or dead amphibian or reptile or its parts classified as noncontrolled for importation and possession.

(i) Legal documentation of the acquisition of the amphibian or reptile shall be maintained for the life of the animal or the time the animal is in possession.

(ii) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number to import any amphibian or reptile into Utah.

(iii) Imported native and naturalized species shall not count toward the possession limit.

(d) Notwithstanding subsection (5)(a) or (b), a person may import and possess any dead amphibian or reptile or its parts classified as prohibited or controlled, except as provided in Section R657-53-5, for personal use without obtaining a certificate of registration, provided the animal was legally taken, is held in legal possession, and a valid license, permit, tag, certificate of registration, bill of sale, or invoice is available for inspection upon request.

R657-53-23. Scientific, or Educational Use: Collection and Possession or Importation and Possession of a Live or Dead Amphibian or Reptile.

(1) A person may collect and possess or import and possess a live or dead amphibian or reptile or its parts for scientific or educational use only as provided in Subsections (a), (b) and (c) and R657-53-19.

(a) The division may issue a certificate of registration to a university, college, governmental agency, bona fide nonprofit educational or scientific institution, or a person involved in wildlife research through an eligible institution to collect and possess or import and possess a live or dead amphibian or reptile classified as prohibited for collection and possession or importation and possession if, in the opinion of the division, the scientific or educational use is beneficial to wildlife and significantly benefits the general public without material detriment to wildlife.

(b) A certificate of registration is required for the collection and possession or importation and possession of any live or dead amphibian or reptile or its parts classified as controlled for collection and possession or importation and possession for scientific or educational use, except as otherwise provided by the Wildlife Board.

(i) Prior to importation, a certificate of registration shall be issued for the importation and resulting possession of any live amphibian or reptile for scientific or educational use that is legally obtained from outside the state of Utah, is a species native to Utah, and is classified as controlled for importation and possession.

(ii) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number to import any amphibian or reptile into Utah.

(iii) Imported native and naturalized species shall not count toward the possession limit.

(c)(i) A certificate of registration is not required for the collection and possession or importation and possession of any live or dead amphibian or reptile or its parts classified as noncontrolled for collection and possession or importation and possession for scientific or educational use, except as provided in Subsections R657-53-27(5) and (6) and R657-53-28(7) and (8).

(ii) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary

inspection and an entry permit number to import any amphibian or reptile into Utah.

(iii) Imported native and naturalized species shall not count toward the possession limit.

R657-53-24. Commercial Use: Collection and Possession or Importation and Possession of a Live or Dead Amphibian or Reptile.

(1) Pursuant to Sections 23-13-13 and 23-20-3, a person may not collect and possess a live amphibian or reptile for a commercial use or commercial venture for pecuniary gain, unless otherwise provided in this rule or a certificate of registration.

(2) A person may collect and possess or import and possess a live or dead amphibian or reptile or its parts for commercial use only as provided in Subsections (a), (b) and (c) and R657-53-19.

(a)(i) A person may import and possess a live amphibian or reptile classified as non-controlled for importation and possession for a commercial use or a commercial venture, except as provided in subsection (ii)

(ii) A native or naturalized species or subspecies of amphibian or reptile may not be sold or traded unless it originated from a captive-bred population.

(iii) Complete and accurate records for native or naturalized species must be maintained and available for inspection for five years from the date of the transaction, documenting the date, name, address, and telephone number of the person from whom the amphibian or reptile has been obtained.

(iv) Complete and accurate records must be maintained and available for inspection for five years from the date of the transfer, documenting the date, name, address and certificate of registration number if applicable of the person receiving the amphibian or reptile.

(b)(i) A person may not import and possess a live amphibian or reptile classified as controlled for importation and possession for a commercial use or commercial venture without first obtaining a certificate of registration.

(ii) A certificate of registration will not be issued to sell or trade a native or naturalized species of amphibian or reptile unless it originates from a captive-bred population.

(iii) It is unlawful to transfer a live amphibian or reptile classified as controlled for collection and possession or importation and possession to a person who does not have a certificate of registration to possess the amphibian or reptile, except as follows:

(A) the amphibian or reptile is captive-bred;

(B) the transferee is not domiciled in Utah;

(C) the transferee is exporting the amphibian or reptile out of Utah; and

(D) the transferee follows the transport provisions in Section R657-53-25.

(iv) Complete and accurate records must be maintained by the buyer and the seller for five years from the date of the transaction or transfer, documenting the date, and the name, address, and telephone number of the person from whom the amphibian or reptile has been obtained and the person receiving the amphibian or reptile.

(v) The records indicated in Subsection (iv) must be made available for inspection upon request of the division.

(c)(i) A certificate of registration will not be issued for importation and possession of a live amphibian or reptile, classified as prohibited for importation and possession for a commercial use or commercial venture, except as provided in Subsection (ii) or R657-53-19.

(ii) The division may issue a certificate of registration to a zoo, circus, amusement park, aviary, or film company to import and possess a live amphibian or reptile classified as prohibited for importation and possession if, in the opinion of the division, the importation and possession for a commercial use is beneficial to wildlife or significantly benefits the general public without material detriment to wildlife.

(iii) The division's authority to issue a certificate of registration to a zoo, circus, amusement park, or aviary under this Subsection is restricted to those facilities that keep the prohibited amphibian or reptile in a park, building, cage, enclosure or other structure for the primary purpose of public exhibition or viewing.

(3) It is unlawful to sell or trade any turtle, including tortoises, less than 4" in carapace length (Referenced Federal Register 21 CFR 1240.62).

(4)(a) Pursuant to Sections 23-13-13 and 23-20-3, a person may not collect and possess or import and possess any dead amphibian or reptile or its parts for a commercial use or commercial venture for pecuniary gain, unless otherwise provided in the rules and proclamations of the Wildlife Board, or a memorandum of understanding with the division.

(b) The restrictions in Subsection (a) do not apply to importation and possession of a dead amphibian or reptile sold or traded for educational use.

R657-53-25. Transporting a Live Amphibian or Reptile Through Utah.

A certificate of veterinary inspection is required from the state of origin as provided in Utah Department of Agriculture Rule R58-1 and proof of legal possession must accompany the zoological animal

(1) Any controlled or prohibited amphibian or reptile may be transported through Utah without a certificate of registration if:

(a) the amphibian or reptile remains in Utah no more than 72 hours; and

(b) the amphibian or reptile is not sold, transferred, exhibited, displayed, or used for a commercial venture while in Utah.

(2) Proof of legal possession must accompany the amphibian or reptile.

(3) If delays in transportation arise, an extension of the 72 hours may be requested by contacting the Wildlife Registration Office in Salt Lake City.

R657-53-26. Propagation of Amphibians or Reptiles.

(1) A person may propagate native amphibians or reptiles that are legally collected in Utah and possessed only as provided in Subsection (a) through (c).

(a) Certificates of registration are not issued for the propagation of any native amphibian or reptile collected in Utah and classified as prohibited for propagation except as provided in R657-53-19.

(b) A certificate of registration is required for propagating any native amphibian or reptile collected in Utah and classified as controlled for propagation, except as otherwise provided by the Wildlife Board.

(i) All progeny shall be marked as determined in the certificate of registration;

(ii) A report shall be submitted yearly as specified in the certificate of registration;

(iii) Records of the progeny as determined in the certificate of registration shall be kept for the life of the animal or time in possession; and

(iv) Progeny shall not count toward possession limits.

(c) A certificate of registration is required for propagating native amphibians or reptiles collected in Utah and classified as noncontrolled for propagation.

(i) A report shall be submitted yearly as specified in the certificate of registration;

(ii) Records of the progeny as determined in the certificate of registration shall be kept for the life of the animal or time in possession; and

(iii) Progeny shall not count toward possession limits.

(2) A person may propagate naturalized amphibians or reptiles that are legally collected in Utah and possessed only as provided in Subsection (a) through (d).

(a) Certificates of registration are not issued for the propagation of any naturalized amphibian or reptile collected in

Utah and classified as prohibited for propagation except as provided in R657-53-19.

(b) A certificate of registration is required for propagating any naturalized amphibian or reptile legally collected in Utah and classified as controlled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession.

(c) A certificate of registration is not required for propagating any naturalized amphibian or reptile collected in Utah and classified as controlled for possession but classified as noncontrolled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession; and

(ii) Progeny shall not count toward possession limits.

(d) A certificate of registration is not required for propagating naturalized amphibians or reptiles collected in Utah and classified as noncontrolled for propagation.

(i) Progeny shall not count toward possession limits.

(3) A person may propagate native amphibians or reptiles that are legally obtained from an instate captive source or imported into Utah and possessed only as provided in Subsection (a) through (d).

(a) Certificates of registration are not issued for the propagation of any native amphibian or reptile imported into Utah and classified as prohibited for propagation except as provided in R657-53-19.

(b) A certificate of registration is required for propagating any native amphibian or reptile legally obtained from an instate captive source or imported into Utah and classified as controlled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession.

(c) A certificate of registration is not required for propagating any native amphibian or reptile imported into Utah and classified as controlled for possession but classified as noncontrolled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession; and

(ii) Progeny shall not count toward possession limits.

(d) A certificate of registration is not required for propagating native amphibians or reptiles imported into Utah and classified as noncontrolled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession; and

(ii) Progeny shall not count toward possession limits.

(4) A person may propagate nonnative or naturalized amphibians or reptiles that are legally obtained from an instate captive source or imported into Utah and possessed only as provided in Subsections (a) through (d).

(a) Certificates of registration are not issued for the propagation of any nonnative or naturalized amphibian or reptile imported into Utah and classified as prohibited for propagation except as provided in R657-53-19.

(b) A certificate of registration is required for propagating any nonnative or naturalized amphibian or reptile legally obtained from an instate captive source or imported into Utah and classified as controlled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession.

(c) A certificate of registration is not required for propagating nonnative or naturalized amphibian or reptile imported into Utah and classified as controlled for possession but classified as noncontrolled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession; and

(ii) Progeny shall not count toward possession limits.

(d) A certificate of registration is not required for propagating nonnative or naturalized amphibians or reptiles imported into Utah and classified as noncontrolled for propagation.

(i) Progeny shall not count toward possession limits.

(5) Certificates of registration may be denied to an applicant who:

(a) is a non-resident of Utah;

(b) fails to provide and maintain suitable, disease-free facilities and to humanely hold and maintain amphibians or reptiles in good condition;

(c) has been judicially or administratively found guilty of violating the provisions of this rule;

(d) has been convicted of, pleaded no contest to, or entered into a plea in abeyance to any criminal offense that bears a reasonable relationship to the applicant's ability to safely and responsibly collect, import, transport or possess amphibians or reptiles; or

(e) fails to maintain the propagation records and file the annual reports required in this section.

(6) Legally-obtained amphibians or reptiles and their progeny and descendants born in captivity, which are held in possession under the authority of a certificate of registration, remain property of the holder, but are subject to regulation by the division in accordance with the needs for public health, welfare, and safety, and impacts on wildlife.

R657-53-27. Classification and Specific Rules for Amphibians.

(1) Common and scientific nomenclature recognized and adopted by the Society for the Study of Amphibians and Reptiles (2003) will be utilized in Subsection (2).

(2) Amphibians are classified as follows:

(a) Frogs are classified as follows:

(i) American bullfrog, Ranidae Family (Rana catesbeiana) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (6);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Canyon treefrog, Hylidae Family (Hyla arenicolor) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Clawed frog, Pipidae Family (Xenopus) (All species) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) Columbia spotted frog, Ranidae Family (Rana luteiventris) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(v) Green frog, Ranidae Family (Rana clamitans) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (7);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(vi) Lowland leopard frog, Ranidae Family (Rana yavapaiensis) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(vii) Northern leopard frog, Ranidae Family (Rana pipiens) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(viii) Pacific treefrog, Hylidae Family (Pseudacris regilla) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ix) Relict leopard frog, Ranidae Family (Rana onca) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(x) Western chorus frog, Hylidae Family (Psedacris triseriata) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(b) Spadefoots are classified as follows:

(i) Great basin spadefoot, Pelobatidae Family (Spea intermontana) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Mexican spadefoot, Pelobatidae Family (Spea multiplicata) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Plains spadefoot, Pelobatidae Family (Spea bombifrons) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(c) Salamanders are classified as follows:

(i) Tiger salamander, Ambystomatidae Family (Ambystoma tigrinum) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah.

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(d) Toads are classified as follows:

(i) Arizona toad, Bufonidae Family (Bufo microscaphus) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Cane (marine) toad, Bufonidae Family (Bufo marinus) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Great Plains toad, Bufonidae Family (Bufo cognatus) is

(A) controlled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) Red-spotted toad, Bufonidae Family (Bufo punctatus) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(v) Western toad, Bufonidae Family (Bufo boreas) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(t) Woodhouse's toad, Bufonidae Family (Bufo woodhousii) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah.

(3)(a) Amphibians classified at the genus or family taxonomic level include all species and subspecies.

(b) Amphibians classified at the species taxonomic level include all subspecies.

(c) Amphibians classified at the subspecies taxonomic level do not include any other related subspecies.

(4) All species or subspecies of amphibians not listed in Subsection (2) are classified as noncontrolled for collection, importation, possession and propagation.

(5)(a) A person must obtain a certificate of registration to collect and possess more than three amphibians of each species or subspecies classified as noncontrolled for collection and possession within a calendar year, except as provided in Subsection (6).

(b) A person must obtain a certificate of registration to possess more than nine amphibians in aggregate classified as noncontrolled for collection and possession and collected within Utah, except as provided in Subsection (6).

(6) A person may collect and possess any number of American bullfrogs (Rana catesbeiana) or Green frogs (Rana clamitans) without a certificate of registration provided they are either killed or released immediately. A person may not transport a live bullfrog or green frog from the point of capture without first obtaining a certificate of registration.

R657-53-28. Classification and Specific Rules for Reptiles.

(1)(i) Common and scientific nomenclature recognized and adopted by the Society for the Study of Amphibians and Reptiles (2003) shall be utilized in Subsection (2) for North American species found north of Mexico.

(ii) Common and scientific nomenclature recognized and adopted by C. Mattison in The Encyclopedia of Snakes (1999) shall be utilized for all other snakes found in Subsection (2).

(iii) Common and scientific nomenclature recognized and adopted by O'Shea and Halliday in Smithsonian Handbooks: Reptiles and Amphibians (2002) shall be utilized for the Gharial found in subsection (2).

(2) Reptiles are classified as follows:

(a) Crocodiles are classified as follows:

(i) Alligators and caimans, Alligatoridae Family (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Crocodiles, Crocdylidae Family (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah; and

(iii) Gharial, Gavialidae Family (Gavialis gangeticus) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah.

(b) Lizards are classified as follows:

(i) Beaded lizard, Helodermatidae Family, (Heloderma horridum) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Chuckwalla, Iguanidae Family (Sauromalus) (All species) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation and possession and prohibited for propagation of individuals legally obtained outside of Utah;

(iii) Common lesser earless lizard, Phrynosomatidae Family (Holbrookia maculata) is

(A) noncontrolled for collection, possession and propagation

of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) Common side-blotched lizard, Phrynosomatidae Family (Uta stansburiana) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (8);

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(v) Desert horned lizard, Phrynosomatidae Family (Phrynosoma platyrhinos) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(vi) Desert iguana, Iguanidae Family (Dipsosaurus dorsalis) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation and possession, and prohibited for propagation of individuals legally obtained outside of Utah;

(vii) Desert spiny lizard, Phrynosomatidae Family (Sceloporus magister) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(viii) Eastern collared lizard, Crotaphytidae Family (Crotaphytus collaris) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ix) Gila monster, Helodermatidae Family (Heloderma suspectum) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(x) Great Basin collared lizard, Crotaphytidae Family (Crotaphytus bicinctores) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xi) Great Basin fence lizard, Phrynosomatidae Family (Sceloporus occidentalis longipes) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xii) Great Basin skink, Scincidae Family (Eumeces skiltonianus utahensis) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xiii) Great Basin Whiptail, Teiidae Family (Aspidoscelis tigris tigris) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xiv) Greater short-horned lizard, Phrynosomatidae Family (Phrynosoma hernandesi) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xv) Long-nosed leopard lizard, Crotaphytidae Family (Gambelia wislizenii) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xvi) Northern plateau lizard, Phrynosomatidae Family (Sceloporus undulatus elongatus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xvii) Northern sagebrush lizard, Phrynosomatidae Family (Sceloporus graciosus graciosus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (5);

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xviii) Ornate tree lizard, Phrynosomatidae Family (Urosaurus ornatus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xix) Plateau striped whiptail, Teiidae Family (Aspidoscelis velox) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xx) Plateau tiger whiptail, Teiidae Family (Aspidoscelis tigris septentrionalis) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxi) Southern plateau lizard, Phrynosomatidae Family (Sceloporus undulatus tristichus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxii) Utah banded gecko, Gekkonidae Family (Coleonyx variegatus utahensis) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxiii) Utah night lizard, Xantusiidae Family (Xantusia vigilis utahensis) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxiv) Variable (many-lined) skink, Scincidae Family (Eumeces multivirgatus epipleurotus)

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxv) Western zebra-tailed lizard, Phrynosomatidae Family (Callisaurus draconoides rhodostictus) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah; and

(xxvi) Yucca night lizard, Xantusiidae Family (Xantusia vigilis vigilis) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah.

(c) Snakes are classified as follows:

(i) Bird Snake, Colubridae Family (Thelotornis) (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Boomslang, Colubridae Family (Dispholidus typus) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Burrowing asps, Atractaspidae Family (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) California kingsnake, Colubridae Family (Lampropeltis getula californiae) is

(A) controlled for collection, possession and noncontrolled for propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(v) Desert glossy snake, Colubridae Family (Arizona elegans eburnata) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(vi) Desert nightsnake, Colubridae Family (Hypsiglena torquata deserticola) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(vii) Desert striped whipsnake, Colubridae Family (Masticophis taeniatus taeniatus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(viii) Desert gophersnake, Colubridae Family (Pituophis catenifer deserticola) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ix) Great Basin rattlesnake, Viperidae Family (Crotalus oreganus lutosus) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (6);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(x) Great Plains ratsnake, Colubridae Family (Elaphe emoryi) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xi) Groundsnake, Colubridae Family (Sonora semiannulata) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xii) Keelback, Colubridae Family (Rhabdophis) (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xiii) Midget faded rattlesnake, Viperidae Family (Crotalus oreganus concolor) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xiv) Mojave rattlesnake, Viperidae Family (Crotalus scutulatus) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xv) Mojave patch-nosed snake, Colubridae Family (Salvadora hexalepis mojavensis) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xvi) Painted desert glossy snake, Colubridae Family (Arizona elegans philipi) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xvii) Pit vipers, Viperidae Family (All species) are

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xviii) Prairie rattlesnake, Viperidae Family (Crotalus viridis) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xix) Proteroglyphous snakes, Australian spp., cobras, coral snakes, kraits, and their allies, Elapidae Family (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xx) Red racer (Coachwhip), Colubridae Family (Masticophis flagellum piceus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxi) Regal ring-necked snake, Colubridae Family (Diadophis punctatus regalis) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxii) Rubber boa, Boidae Family (Charina bottae) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxiii) Sidewinder, Viperidae Family (Crotalus cerastes) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxiv) Smith's black-headed snake, Colubridae Family (Tantilla hobartsmithi) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxv) Smooth greensnake, Colubridae Family (Opheodrys vernalis) is

(A) controlled for collection, possession and propagation of

individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxvi) Sonoran lyresnake, Colubridae Family (Trimorphodon biscutatus lambda) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxvii) Speckled rattlesnake, Viperidae Family (Crotalus mitchellii) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxviii) Spotted leaf-nosed snake, Colubridae Family (Phyllorhynchus decurtatus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxix) Utah milksnake, Colubridae Family (Lampropeltis triangulum taylori) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxx) Utah mountain kingsnake, Colubridae Family (Lampropeltis pyromelana infralabialis) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxi) Utah threadsnake, Leptotyphlopidae Family (Leptotyphlops humilis utahensis) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxii) Valley gartersnake, Colubridae Family (Thamnophis sirtalis fitchi) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxiii) Wandering gartersnake, Colubridae Family (Thamnophis elegans vagrans) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (8);

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxiv) Western black-necked gartersnake, Colubridae Family (Thamnophis cyrtopsis cyrtopsis) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxv) Western long-nosed snake, Colubridae Family (Rhinocheilus lecontei lecontei) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah; and

(xxxvi) Western yellow-bellied racer, Colubridae Family (Coluber constrictor mormon) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah.

(d) Turtles are classified as follows:

(i) Alligator snapping turtle, Chelydridae Family (Macrochelys temminckii) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (9);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Common snapping turtle, Chelydridae Family (Chelydra serpentine) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (9);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Desert tortoise, Testudinidae Family (Gopherus agassizii) is

(A) prohibited for collection, and propagation and controlled for possession of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) Painted turtle, Emydidae Family (Chrysemys picta) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah.

(v) Red-eared slider, Emydidae Family (Trachemys scripta elegans) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah.

(vi) Spiny softshell, Trionychidae Family (Apalone spinifera) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (9);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(3)(a) Reptiles classified at the genus or family taxonomic level include all species and subspecies.

(b) Reptiles classified at the species taxonomic level include all subspecies.

(c) Reptiles classified at the subspecies taxonomic level do not include any other related subspecies.

(4) All species or subspecies of reptiles not listed in Subsection (2) are classified as noncontrolled for collection, importation, possession and propagation.

(5) A person may not:

(a) knowingly disturb the den of any reptile or kill, capture, or harass any reptile within 100 yards of a reptile den without first obtaining a certificate of registration from the division; or

(b) indiscriminately kill any reptile.

(6)(a) Great Basin rattlesnakes, Crotalus oreganus lutosus, may be killed without a certificate of registration only for reasons of human safety.

(b) The carcass or its parts of a Great Basin rattlesnake killed pursuant to Subsection (a) may be retained for personal use or possessed.

(7)(a) A person must obtain a certificate of registration to collect more than three reptiles of each species or subspecies classified as noncontrolled for collection and possession within a calendar year, except as provided in Subsection (8).

(b) A person must obtain a certificate of registration to possess more than nine reptiles of each species or more than 56 in aggregate which are classified as noncontrolled for collection and possession and collected within Utah, except as provided in Subsection (8).

(8) In a calendar year, a person may collect and possess for personal use 25 common side-botched lizards (Uta stansburiana), 25 northern sagebrush lizards (Sceloporus graciosus graciosus), and 25 wandering gartersnakes (Thamnophis elegans vagrans), without obtaining a certificate of registration or counting against the aggregate possession limit.

(9)(a) A person may collect and possess any number of common snapping turtles (Chelydra serpentina), alligator turtles (Macrochelys temminckii) or spiny softshell (Apalone spinifera) turtles without a certificate of registration provided they are either killed or released immediately upon removing them from the point of capture.

(b) A person may not transport a live common snapping turtle, alligator turtle or spiny softshell turtle from the point of capture from which it was collected without first obtaining a certificate of registration.

KEY: wildlife, import restrictions, amphibians, reptiles

May 10, 2010	**23-14-18**
Notice of Continuation April 12, 2018	**23-14-19**
	23-20-3
	23-13-14

R698. Public Safety, Administration.
R698-7. Emergency Vehicles.
R698-7-1. Purpose.

This rule explains how vehicles can be designated as "authorized emergency vehicles." Authorized emergency vehicles shall be referred to in this rule as "emergency vehicles."

R698-7-2. Authority.

This rule is authorized by Section 41-6a-310 and Subsection 53-1-108(1)(c).

R698-7-3. Definitions.

As used in this rule:

(1) "Emergency" or "emergencies" means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential to the preservation of human life or property and justifies the operator of a vehicle to exercise the driving privileges in Subsection 41-6a-212(2).

(2) "Industrial ambulance" means an ambulance that is owned and operated by a private company for the sole benefit of its employees.

R698-7-4. Publicly Owned Emergency Vehicles.

(1) A publicly owned fire department vehicle, or publicly owned police vehicle can be designated as an emergency vehicle if the vehicle:

(a) responds to emergencies;

(b) is in compliance with the emergency lights and siren requirements of Title 41, Chapter 6a;

(c) is properly insured; and

(d) is approved as an emergency vehicle by the political subdivision that owns it.

R698-7-5. Privately Owned Emergency Vehicles.

Privately owned vehicles can be designated as emergency vehicles by meeting the requirements set forth in this rule.

R698-7-6. Categories of Privately Owned Emergency Vehicles.

(1) Privately owned emergency vehicles shall be divided into the following categories:

(a) private fire response vehicles;

(b) private police vehicles;

(c) private search and rescue vehicles; and

(d) private ambulance vehicles.

R698-7-7. Private Fire Response Vehicles, Private Police Vehicles, and Private Search and Rescue Vehicles.

(1) A private fire response vehicle, private police vehicle, or private search and rescue vehicle can be designated as an emergency vehicle if:

(a) the vehicle is used on a part time basis to assist a governmental agency in responding to emergencies;

(b) the owner of the vehicle receives written authorization to operate the vehicle as an emergency vehicle from the sheriff, chief of police, or fire chief of the governmental agency that the vehicle is authorized to assist;

(c) the vehicle is in compliance with the emergency lights and siren requirements of Title 41, Chapter 6a;

(d) the vehicle is licensed and has a current safety inspection certificate; and

(e) the governmental agency that authorizes the vehicle to operate as an emergency vehicle has adopted written policies regarding the operation of emergency vehicles in their jurisdiction. The policies shall require compliance with the statutory restrictions and requirements of Title 41, Chapter 6a.

R698-7-8. Ambulance Vehicles.

(1) A publicly owned or privately owned ambulance vehicle can be designated as an emergency vehicle if the vehicle is licensed by the Utah Department of Health, Bureau of Emergency Medical Services to provide emergency and non-emergency ambulance services under Title 26, Chapter 8a.

(2) An industrial ambulance vehicle can be designated as an emergency vehicle if:

(a) the vehicle is in compliance with the emergency lights and siren requirements of Title 41, Chapter 6a;

(b) the vehicle is properly insured;

(c) the vehicle is licensed and has a current safety inspection certificate; and

(d) the company that owns the vehicle receives written authorization to operate the vehicle as an emergency vehicle from:

(i) the sheriff of the county in which the company is located; and

(ii) the chief of police of the city, if any, in which the company is located.

KEY: emergency vehicle
September 11, 1997 41-6a-310
Notice of Continuation April 12, 2018 53-1-108(1)©

R708. Public Safety, Driver License.
R708-14. Adjudicative Proceedings For Driver License Actions Involving Alcohol and Drugs.
R708-14-1. Purpose.

The purpose of this rule is to establish procedures to be used by the Utah Driver License Division for alcohol/drug adjudicative proceedings.

R708-14-2. Authority.

This rule is authorized by Section 53-3-104 and Subsection 63G-4-203(1).

R708-14-3. Definitions.

(1) "Adjudicative proceeding" means any meeting, conference, session or hearing, in person or otherwise, between a person and a presiding officer or designee of the division, that is intended to resolve a dispute.

(2) "Division" means the Driver License Division of the Utah Department of Public Safety.

(3) "Division record" means the entire division file, including written reports received or generated by the division. It also includes, but is not limited to, minutes, written comments, presiding officer's written statements and summaries, testimony, evidence, findings of fact, conclusions of law, recommendations, and orders.

(4) "Hearing" means an alcohol/drug adjudicative proceeding where evidence is considered to determine an issue of fact and to adjudicate a legal right or privilege.

(5) "Presiding officer" means a division employee with authority to conduct alcohol/drug adjudicative proceedings.

(6) "Recording" means documenting, by electronic or other means, the testimony or information presented at an alcohol/drug adjudicative proceeding.

R708-14-4. Designations.

(1) In compliance with Section 63G-4-202, all division alcohol/drug adjudicative proceedings are designated as informal proceedings, unless converted to formal proceedings by a presiding officer or division supervisor.

(2) An informal proceeding may be converted to a formal proceeding only if approved by a division supervisor and only if the conversion will promote efficiency, public safety, and not unreasonably increase cost.

(3) The driver may represent him/herself or be represented by a State Licensed attorney in the adjudicative proceeding.

R708-14-5. Authority for Conducting Adjudicative Proceedings.

Alcohol/drug adjudicative proceedings will be conducted in accordance with Sections 41-6a-521, 53-3-223, 53-3-231, 53-3-418, 63G-4-203, and this rule.

R708-14-6. Commencement of Adjudicative Proceedings.

(1) In accordance with Subsection 63G-4-201, alcohol/drug adjudicative proceedings may be commenced by:

(a) a notice of division action, if the proceedings are commenced by the division; or

(b) a request for division action, if the proceedings are commenced by a person other than the division.

(2) A notice of division action and request for division action shall include the information set forth in Subsections 63G-4-201(2)(a) and (3)(a) respectively. In addition, a request for division action shall include the petitioner's full name, date of birth, and the date of arrest or occurrence which prompted the request for division action. A request for division action that is not made timely, in accordance with Subsections 53-3-223(6)(a), 53-3-231(7)(a)(ii), and 53-3-418(9)(b), will not be granted except for good cause as determined by the division.

R708-14-7. Alcohol/Drug Adjudicative Proceedings.

The alcohol/drug adjudicative proceedings deal with the following types of hearings:

(a) driving under the influence of alcohol/drugs (per-se), Section 53-3-223;

(b) implied consent (refusal), Section 41-6a-520;

(c) measurable metabolite in body, Section 41-6a-517;

(d) consumption by a minor (not a drop), Section 53-3-231; and

(e) CDL (.04), Section 53-3-418.

R708-14-8. Hearing Procedures.

(1) Time and place. Alcohol/drug adjudicative proceedings will be held in the county of arrest or a county which is adjacent to the county in which the offense occurred, at a time and place designated by the division, or agreed upon by the parties.

(2) Notice. Notice shall be given as provided in Subsection 53-3-216(4) unless otherwise agreed upon by the parties. Notice shall be given on a form approved by the division and is deemed to be signed by the presiding officer. The notice need only inform the parties as to the date, time, place, and basic purpose of the proceeding. The parties are deemed to have knowledge of the law.

(3) Default. If the driver fails to respond timely to a division request or notice, a default may be entered in accordance with Section 63G-4-209.

(4) Evidence. The parties and witnesses may testify under oath, present evidence, and comment on pertinent issues. The presiding officer may exclude irrelevant, repetitious, immaterial, or privileged information or evidence. The presiding officer may consider hearsay evidence and receive documentary evidence, including copies or excerpts.

(5) Information. The driver shall have access to information in the division file to the extent permitted by law.

(6) Subpoenas. Discovery is prohibited, but the division may issue subpoenas or other orders to compel production of necessary evidence. Subpoenas may be issued by the division at the request of the driver if the costs of the subpoenas are paid by the driver and will not delay the proceeding.

(7) Administrative notice. The presiding officer has discretion to take administrative notice of records, procedures, rules, policies, technical scientific facts within the presiding officer's specialized knowledge or experience, or of any other facts that could be judicially noticed.

(8) Presiding officer. The presiding officer may:

(a) administer oaths;

(b) issue subpoenas;

(c) conduct prehearing conferences by telephone or in person to clarify issues, dispose of procedural questions, and expedite the hearing;

(d) tape record or take notes of the hearing at his/her discretion;

(e) take appropriate measures to preserve the integrity of the hearing; and

(f) conduct hearings in accordance with division policy III-A-3, III-A-4, and III-A-5.

R708-14-10. Reconsideration.

In accordance with Section 63G-4-302 a driver may file a request for reconsideration of the order within 20 days after receiving it. If the division does not issue an amended order within 20 days after receiving the request for reconsideration, the request for reconsideration shall be considered denied, and the driver may seek judicial review in accordance with Section 63G-4-402.

KEY: adjudicative proceedings
May 26, 2015 53-3-104
Notice of Continuation January 8, 2017 63G-4-203(1)

R708. Public Safety, Driver License.
R708-30. Motorcycle Rider Training Schools.
R708-30-1. Purpose.

The purpose of this rule is to assist the Driver License Division in administering the Motorcycle Rider Education Program set forth in Title 53, Chapter 3, Part 9, the Motorcycle Rider Education Act.

R708-30-2. Authority.

This rule is authorized by Subsection 53-3-903(1)(b).

R708-30-3. Definitions.

(1) "Agreement" means a written agreement between the Driver License Division, and a school, institution, or individual to provide motorcycle rider training courses for beginner and experienced riders and courses for instructors.

(2) "Division" means the Driver License Division.

(3) "Practice riding" means that portion of instruction during which the student actually rides a motorcycle.

(4) "Program coordinator" means the division representative appointed to oversee and direct the Motorcycle Rider Education Program.

(5) "School" means an institution owned and operated by an individual, partnership or corporation, public or private, licensed to do business in the State of Utah, for the purpose of providing classroom and practical motorcycle rider training.

R708-30-4. Application.

(1) An application for an original or renewal agreement shall be made on a form furnished by the division and shall include the following:

(a) name of the school;

(b) address of the school;

(c) names of all proposed instructors; and

(d) addresses of all instruction sites.

(2) Upon receipt of the application, the division shall schedule an inspection of the school sites, equipment, instructional materials, course curriculum, class schedules, and shall determine eligibility of proposed instructors.

(3) Once the application has been completed and approved, the division and the school may enter into an agreement allowing the school to conduct motorcycle rider training.

R708-30-5. Agreement.

(1) Once the school has executed an agreement with the division to provide training for beginner and experienced motorcycle riders, the school may begin to conduct motorcycle rider training.

(2) The agreement shall allow the school to provide training and instruction for motorcycle riders, but shall not allow the school to bind or obligate the division in any way to issue a motorcycle endorsement or license.

(3) Upon execution of the agreement, the school and all approved instructors will be placed on a list provided to all driver license offices. A certificate of approval will be mailed to the school and will indicate the expiration date of the agreement.

(4) The agreement shall expire on July 1 of each year. No later than three months prior to expiration of the agreement, the school may submit a renewal application to the division.

R708-30-6. Standards.

(1) To be approved, a school shall meet the following standards:

(a) make application to and enter into an agreement with the division;

(b) maintain a place of business with at least one permanent occupied structure within the State;

(c) ensure the place of business meets all requirements of State law and local ordinances;

(d) have at least one qualified and approved instructor;

(e) provide helmets, motorcycles and range equipment for practice riding;

(f) have emergency equipment readily available. The emergency equipment shall include an adequate fire extinguisher and a fully stocked, industrial-quality first-aid kit;

(g) have written procedures for responding to accidents, including emergency telephone numbers, and a telephone within easy access during any range training;

(h) furnish the division with written permission to use any facilities not owned or leased by the school. Specific days of use and intended use of the facilities must be indicated, e.g., days: Thursday, Saturday, Sunday, etc.; and uses: classroom instruction and operation of motorcycles on property;

(i) request approval from the division for any proposed changes in instructor or administrative procedures;

(j) make record of and report to the division within 48 hours any accident or injuries occurring during any instruction;

(k) provide rider training at remote sites only upon approval and/or at the request of the division;

(l) not engage the service of an employee of the division as an instructor, agent or employee of the school; and

(m) maintain for five years, and present upon request of the division, verification that all instructors are certified, and attendance and completion records are accurate.

R708-30-7. Certificate of Approval.

Upon approval, the division will issue a certificate of approval to the school, each branch office, and/or mobile team. The certificate will be conspicuously displayed at all times in the school's permanent place of business and will be displayed during instruction at branch offices and mobile training sites.

R708-30-8. Inspections.

(1) The division may:

(a) conduct random examinations, inspections, and audits without prior notice during normal business hours; and

(b) conduct on-site inspections annually and at any other time deemed necessary by the division.

(2) A person designated by the school shall accompany the division representative while performing on-site inspections. On-site inspections may include:

(a) ensuring that all requirements specified in this rule are met;

(b) examining school records;

(c) ensuring that practice riding procedures comply with criteria established by the Motorcycle Safety Foundation or another nationally recognized motorcycle safety instructor certifying body and the division; and

(d) reviewing any other items the division may deem necessary to ensure that all requirements specified in the agreement are met.

(3) Random checks may be made by any designated division representative to verify compliance with course instruction standards. Checks by the division may include:

(a) having a division representative take a course administered by the school; and

(b) having the division administer practical skills tests to a sample of riders who have completed the course of instruction presented by the school to determine if the results of the tests administered by the division are comparable to the results submitted by the school.

R708-30-9. Courses.

(1) Course curriculum will be conducted in accordance with this rule. The division may provide supplemental instruction as necessary. Such instruction may include information on course content, practice riding, instructor and administrative procedures and/or changes.

(2) Courses shall be conducted at locations approved by the division.

(3) Courses shall be conducted using division approved content, forms, scoring procedures and equipment.

(4) Courses conducted by mobile teams at remote sites and branches shall be held to the same standards as required at permanent locations.

R708-30-10. Certificate of Course Completion.

(1) The school will provide a certificate of course completion to verify rider competency and successful completion of the prescribed course of instruction.

(2) The certificate of course completion shall include the following:

(a) applicant's name;

(b) title of the course completed;

(c) date of course completion; and

(d) authorized signature from the school.

(3) Upon completion of a beginner class from an approved school, the division may waive the practical skills portion of the application for motorcycle license or endorsement to a current driver license.

(4) Riders must submit to the division the certificate of course completion of a beginner class within six months of the date of course completion to be eligible for waiver of the practical skills test. The rider will be restricted based on the cc size of the motorcycle tested on. The instructor shall write the engine size in cc format on the certificate.

(5) Upon successful completion of the class from an approved school, the division may waive the two month motorcycle learner permit holding period for riders under the age of 19.

R708-30-11. Insurance Coverage.

(1) The division shall obtain through a commercial insurance agency the required insurance coverage for all schools involved in providing motorcycle rider training.

(2) Each school shall submit to the division a list identifying all motorcycles used for instruction purposes.

(3) Motorcycles used by the schools for instruction purposes shall be covered by insurance obtained by the division and will be used only in approved rider training courses and only on division approved ranges.

R708-30-12. Instructors.

(1) Instructors approved by the division to conduct motorcycle rider training shall:

(a) furnish proof of completed training and certification provided by the Motorcycle Safety Foundation or another nationally recognized motorcycle safety instruction certifying organization;

(b) instruct only those classes which have been approved by the division;

(c) instruct only those students who are at least 16 years of age and have completed an approved driver education course;

(d) except as set forth in paragraph two of this section, have a valid Utah driver license with motorcycle endorsement;

(e) have a high school diploma or its equivalent;

(f) be at least 18 years of age;

(g) have at least two years of recent motorcycle riding experience;

(h) possess valid Red Cross standard first-aid and CPR cards, or their equivalent; and

(i) manifest safe riding habits whenever riding.

(2) The requirement for a Utah drive license may be waived by the division if the instructor is assigned as active duty military to an installation in Utah.

(3) Instructors are encouraged to wear all protective gear every time they ride. Protective gear includes helmet and eye protection, over-the-ankle footwear (not cloth, canvas, etc.), long non-flare denim pants or material of equivalent durability, long-sleeved shirt or jacket, and full-fingered gloves (preferably leather).

(4) The division shall refuse approval or will revoke approval if the applicant/instructor:

(a) no longer meets the requirements of this section;

(b) has had a driver license suspended or revoked during the preceding two years or within the preceding five years if the suspension or revocation was for an alcohol or drug related offense; or

(c) fails to successfully complete an instructor course or required course updates, or fails to teach at least two rider training classes per year, one of which must be as the lead instructor. An exception to this requirement may be granted if written justification for not meeting the teaching requirements is submitted by the instructor and is approved/accepted by the division.

R708-30-13. Advertisement.

(1) No school advertisement may:

(a) indicate in any way that a program can issue or guarantee the issuance of a motorcycle license or endorsement;

(b) imply that a program can in any way influence the division in the issuance of a motorcycle license or endorsement; or

(c) imply that preferential or advantageous treatment from the division can be obtained.

(2) No instructor, employee or agent of a school may be permitted to advertise or solicit business or cause business to be solicited in its behalf, or display or distribute any advertising material within 1500 feet of a location rented, leased, or owned by the division.

R708-30-14. Revocation.

(1) In accordance with Subsection 63G-4-202(1), the division designates all adjudicative proceedings associated with this rule as informal adjudicative proceedings.

(2) The division shall deny approval of an application for a school or an instructor if the applicant does not qualify for approval under provisions of this rule.

(3) The division may deny approval or revoke approval of a school or instructor for any of the following reasons:

(a) failure to comply with any provision of this rule or the school's agreement;

(b) falsification of any records or information relating to the school's instruction program;

(c) commission of any act which compromises the integrity of the school's instruction program or the instructor;

(d) failure to notify the division within ten days of any change in instructor personnel or testing locations;

(e) notification that an instructor's driver license is suspended, revoked, canceled or disqualified; or

(f) misstatements or misrepresentation on the application.

(4) If the division determines that reasons for revocation exist because of failure to comply with any provision of this rule or the school's agreement, the division may postpone revocation and allow the school or instructor up to thirty (30) days to correct the deficiency.

(5) A school or instructor who receives notice that the division intends to revoke their approval is entitled to a hearing. The hearing will be conducted by a person appointed by the division director.

(a) The party requesting the hearing must file the request for hearing within ten days from the date notice of the division's intent to revoke is received.

(b) The person conducting the hearing will issue a written decision that complies with Subsection 63G-4-203(1)(i) within ten days following the hearing.

(6) The decision of the person conducting the hearing will be considered final agency action. A party wishing to contest the decision may:

(a) file a request for reconsideration with the division in accordance with Section 63G-4-302; or

(b) seek judicial review in accordance with Section 63G-4-401.

(7) Reinstatement following revocation of approval may take place only after:

(a) a new application for approval is filed;

(b) the division is satisfied that the reason for revocation no longer exists; and

(c) the division is satisfied that approval of the school or instructor is in the best interests of the public and will not jeopardize public safety.

KEY: motorcycle rider training schools
July 11, 2008 **53-3-903**
Notice of Continuation April 19, 2018

R746. Public Service Commission, Administration.
R746-8. Utah Universal Public Telecommunications Service Support Fund (UUSF).
R746-8-100. Authority, Purpose, and Organization.

(1) This rule is adopted under:
(a) Utah Code Section 54-8b-10; and
(b) Utah Code Section 54-8b-15.
(2) This rule:
(a) governs the methods, practices, and procedures by which:
(b) the UUSF is created, maintained, and funded; and
(c) funds are disbursed from the UUSF to qualifying access line providers.
(3) This rule is organized into the following Parts:
(a) Part 100: Authority, Purpose and Organization;
(b) Part 200: Definitions;
(c) Part 300: UUSF Funding; and
(d) Part 400: UUSF Distributions.

R746-8-200. Definitions.

(1)(a) "Access line" is defined at Utah Code Subsection 54-8b-2(1), and is used in this rule, R746-8, to the extent consistent with federal law.
(b) For purposes of applying the statutory definition of "access line," the term "connection" is defined at Utah Code Subsection 54-8b-15(1) and is used in this rule, R746-8, to the extent consistent with federal law.
(c)(i) Providers of access lines and functionally equivalent connections are hereafter referred to jointly as "providers."
(ii) Access lines and connections are hereafter referred to jointly as "access line" or "access lines."
(2)(a) "Affordable base rate" or "ABR" means the monthly retail rate that a rate-of-return regulated provider is required to charge on a per-access line basis in order to receive ongoing disbursements from the UUSF.
(b) "Affordable base rate" may include, if itemized in the provider's Commission-approved tariff:
(i) the applicable UUSF surcharge;
(ii) mandatory extended area service fees; or
(iii) state subscriber line fees.
(c) "Affordable base rate" does not include:
(i) municipal franchise fee(s);
(ii) tax(es); or
(iii) any incidental surcharge(s) other than those identified in R746-8-200(2)(b):
(A) included in a Commission-approved tariff; or
(B) authorized under these rules.
(3) "Broadband internet access service" is defined at Utah Code Subsection 54-8b-15(1).
(4) "Carrier of last resort" is defined at Utah Code Subsection 54-8b-15(1).
(5) "Eligible telecommunications carrier" or "ETC" means a provider that, if seeking to participate in the state Lifeline program:
(a) is designated as an eligible telecommunications carrier by the commission in accordance with 47 U.S.C. Section 214(e); or
(b) is designated by the FCC as a Lifeline Broadband Provider (LBP).
(6) "Designated support area" means the geographic area used to determine a provider's UUSF support distribution, including, at a minimum, the provider's entire certificated service territory located in the State of Utah.
(7) The acronym "FCC" means the Federal Communications Commission.
(8) "Facilities-based provider" means a provider that uses:
(a) its own facilities;
(b) essential facilities or unbundled network elements obtained from another provider; or
(c) a combination of its own facilities and essential facilities or unbundled network elements obtained from another provider.
(9)(a) "Household" means any individual or group of individuals living together at the same address as one economic unit.
(b) "Economic unit" means all adult individuals contributing to and sharing in the income and expenses of a household.
(10) "Lifeline subscriber" means an individual who qualifies for state subsidization of an access line through participation in a program for low-income individuals that is recognized by the FCC.
(11) "Non-rate-of-return regulated" is defined at Utah Code Subsection 54-8b-15(1).
(12) "Rate-of-return regulated" is defined at Utah Code Subsection 54-8b-15(1).
(13) "Wholesale broadband internet access service" is defined at Utah Code Subsection 54-8b-15(1).

R746-8-300. UUSF Funding.

The following sections in the 300 series address UUSF Funding.

R746-8-301. Calculation and Application of UUSF Surcharge.

(1) The Utah Universal Public Telecommunications Service Support Fund (UUSF) shall be funded as follows:
(a) Unless Subsection R746-8-301(3) applies, providers shall remit to the Commission $0.36 per month per access line that, as of the last calendar day of each month, has a place of primary use in Utah in accordance with the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.
(b)(i) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs.
(ii) A provider of mobile telecommunications service shall consider the customer's place of primary use to be the customer's residential street address or primary business street address.
(iii) A provider of non-mobile telecommunications service shall consider the customer's place of primary use to be:
(A) the customer's residential street address or primary business street address; or
(B) the customer's registered location for 911 purposes.
(c) A provider may collect the surcharge:
(i) as an explicit charge to each end-user; or
(ii) through inclusion of the surcharge within the end-user's rate plan.
(d) A provider that offers a multi-line service shall apply the surcharge to each concurrent real-time voice communication call session that an end-user can place to or receive from the public switched telephone network.
(e)(i) A provider that offers prepaid access lines or connections that permit access to the public telephone network shall remit to the Commission $0.36 per month per access line for such service (new access lines or connections, or recharges for existing lines or connections) purchased on or after January 1, 2018.
(ii) Subsection R746-8-301(1)(e)(i) operates in lieu of Subsection R746-8-301(1)(a) in that a provider who is required to make a remittance for an access line under Subsection R746-8-301(1)(e)(i) is not required to make an additional remittance for the same access line under Subsection R746-8-301(1)(a).
(iii)(A) Multiple recharges of a single prepaid access line during a single month do not trigger multiple remittance requirements.
(B) $0.36 per month is both the maximum and minimum amount of remittance necessary for any single access line.
(2)(a) A provider shall remit to the Commission no less than 98.69 percent of its total monthly surcharge collections.
(b) A provider may retain a maximum of 1.31 percent of its total monthly surcharge collections to offset the costs of administering this rule.
(3)(a) Subject to Subsection R746-8-301(3)(b), a provider may omit the UUSF surcharge with respect to an access line that is described in Subsection R746-8-301(1), and:
(i) generates revenue that is subject to a universal service fund

surcharge in a state other than Utah for the relevant month for which the provider omits the UUSF surcharge; or

(ii) for the relevant month for which the provider omits the UUSF surcharge, was not used to access Utah intrastate telecommunications services.

(b) A provider that omits any UUSF surcharge pursuant to Subsection R746-8-301(3)(a) shall:

(i) maintain documentation for at least 36 months that the omission complied with Subsection R746-8-301(3)(a); and

(ii) consent to any audit of the documentation requested by the:

(A) Commission; or

(B) Division of Public Utilities.

(c) A provider who omits any UUSF surcharge pursuant to Subsection R746-8-301(3)(a) shall report monthly to the Division of Public Utilities, using a method approved by the Division, the number of omissions claimed pursuant to each Subsection R746-8-301(3)(a)(i) and R746-8-301(3)(a)(ii).

R746-8-302. UUSF Surcharge Remittances.

Providers shall remit surcharge assessments to the Commission as follows:

(1) If, over a period of six months, the average monthly UUSF surcharge assessments total $1,000 or more, the provider shall remit the funds:

(a) on a monthly basis; and

(b) within 45 days of the last calendar day of each month.

(2) If, over a period of six months, the average UUSF surcharge assessments are less than $1,000 per month, the provider shall accrue the UUSF surcharge assessments and submit the accrued assessments every six months.

R746-8-400. UUSF Distributions.

The following sections in the 400 series address UUSF Distributions.

R746-8-401. Rate-of-Return Regulated Providers.

(1) A rate-of-return regulated provider is eligible for ongoing UUSF support pursuant to Utah Code Section 54-8b-15 if the provider:

(a) is a carrier of last resort;

(b) is in compliance with Commission orders and rules;

(c) unless a petition brought pursuant to Subsection R746-8-401(2) is granted after adjudication, charges, at a minimum, $18 per access line;

(d) offers Lifeline service on terms and conditions prescribed by the Commission;

(e) operates as a facilities-based provider, not a reseller; and

(f) in compliance with R746-8-401(3), demonstrates through an adjudicative proceeding that its costs as established in Utah Code Section 54-8b-15 exceed its revenues as established in Utah Code Section 54-8b-15.

(2)(a) A rate-of-return regulated provider may petition the Commission to deviate from the affordable base rate set forth in Subsection R746-8-401(1)(c).

(b) A rate-of-return regulated provider that files a petition to deviate from the affordable base rate shall:

(i) demonstrate that the affordable base rate is not reasonable in the provider's designated support area; or

(ii) impute income up to the affordable base rate in calculating the provider's UUSF disbursement.

(3) The calculation of a rate-of-return regulated provider's ongoing UUSF distribution shall conform to the following standards:

(a) The provider's state rate-of-return shall be equal to the weighted average cost of capital rate-of-return prescribed by the FCC for rate-of-return regulated carriers, as of the date of the provider's application for support, and as follows:

(A) beginning July 1, 2016: 11.0%

(B) beginning July 1, 2017: 10.75%;

(C) beginning July 1, 2018: 10.5%;

(D) beginning July 1, 2019, 10.25%;

(E) beginning July 1, 2020, 10.0%; and

(F) beginning July 1, 2021, 9.75%.

(b) The provider's depreciation costs shall be calculated as established in Utah Code Section 54-8b-15.

(4) Yearly following a change in the FCC rate-of-return, unless the provider files with the Commission a petition for review of its UUSF disbursement, the Division shall make a recommendation of whether each provider's monthly distribution should be adjusted according to:

(a) the current FCC rate-of-return as set forth in R746-8-401(3)(a); and

(b) the provider's financial information from its last Annual Report filed with the Commission.

R746-8-402. Non-rate-of-return Regulated Providers.

(1) A non-rate-of-return regulated provider may be eligible for ongoing UUSF support for the deployment and management of networks capable of providing access lines, connections, or broadband internet access, upon application to the Commission, if the provider:

(a) is a carrier of last resort; and

(b) is in compliance with Commission orders and rules.

(2) Upon receipt of an application brought under R746-8-402, the Commission shall establish the appropriate criteria for the entitlement to, and the disbursement of, UUSF funds to non-rate-of-return regulated providers.

R746-8-403. Lifeline Support.

(1) In addition to any disbursement calculated under R746-8-401 or R746-8-402, an ETC may receive an ongoing distribution through ongoing participation in a Commission-approved Lifeline program upon a specific finding of public interest by the Commission.

(2)(a) The support claimed under this Subsection R746-8-403 may not exceed $3.50 per Lifeline subscriber per month of subscription to a service that:

(i) provides service over landlines; or

(ii)(A) meets FCC broadband Lifeline requirements as set forth in 47 C.F.R. 54.408; and

(B) for wireless Lifeline, allows, at no charge beyond the basic monthly fee, unlimited texting and at least 750 voice minutes per month; or

(iii)(A) meets FCC broadband Lifeline requirements as set forth in 47 C.F.R. 54.408; and

(B) does not include a voice component.

(b) Lifeline distributions will be based on eligible Lifeline subscribers as of the first day of each month, with no prorated discounts.

(3) An ETC that is approved to participate in the Commission Lifeline program shall:

(a) provide potential Lifeline subscribers with application materials and information;

(b) provide service to any customer who is verified as eligible for participation through:

(i) the FCC's national verifier system; or

(ii) if the FCC's national verifier system is not yet operational, the program administrator with which the Commission contracts to administer the initial and continued eligibility verification of state Lifeline participants;

(c) waive, for Lifeline subscribers, the following charges:

(i) customer security deposits, if the customer voluntarily elects to receive toll blocking; and

(ii) within any 12-month period, the first nonrecurring service charge for:

(A) changing local exchange usage service to Lifeline service; and

(B) changing from flat rate service to message rate service; and

(d)(i) add the Lifeline discount to a customer's account within five (5) business days of notification of the customer's eligibility under FCC Lifeline requirements; and;

(ii) remove the Lifeline discount from a Lifeline subscriber's account within five (5) business days of notification of the Lifeline subscriber's ineligibility under FCC Lifeline requirements; and

(e) submit to the Division by May 1 of each year, a complete Lifeline subscriber list, as defined by the FCC.

(4) An ETC participating in the Commission Lifeline program may not:

(a) disconnect Lifeline telephone service for nonpayment of toll service;

(b) require a Lifeline subscriber to purchase additional services from the ETC; or

(c) prohibit a Lifeline subscriber from purchasing additional services from the ETC, unless the participant fails to comply with the ETC's terms and conditions for those additional services.

R746-8-404. One-time UUSF Distribution.

A non-rate-of-return regulated carrier of last resort may apply for a one-time UUSF distribution pursuant to Utah Code Subsection 54-8b-15(3)(d).

R746-8-405. UUSF Support for Deaf, Hard of Hearing, or Severely Speech Impaired Person.

(1) This rule governs a program to provide telecommunication devices and services to qualifying deaf, hard of hearing, or severely speech impaired persons

(2) Definitions.

(a) "Applicant" means a person applying for:

(i) a telecommunication device for the deaf, hard of hearing, or severely speech impaired;

(ii) a signal device; or

(iii) another assistive communication device.

(b) "Audiologist" means a person who:

(i)(A) has a master's or doctoral degree in audiology; or

(B) is licensed in audiology in Utah; and

(ii) holds a Certificate of Clinic Competence in Audiology from the American Speech/Language/Hearing Association or its equivalent.

(c) "Deaf" means hearing loss that requires the use of a TDD to communicate effectively on the telephone.

(d). "Hard of hearing" means hearing loss that requires use of a TDD to communicate effectively on the telephone.

(e) "Otolaryngologist" means a licensed physician specializing in ear, nose, and throat medicine.

(f) "Recipient" means a person who is approved to receive a TDD, signal device, personal communicator, or other assistive communication device.

(g) "Speech language pathologist" means a person who:

(i) has a master's or doctoral degree in Speech Language Pathology; and

(ii) holds a Certificate of Clinical Competence in Speech/Language Pathology from the American Speech Language Hearing Association or its equivalent.

(h) "Severely Speech Impaired" means a speech handicap or disorder that renders speech on an ordinary telephone unintelligible.

(i) "Signal device" means a mechanical device that alerts a deaf, deaf-blind, or hard of hearing person of an incoming telephone call.

(j) "Telecommunications Device for the Deaf" or "TDD" means an electrical device for use with a telephone that utilizes:

(i) a key board;

(ii) an acoustic coupler;

(iii) a display screen;

(iv) a braille display; or

(v) a tablet device or unlocked cellular telephone that is equipped with applications that allow a user to transmit and receive messages.

(3) Eligibility.

(a) At a minimum, applicants shall demonstrate that they:

(i) live within the State of Utah;

(ii) are

(A) deaf;

(B) hard of hearing; or

(C) severely speech impaired;

(iii) are eligible for assistance under a low-income public assistance program; and

(iv) are able to send and receive messages with a TDD or other appropriate assistive device.

(b) Qualification under Subsection R746-8-405(3)(a)(ii) shall be established by the certification of:

(i) a person who is licensed to practice medicine;

(ii) an audiologist;

(iii) an otolaryngologist;

(iv) a speech/language pathologist; or

(v) qualified personnel within a state agency.

(4) Distribution process.

(a) If approved by the Commission to receive an assistive device, the applicant shall:

(i) unless Subsection R746-8-405(4)(b) applies, sign an agreement and conditions of acceptance form supplied by the Commission; and

(ii) report, as instructed by the Commission, for training and receipt of the approved device.

(b) If the recipient is a minor or is unable to sign the agreement and conditions of acceptance form, the recipient's legal guardian may sign.

(5) Ownership and Liability.

(a)(i) An assistive device provided under this rule remains the property of the State of Utah.

(ii) A recipient shall not remove an assistive device from the state of Utah for a period of time longer than 90 days unless the recipient obtains the written consent of the Commission.

(b) A recipient shall be solely responsible for the costs of:

(i) repair of an assistive device, other than for normal wear and tear;

(ii) replacement of an assistive device;

(iii) paper required by an assistive device;

(iv) telephone and internet service; and

(v) light bulbs required by an assistive device.

(c) If an assistive device requires repair, the recipient shall return it to the Commission and may not make private arrangements for repair.

(6) Termination of Use. A recipient, or if applicable, the recipient's guardian, shall return an assistive device to the Commission if the recipient:

(a) no longer intends to reside in Utah;

(b) becomes ineligible pursuant to R746-8-405(3); or

(c) is notified by the Commission to return the device.

R746-8-405a. New Technology Equipment Distribution Program (NTEDP).

(1) Authority and Purpose.

(a) This rule section is promulgated pursuant to Utah Code Subsection 54-8b-10(3)(b).

(b) The purposes of the NTEDP are:

(i) to explore the feasibility of using tablet devices and/or unlocked cellular telephones to address the telecommunication needs of the deaf, hard of hearing, and severely speech-impaired communities;

(ii) to determine how best to manage a program in which tablet devices and/or unlocked cellular telephones are provided; and

(iii) to determine the level of support services that would be required if tablet devices and/or unlocked cellular telephone devices are provided.

(2) Duration. The NTEDP shall terminate no later than December 31, 2018.

(3) Participation.

(a) An individual who wishes to participate in the NTEDP shall:

(i) submit a completed application form to the Relay Utah office;

(ii) provide medical documentation of:

(A) deafness;

(B) hardness of hearing; or

(C) severe speech impairment;

(iii) demonstrate that the individual is receiving assistance from a low-income public assistance program administered by a state agency;

(iv)(A) if applying for a tablet, certify that the individual has consistent access to a WiFi network; or

(B) if applying for an unlocked cellular telephone, certify that the individual has a service plan in place with a wireless telecommunications provider; and

(v) certify that the individual is able and willing to comply with Subsection (4).

(b) Priority may be given to applicants who have previously participated in the Commission's Relay Utah program.

(c) An applicant who is not selected to participate may request to be placed on a waiting list.

(d) Participation shall be limited as follows:

(i) From the inception of the program through June 30, 2017, no more than 25 participants, as follows:

(A) no more than 8 deaf individuals who are at least 13 years old;

(B) no more than 8 hard of hearing individuals who are at least 13 years old;

(C) no more than 8 severely speech impaired individuals who are at least 13 years old; and

(D) at least one deaf, hard of hearing, or severely speech impaired individual who is under 13 years of age.

(ii) From July 1, 2017 through the conclusion of the program, up to 10 additional participants in each six-month period.

(4) Participant obligations.

(a) An individual who is chosen to participate in the NTEDP shall:

(i) participate in an entrance interview with the Relay Utah office;

(ii) complete online surveys as instructed by the Relay Utah office;

(iii) promptly comply with all instructions from the Relay Utah office to download apps;

(iv) promptly respond to requests from the Relay Utah office for information and feedback;

(v) maintain the device in the storage case provided;

(vi) retain all original device packaging, instructions, and information;

(vii) contact the manufacturer's customer service department for assistance with technical support;

(viii) promptly report to the Relay Utah office:

(A) software and hardware failures; and

(B) damage to the device;

(ix) take financial responsibility for loss of, or damage to, the device if caused by the individual's misuse or negligence; and

(x) immediately return the device to the Relay Utah office if the individual:

(A) moves from the State of Utah;

(B) is disqualified by the Relay Utah office from further participation in the NTEDP; or

(C) chooses to terminate the individual's participation in the NTEDP.

(b) An individual who is chosen to participate in the NTEDP may not:

(i) reformat or attempt to reformat the device;

(ii) allow any other person to use the device, except as necessary to assist the participant with telecommunications; or

(iii) install software, apps, or other programs not authorized by the Relay Utah office.

(c) A participant who fails to comply with this Subsection (4) may be disqualified from further participation in the NTEDP.

(5) All devices distributed as part of the NTEDP shall remain the property of the State of Utah Public Service Commission.

KEY: Utah universal service fund, surcharges and disbursements, speech/hearing challenges, assistive devices and technology

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54-4-1
54-8b-15
54-8b-10

R746. Public Service Commission, Administration.
R746-110. Uncontested Matters to be Adjudicated Informally.
R746-110-1. Requests.

When a request for agency action is filed with the Commission and the party filing the request anticipates and represents in the request that the matter will be unopposed and uncontested, or when the Commission determines that the matter can reasonably be expected to be unopposed and uncontested the request may be adjudicated informally in accord with Section 63G-4-203 and the following:

R746-110-2. Procedure.

The applicant shall file in support of the request sworn statements and documents as may be necessary to establish the pertinent facts of the matter. Thereupon, the Commission may, without hearing, enter its Report and Order in tentative form not to be effective for a minimum of 20 days after its issuance. Provided, however, that in cases where the applicant shall establish good cause, the Commission may waive the 20-day tentative period and issue a final order. Section 63G-4-301 provides for review of final agency orders. The order shall provide that any person may file a protest prior to its effective date and that if the Commission finds the protest to be meritorious, the effective date shall be suspended pending further proceedings. The order shall be served by the applicant upon all persons deemed by the Commission to have an interest or potential interest in the subject matter, and the Commission may require public notice in the form designated by the Commission.

Absent meritorious protest, the order shall automatically become effective without further action.

R746-110-3. Rate Increases.

In cases where a public utility seeks an increase in rates, fees, or charges, informal summary procedure may be invoked if the applicant files in addition to supporting documentation a sworn statement from each person impacted by the increase that such person has no objection to the increase. This provision does not apply to energy-cost pass-through cases, which are provided for in Section 54-7-13.5, nor does it apply to cases brought under Section 54-7-12(6).

KEY: public utilities, rules and procedures
1988 54-4-1
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R746. Public Service Commission, Administration.
R746-210. Utility Service Rules Applicable Only to Electric Utilities.
R746-210-1. Public Utility Regulatory Policy Act (PURPA) Standards for Master-Metered Multiple Tenancy Dwellings.

A. The Public Utility Regulatory Policy Act (PURPA) standards for Master Metered Multiple Tenancy Dwellings as set forth below are hereby adopted by the Commission.

1. Section 113 of PURPA 16 USCA states:

"To the extent determined appropriate under Section 115(d), master metering of electric service in the case of new buildings shall be prohibited or restricted to the extent necessary to carry out the purpose of this Title.

Section 115(d) states:

"Separate metering shall be determined appropriate for any new building for purposes of section 113(b)(1) if --

(1) there is more than one unit in such building,

(2) the occupant of each such unit has electric energy used in such unit, and

(3) with respect to such portion of electric energy used in such unit, the long-run benefits to the electric consumers in such building exceed the costs of purchasing and installing separate meters in such building.

R746-210-2. Exemptions.

A. Automatic Exemptions -- Separate individual metering is not required for:

1. Those portions of transient multiple occupancy buildings and transient mobile home parks normally used as temporary domiciles in such buildings as hotels, motels, dormitories, rooming houses, hospitals, nursing homes and those mobile home park sections designated for travel trailers;

2. Residential unit space in multiple occupancy buildings where all space heating, water heating, ventilation and cooling are provided through central systems and where the electric load within each unit that is controlled by the tenant is projected to be 250 kWh or less per month and where the utility has been provided reasonable substantiation of the load projection;

3. Common building areas such as hallways, elevators, reception and/or washroom, security lighting areas.

4. Commercial unit space which is:

a. Subject to alternation with change in tenants as evidenced by temporary as distinguished from permanent type of load bearing wall and floor construction separating the commercial unit spaces, and

b. Non-energy intensive as evidenced by connected loads other than space heating, water heating, and air-conditioning of five watts or less per square foot of occupied space.

R746-210-3. Exemptions Requiring a Cost-Effectiveness Test.

Cases not covered under "automatic exemptions" will be granted an exemption if the benefit-to-cost ratio is less than one (1) with respect to separate metering using the cost effectiveness test guidelines described below. The burden of proof rests with the person requesting exemption and the evidence required to sustain that burden must demonstrate that the long-run benefits of individual metering to the electric consumer are less than the costs of purchasing and installing separate meters. Written requests to the utility for an exemption will be given consideration based upon the following criteria and conditions:

A. "New buildings" shall be defined as those structures or mobile home parks for which a building permit is obtained on or after August 1, 1984, or, if no permit is required, for which construction is commenced on or after August 1, 1984. Construction is defined to begin when footings are poured.

B. The benefits shall be quantified in dollars of savings and shall reflect the difference in electricity use which results when separate metering is utilized rather than master-metering. The lump sum savings shall reflect a present worth analysis using as a discount rate the percentage interest rate of long-term debt such as the utility's latest long-term bond issue, or a mortgage rate, and a period equal to the estimated life of the building. Such analysis, including its preparation and expense, shall be the sole responsibility of the customer.

C. The customer's determination of benefit shall be based on electric service supplied by the utility at electric service rates and regulations approved by the Commission, including but not limited to, regulations that prohibit resale of electric service to any other person or entity unless taking service under rate schedules that specifically provide for reselling.

D. The cost shall be quantified in dollars and shall reflect the current difference in installed cost between master and individual metering. The lump sum differential cost reflecting the purchase and installation of separate meters versus a single meter shall be prepared by the utility. The preparation of the differential costs of meter bases and building wiring shall be the sole responsibility of the customer; and

E. The benefit-to-cost ratio shall equal the present worth of benefits described in paragraph (b) divided by the current (present worth) costs described in paragraph (d).

R746-210-4. Exemption by Appeal.

In the event the customer disagrees with the utility's determination of the exemption, such dispute shall be resolved by the Commission. The Commission, upon its own motion or upon the petition of any person, may initiate formal or investigative proceedings upon any matter arising out of an informal complaint. Further, a formal investigation requires not only the benefit-to-cost determination, but also a showing by the customer that a granted exemption status will be consistent with the stated purposes of Title I of PURPA; i.e., conservation, efficiency, and equity. It is appropriate that equity, conservation and efficiency not be negatively impacted as required under the promulgated PURPA regulations.

R746-210-5. Submetering as an Alternative to Individual Metering.

There are no circumstances, other than exemptions, where submetering is an acceptable alternative to individual metering under the constraints of PURPA. Submetering, while giving consumers control over their energy consumption, still retains a primary objection to master metering; namely, that since customers of a master metered utility customer are not customers of a regulated public utility, the Commission is without authority to provide redress where appropriate, such as in cases of service or billing problems.

KEY: electric utility industries, rules, procedure
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R746. Public Service Commission, Administration.
R746-240. Telecommunication Service Rules.
R746-240-1. General Provisions.

A. Authorization--The Utah Public Utility Code Sections 54-1-1, 54-4-4, 54-4-7, 54-4-8, and 54-4-14.

B. Title--These rules shall be known and may be cited as the Utah Service Rules for Telecommunication Corporations.

C. Purpose--The purpose of these rules is to establish and enforce uniform telecommunications service practices and procedures governing eligibility, deposits, account billing, termination and deferred payment agreements.

D. Objective--The objective of these rules is to assure the adequate provision of residential and business telecommunications service, to restrict unreasonable termination of or refusal to provide residential and business telecommunications service, to provide functional alternatives to termination or refusal to provide residential or business telecommunications service, and to establish and enforce fair and equitable procedures governing eligibility, deposits, account billing, termination and deferred payment agreements.

E. Nondiscrimination--Telecommunications service shall be provided to qualified persons without regard to employment, occupation, race, handicap, creed, sex, national origin, marital status, or number of dependents.

F. Requirement of Good Faith--Every agreement or obligation within these rules imposes an obligation of good faith, honest, and fair dealings in its performance and enforcement.

G. Application of Rules--These telecommunications service rules shall apply to each telecommunications corporation operating within Utah under the jurisdiction of the Public Service Commission.

1. A telecommunications corporation may petition the Commission for an exemption from specified portions of these rules in accordance with R746-1-109, Deviation from Rules.

2. The adoption of these rules by the Commission shall in no way preclude it from altering or amending a specific rule pursuant to applicable statutory procedures.

H. Customer's Statement of Rights and Responsibilities--When telecommunications service is extended to an account holder, and annually thereafter, a local exchange carrier shall provide a copy of the "Customer's Statement of Rights and Responsibilities" as approved by the Public Service Commission. This statement shall be a single page document. It shall be prominently displayed in each customer service center.

R746-240-2. General Definitions.

A. "Account Holder"--A person, corporation, partnership, or other entity which has agreed with a telecommunications corporation to pay for receipt of telecommunications services and to which the utility provides the telecommunications services.

B. "Applicant"--A person, corporation, partnership, or other entity that applies to a telecommunications corporation for local access line services.

C. "Local Exchange Carrier/LEC"--A telecommunications corporation that provides the local access line services within the geographic territory authorized by the Commission.

D. "Deferred Payment Agreement"--An agreement to receive or to continue to receive telecommunications service pursuant to Section R746-240-5, Deferred Payment Agreement, and to pay an outstanding debt or delinquent account owed to a telecommunications corporation.

R746-240-3. Deposits and Eligibility for Service.

A. Deposits and Guarantees--

1. Telecommunications corporations not subject to pricing flexibility pursuant to 54-8b-2.3 shall have Commission approved tariffs on file relating to their security deposits and third party guarantor polices and procedures. Telecommunications corporations subject to pricing flexibility shall include any terms and conditions relating to their security deposits and third party guarantor policies and procedures in their price lists.

2. Simple interest shall accrue on a deposit and shall be paid at the time the deposit is either refunded or applied to the customer's final bill for service. The interest rate used by a telecommunications corporation shall be set by the Commission.

B. Eligibility for Service--

1. Telecommunications service is to be conditioned upon payment of deposits, when required, and of the outstanding debts for past telecommunications service which are owed by the applicant to that telecommunications corporation, subject to Section R746-240-7 Review and Resolution of Disputes, and Section R746-240-8, Formal Agency Proceedings Based Upon Complaint Review. That service may be denied when unsafe conditions exist, when the applicant has given false information in applying for telecommunications service, or when the applicant has tampered with the telecommunications corporation's lines, equipment, or other properties.

2. When an applicant is unable to pay an outstanding debt in full, service may be provided upon execution of a deferred payment agreement as set forth in Section R746-240-5, Deferred Payment Agreement.

3. An applicant is ineligible for service if at the time of application, the applicant is cohabiting with a delinquent account holder, previously terminated for non-payment, and the applicant and the delinquent account holder received the telecommunications corporation's service, whether the service was received at the applicant's present address or another address.

R746-240-4. Account Billing.

A. Billing Procedures--

1. Bills to account holders for telecommunications services shall be issued on a monthly basis and shall be typed or machine printed.

B. Periodic Billing Statement--

1. Except in the case of telecommunications service which is deemed to be uncollectible or with respect to which collection or termination procedures have been instituted, a telecommunications corporation shall mail or deliver to the account holder, for each billing cycle at the end of which there is an outstanding balance for current service, a statement which the account holder may retain, setting forth each of the following disclosures to the extent applicable:

a. the outstanding balance in the account at the beginning of the current billing cycle using a term such as "previous balance";

b. the amount of the charges debited to the account during the current billing cycle using a term such as "current service";

c. the amount of the payments made to the account from the previous billing cycle using a term, such as "payments";

d. the amount of the late payment charges debited to the account during the current billing cycle using a term, such as "late charge";

e. a listing of the closing date of the current billing cycle and the outstanding balance in the account on that date using a term, such as "amount due";

f. a listing of the statement, or payment, due date;

g. a listing of the date by which payment of the new balance must be made to avoid assessment of a late charge;

h. a statement that a late charge, expressed in annual percentage rate or periodic rate, may be assessed against the account for late payment;

i. a statement such as: "If you have questions about this bill, please call the company at--phone #".

C. Late Charge--

1. A late payment charge of a periodic rate as established by the Commission may be assessed against an unpaid balance pursuant to specific tariffs approved by the Commission for telecommunications corporations not subject to pricing flexibility pursuant to 54-8b-2.3. Late payment charges shall not apply if

payment is made before the next bill is rendered by the telecommunications corporation. A late payment charge may be assessed against an unpaid balance pursuant to terms and conditions in price lists of telecommunications corporations subject to pricing flexibility.

2. No other charge, whether described as a finance charge, service charge, discount, net or gross charge may be applied to an account for failure to pay an outstanding bill by the statement due date. This subsection does not apply to reconnection charges or return check service charges.

D. Statement Due Date--An account holder shall have not less than 20 days from the bill date to pay the new balance, which date shall be the statement due date.

E. Disputed Bill--

1. In the event of a dispute between the account holder and the telecommunications corporation respecting a bill, the telecommunications corporation may require the account holder to pay the undisputed portion of the bill to avoid discontinuance of service for nonpayment. The telecommunications corporation shall make an investigation as may be appropriate to the particular case, and report the result thereof to the account holder. In the event the dispute is not reconciled, the telecommunications corporation shall advise the account holder that he may make application to the Division of Public Utilities for review and disposition of the matter per Section R746-240-7, Review and Resolution of Disputes.

2. Inaccurately billed service--When the billings for telecommunications services have not been accurately determined because of the telecommunications corporation's omission or negligence, the telecommunications corporation shall offer and enter into reasonable payment arrangements when the amount owed by the customer exceeds $25 and when the period over which the underbilling accumulated exceeds one month. When a telecommunications corporation overbills a customer for telecommunications service, the telecommunications corporation shall offer the account holder a credit on future bills or a refund if requested by the account holder.

3. Interruption of service--In the event the account holder's service is interrupted, other than by the negligence or the willful act of the account holder, and it remains out of service for a specified number of hours, after being reported or found by the telecommunications corporation to be out of order, credit adjustments shall be made to the account holder's billing. The specified number of hours, which can be either 24 or 48, and the adjustment methods will be as shown in the tariffs of each telecommunications corporation and approved by the Commission for telecommunications corporations that are not subject to pricing flexibility pursuant to 54-8b-2.3 or in the price lists of each telecommunications corporation that is subject to pricing flexibility.

R746-240-5. Deferred Payment Agreement.

A. Delinquent Account--

1. An account holder who is unable to pay a delinquent account balance on demand may be able to receive telecommunications services under a deferred payment agreement, if such an agreement is offered by the LEC.

2. When a telecommunications corporation offers a form of a deferred payment agreement, the account holder can prevent disconnection, or be reconnected, by negotiating and executing a deferred payment agreement and paying the first installment at the telecommunications corporation's business office. Within two working days after the account holder makes the first installment payment, telecommunications service will be reconnected.

3. After negotiating a deferred payment agreement, the account holder shall pay the current bills for service plus the monthly installment necessary to liquidate the delinquent bill.

4. A deferred payment agreement may include a late payment charge as authorized for the telecommunications corporation by the Commission.

B. Breach--If an account holder breaches a condition or term of a deferred payment agreement, the telecommunications corporation may treat that breach as a delinquent account and shall have the right to terminate service without further notice.

R746-240-6. Termination.

A. Delinquent Account--

1. A service bill which has remained unpaid beyond the statement due date is a delinquent account. A telecommunications corporation shall not consider an account holder's bill past due unless it remains unpaid for a period of 20 calendar days after the billing date printed on the bill.

2. When an account is delinquent, the telecommunications corporation, before termination, shall issue a written late notice to inform the account holder of the delinquent status. A late notice or reminder notice must include the following information:

a. a statement that the account is a delinquent account and should be paid promptly;

b. a statement that the account holder should communicate with the telecommunications corporation's collection department, by calling the company, if the account holder has questions concerning the account;

c. a statement of the delinquent account balance, using a term such as "delinquent account balance."

3. When the account holder responds to a late notice or reminder notice, the telecommunications corporation's collections personnel shall investigate any disputed issue and shall attempt to resolve that issue by negotiation. If the dispute is not resolved, the telecommunications corporation's collection personnel shall inform the account holder that he may make application to the Division of Public Utilities for a review and disposition pursuant to Section R746-240-7, Review and Resolution of Disputes. During this investigation and negotiation and a subsequent review by the Division of Public Utilities no other action shall be taken to terminate the local access service if the account holder pays the undisputed portion of the account, subject to the telecommunications corporation's right to terminate service pursuant to R746-240-6(D), Termination Without Notice.

B. Reasons for Termination--

1. Service may be terminated by a telecommunications corporation for the following reasons:

a. nonpayment of billed and delinquent charges, deposits, deferred payments owed to the telecommunications corporation;

b. abusive use of the telephone services in a manner that interferes with the service of another person;

c. intentionally using the service in a manner that causes wrongful billing charges to another person;

d. intentionally using the service to transmit messages or to locate a person to give or obtain information, without payment of appropriate message charges;

e. using the service with fraudulent intent by impersonating someone else;

f. using the service for unlawful purposes;

g. tampering with or destroying company lines, equipment or other properties;

h. subterfuge or deliberately furnishing false information when applying for and obtaining telephone services;

i. abandonment of the service.

2. The following shall be insufficient grounds for termination of service:

a. a delinquent account, accrued prior to the commencement of a divorce or separate maintenance action in the courts, in the name of a former spouse;

b. cohabitation of a current account holder with one who is a delinquent account holder who was previously terminated for non-payment, unless the current and delinquent account holders also cohabited during the time the delinquent account holder received the telecommunications corporation's service, whether such service was received at the current account holder's present address or another address;

c. when the delinquent account balance is $15.00, or less, except when a delinquent balance has accrued for more than 3 months.

d. delinquency in payment for service by a previous occupant at the premises to be served other than a member of the same family or household;

e. failure to pay any amount in a bona fide dispute before the Division or Commission.

C. Medical Emergency/Medical Facilities--

1. A local exchange carrier shall postpone discontinuance of service of a residential customer for 30 days from the date of a certificate of a licensed physician which states that discontinuance of service will aggravate an existing medical emergency or create a medical emergency for the customer, a member of his family, or other permanent resident on the premises where service is rendered. This postponement shall be limited to a single 30-day period or a lesser period as may be agreed upon by the telecommunications corporation and the account holder. A person whose health is threatened or illness aggravated may petition the Commission for an extension of time.

2. The notice or certificate of medical emergency must be in writing and show clearly the name of the person whose illness would be exacerbated by discontinuance of service, the nature of the medical emergency, the specific manner in which the discontinuance of service will aggravate or create a medical emergency, and the name, title, and signature of the physician certifying the medical emergency.

3. In instances when discontinuance of service is delayed for medical reasons, the telecommunications corporation may restrict the ability of the account holder to place toll calls. The account holder shall pay the appropriate rates for toll restriction service.

D. Termination Without Notice--A telecommunications corporation may terminate local access without notice when, in its judgment, a clear emergency or serious health or safety hazard exists, or when there is unauthorized use of or diversion of a telecommunications corporation service or tampering with lines, or other property owned by the telecommunications corporation. The telecommunications corporation shall notify the account holder of the reason for the termination of service.

E. Notice of Proposed Termination--The account holder shall be notified in writing of the telecommunications corporation's intention to discontinue service and be allowed no less than seven days from the mailing date to respond to the notice. Notices of proposed discontinuance of service shall state:

1. the reasons for and date of scheduled discontinuance of service;

2. actions which the account holder may take to avoid discontinuance of service;

3. a statement of the customer's rights and responsibilities under existing state law and Commission rules.

F. Effort to Contact the Account Holder--

1. On the business day prior to actual discontinuance of telecommunications service, a representative of the telecommunications corporation shall make a reasonable effort to contact the account holder affected, either in person or by telephone, to apprise the account holder of the proposed action and steps to take to avoid or delay discontinuance. This oral notice shall include the same information required for written notice. Each local exchange carrier shall maintain clear, written records of these oral notices, showing dates and names of employees giving the notices.

2. The telecommunications corporation shall make reasonable efforts to personally contact a third party designated by the residential account holder before termination occurs, if the third party resides within its service area. The telecommunications corporation shall inform its account holders of the third party notification procedure in its statement of customer rights and responsibilities.

G. Termination--Upon expiration of the notice of proposed termination, the telecommunications corporation may terminate service.

H. Account Holder Requested Termination--An account holder shall advise a telecommunications corporation at least three days in advance of the day on which he wants local access service disconnected. The telecommunications corporation shall disconnect the service within one working day of the requested disconnect date. The account holder shall not be liable for services rendered to or at the address or location after 11:59 p.m. of the requested disconnect date.

R746-240-7. Review and Resolution of Disputes.

A. Informal Review--A person who is unable to resolve a dispute with a telecommunications corporation concerning a matter subject to Public Service Commission jurisdiction may obtain informal review of the dispute by a designated employee within the Division of Public Utilities. Upon receipt of a request for informal review, the Division employee shall, within one business day, notify the telecommunications corporation that an informal complaint has been filed. Absent unusual circumstances, the telecommunications corporation shall attempt to resolve the complaint within five business days. In no circumstance shall the telecommunications corporation fail to respond to the informal complaint within five business days. The response shall advise the complainant and the Division employee regarding the results of the telecommunications corporation's investigation and a proposed solution to the dispute or provide a timetable to complete any investigation and propose a solution. The telecommunications corporation shall make reasonable efforts to complete any investigation and resolve the dispute within 30 calendar days. A proposed solution may be that the telecommunications corporation requests that the informal complaint be dismissed if, in good faith, it believes the complaint is without merit. The telecommunications corporation shall inform the Division employee of the telecommunications corporation's response to the complaint, the proposed solution and the complainant's acceptance or rejection of the proposed solution and shall keep the Division employee informed as to the progress made with respect to the resolution and final disposition of the informal complaint. If, after 30 calendar days from the receipt of a request for informal review, the Division employee has received no information that the complainant has accepted a proposed solution or otherwise completely resolved the complaint with the telecommunications corporations, the complaint shall be presumed to be unresolved.

B. Mediation--If the telecommunications corporation or the complainant determines that they cannot resolve the dispute by themselves, either of them may request that the Division attempt to mediate the dispute. When a mediation request is made, the Division employee shall inform the other party within five business days of the mediation request. The other party shall either accept or reject the mediation request within ten business days after the date of the mediation request, and so advise the mediation requesting party and the Division employee. If mediation is accepted by both parties or the complaint continues to be unresolved 30 calendar days after receipt, the Division employee shall further investigate and evaluate the dispute, considering both the customer's complaint and the telecommunications corporation's response, their past efforts to resolve the dispute, and try to mediate a resolution between the complainant and the telecommunications corporation. Mediation efforts may continue for 30 days or until the Division employee informs the parties that the Division has determined that mediation is not likely to result in a mutually acceptable resolution, whichever is shorter.

C. Division Access to Information During Informal Review or Mediation--The telecommunications corporation and the complainant shall provide documents, data or other information requested by the Division, to evaluate the complaint within five business days of the Division's request, if reasonably possible or as expeditiously as possible if they cannot be provided within five business days.

D. Commission Review--If the telecommunications

corporation has proposed that the complaint be dismissed from informal review for lack of merit and the Division concurs in the disposition, if either party has rejected mediation or if mediation efforts are unsuccessful and the Division has not been able to assist the parties in reaching a mutually accepted resolution of the informal dispute, or the dispute is otherwise unresolved between the parties, the Division in all cases shall inform the complainant of the right to petition the Commission for a review of the dispute, and shall make available to the complainant a standardized complaint form with instructions approved by the Commission. The Division itself may petition the Commission for review of a dispute in any case which the Division determines appropriate. While a complainant is proceeding with an informal review or mediation by the Division or a Commission review of a dispute, no termination of telecommunications service shall be permitted, if amounts not disputed are paid when due, subject to the telecommunications corporation's right to terminate service pursuant to R746-240-6(D), Termination Without Notice.

R746-240-8. Formal Agency Proceedings Based Upon Complaint Review.

The Commission, upon its own motion, the petition of the Division of Public Utilities, or any person, may initiate formal hearings or investigative proceedings upon a matter arising out of an informal complaint.

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54-7-9

R746. Public Service Commission, Administration.
R746-340. Service Quality for Telecommunications Corporations.
R746-340-1. General.

A. Application of Rules -- These rules promulgated herein shall apply to each telecommunications corporation, as defined in Subsection 54-8b-2.

1. These rules govern the furnishing of communications services and facilities to the public by a telecommunications corporation subject to the jurisdiction of the Commission. The purpose of these rules is to establish reasonable service standards to the end that adequate and satisfactory service will be rendered to the public.

2. The adoption of these rules by the Commission shall in no way preclude it from altering or amending its rules pursuant to applicable statutory procedures, nor shall the adoption of these rules preclude the Commission from granting temporary exemptions to rules in exceptional cases as provided in R746-1-109, Deviation from Rules.

B. Definitions -- In the interpretation of these rules, the following definitions shall apply:

1. "Allowed Service Disruption Event" -- an event when a telecommunications corporation is prevented from providing adequate service due to:

a. A customer's act;

b. A customer's failure to act;

c. A governmental agency's delay in granting a right-of-way or other required permit;

d. A disaster or an act of nature that would not have been reasonably anticipated and prepared for by the telecommunications corporation;

e. A disaster of sufficient intensity to give rise to an emergency being declared by state government;

f. A work stoppage, which shall include a grace period of six weeks following return to work;

g. A cable cut outside the telecommunications corporation's control affecting more than 20 pairs.

h. A public calling event, busy calling or dial tone loss due to mass calling or dial-up event;

i. Negligent or willful misconduct by customers or third parties including outages originating from the introduction of a virus onto the telecommunications corporation's network or acts or terrorism.

2. "Central Office" -- A building that contains the necessary telecommunications equipment and operating arrangements for switching, connecting, and inter-connecting the required local, interoffice, and interexchange services for the general public.

3. "Central Office Area" -- A geographic area served by a central office.

4. "CFR" means the Code of Federal Regulations, 2000 edition.

5. "Choke Network Trunk Groups" -- A network with special trunking and special prefixes in place to manage the use of mass-calling-numbers.

6. "Commission" -- Public Service Commission of Utah.

7. "Commitment" -- A promise by a telecommunications corporation to a customer specifying a date and time to provide a service.

8. "Customer" -- A person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency, provided with telecommunications services by a telecommunications corporation.

9. Customer trouble reports include:

a. "Trouble Report" -- A customer report attributable to the malfunction of a telecommunications corporation's facilities and includes repeat trouble reports.

b. "Out of Service Trouble Report" -- A report used when a customer reports there is neither incoming nor outgoing telecommunications capability.

c. "Repeat Trouble Report" -- A report received on a customer access line within 30 days of a closed trouble report.

10. "Exchange" -- A unit established by a telecommunications corporation for the administration of telecommunication services in a specified geographic area. It may consist of one or more central office areas together with associated outside plant facilities used in furnishing telecommunications services in that area.

11. "Exchange Service Area" -- The geographical territory served by an exchange.

12. "Held Order" -- A request for basic exchange line service delayed beyond the initial commitment date due to a lack of facilities which the telecommunications corporation is responsible for providing.

13. "Interconnection Trunk Group" -- Connects the telecommunications corporation's central office or wire center with another telecommunications corporation's facilities.

14. "Local Access Line" -- A facility, totally within one central office area, providing a telecommunications connection between a customer's service location and the serving central office.

15. "Out of Service" -- When there exists neither incoming nor outgoing telecommunication capability.

16. "Party Line Service" -- A grade of local exchange service which provides for more than one customer to be served by the same local access line.

17. "Price List" -- The terms and conditions upon which public telecommunications services are offered that is filed by a telecommunications corporation that is subject to pricing flexibility pursuant to 54-8b-2.3.

18. "Tariff" -- A portion or the entire body of rates, tolls, rentals, charges, classifications and rules, filed by the telecommunications corporation and approved by the Commission.

19. "Telecommunications Corporation" -- A "telephone corporation" as defined in Section 54-2-1.

20. "Voice Grade Service" -- Service that at a minimum, includes:

a. providing access to E911, which identifies the exact location of the emergency caller;

b. Two-way communications with a clear voice each way;

c. Ability to place and receive calls; and

d. Voice band between 300 HZ and 3000 HZ.

21. "Wire Center" -- The building in which one or more local switching systems are installed and where the outside cable plant is connected to the central office equipment.

R746-340-2. Records and Reports.

A. Availability of Records -- Each telecommunications corporation shall make its books and records open to inspection by representatives of the Commission, the Division of Public Utilities, or the Office of Consumer Services (or any successor agencies) during normal operating hours.

B. Retention of Records -- All records required by these rules shall be preserved for the period of time specified at 47 CFR 42, incorporated by this reference.

C. Reports --

1. Each telecommunications corporation shall maintain records of its operations in sufficient detail to permit review of its service performance.

2. Central offices with more than 500 local access lines, shall each report as promptly as possible to the Commission and the local news media, including, but not limited to, radio, TV, and newspaper, when applicable, failure or damage to the equipment or facilities which disrupts the local or toll service of 25 percent or more of the local access lines in that central office for a time period in excess of two hours.

D. Uniform System of Accounts -- The Uniform System of Accounts for Class A and Class B telephone utilities, as prescribed by the Federal Communications Commission at 47 CFR 32 is the prescribed system of accounts to record the results of Utah intrastate

operations.

E. Data to be Filed with the Commission --

1. Terms and Conditions of Service -- Each telecommunications corporation shall have its tariff, price lists, etc., which describe the terms and conditions under which it offers public telecommunications services on file with the Commission, and where applicable, in accordance with the rules governing the filing of the information as prescribed by the Commission. It shall also provide the same information to the Commission in electronic format as requested by the Commission.

2. Exchange Maps -- Each telecommunications corporation shall have on file with the Commission an exchange area boundary map for each of its exchanges within the state. Each map shall clearly show the boundary lines of the exchange area wherein the telecommunications corporation serves. Exchange boundary lines shall be located by appropriate measurement to an identifiable location where that portion of the boundary line is not otherwise located on section lines, waterways, railroads, roads, etc. Maps shall show the location of major highways, section lines, geographic township and range lines and major landmarks located outside municipalities. An approximate distance scale shall be shown on each map.

R746-340-3. Engineering.

A. Utility Plant -- Utility plant shall be designed, constructed, maintained and operated in accordance with the provisions outlined in the National Electrical Safety Code, 1993 edition, incorporated by reference.

B. Party-line Service -- When party-line service is to be provided, no more than eight customers shall be connected on one local access line, unless approved by the Commission. The telecommunications corporation may re-group customers as may be necessary to carry out the provisions of this rule.

R746-340-4. Emergency Operation.

A. Emergency Service -- Telecommunications corporations shall make reasonable arrangements to meet emergencies resulting from failures of service, unusual and prolonged increases in traffic, illness of personnel, fire, storm or other acts of God, and inform its employees as to procedures to be followed in the event of emergency in order to prevent or minimize interruption or impairment of telecommunication service.

B. Battery Power -- Each central office shall have a minimum of three hours battery reserve.

C. Auxiliary Power -- In central offices exceeding 5,000 lines, a permanent auxiliary power unit shall be installed.

R746-340-5. Maintenance.

A. Maintenance of Plant and Equipment --

1. Each telecommunications corporation shall adopt and pursue a maintenance program aimed at achieving efficient operation of its system to permit the rendering of safe, adequate and continuous service at all times.

2. Maintenance shall include keeping all plant and equipment in a good state of repair consistent with safety and the adequate service performance of the plant affected.

B. Customer Trouble Reports --

1. Each telecommunications corporation shall provide for the receipt of customer trouble reports at all hours, and shall make a full and prompt investigation of and response to each complaint. The telecommunications corporation shall maintain a record of trouble reports made by its customers. This record shall include appropriate identification of the customer or service affected, the time, date and nature of the report, and the action taken to clear the trouble or satisfy the complaint.

2. Provision shall be made to clear emergency out-of-service trouble at all hours, consistent with the bona fide needs of customers and the personal safety of utility personnel.

3. Provisions shall be made to clear other out-of-service trouble not requiring unusual repair, within 48 hours of the report received by the telecommunications corporation, unless the customer agrees to another arrangement.

4. If unusual repairs are required, or other factors preclude clearing of reported trouble promptly, reasonable efforts shall be made to notify affected customers.

C. Inspections and Tests -- Each telecommunications corporation shall adopt a program of periodic tests, inspections and preventive maintenance aimed at achieving efficient operation of its system and rendering safe, adequate, and continuous service. It shall file a description of its inspection and testing program with the Commission showing how it will monitor and report compliance with Commission rules or standards.

D. Planned Service Interruptions -- If service must be interrupted for purposes of rearranging facilities or equipment, the work shall be done at a time which will cause minimal inconvenience to customers. Each telecommunications corporation shall attempt to notify each affected customer in advance of the interruption. Emergency or alternative service shall be provided, during the period of the interruption, to assure communication is available for local law enforcement and public safety units and agencies.

R746-340-6. Safety.

A. Safety -- Each telecommunications corporation shall:

1. require its employees to use suitable tools and equipment to perform their work in a safe manner;

2. instruct employees in safe work practices;

3. exercise reasonable care in minimizing the hazards to which its employees, customers and the general public may be subjected.

R746-340-7. End User Service Standards For All Telecommunications Corporations.

A. Public Telecommunications Services -- A telecommunications corporation providing public telecommunications services shall, excluding documented Allowed Service Disruption events listed under R746-340-1(B)(1):

1. meet minimum voice grade requirements as defined in R746-340-1(B)(19);

2. meet network call completion standards:

a. provide dial tone within three seconds on at least 98 percent of tested calls placed during average daily busy hours each month for each wire center; and

b. assure that no interoffice facilities entirely within a telecommunications corporation's network, except choke network trunks, exceed two percent blocking. Intertandem facilities shall be governed by R746-365.

KEY: procedures, telecommunications, telephone utility regulations

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	54-4-23

R765. Regents (Board of), Administration.
R765-605. Higher Education Success Stipend Program.
R765-605-1. Purpose.

To provide Board of Regents ("the Board") policy and procedures for implementing the Higher Education Success Stipend Program ("HESSP", or program) (formerly known as the Utah Centennial Opportunity Program for Education ("UCOPE," or "program"), UCA 53B-13a, enacted in H.B. 64 by the 1996 General Session of the Utah Legislature, as amended in 1997, 1998 and 2004 by S.B. 40, Cesar Chavez Scholarship Program and 2011 by S.B. 107, Higher Education Success Stipend Program ("HESSP").

R765-605-2. References.

2.1. Utah Code. Title 53B, Utah System of Higher Education, Chapter 8, Section 102.

2.2. Utah Code. Title 53B, Utah System of Higher Education, Chapter 8, Section 106.

2.3. Utah Code. Title 53B, Utah System of Higher Education, Chapter 13a.

2.4. State Board of Regents Policy R512, Determination of Resident Status.

R765-605-3. Effective Date.

These policies and procedures are effective July 1, 2011.

R765-605-4. Policy.

4.1. Program Description - HESSP is a State supplement to increasingly inadequate grant and work assistance from Federal Government student financial aid programs. In UCA 53B-13a-103(1), "the Legislature finds that the prosperity, economic success, and general welfare of the people of Utah and of the state are directly related to the educational levels and skills of the citizens of the state, and financial assistance, to bridge the gap between a financially needy student's resources and the cost of attendance at a Utah postsecondary institution, is a necessary component for ensuring access to postsecondary education and training".

4.2. Award Year - The award year for HESSP is the twelve-month period coinciding with the state fiscal year beginning July 1 and ending June 30.

4.3. Institutions Eligible to Participate - Eligible institutions include the eight institutions of the Utah System of Higher Education, Utah private, nonprofit postsecondary institutions which are accredited by a regional accrediting organization recognized by the Board, and the Utah System of Technical Colleges campuses. These are the only institutions eligible to participate. For purposes of this section, the Board recognizes the Northwest Association of Schools and Colleges as the accrediting organization.

4.4. Students Eligible to Participate - To be eligible for grant or work-study assistance from HESSP funds, a student must:

4.4.1. be a resident student of the State of Utah under UCA 53B-8-102 and Board Policy R512 or exempt from paying the nonresident portion of total tuition under Utah Code Section 53B-8-106. For purposes of this section, in addition to the qualification methods set forth in Policy R512, an institution may recognize a student, other than a nonimmigrant alien, as a resident student of the State of Utah if the student graduated from a Utah high school within 12 months of enrolling in the institution; and

4.4.2. be unconditionally admitted and currently enrolled in an eligible institution on at least a half-time basis as defined in Federal regulations applicable to Title IV of the Higher Education Act, in a post-high school program of at least nine months duration, leading to an Associate or Bachelor's degree, or to a diploma or certificate in an applied technology or other occupational specialty. This does not include unmatriculated students or students enrolled in postbaccalaureate programs or in remedial or developmental programs to prepare for admittance to a degree, diploma, or occupational certificate program; and

4.4.3. be maintaining satisfactory academic progress, as defined by the institution, toward the degree, diploma, or certificate objective in which enrolled; and

4.4.4. meet all requirements of general eligibility for Federal Higher Education Act Part IV Student Financial Aid Programs, as defined in applicable U. S. Department of Education Regulations and the current edition of the Department of Education Student Aid Handbook; and

4.4.5. have a demonstrated need for financial assistance based on the defined Cost of Attendance for the applicable student category at the institution and the expected family contribution as determined by the Federal need analysis process for Higher Education Act Title IV student financial assistance programs.

4.5. Program Administrator - The program administrator for HESSP is the Associate Commissioner for Student Financial Aid, or a person designated in a formal delegation of authority by the Associate Commissioner, under executive direction of the Commissioner of Higher Education.

4.6. Determination of Funds Available for The Program - Funds available for HESSP allotments to institutions may come from specifically earmarked state appropriations, from the statewide student financial aid line item appropriation to the Board, or from other sources such as private contributions. Amounts available for allotment each year are determined as follows:

4.6.1. Consistent with the original purposes of the Statewide Student Financial Aid line item appropriation to the Board, funds appropriated in the line item shall be applied in the following priority order:

4.6.1.1. First priority is given to matching funds for Utah System of Higher Education institutional awards from the Federal Government for campus-based Federal Perkins Loan Program capital contributions, Federal Supplemental Educational Opportunity Grant Program funds, and partial matching for the Federal Work-Study Program.

4.6.1.2. Second priority is given to providing the required state match for allocations of Leveraging Educational Assistance Partnership Program funds to the State of Utah.

4.6.1.3. All remaining funds are used for HESSP.

4.6.2. All funds appropriated by specific legislation, or in a specific line item for HESSP, and any funds from other sources contributed for HESSP, are added together with funds available for HESSP pursuant to subsection 4.6.1, to determine the total amount available for the program.

4.7. Allotment of Program Funds to Institutions.

4.7.1. Annually, the program administrator will request Federal Pell Grant disbursement data by March 1st. The director of financial aid of an eligible institution will demonstrate intention to continue participation in HESSP by submitting to the program administrator a certification, subject to audit, of (a) the total dollar amount of Federal Pell Grant funds awarded in the most recent completed award year to all students at the institution and (b) the total dollar amount of Pell Grant funds awarded specifically to students at the institution who were resident students of the state of Utah under UCA 53B-8-102 and Board Policy R512.

4.7.2. Failure to submit the certification required in 4.7.1 by the requested date constitutes an automatic decision by an eligible institution not to participate in the program for the next fiscal year.

4.7.3. Allotment of program funds to participating institutions is in the same proportion as the amount of Federal Pell Grant funds received by each participating institution for resident undergraduate students bears to the total of such funds received for such students in the most recently completed award year by all participating institutions.

4.7.4. The program administrator will send official notification of each participating institution's allotment, together with a blank copy of the format for the institutional HESSP performance report to be submitted within 30 days of the end of the applicable fiscal year, to the director of financial aid of each participating institution each fiscal year.

4.8. Institutional Participation Agreement - Each participating institution will enter into a written agreement with the program

administrator, or assigned designee, agreeing to abide by the program policies, accept and disburse funds per program rules, provide the required report each year and retain documentation for the program to support the awards and actions taken. By accepting the funds, the participating institution agrees to the following terms and conditions:

4.8.1. Use of Program Funds Received by the Institution.

4.8.1.1. The institution may at its discretion place up to, but in no case more than, 3.0% of the total amount of program funds allotted to it for the award year in a budget for student financial aid administrative expenses of the institution, and will expend all funds so budgeted before the end of the state fiscal year for which allotted.

4.8.1.2(a). For any award year, the institution may, at its option, place all or any portion of its allotted HESSP funds in a budget to be used only for payment of work-study stipends to eligible students, for employment during the award year either in jobs provided under Federal Work-Study Program (FWSP) regulations or in jobs provided in accordance with HESSP Work-Study Program (HWSP) policies (Section 4.9 herein). The State Legislature has determined that need-based work-study stipends be given strong emphasis.

4.8.1.2(b). Work-study payments from the institution's HESSP work-study budget, for jobs under either FWSP regulations or HWSP policies, will be counted as HESSP awards for purposes of subsection 4.8.2.3.

4.8.1.3. All work-study jobs provided using HESSP funds from the budget pursuant to this subsection, including those established under FWSP regulations, will be identified to the recipient as HESSP work-study awards. No portion of the institution's HESSP allotment may be used as institutional match for Federal Work-Study Program allocations.

4.8.1.4. The institution will place the total remainder of program funds allotted to it for the award year, after amounts budgeted pursuant to subsections 4.8.1.1 and 4.8.1.2, in a budget to be used only for payment of HESSP grants to eligible students during and for periods of enrollment within the award year. Grants awarded from this budget will be identified to the recipient as Higher Education Success Stipend Grants.

4.8.1.5. The institution may not carry forward or carry back from one fiscal year to another any of its HESSP allocation for a fiscal year. Any exception to this rule must be approved in advance by the HESSP program administrator. The institution will inform the program administrator immediately if it determines it will not be able to utilize all program funds allotted to it for an award year. Unused funds may be returned to the program administrator as directed. Returned funds will be re-distributed to the other eligible institutions as supplemental HESSP allocations for disbursement during the same award year. The portion of HESSP allocations budgeted for administrative expenses pursuant to Section 4.8.1.1 will not be part of any carryover.

4.8.2. Determination of Awards to Eligible Students.

4.8.2.1. Student Cost of Attendance budgets will be established by the institution, in accordance with Federal regulations applicable to student financial aid programs under Title IV of the Higher Education Act as amended, for specific student categories authorized in the Federal regulations, and providing for the total of costs payable to the institution plus other direct educational expenses, transportation and living expenses.

4.8.2.2. HESSP work-study or grant amounts will be awarded based on financial aid information and cost of attendance budgets at the time the awards are determined, with first priority given to eligible students who demonstrate the greatest financial need.

4.8.2.3. The total amount of any HESSP grant and/or work-study award to an eligible student in an award year will not exceed $5,000, and the minimum HESSP grant and/or work-study award to an eligible student will be $300, except that:

4.8.2.3(a). the minimum amount may be the amount of funds remaining in the institution's allotment for the award year in the case of the last eligible student receiving a HESSP grant award for the year; and

4.8.2.3(b). An eligible student whose period of enrollment is less than the normally-expected period of enrollment within the award year (such as two semesters, three quarters, nine months, or 900 clock hours) will be awarded a minimum or maximum grant amount in proportion to the portion of the normally-expected period of enrollment represented by the quarter(s), semester(s) or other defined term for which the student is enrolled.

4.8.2.4. HESSP Grants and work-study stipends will be awarded and packaged on an annual award year basis. Grants will be paid one quarter or semester at a time (or in thirds, if applicable to some other enrollment basis such as total months or total clock hours), contingent upon the student's maintaining satisfactory progress as defined by the institution in published policies or rules. Work-study wages will be paid regularly as earned, provided the student is continuing to make satisfactory progress.

4.8.2.5. All awards under the program will be made without regard to an applicant's race, creed, color, religion, ancestry, or age.

4.8.2.6. Students receiving financial aid under the program will be required to agree in writing to use the funds received for expenses covered in the student's cost of attendance budget.

4.8.2.6(a). The student's signature on the Free Application for Federal Student Aid satisfies this requirement.

4.8.2.6(b). If the institution determines, after opportunity for a hearing on appeal according to established institutional procedures, that a student used HESSP grant or work-study funds for other purposes, the institution will disqualify the student from HESSP eligibility beginning with the quarter, semester, or other defined enrollment period after the one in which the determination is made.

4.8.2.7. In no case will the institution initially award program grants or work-study stipends or both in amounts which, with Federal Direct, Federal PLUS, and/or Federal Perkins Loans and other financial aid from any source, both need and merit-based, and with expected family contributions, exceed the cost of attendance for the student at the institution for the award year.

4.8.2.8. If, after the student's aid has been packaged and awarded, the student later receives other financial assistance (for example, merit or program-based scholarship aid) or the student's cost of attendance budget changes, resulting in a later overaward of more than $500, the institution will appropriately reduce the amount of financial aid disbursed to the student so that the total does not exceed the cost of attendance.

4.8.3. Reports - The institution will submit an annual report within 30 days after completion of the award year, providing information on individual awards and such other program-relevant information as the board may reasonably require.

4.8.4. Records Retention and Cooperation in Program Reviews - The institution will cooperate with the program administrator in providing records and information requested for any scheduled audits or program reviews, and will maintain records substantiating its compliance with all terms of the participation agreement for three years after the end of the award year, or until a program review has been completed and any exceptions raised in the review have been resolved, whichever occurs first. If at the end of the three year retention period, an audit or program review exception is pending resolution, the institution will retain records for the award year involved until the exception has been resolved.

4.9. HESSP Work-Study Program Guidelines - If an institution elects to utilize its HESSP Work-Study funds for the HESSP Work-Study Program (HWSP) instead of in accordance with Federal Work-Study (FWSP) regulations, the following guidelines apply.

4.9.1. Institutional Jobs - The institution may establish designated HWSP institutional jobs on campus or in other institutional operating sites, and administer such jobs in accordance with the following conditions.

4.9.1.1. The job must be supplemental to, and not displace, any regularly-established job held by a greater-than-half-time

institutional employee in the three months immediately prior to establishment of the HWSP institutional job.

4.9.1.2. The hourly wage for the HWSP institutional job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the institution in equivalent positions in the institution's personnel system.

4.9.1.3. The institution may pay up to one hundred percent of the hourly wage for the institutional job from its HESSP work-study budget established pursuant to subsection 4.9.1, provided the total wages paid to a student for the job from HESSP and any other institutional funds do not exceed the amount of the award to the student for the award year.

4.9.2. School Assistant Jobs - The institution may establish designated HWSP school assistant jobs for volunteer tutors, mentors, or teacher assistants, to work with educationally disadvantaged and high risk school pupils, by contract with individual schools or school districts, and administer such jobs in accordance with the following conditions:

4.9.2.1. The hourly wage for the HWSP school assistant job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the school or school district in equivalent positions in its personnel system.

4.9.2.2. The institution may pay up to one hundred percent of the hourly wage for the job from its HESSP work-study budget established pursuant to subsection 4.9.2 , provided the total wages paid to a student for the job from any source do not exceed the amount of the award to the student for the award year.

4.9.3. Community Service Jobs - The institution may establish designated HWSP community service jobs with volunteer community service organizations certified by the program administrator on advice of the Utah Commission on Volunteers, and administer such jobs in accordance with the following conditions:

4.9.3.1. The hourly wage for the HWSP community service job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the organization in equivalent positions in its personnel system.

4.9.3.2. The institution may pay up to one hundred percent of the hourly wage for the job from its HESSP work-study budget established pursuant to subsection 4.9.3, provided the total wages paid to a student for the position from any source do not exceed the amount of the award to the student for the award year.

4.9.4. Matching Jobs - The institution may establish designated HWSP matching jobs by contract with government agencies, private businesses, or non-profit corporations, and administer such jobs in accordance with the following conditions:

4.9.4.1. The matching job may not involve any religious or partisan political activities, or be with an organization whose primary purpose is religious or political.

4.9.4.2. The matching job must be supplemental to, and not displace, any regularly-established job held by a greater-than-half-time employee in the government agency, private business, or non-profit corporation in the three months immediately prior to establishment of the HWSP matching job.

4.9.4.3. The hourly wage for the HWSP matching job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the organization in equivalent positions in its personnel system.

4.9.4.4. The institution may pay up to fifty percent of the hourly wage for the job from its HESSP work-study budget established pursuant to subsection 4.9.4, provided the total wages (including the employer-paid portion) paid to the student do not exceed the amount of the award to the student for the award year.

4.9.5. Institutions are strongly encouraged to place students, when possible, in HWSP jobs which have a relationship to the student's field of study or training.

4.9.6. Institutions or the employing organization must pay the employer portion of required Federal Taxes (FICA, FUI, and SUI), from institutional funds, for the students who are paid for a work-study award.

4.9.7. If an institution employs students in work-study jobs or other institutional jobs cumulatively over time to a point at which the institution is required to pay employee benefits other than the direct job wages for a HESSP-funded work-study job, the institution is required to pay the costs of any such required employee benefits from institutional funds other than HESSP-allotted funds.

KEY: financial aid, higher education
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Notice of Continuation April 11, 2018 53B-13a

R810. Regents (Board of), University of Utah, Commuter Services.
R810-1. University of Utah Parking Regulations.
R810-1-1. Authority.

The University's parking system is authorized by Utah Code, Title 53B, Chapter 3, Sections 103 and 107.

R810-1-2. Motor Vehicle Parking On Campus.

A motor vehicle is defined under Utah State Code, Unannotated 41-1a-102(66).

A vehicle is defined under Utah State Code, Unannotated 41-1a-102(65).

Anyone parking a vehicle on campus must purchase a parking permit from Commuter Services and register the vehicle(s) license plate(s) to the permit purchased, or park the vehicle in a metered or pay area and pay the appropriate fee. Payment for the use of campus meters or pay areas is required whether or not the vehicle is associated to a valid University of Utah parking permit. If a physical permit is distributed, it must be displayed and clearly visible from the front windshield.

R810-1-3. Parking Areas.

Parking is permitted only in designated areas and only in accordance with all posted signs. Vehicles must be parked properly within marked stalls. Tickets are issued to vehicles parked contrary to posted signs.

R810-1-4. Restrictions.

Parking is prohibited 24 hours daily at red curbs, no parking areas, bus zones, crosswalks, driveways, and in front of fire hydrants and dumpsters.

R810-1-5. Vehicle Operator Responsibilities.

Parking area designations are subject to change, and it is the motorist's responsibility to be cognizant of such changes. The responsibility for finding an authorized parking space rests with the motor vehicle operator.

A vehicle must be parked in a valid parking stall so that the vehicle's license plate is clearly visible from the roadway from which the vehicle pulled into the stall. It is the motorist's responsibility to assure that the vehicle's license plate is visible and clear of debris.

R810-1-6. Parking for Drivers with Disabilities.

Parking for drivers with disabilities is reserved for students, faculty, staff and visitors who must purchase and display a parking permit or park in a metered area or pay lot and pay the appropriate fee.

R810-1-8. University Vehicle Parking.

University owned vans, trucks, and SUV's involved in maintenance must park in maintenance stalls when available. University owned sedans may not park in maintenance stalls. All University owned vehicles may park in U or E permitted stalls but are prohibited from parking in No Parking, Tow Away, Disabled or Reserved areas, or metered loading zones. University owned vehicles parking at non loading zone meters are limited to the maximum time listed on the meter. Pay by phone limitation is two hours; visitor pay lot limitation is one hour and "A" permit stall limitation is for loading and unloading only. Drivers of improperly parked University vehicles will be responsible for tickets received.

R810-1-9. Motorcycle Parking.

Drivers of motorcycles, motorbikes, scooters and mopeds must purchase a parking permit from Commuter Services and register the license plate(s) number(s) to the permit purchased.

R810-1-11. University Student Apartments Parking.

University Student Apartment parking lots are restricted to apartment residents, housing employees, resident's guests, apartment applicants and visitors.

Parking is permitted only in designated areas in accordance with all posted signs.

Residents and employees must purchase a housing parking permit and register all vehicle (including motorcycle, scooter, and moped) license plates to the permit.

R810-1-12. Extended Parking Privileges.

Vehicles occupying the same lot or stall for 48 hours or longer may be removed at the owner's expense if the vehicle interferes with regular University functions or maintenance. Vehicles parked in the residence halls are exempted from the 48 hour limitations.

R810-1-13. Abandoned Vehicles.

Vehicles that have not been moved for a period of seven days will be considered as abandoned and may be removed from University property at the owner's expense.

R810-1-14. Living In A Motor Vehicle On Campus.

Campers, trailers, motor homes or other vehicles may not be used for sleeping or living purposes on campus unless parked in areas designated by Commuter Services as RV parking.

R810-1-15. University Responsibility For Vehicle Damage.

The University is not responsible for the care and protection of or damage to any vehicle or its contents when operated or parked on University property. The purchase of a parking permit shall constitute an acknowledgement and acceptance of this condition as the privilege to use the University's parking facilities.

R810-1-16. Special Parking.

Commuter Services may change the designated use of lots or roadways at any time. During events, Commuter Services may charge additional fees for the use of University parking lots.

KEY: parking facilities
April 5, 2018 **53B-3-103**
53B-3-107

R810. Regents (Board of), University of Utah, Commuter Services.
R810-8. Vendor Regulations.
R810-8-1. Parking Options for Vendors and Sales Representatives.

Vendors and sales representatives may:

A. Purchase a vendor permit from Commuter Services.

B. Purchase a day pass.

C. Park at a meter or pay area and pay the appropriate fee.

1. Vendors are required to obey University parking regulations.

2. Departments being served by vendors may not exempt vendors from parking regulations.

3. Vendor permits are limited to business use only and may not be used to attend classes or for all-day parking.

4. University of Utah employees may not use departmental vendor permits in lieu of a University of Utah parking permit. A University employee's vehicle displaying a departmental vendor permit must also have a parking permit from Commuter Services.

KEY: parking facilities
April 5, 2018 **53B-3-103**
53B-3-107

R916. Transportation, Operations, Construction.
R916-4. Construction Manager/General Contractor and Progressive Construction Manager/General Contractor Contracts.
R916-4-1. Purpose.

(1) Pursuant to Utah Code Section 63G-6a-106(3)(a), this rule establishes the Department's procedures to procure transportation construction under the Construction Manager/General Contractor (CM/GC) approach authorized in Utah Code Section 63G-6a-1302. CM/GC contracting seeks to provide a collaborative project delivery method which may result in: A savings of time and cost; improved quality expectations as to the end product, schedule, and budget; and risk management savings through lack of duplication of expenses, and through early, continuous and coordinated efforts.

R916-4-2. Authority.

(1) This rule is authorized by sections 63G-6a-106, 63G-6a-702, and 63G-6a-1302 of the Utah Procurement Code; section 63G-3-201 of the Utah Administrative Rulemaking Act; and subsection 72-1-201(1)(h) of the Utah Transportation Code.

R916-4-3. Policy.

(1) When the Executive Director or designee determines it appropriate, Department may use CM/GC method of project delivery. CM/GC is not recommended for every project, therefore, the decision to use the method must consider the factors listed in Utah Code Subsection 63G-6a-1302(3). When the Executive Director or designee makes such a determination, the procurement officer responsible for the project shall execute and include in the contract file a written statement describing the facts leading to the selection of the method of construction contracting management used for the project.

(2) This rule also applies when the Department uses a variation of CM/GC contracting known as Progressive CM/GC (also referred to in the transportation industry as Progressive Design-Build).

(3) When a Progressive CM/GC contracting approach is used, the Department shall enter into one or multiple contracts to provide both engineering/design services, construction services, maintenance services, or a combination thereof pursuant to a scope of work statement provided by the Department.

R916-4-4. Request for Proposals (RFP).

(1) The Department will issue a request for proposals (RFP) from interested contractors.

(2) The RFP may require separate technical and price proposals, meeting requirements as stated in the RFP.

(3) The RFP may require a minimum mandatory technical level.

R916-4-5. Evaluation Team.

(1) The Department shall establish a team for evaluating proposals.

(2) One member of the team may be an employee of a consulting engineering firm, selected based on recommendation from the American Council of Engineering Companies of Utah (ACEC); and

(3) One member may be an employee of a licensed contractor, selected based on recommendation from the Utah Chapter of the Association of General Contractors (AGC).

(4) No evaluation team member may be an employee of any firm that participates in preparing a proposal to be submitted in response to an RFP or RLOI issued by the Department.

(5) Every member of an evaluation team must disclose conflicts of interest pursuant to the requirements of state and federal ethics and procurement law and the Department's Standard Specifications and policies.

R916-4-6. Evaluation of Proposals and Discussions with Proposers.

(1) The Department shall evaluate proposals, in accordance with the evaluation criteria set forth in the RFP.

(2) As part of the qualifications specified in the RFP, the Department may require that potential contractors, at a minimum, demonstrate their:

(a) Construction experience with similar projects;

(b) financial, manpower and equipment resources available for the project;

(c) experience with other negotiated contracts; and

(d) preconstruction or design support experience.

(3) The Department may require potential contractors to participate in formal interviews as part of the selection process.

R916-4-7. Acceptable Bid Security; Performance and Payment Bonds.

(1) The Executive Director or designee shall have the authority to waive the requirement to provide bid security, or may reduce the amount of such security, if he or she determines that the bid security otherwise required by Part 11 of the Utah Procurement Code to be unnecessary to protect the State.

(2) The Executive Director or designee may reduce the amount of the payment and performance bonds below the 100% level required by Part 11 of the Utah Procurement Code, if he or she determines that a 100% bond is unnecessary to protect the State.

(3) Bid security, payment bonds and performance bonds must be provided on the forms included in the RFP.

R916-4-8. Required Contract Clauses.

(1) The Department shall comply with Section 63G-6a-1202 regarding clauses for contracts. The Department shall establish standard contract clauses to assist the Department and to help contractors and potential contractors to understand applicable requirements. These standard contract clauses may be modified as needed to meet the requirements of individual projects.

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

(3) All contracts shall include text that allows the Department to terminate the contract for cause at any time, or without cause after providing the contractor with reasonable notice. The Department will pay the contractor the amount owing as of the termination date.

R916-4-9. Selection.

The basis for selection shall be stated in the RFP. Selection may be based on any of the following approaches.

(1) By the responsible proposer offering the lowest priced responsive proposal. If the RFP includes a mandatory technical level, no proposal shall be considered responsive unless it meets that level;

(2) By the responsible proposer whose proposal is evaluated as providing the best value to Department;

(3) By the responsible proposer whose proposal is evaluated as representing the most qualified proposer; or

(4) Other approaches as determined by the Executive Director or designee, which satisfy the requirements of the Utah Procurement Code.

R916-4-10. Award of Contracts.

(1) The CM/GC approach consists of the following two contract phases:

(a) Preconstruction or design services, which may include value engineering, cost estimating, conceptual estimating, constructability reviews, scheduling, and Maintenance of Traffic plans.

(b) Construction services, which will be awarded after the plans have been sufficiently developed and a price for construction services has been successfully validated and accepted. In the event

that a price is not validated and accepted, the Department shall not award the construction phase of the contract. Incremental construction contracts may be awarded after prices are validated and accepted for each contract. The Department may choose to retain any of the parties if the construction/design services phase of the contract is not awarded.

(2) The Department shall not be required to award a contract during either of the contract phases. However, following an award, the Department shall provide notice of the award to the successful CM/GC proposer followed by a notice to proceed with the work.

(3) Contractors or contractor teams must not begin work before receiving the notice to proceed with work described in rule R916-8-12(2).

KEY: transportation, highways, contracts, construction
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